Calendar No. 333

99th Congress
1st Session

SENATE

Report
99-146

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

REPORT

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

TO ACCOMPANY

S. 1730

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2 OF THE FIRST CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1986 (S. CON. RES. 32, NINETY-NINTH CONGRESS)

October 2 (legislative day, September 30), 1985.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

52-761 O WASHINGTON : 1985

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CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

OCTOBER 2 (legislative day, SEPTEMBER 30), 1985.—Ordered to be printed

Mr. DOMENICI, from the Committee on the Budget, submitted the following

REPORT

[To accompany S. 730]

The Committee on the Budget, to which were submitted recommendations pursuant to section 2 of the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, Ninety-ninth Congress), having considered the same, reports favorably thereon and recommends that the bill embodying those recommendations do pass.

VIEWS OF THE COMMITTEE ON THE BUDGET

Reconciliation is an important tool to restrain Federal spending. It is authorized and described in Title III of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). The reconciliation procedure allows Congress to consider changes in spending and revenues within the purview of several committees in a single bill, while reserving to those committees the power to determine what changes will be made in laws within their respective jurisdiction.

On August 1, 1985, Congress adopted S. Con. Res. 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986. That resolution mandated major reductions in the staggering budget deficits now facing the United States. Revenue and spending targets for the fiscal years 1986 through 1988 contained in the resolution will lower deficits over the next 3 years by $276.2 billion.

In order to realize the fiscal policy set forth in S. Con. Res. 32, Congress included in that resolution instructions to 11 Senate committees and 14 House committees to recommend changes in laws in their jurisdiction which would reduce Federal spending by $20.1 billion in budget authority and $67.1 in outlays during FY 1986 through FY 1988. In addition, the Senate Finance and House Ways and Means Committees were instructed to recommend revenue increases totaling $8.4 billion during that 3-year period.

All reconciled committees were instructed to submit their recommendations to the Senate Budget Committee that have met their deadlines. The Senate Budget Committee is responsible for combining these legislative recommendations into a single bill and for reporting these recommendations to the Senate without substantive revision. This report summarizes the views of the Committee on the Budget on the material submitted by the individual committees.

Reconciliation Is a Necessary Tool To Achieve Savings

The Senate Budget Committee believes that the reconciliation process as used by the Congress since 1981 is a necessary procudure through which to achieve many of the dramatic reductions in Federal spending mandated by the Congress when it approved S. Con. Res. 32, the First Concurrent Budget Resolution for FY 1986. Reconciliation allows the individual authorizing committees to work their wills on programs within their jurisdiction, as the rules of the Senate provide. This safeguard insures that the Senate will have the best judgement of individual committees on restraint on federal programs.

This Bill And Report

Pursuant to section 310(c)(2) of the Budget Act, the Budget Committee reports herewith the recommendation of 11 Senate committees, without any substantive revision, and with a recommendation that the bill does pass.

Nonbudgetary Provisions

The Budget Committee believes that the inclusion of non-budgetary provisions in a reconciliation bill is inconsistent with the spirit and letter of the Budget Act, damages the credibility of the budget process, and could have the effect of circumventing Rule XXII of the Standing Rules of the Senate.

The problem of so-called "extraneous matters" became a major issue in 1981, during Senate consideration of S. 1377, the Omnibus Reconciliation Act of 1981. A number of provisions which were determined to be clearly extraneous were stricken from that bill. A special time agreement was entered into with respect to other provisions which some Senators contended were extraneous.

The Budget Committee has authorized the Chairman and Ranking Minority Member to consult with the Chairman and Ranking Minority Members of committees which have submitted legislation, and with the Senate Majority and Minority leadership, to identify any clearly extraneous matters in this bill and to reach an agreement on any amendments which may be necessary to eliminate such matters from the bill. The Budget Committee recommends that such amendments as agreed upon be adopted by the Senate.

Summary of Reconciliation Responses

The total reductions in deficits as reported by the 11 Senate committees exceed by $10.1 billion the total deficit reduction instructions given by the Congress through reconciliation for FY 1986–88. According to Congressional Budget Office estimates, 10 of the 11 reconciled Senate committees exceeded their deficit-reduction goals.

Morever, Congress assumed additional savings would be made through the appropriations process. These savings, which were not reconciled, total approximately $37 billion for FY 1986. If these savings are achieved, coupled with the savings included in this bill, then the Congress will have exceeded its target of $55.5 billion in deficit reduction for FY 1986. If, in addition, the appropriations process in FY 1987 and FY 1988 also meet assumed targets for savings, and other assumed non-appropriations actions occur, then the entire deficit-reduction package of $276.2 billion for the 3-years period will be exceeded.

RECONCILIATION PROCEDURE

Just as the Budget Act provides for the reconciliation procedure, it provides in sections 310(e) and 305 special rules for the consideration of reconciliation bills.

The following rules apply to the consideration of a reconciliation bill in the Senate:

First, debate on any reconciliation bill and all amendments thereto and debatable motions and appeals in connection therewith is limited to 20 hours.

Second, debate on the bill (including amendments, debatable motions, and appeals) shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

Third, debate on any amendment is limited to 2 hours, divided between the mover of the amendment and the manager of the bill.

Fourth, debate on any amendment to an amendment, debatable motion, or appeal is limited to 1 hour, divided between the mover and the manager.

Fifth, a motion to limit debate to less than 20 hours is not debatable.

Sixth, a motion to recommit is not in order unless it contains instructions to report back within a specified time, not to exceed 3 days, and debate on such a motion is limited to 1 hour, divided between the mover and the manager.

Seventh, any germane amendment which amends the bill in more than one place and which achieves or maintains mathematical consistency is always in order.

Eighth, amendments to the bill must be "germane to the provisions of" the legislation. The "germaneness rule" has been interpreted as prohibiting any amendment which introduces "new subject matter."

The instructed committees, therefore, set the parameters of germaneness, as the Budget Committee reports what is submitted to it without any substantive revision.

The "germaneness rule" does not apply to a motion to recommit the bill with instructions to report a specific amendment, if a committee has not complied with its reconciliation instructions, and if the effect of the motion would be to bring the bill into compliance with the reconciliation instructions.

Ninth, floor consideration of the conference report on a reconciliation bill is in order any time after the third day following the day on which the conference report is reported and is available to Senators. Debate on the conference report is limited to 10 hours, divided equally, with debate on any appeal or motion limited to 1 hour divided between the mover and the manager.

SUMMARY OF RECONCILIATION RECOMMENDATIONS

The following tables summarize the savings achieved by the committees instructed by the Congress to make changes in programs in their jurisdiction in order to reduce spending and increase revenues in FY 1986–88. The tables compare the legislation reported by the committees to the reconciliation instructions they received from the Congress.

Table 1 provides an overall comparison of the reported bill to the reconciliation instructions. It shows that the recommendations in the bill achieve $85.7 billion in deficit reductions over FY 1986–88, which is $10.1 more than the instruction to the committees. Table 2 provides a summary of outlay reductions by committee. Table 3 provides details of the savings within each committee submission.

Of the 11 Senate committees receiving reconciliation instructions, six received instructions for both budget authority and outlays and five received instructions only for outlays. In table 3 that follows, budget authority estimates in the reported bill are shown only for those committees that received budget authority reconciliation instructions.

The dollar amounts in the tables, except in one instance as noted, have been estimated by the Congressional Budget Office based on the submissions of the 11 committees to the Budget Committee. Details may not add to totals due to rounding.

Table 1

SUMMARY OF SAVINGS

[In millions of dollars]

	FY 1986	FY 1987	FY 1988	Total FY 1986–88
RECOMMENDATIONS IN BILL				
Reductions in outlays	−19,397	−22,071	−28,426	−69,895
Increase in revenues	2,225	6,269	7,263	15,757
Reduction in deficit	−21,622	−28,340	−35,689	−85,652
RECONCILIATION INSTRUCTIONS TO COMMITTEES				
Reductions in outlays	−17,582	−21,036	−28,517	−67,135
Increase in revenues	1,800	3,000	3,600	8,400
Reduction in deficit	−19,382	−24,036	−32,117	−75,535

Table 2

SUMMARY OF OUTLAY REDUCTIONS BY COMMITTEE

[In millions of dollars]

	FY 1986	FY 1987	FY 1988	Total FY 1986–88
Agriculture, Nutrition, and Forestry	−2,222	−2,561	−3,301	−8,084
Armed Services	−146	−118	−150	−414
Banking, Housing, and Urban Affairs	−2,898	−3,706	−3,860	−10,464
Commerce, Science, and Transportation	−349	−204	−222	−775
Energy and Natural Resources	−5,919	298	−412	−6,034
Environment and Public Works	−250	−1,200	−1,550	−3,000
Finance	−3,017	−8,042	−11,348	−22,407
Governmental Affairs	−3,473	−4,532	−5,167	−13,172
Labor and Human Resources	−340	−500	−835	−1,675
Small Business	−503	−1,026	−1,044	−2,573
Veterans' Affairs	−280	−480	−537	−1,297
Total outlay reductions in bill	−19,397	−22,071	−28,426	−69,895
Total outlay instruction to committees	−17,582	−21,036	−28,517	−67,135

Table 3

SAVINGS BY COMMITTEE

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986–88
TITLE I					
Agriculture, Nutrition, and Forestry Committee					
Export sales of dairy products.	O	−107	−110	−114	−331
Agriculture and rural credit ...	O	−1,998	−2,259	−2,910	−7,167
Food stamps ...	O	−117	−192	−277	−586
Total spending reduction in title I.	O	−2,222	−2,561	−3,301	−8,084
Reconciliation instruction to committee.	O	−1,250	−2,050	−4,600	−7,900
TITLE II					
Armed Services Committee					
Military pay ...	O	−146	−3	0	−149
Medicare reimbursement for CHAMPUS patients.	O	0	−115	−150	−265
Total spending reduction in title II.	O	−146	−118	−150	−414
Reconciliation instruction to committee.	O	−100	−200	−300	−600
TITLE III					
Banking, Housing, and Urban Affairs Committee					
Rural housing ...	BA	−1,588	−1,949	−2,032	−5,569
	O	−1,171	−1,764	−1,828	−4,763
Public housing operating subsidies.	BA	−288	−327	−360	−975
	O	−144	−307	−342	−793
Section 108 loan guarantees ...	BA	−4	12	−62	−54
	O	−12	−46	−78	−136
Public housing debt forgiveness.	BA	−497	−467	−463	−1,427
	O	−1,567	−1,567	−1,567	−4,701

Table 3—Continued

SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986–88
TITLE III—Continued					
Urban development action grants (UDAG).	BA	−88	−91	−95	−274
	O	−4	−22	−45	−71
Total spending reduction in title III.	BA	−2,465	−2,822	−3,012	−8,299
	O	−2,898	−3,706	−3,860	−10,464
Reconciliation instruction to committee.	BA	−2,374	−2,828	−2,998	−8,200
	O	−2,814	−3,685	−3,821	−10,320
TITLE IV					
COMMERCE, SCIENCE, AND TRANSPORTATION COMMITTEE					
Local rail service assistance	BA	−7	−8	−8	−23
	O	−1	−3	−6	−10
Amtrak	BA	−131	−136	−142	−409
	O	−114	−128	−141	−383
Corporation for Public Broadcasting.	BA	−1	2	11	12
	O	−(*)	−(*)	7	7
Federal Communications Commission.	BA	1	−31	−35	−65
	O	1	−31	−35	−65
Ship construction differential subsidies.	BA	−200	0	0	−200
	O	−200	0	0	−200
National Oceanic and Atmospheric Administration.	BA	−32	−33	−37	−102
	O	−26	−33	−37	−96
Maritime Administration	BA	−10	−10	−10	−30
	O	−8	−10	−10	−28
U.S. Travel and Tourism Administration.	BA	−(*)	0	(*)	−(*)
	O	−(*)	0	(*)	−(*)
Total spending reduction in title IV.	BA	−381	−216	−221	−818
	O	−349	−204	−222	−775
Reconciliation instruction to committee.	BA	−328	−133	−135	−596
	O	−310	−119	−130	−559
TITLE V					
ENERGY AND NATURAL RESOURCES COMMITTEE					
Strategic petroleum reserve	BA	−1,471	−1,185	−1,335	−3,991
	O	−1,359	−1,331	−1,313	−4,003
Uranium enrichment	BA	−80	−98	−136	−314

Table 3—Continued

SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986-88
TITLE V—Continued					
	O	−51	−84	−120	−255
Shared-energy savings	BA	(*)	−2	−4	−7
	O	(*)	−2	−4	−7
Outer Continental Shelf [1]	BA	−4,509	1,715	1,025	−1,769
	O	−4,509	1,715	1,025	−1,769
Total spending reduction or increase in title V.	BA	−6,060	430	−450	−6,081
	O	−5,919	298	−412	−6,034
Reconciliation instruction to committee.	BA	−5,485	291	−337	−5,531
	O	−5,403	147	−314	−5,570
TITLE VI					
ENVIRONMENT AND PUBLIC WORKS COMMITTEE					
Federal-aid highways	O	−250	−1,200	−1,550	−3,000
Total spending reduction in title VI.	O	−250	−1,200	−1,550	−3,000
Reconciliation instruction to committee.	O	−200	−850	−1,050	−2,100
TITLE VII					
FINANCE COMMITTEE SPENDING PROVISIONS					
Medicare	O	−2,645	−3,906	−5,724	−12,275
Medicaid	O	−40	−140	−145	−325
Social security	O	4	5	5	14
AFDC	O	−1	−3	−4	−8
Foster care and adoption assistance.	O	3	2	3	8
Unemployment compensation.	O	−1	−1	−1	−3
Customs fees	O	−170	−245	−255	−670
Trade adjustment assistance	O	−5	−6	−7	−18

Table 3—Continued

SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986–88
TITLE VII—Continued					
General revenue sharing	O	0	−3,526	−4,956	−8,482
Pension Benefit Guarantee Corporation.	O	−163	−216	−243	−622
Tobacco program improvements.	O	−68	−75	−92	−235
Medicare for State and local employees.	O	0	(*)	2	2
Additional Customs personnel.	O	25	25	25	75
Additional IRS personnel	O	43	43	43	129
Modify reimbursement for attorney's fees.	O	1	1	1	3
Total spending reduction in title VII.	O	−3,017	−8,042	−11,348	−22,407
Reconciliation instruction to committee.	O	−3,307	−7,951	−10,908	−22,166
TITLE VII					
FINANCE COMMITTEE REVENUE PROVISIONS					
Tobacco excise tax		1,547	1,697	1,701	4,945
Extend medicare coverage for State and local workers.		0	2,251	2,456	4,707
Superfund excise tax		243	684	730	1,657
Limit income averaging		133	541	589	1,263
Research and development tax allocation moratorium.		−191	−96	0	−287
Railroad unemployment insurance tax.		0	101	98	199
Increase Customs collections		150	450	615	1,215
Increase IRS collections		365	744	928	2,037

Table 3—Continued

SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986-88
TITLE VII—Continued					
Alternate minimum tax for insolvents.		−20	−100	−139	−259
Trade adjustment assistance import tax.		0	0	289	289
Gulf coast waste disposal authority to issue IDB's.		−1	−2	−3	−6
Social security tax treatment for American Samoa.		−1	−1	−1	−3
Total revenue increases in title VII.		2,225	6,269	7,263	15,757
Reconciliation instruction to committee.		1,800	3,000	3,600	8,400
Total deficit reductions in title VII.		−5,242	−14,311	−18,611	−38,164
Reconciliation instruction to committee.		−5,107	−10,951	−14,508	−30,566
TITLE VIII					
GOVERNMENTAL AFFAIRS COMMITTEE					
Civilian agency pay	O	−1,232	−2,120	−2,557	−5,909
DOD civilian pay	O	−904	−1,680	−2,061	−4,645
2,087-hour workyear	O	−160	−160	−170	−490
Postal Service programs	O	−20	−82	−89	−191
Federal employees health benefits programs.	O	−1,067	−300	0	−1,367
Civilian agency government contracting.	O	−90	−190	−290	−570
Total spending reduction in title VIII.	O	−3,473	−4,532	−5,167	−13,172
Reconciliation instruction to committee.	O	−3,219	−4,421	−4,986	−12,626

Table 3—Continued

SAVINGS BY COMMITTEE—Continued

[In millions of dollars]

		FY 1986	FY 1987	FY 1988	Total FY 1986–88
TITLE IX					
LABOR AND HUMAN RESOURCES COMMITTEE					
Walsh-Healey overtime provision.	BA	−570	−610	−635	−1,815
	O	−70	−285	−510	−865
Guaranteed student loans	BA	−315	−225	−325	−865
	O	−270	−215	−325	−810
Graduate medical education	BA	(*)	0	0	(*)
	O	(*)	0	0	(*)
Total spending reduction in title IX.	BA	−885	−835	−960	−2,680
	O	−340	−500	−835	−1,675
Reconciliation instruction to committee.	BA	−670	−860	−1,085	−2,615
	O	−170	−535	960	−1,665
TITLE X					
SMALL BUSINESS COMMITTEE					
SBA business programs	BA	−460	−628	−659	−1,747
	O	−374	−605	−588	−1,566
SBA disaster program	BA	0	0	−459	−459
	O	−129	−421	−457	−1,007
Total spending reduction in title X.	BA	−460	−628	−1,118	−2,206
	O	−503	1,026	−1,044	−2,573
Reconciliation instruction to committee.	BA	−448	−564	−1,060	−2,072
	O	−509	−972	−998	−2,479
TITLE XI					
VETERANS' AFFAIRS COMMITTEE					
Medical care	BA	−253	−446	−504	−1,203
	O	−250	−440	−498	−1,188
Compensation	BA	−34	−40	−39	−113
	O	−30	−40	−39	−109
Total spending reduction in title XI.	BA	−287	−486	−543	−1,316
	O	−280	−480	−537	−1,297
Reconciliation instruction to committee.	BA	−300	−400	−450	−1,150
	O	−300	−400	−450	−1,150

*Less than $500 thousand.

[1] The estimate in the budget resolution for OCS receipts was prepared by the House Budget Committee. The CBO estimate of the same provision produces savings $0.4 billion below the House estimate over the 3 years, 1986–88, due to different technical assumptions. Estimates of OCS savings in this table have been revised upward to reflect these technical differences.

RULE XXVI

In compliance with Rule XXVI, paragraphs 11(b) (regulatory impact) and 12 (comparative prints of proposed legislation) of the Standing Rules of the Senate, it is the opinion of the Budget Committee that it is necessary to dispense with these requirements of the rule in order to expedite the business of the Senate.

However, with respect to any committee which has submitted reconciliation recommendations and has transmitted to the Budget Committee a regulatory impact statement or a comparative print of proposed legislation, this material is incorporated in this report without revision, in the title-by-title analysis.

ROLLCALL VOTES IN COMMITTEE

Votes taken during Committee consideration of this legislation were as follows:

Domenici motion to report to the Senate the Consolidated Omnibus Budget Reconciliation Act of 1985 with a favorable recommendation and to include report language proposed by Senator Chiles regarding extraneous provisions.

YEAS	NAYS
Mr. Domenici	
Mr. Armstrong	
Mrs. Kassebaum (by proxy)	
Mr. Boschwitz (by proxy)	
Mr. Hatch (by proxy)	
Mr. Symms (by proxy)	
Mr. Grassley (by proxy)	
Mr. Kasten	
Mr. Quayle	
Mr. Gorton	
Mr. Danforth (by proxy)	
Mr. Chiles	
Mr. Johnston	
Mr. Sasser	
Mr. Riegle	
Mr. Moynihan	
Mr. Exon	
Mr. Lautenberg	

TITLE-BY-TITLE ANALYSIS

The following is a title-by-title analysis of the legislation. In each case, the analyses of the respective committees are presented without revision. In some instances, the final cost estimates by the Congressional Budget Office were not available to the committees when they made their submissions to the Budget Committee. In those cases, the CBO cost estimates have been added to the materials submitted by the committees.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
Title I

JESSE HELMS, NORTH CAROLINA, CHAIRMAN
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TOM HARKIN, IOWA

United States Senate
COMMITTEE ON
AGRICULTURE, NUTRITION, AND FORESTRY
WASHINGTON, DC 20510

September 27, 1985

Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed pursuant to the reconciliation instructions in section 2(b) of the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32) are the recommendations of the Senate Committee on Agriculture, Nutrition, and Forestry for reducing spending under laws within its jurisdiction.

In accordance with the instructions, this Committee has prepared (1) the legislative language to effect the reductions in outlays and authorizations as required by the resolution, and (2) an explanation of those reductions for inclusion in the report of the Committee on the Budget for the reconciliation legislation.

According to the Congressional Budget Office, the changes in law adopted by this Committee, and included in this recommendation, would reduce spending in the following manner (in millions of dollars): Fiscal Year 1986, outlays, -$2222; Fiscal Year 1987, outlays, -$2561; Fiscal Year 1988, outlays, -$3308.

S.Con.Res. 32 instructed this Committee to make changes in legislation that would result in outlay savings of $7.9 billion over the three Fiscal Years, 1986 through 1988. The recommendations for savings adopted by this Committee are in the amount of $8.091 billion for those three fiscal years, an amount that exceeds our instructions by $190 million.

Sincerely,

Jesse Helms

JESSE HELMS
Chairman

Enclosures

SUMMARY OF MAJOR PROVISIONS

Title I—Agriculture, Forestry, and Related Problems

Subtitle A—Agricultural Exports

Export sales of dairy products

The bill requires the Secretary of Agriculture to sell for export, at prices the Secretary determines appropriate, at least 150,000 metric tons of CCC-owned dairy products in each of the fiscal years 1986, 1987, and 1988 and to report semiannually to the Senate and House agriculture committees on the volume of dairy sales made under this section.

Subtitle B—Food Stamps and Commodity Distribution

A. Food Stamps

The food stamp provisions of the bill would—

(1) Permit certain publicly operated community health centers to accept food stamps from their residents who are participating in drug addiction or alcoholic treatment programs and make residents of such programs eligible to participate in the Food Stamp Program;

(2) Modify the definition of a disabled person for purposes of the Food Stamp Program to include anyone receiving Federal benefits based on a determination of disability or blindness under criteria substantially similar to the criteria used in the supplemental security income (SSI) program to determine disability or blindness;

(3) Clarify the current regulatory practice of including as income benefits provided to third parties on behalf of households by the Aid to Families with Dependent Children (AFDC) program and by State and local governments, except medical, energy, housing assistance, and child care assistance;

(4) Require educational grants, loans, and scholarships, to the extent they provide assistance beyond that for tuition and mandatory fees, to be counted as income if they are provided in the form of vendor payments;

(5) Provide that food stamp benefits will not be adjusted to reflect a reduction in AFDC or SSI benefits due to receipt of a nonrecurring lump sum payment;

(6) Include allowances, earnings, and payments received under programs authorized by the Job Training Partnership Act as income for the Food Stamp Program;

(7) Exclude from income at State option, child support payments that are excluded under AFDC if the State agrees to pay the additional food stamp benefit costs caused by such exclusion;

(8) Clarify that shelter expenses paid by any kind of Low-Income Home Energy Assistance Act payments do not qualify as household expenses for the purpose of calculating the excess shelter expense deduction;

(9) Require retrospective budgeting and monthly reporting for all households with earnings or a recent work history. Prospective budgeting would be used for migrants and households with no earnings and only elderly or disabled adult members. States would

have the option of using either prospective or retrospective budgeting and requiring periodic reports for all other types of households;

(10) Exclude from resources the value of a burial plot for each household member;

(11) Authorize States to consider households containing only persons receiving AFDC or SSI benefits as automatically meeting the food stamp income and resources eligibility tests if the gross income of such households does not exceed 130 percent of the poverty level;

(12) Require States to establish employment and training programs for able-bodied food stamp recipients which could include job search training programs, employment experience programs, workfare, or other employment activities. States would be required to place 25 percent of the persons subject to the work requirements in employment and training activities by the end of fiscal year 1978, 35 percent by the end of the fiscal year 1988, and 45 percent by the end of fiscal year 1990 and thereafter;

(13) Count all income (instead of a pro rata share) of an ineligible alien as available to his or her household;

(14) Prohibit the charging of sales tax on food purchased with food stamp coupons;

(15) Require (instead of authorize) the Secretary of Agriculture to require the use of alternative methods of food stamp issuance, including electronic benefit transfer, when the Secretary in consultation with the Inspector General of the Department of Agriculture determines that program integrity would be improved by instituting a different method of issuance in an area;

(16) Authorize States, with approval of the Secretary, to use simplified application and benefit determination procedures for households containing members receiving AFDC, SSI or medicaid;

(17) Require State agencies to provide a means of certifying and issuing food stamps to eligible households that do not reside in permanent dwellings or have fixed mailing addresses;

(18) Require all adult members of a household, or one adult member of a household being certified under expedited service proceduers, to certify under penalty of perjury the truth of all information on the household's application form and all other reports which the household is required to file;

(19) Require State agencies to verify household size in any case in which household size in questionable and permit State agencies, as well as the Secretary, to establish other factors that must be verified;

(20) Provide that the Secretary, after consulting with the Inspector General may require State agencies to require most households to present photographic identification cards to receive coupons in project areas where the Secretary determines that this practice would be cost effective as well as useful to protect program integrity. State agencies could permit households to comply with this requirement by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;

(21) Permit State agencies to stagger food stamp coupon issuance throughout a month except that no household could go more than 40 days between coupon issuances as a result of changes in scheduling;

(22) Require State agencies to establish and operate fraud detection units in all project areas with 5,000 or more participating households;

(23) Make a retail food store or wholesale food concern that has been disqualified under the Food Stamp Program ineligible to participate in the special supplemental food program for women, infants, and children (WIC) established under section 17 of the Child Nutrition Act. The bill would also authorize information obtained from retail food stores and wholesale food concerns to be used in administration of the WIC program;

(24) Subject retail food stores and wholesale food concerns that are sold during a disqualification period to be civil money penalty and prohibit the buyer of the store or concern from accepting food stamps until the money penalty is fully paid if the buyer had actual or constructive notice of the penalty when the store or concern was old;

(25) Make all adult household members jointly and severally liable for the value of any overissuance of benefits to the household;

(26) Make State agencies liable for interest on claims assessed against the State by the Secretary after the State agency has exhausted the administrative review process;

(27) Require States to use other means of collection to collect claims arising from intentional program violations which are not collected through cash payment or allotment reduction unless the State agency can demonstrate that other collection methods are not cost-effective. Also, State agencies would be allowed to reduce household allotments to collect claims arising from State agencies' errors;

(28) Authorize the intercept of unemployment compensation benefits by State agencies to collect claims arising from a food stamp overissuance caused by an intentional program violation;

(29) Require a retail food store, wholesale food concern, or State agency, to show that it is likely to prevail on the merits of its case to obtain a judicial stay of an administrative action of the Secretary;

(30) Require the Secretary to set standards for States' periodic review of office hours of operations;

(31) Require States with error rates in excess of 5 percent to pay 75 percent of the dollar value of benefits issued erroneously between 5 and 7 percent and 100 percent of the benefits issued erroneously over 7 percent;

(32) Authorize the Secretary to require special certification procedures in project areas with high payment error rates if such procedures would improve program integrity in a cost-effective manner;

(33) Extend for 4 years the supplemental security income cashout demonstration projects;

(34) Authorize the Secretary to conduct a pilot project on the effects of eliminating cash change;

(35) Prohibit funds appropriated under the Food Stamp Act of 1977 to be transferred to the Department of Agriculture's Office of the Inspector General or Office of the General Counsel;

(36) Delete the requirement that Puerto Rico provide non-cash benefits beginning October 1, 1985, under its food assistance block

grant. The date by which the Commonwealth must submit its plan describing the provision of assistance would be moved from July 1 to April 1 of the prior fiscal year. Also, the requirement that the Commonwealth designate a single agency as responsible for the supervision of program administration would be deleted to allow different agencies to be responsible for different phases of the nutrition assistance program.

B. Commodity Distribution

The commodity distribution provisions of the bill would—

(1) Permit transfer of perishable agricultural commodities purchased under section 32 of Public Law 74-320 from a public or private nonprofit organization that receives these commodities to another such organization that agrees to use the commodities in providing nutrition assistance to individuals in low-income groups without cost or waste;

(2) Extend through September 30, 1989, the Commodity Distribution Program under section 4 of the Agriculture and Consumer Protection Act of 1973;

(3) Extend through September 30, 1989, the Commodity Supplemental Food Program under section 5(a) of the Agriculture and Consumer Protection Act of 1973;

(4) Make section 32 commodities available for Temporary Emergency Food Assistance Program (TEFAP) distribution in addition to the price-support commodities already distributed. The bill also requires States to encourage distribution of TEFAP commodities in rural areas;

(5) Extend the Temporary Emergency Food Assistance Program for 2 years and authorize appropriations of $50 million for payment of storage and distribution costs of States and local operating agencies with a requirement that States must match these Federal funds.

Subtitle C—Agricultural Credit

The agricultural credit provisions of the bill would—

(1) Consolidate the authorizations for the FmHA farm ownership and farm operating loan programs into one authorization, with an amount of $4 billion authorized annually for these programs for fiscal year 1986, fiscal year 1987, and fiscal year 1988. These authorizations would be apportioned between insured loans and guaranteed loans as follows:

> (a) Fiscal year 1986—$2 billion would be designated for insured loans and $2 billion for guaranteed loans.
>
> (b) Fiscal year 1987—$1.5 billion would be designated for insured loans and $2.5 billion for guaranteed loans.
>
> (c) Fiscal year 1988—$1 billion would be designated for insured loans and $3 billion for guaranteed loans.

In each of the 3 fiscal years, the Secretary is authorized to transfer up to 25 percent of the funds designated for guaranteed loans to the insured loan program.

(2) Encourage use of the crop insurance program by restricting access to the emergency disaster loan program—

(a) to eligible producers who have suffered physical losses; and

(b) to eligible producers who do not have access to Federal Crop Insurance for the crop in question.

Any eligible producer who suffers a qualifying loss on annual crops planted before the date of enactment of the bill, however, would have access to the emergency disaster loan program.

(3) Establish a 3-year interest rate buy-down program for FmHA guaranteed loans, to be funded at $490 million over 3 fiscal years. The duration of the interest rate buy-down on an individual loan would be for the term of the loan, or for three years, whichever is shorter. An individual guaranteed loan borrower would be eligible for up to a 2 percent Federal interest rate buy-down if—

(a) the borrower can meet the 100 percent cashflow test that is currently being used by FmHA;

(b) the lending institution matches the Federal interest rate buy-down with at least an equal reduction in the borrower's interest rate;

(c) the borrower is otherwise unable to make his loan payments in a timely manner; and

(d) the loan guarantee is necessary for the borrower to obtain credit.

(4) Authorize the compromise, adjustment, reduction, or charge-off of claims and the release of security instruments and agreements entered into or administered by the Farmers Home Administration to carry out the Act. Borrowers or others obligated on a debt could also be released from personal liability with or without the payment of any consideration at the time of the compromise, adjustment, reduction or charge-off of the claim.

(5) Require that a loan applicant or borrower who is directly and adversely affected by a decision of the Secretary be given—

(a) written notice of the decision within 10 days of the date of the decision, an opportunity for an informal meeting, an opportunity for a hearing, and the procedures to be used to appeal the decision;

(b) a reasonable opportunity to inspect and reproduce the applicant's or borrower's personal file maintained by the Secretary; and

(c) the right to be represented by an attorney or nonattorney at any file inspection, informal meeting, or hearing. The Secretary may charge the applicant or borrower for reasonable costs incurred in reproducing files.

(6) Provide for the sale or lease of farmland held in FmHA inventory as follows:

(a) To the extent practicable, farmland would be sold or leased to operators of not larger than family-size farms. The Secretary must advertise the availability of such land in at least one local newspaper and post an announcement of the availability of such land in the FmHA county office. If such land could not be sold or leased to family-size farmers, it could be disposed of under the provisions in current law.

(b)(i) The Secretary may sell farmland through installment sales or similar devices. The Secretary may subsequently sell any such installment sale or other contract.

(ii) The Secretary may also enter into lease with option to repurchase agreements with farm operators. Such lease agreements must be made on a fair and equitable basis. In leasing such land, the Secretary must give special consideration to the previous owner or operator, if the person has the resources and skills to succeed in the proposed farming operation.

(c) The Secretary must offer to sell the farmland at a price that reflects the average annual income that could be generated from farming the land.

(d) If two or more persons are qualified to purchase a given tract of land, the FmHA county committee will select the person who will be allowed to make the purchase.

(e) If any tract of farmland in the FmHA inventory is too large to be used in a family farm operation, the Secretary must subdivide the tract into parcels suitable for farming by family farmers.

(f) If any of the farmland in the FmHA inventory is highly erodible land, as defined in the "Sodbuster" portion of the bill, the Secretary may require as a condition of sale or lease, that specified conservation practices be used on such land.

(7) Require that the Secretary—

(a) consider recommendations made by a loan applicant or borrower concerning the technical design and choice of materials to be used in the construction of water and waste disposal facilities and give the applicant or borrower a comprehensive justification when such design or materials are not used in the facility;

(b) conduct a study of the practicality and cost effectiveness of making loans and grants for the construction of rural water and waste disposal facilities at individual locations, rather than central or community locations, and report the results to the House and Senate agriculture committees;

(c) with regard to an application for a loan or loan guarantee—

(i) approve or disapprove an application, and notify the applicant of the Secretary's action, including any reasons for disapproval, within 90 days after receipt of a complete application; and

(ii) if the application is incomplete when it is received, inform the applicant of the reasons for its incompleteness within 20 days after receipt;

(d) make the proceeds of an insured loan available within 15 days of the date the loan is approved or within 15 days of the date that sufficient funds become available to the Secretary for such loans, unless the loan applicant agrees to a longer period;

(e) decide whether a lender should be designated as an approved lender under the Department's approved lender program within 15 days of the receipt of a complete application; and

(f) make personnel and resources available in sufficient quantities to expeditiously process FmHA loan applications submitted by farmers and ranchers.

(8) Authorize FmHA insured loan borrowers to—

(a) transfer their loan accounts, on a one-time basis and with the approval of the head of the FmHA State office, to an FmHA county office in an adjacent county; and

(b) make prospective loan payments—

(i) from proceeds generated from the leasing of mineral rights in real property used to secure an FmHA loan, and

(ii) from proceeds generated from the sale of minerals severed from real property used to secure an FmHA loan if the minerals had not been used as security for the loan and the loan security is otherwise adequate.

The provision for prospective loan payments will not apply to any loan subject to foreclosure or liquidation proceedings on the date of enactment of the bill.

(9) Clarify that the Secretary can sell notes from the Agricultural Credit Insurance Fund and the Rural Development Insurance Fund on a non-recourse basis. All such notes sold from the Agricultural Credit Insurance Fund must have been held in that fund for at least 4 years.

(10) Authorize the use of a portion of the proceeds from an operating loan made to a limited-resource borrower to pay for training in the keeping of farm and ranch business records.

(11) Require a study of the administrative appeals procedure used under the FmHA farm loan programs and a report of the results of such study be made to the House and Senate Agriculture committees by September 1, 1986.

(12) Require a study of the appropriateness of the Farm and Home Plan used by FmHA in the administration of its farm and ranch lending program and a report of the results of such study be made to the House and Senate Agriculture Committees not later than 120 days after enactment of the bill.

(13) Require the release of funds from normal income security in amounts sufficient to pay the borrower's essential household and farm operating expenses, until such time as the Secretary determines that the underlying loan should be liquidated.

(14) Require that a detailed annual loan summary statement be issued to any insured loan borrower who requests such a statement.

BACKGROUND, PURPOSE, AND NEED

Subtitle A—Export Sales of Dairy Products

The Committee believes that international trade in dairy products has been particularly distorted by unfair trading practices.

The bill includes a provision requiring the sale of surplus CCC-owned dairy products. For each of the fiscal years 1986, 1987, and 1988, the Secretary is required to sell 150 thousand metric tons of CCC-owned dairy products annually on the international market.

This provision was also approved by the Committee as part of S. 822, the Agriculture Export Equity and Market Expansion Act of 1983.

As of March 1, 1985, the CCC inventory contained 955,949 metric tons of dairy products. Included in the inventory were 118,888 metric tons of butter, 317,473 metric tons of cheese, and 522,589 metric tons of nonfat dry milk. Approximately 204,753 metric tons of this inventory was committed to domestic dairy sales and donation programs.

In fiscal year 1984 direct sales to importers from CCC stocks totaled almost 66,000 tons valued at nearly $74 million.

The Committee believes that mandatory dairy product sales from CCC stocks will signal U.S. resolve to the European Community and other countries that we are able to employ the same type of trade practices that are used by others regularly. The Committee hopes that such action will encourage negotiation of more fair and open international dairy trade.

Subtitle B—Food Stamps and Commodity Distribution

Part 1—Food Stamps

Publicly Operated Community Health Centers (Sec. 111)

As a general rule, the Food Stamp Act of 1977 does not permit individuals in institutions to participate in the food stamp program. Rather, only individual households are typically permitted to participate. However, certain exceptions to the general rule are provided in the statute to permit individuals in certain institutions to participate in the program. Food stamps may be provided to residents of, and used for meals prepared and served in, approved drug addiction and alcoholic treatment programs, group homes for the disabled, and shelters for battered women and children. With regard to drug addiction and alcoholic treatment programs, the statute provides approval of such residential programs in private, non-profit institutions.

Prior to 1982, residents of twelve community mental health centers in Mississippi, which operate halfway houses for alcoholics, had participated in the food stamp program.

In 1982, the U.S. Department of Agriculture notified these community health centers that they could no longer accept food stamps for their residents. The Department ruled that all but one of the programs in Mississippi were ineligible to participate in the program on the grounds that they were public, no private agencies.

The Department reached the conclusion that the agencies were public, rather than private, operations based on information from the Mississippi Tax Commission which indicated that the institutions were state-owned and operated public institutions. The centers were established by the State under regional commissions whose boards are appointed by the boards of supervisors in the counties. In this sense, the centers are public. However, the commissioners that supervise the centers are private citizens; the employees are not public employees, and the centers are not directly supervised by any agency of Mississippi's State or county governments. Additionally, the programs are identical to those in other states that are privately incorporated and that have self-perpetuating boards of directors.

Public Law 98–107 in 1983 (the agriculture appropriations bill for fiscal year 1984) included legislative language intended to permit these public community health centers to continue participation in the food stamp program. The Office of Management and Budget applied the change only to the fiscal year (1984) in which the legislation was applicable.

Earlier this year, the Congress included in the supplemental appropriations bill for fiscal year 1985 (Public Law 99–88) similar language intended to make permanent the applicability of the change.

The Committee's provision amends the Food Stamp Act of 1977 to specify that publicly operated community health centers (such as those identified in Mississippi)—which provide the same type of residential programs for alcoholic or drug rehabilitation as in the case of private, non-profit institutions—can participate in the food stamp program. Inclusion of this provision clearly makes the change a part of permanent law.

Definition of Thrifty Food Plan (Sec. 112)

Section 112 would make a technical change in the Food Stamp Act to change one of the age ranges in the 4-person reference family used in calculating the amount of the specific thrifty food plan used in the food stamp program.

The thrifty food plan is a research-based set of economical and nutritious diets that, insofar as possible, reflects food choices of households with limited food budgets. It is composed of an assortment of foods that represents as little change from average food consumption of persons in U.S. households with relatively low food costs as was required to provide a nutritious diet while controlling costs.

The thrifty food plan specifies the amounts of foods of different types (food groups) that households might buy, or obtain from other sources, to provide nutritious meals and snacks for household members. In the plan, amounts of food groups are suggested for men, women, and children of different ages.

For purposes of food stamp benefit determination, the Food Stamp Act specifies that benefits shall be based on a 4-person family consisting of one man and one woman, ages 20–54, and two children, ages 6–8 and 9–11.

Under the provision adopted by the Committee, the ages of the adults in the reference family would be 20–50 years old instead of 20–54 years. Such a change was recommended by the Administration, in S. 969, so that the age categories used for the thrifty food plan will correspond to the age categories used by the National Academy of Sciences—National Research Council in developing the Recommended Dietary Allowances.

When the Thrifty Food Plan was revised in 1983, the food costs for the two groups (adults 20–50 and adults 20–54) were the same. The food consumption patterns for the 20–54 group are the same for seven of the eleven major food groups used in developing the thrifty food plan. There are only minimal differences in the other four food groups.

A final reason for the change is that the original age range of 20–54 was selected in 1971 to conform with the age ranges of the 1968 Recommended Dietary Allowances which were in use when the economy food plan (the forerunner of the thrifty food plan) was adopted. New research led to revision of the age range to 20–50 years in the corresponding 1980 Recommended Dietary Allowances.

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The provision is largely a technical change to make the statute consistent with the underlying thrifty food plan on which food stamp benefits are based.

Definition of Disabled (Sec. 113)

Since 1979, certain disabled persons (and elderly persons over age 60) have received special treatment in determining their food stamp eligibility and benefits. At present, the special treatment consists primarily of (1) the right to deduct any medical expenses of an elderly or disabled household member, to the extent the expenses exceed $35 a month; (2) the ability to claim an excess shelter expense deduction without regard to the dollar limit (currently $134 per month) imposed on other households; and (3) exemption from the food stamp gross income eligibility test (although their net income, after allowable deductions, must still be below Federal poverty levels).

In making this special treatment available to the disabled, Congress has sought to limit the definition of a disabled person, for food stamp purposes, to those who are seriously disabled: i.e., those who must meet the permanent and total disability test of the Social Security Act, or a similarly strict test.

Congress has also constructed the definition so that it is simple to administer—i.e., so that food stamp eligibility workers need not administer a disability test, but can rely on information derived from Federal disability programs. As a result, the definition of disabled for food stamp purposes now includes:

(1) those receiving social security disability benefits;

(2) those receiving basic Federal Supplemental Security Income disability or blindness benefits, or similar benefits in the territories;

(3) veterans receiving compensation for service-connected disability rated at 100 percent; and

(4) veterans' survivors (spouse and children) receiving veterans benefits who have a disability considered permanent under social security disability rules.

Inasmuch as the definition of disabled is explicitly defined in the statute, legislative changes have been required in recent years to broaden the statute to include other, similarly-situated disabled persons, Most recently, in 1982, the statute was expanded to include certain disabled veterans and disabled survivors of veterans.

The provision adopted by the Committee would replace the specific references to recipients of SSI and veterans disability payments with a general definition of disabled. This new definition would include individuals who receive Federal benefits based on a determination of blindness or disability under criteria that the Secretary determines aer the same as, or provide for substantially the same degree of disability or blindness as, the criteria for disability or blindness prescribed in the Social Security Act.

The Committee specifically notes that it is not the intent of the provision to reduce eligibility of categories of disabled persons now provided for specifically in the statute, but rather to provide greater flexibility for the Secretary to establish regulations establishing comparable access for similarly situated food stamp recipients receiving various Federal disability benefits in the future, without requiring repeated Congressional action.

Food Distribution Program on Indian Reservations (Sec. 114)

The Committee adopted a provision, recommended by the Administration, to require, as a condition of eligibility for the Food Distribution Program, social security numbers from participants.

The bill amends both the Food Stamp Act of 1977 and section 4 of the Agriculture and Consumer Protection Act of 1973; the latter authorizes the Food Distribution Program on Indian Reservations, also known as the Needy Family Program. Current law permits an Indian household to participate in either the food distribution program or the food stamp program at any given time, but not both simultaneously.

The provision requires that social security numbers be submitted for all household members in order to be eligible to receive commodities under the program and permits the Secretary and State agencies to match the numbers with those of food stamp participants to verify program eligibility and ensure against dual participation.

Requiring social security numbers would improve the accountability and administration of this program and the food stamp program by establishing a common mechanism to ensure that no members of a household are participating in both programs.

It is the intent of the Committee that the Department apply the same type of flexibility in requiring participants in the Food Distribution Program to obtain social security numbers as is currently applicable in the food stamp program. Present food stamp regulations allow for an initial period of participation from the date of eligibility determination while awaiting receipt of the social security number. This allowance provides a reasonable time for newborn household members to be assigned a social security number as well as to accommodate emergency situations and cases in which applicants do not have a social security number.

Third-party Payments (Sec. 115)

The Committee has included a provision to count as income for food stamp purposes certain third-party payments for basic needs from state and local governments such as aid provided through AFDC and general assistance programs sources. Third-party payments for medical, child care, or energy, would still be excluded as income, and the Secretary would be authorized to exclude certain emergency or special assistance. The provision was suggested by the Administration's proposed legislation (S. 969) and is intended to specify in the statute current regulatory policy based on previous congressional intent.

Specifically, the bill would amend the Food Stamp Act to provide explicit authority for the current regulatory practice which is to include as income benefits provided to third parties on behalf of households by the Aid to Families with Dependent Children (AFDC) program and by State and local governments. However, again, as specified in current regulations, medical, energy, and child care assistance, would not be included as income. The Secretary would be authorized to provide, by regulation, an exclusion for certain third-party payments for emergency and special assistance; for example, if the payments exceeded usual grant levels, they could be excluded.

Currently, the Act excludes from the definition of income benefits which are not in the form of money payable directly to a household. However, the legislative history accompanying this part of the Act (House Report No. 95-464, June 24, 1977, page 34) states: "It should be noted that any money payable to a household, but diverted from it to a third party, either of the household's own free will (e.g., an arrangement with an employer to deduct the rent and mail it to the landlord) or involuntarily (e.g., court-order garnishment of wages) would be counted as income and would not be excluded . . ."

Based on the legislative history, the language in the Act has been interpreted by the Department so that AFDC protective payments and certain general assistance payments provided by State and local governments through vendor payments rather than payments directly to the household have been included as income. The Committee agrees with the Department's position that such an interpretation is the logical one, particularly so when the same assistance is provided to other recipients in cash, and must be included as income. However, the policy on general assistance vendor payments has been challenged in at least two court suits.

The Committee has included this provision to help assure that the Federal Government's position is upheld and congressional intent is served. The language of the Committee's provision refers specifically to payments of the AFDC program, State and local general assistance program, and other basis assistance programs, as determined by the Secretary, payable for living expenses. General assistance is provided under many different names and in different forms. The Secretary has the discretion to determine whether payments, by whatever name, are for living expenses, and, in effect, part of a regular program of aid and thus subject to the provision's application.

In some cases, general assistance may be provided as third-party payments only, with no payments going directly to households. Under the Committee's provision, none of these distinctions would matter, since any governmental payment made to the provider of goods or services on behalf of a household (in lieu of a payment made directly to the household) would be included as income unless specifically excluded by regulations promulgated under the authority provided to the Secretary.

The provision will reinforce Congress' historical intent that payments from governmental assistance programs be included as income regardless of their form and insure equity between groups of individuals who receive assistance in varying forms.

Reimbursements and Payments on Behalf of Students (Sec. 116)

The Committee adopted a provision to reinforce current regulatory policy with regard to the counting of certain income for students. The Committee bill would require that deferred education loans, grants, scholarships, and the like be counted as income if provided as a vendor payment. The bill also provides that no portion of any deferred repayment of a student loan, educational grant, scholarship, or the like could be excluded from income as a "reimbursement".

In essence, the provision clarifies that such grants are only excludable to the extent utilized for tuition and mandatory fees. Currently, for example, some students are receiving Federal income assistance (such as Supplemental Opportunity Grants, known as SEOGs or Pell Grants) through their colleges in such a manner that the students are construing the assistance to be vendor payments or reimbursements which would be excluded under the general rules which exclude all vendor payments and reimbursements. These grants are provided to individual students, although the funds are often channeled through the college to the student. However, the grants should not be considered "vendor payments" or "reimbursements" excludable as income.

The Committee is acting in response to several court challenges to this policy. While the court challenges have focused on Federal education assistance, the provisions applies to any education assistance—whether Federal, State, local, or private. Enactment of the proposal would render the court challenges moot, thus ensuring that expenses for items other than tuition and mandatory fees will be handled in the same way for all students whether or not they receive education assistance directly or channeled through their colleges. Additionally, the proposal would result in administrative simplification and error reduction since all education income that is not used for tuition or mandatory fees would be counted as income for food stamp purposes without having to apply the additional reimbursement and vendor payments rules.

The Committee recognizes that certain courses of study normally require special materials above and beyond books and routine supplies. For example, a cosmetology school may require all students to furnish their own scissors and combs. A chemistry course may require all students to provide their own gloves and smocks for use in the laboratory. The Committee intends for the Department to allow the portion of educational assistance which is used to pay for such required expenses to be excluded from gross income, because it is a mandatory fee. Current progam regulations define a mandatory fee as one charged to all students or one charged to all students within a certain curriculum. Accordingly, a lab fee charged to all students in a science course is excluded from income. The Committee intends for this exclusion to be broadened to recognize that certain supplies are required of all students even though a separate fee is not imposed for these supplies. The Committee further intends that this exclusion be limited to special supplies and materials, not books or office supplies.

Nonrecurring Lump-sum Payments (Sec. 117)

In the Food Stamp Program, lump-sum payments (which include such payments as income tax refunds, rebates, or credits, retroactive lump-sum Social Security or railroad retirement pension payments, and retroactive lump-sum insurance settlements) are not counted as income in the month received. Rather, such amounts are counted toward the resource, or asset. limits.

As a result of the Omnibus Budget Reconciliation Act of 1981, lump-sum payments are counted as income in the AFDC Program.

Such payments are counted along with any other household income to determine whether the household is eligible for AFDC benefits. If the total income, including the lump-sum payment, surpasses the eligibility standard—called the standard of need in AFDC—the household is ineligible to participate during that month. Any remaining amount from the calculation for that month is carried forward to determine how many additional months (or part of a month) the household will be ineligible or how much its benefits will be reduced. For instance, assuming a standard of need of $400, and regular monthly income of $100, if the household receives a lump-sum payment of $350, in a month the household would be removed automatically from participation for 1 full month, because the total income received—$450—exceeds the maximum standard of need, of $400. Additionally, the balance resulting from the calculation—$50—is carried over into the next month, together with any regular income—$100 in this example—and affects benefits in that month, as well as the initial month.

In the SSI Program, lump-sum payments are counted as income in the month received. Thus, if the payment is larger than the eligibility standard in the SSI Program the household is removed from participation for that month, or, if less than the standard, benefits are reduced. However, they are not removed for subsequent months (nor are their future benefits affected) no matter how large the lump-sum payment may have been. In subsequent months, any remaining money is counted toward the resource limit in SSI.

The effect of the current dissimilar treatment of lump-sum payments (between the food stamp program and the AFDC and SSI programs) can result in increased food stamp benefits to certain households that receive lump-sum payments.

This is because AFDC and SSI cash payments—which are counted as income in the Food Stamp Program—have been reduced in those programs because of the increased income from the lump-sum payment. However, inasmuch as the Food Stamp Program does not count the lump-sum payment as income, but only the cash assistance grant (which has declined), food stamp benefits are increased.

The Committee adopted a provision to provide that food stamp benefits may not be increased as a result of reduction in AFDC or SSI benefits caused by counting the lump-sum payment as income in those programs. Instead, food stamp benefits would be based on the level of the AFDC or SSI benefit if no lump-sum payment had been received.

Child Support Payments (Sec. 118)

The Committee adopted a provision to permit any State to exclude from income (for food stamp elgibility and benefit determination purposes) child support payments which are excluded for purposes of AFDC recipients, if the State agrees to pay for any additional food stamp benefit costs that are due to such an exclusion.

The Deficit Reduction Act of 184 (Public Law 98-369) required States to disregard the first $50 in child support payments collected on behalf of families participating in the Aid to Families with Dependent Children (AFDC) program when computing the AFDC recipient's benefit.

The result of the exclusion is that AFDC payments are somewhat higher than they would be were it not for the exclusion.

The Food Stamp Program continues to count such payments, if received directly by the household, as income. If the amount is collected by the State on behalf of the AFDC participant, the food stamp program counts the payment by virtue of the fact that the AFDC benefit does not reflect the receipt of the $50 child support payment (that is, the AFDC payment is higher).

Some States have contended that the different treatment of child support payments between the AFDC and food stamp programs may result in errors in determining correct food stamp benefits.

In response to this situation, the Committee adopted a provision to permit States to opt for similar treatment (that is, to disregard in the food stamp program, as well as the AFDC program, the first $50 in child support to AFDC participants). However, any increased cost from the provision would have to be paid by the States to the Secretary. Inasmuch as the "incentive" for collecting child support payments accrues excusively to the AFDC program (with reduced State costs associated with that program), the Committee provision protects against increased costs associated with extending this exclusion, at State option, to the food stamp program.

The determination of the amount of such reimbursements would be determined in a manner prescribed by the Secretary. The Congressional Budget Office estimates that increased food stamp costs of $50 million annually would result if all States opted for the exclusion of these payments.

States, in examining their error rates, may find that it would be more cost effective to pay the increased costs associated with the exclusion of certain child support payments than to be subject to fiscal sanctions for such errors, which some States have indicated to be a concern. Other States may wish to implement the provision as a matter of policy.

Homeownership Component of Shelter Costs (Sec. 119)

Section 119 would amend the Food Stamp Act making a technical change changing references to the homeownership component of shelter costs. This term is used in the Food Stamp Act to describe the method for calculating the annual adjustments in the standard deduction and the cap on the excess shelter expense deduction, the dependent care deduction, and the combined deduction for shelter and dependent care. In 1980, the Act was changed to ensure that indexing of these deduction levels would reflect costs most likely to be incurred by food stamp recipients, who are generally not homeowners. Annual adjustments were tied to shelter costs measured by the consumer price index, without regard to the "homeownership component". The homeownership component consisted of three cost categories: home purchase; financing, taxes, and interest; and the costs of maintenance and repairs. It was one of two components of shelter costs in the Consumer Price Index for all urban consumers (CPI–U). The Bureau of Labor Statistics no longer develops a homeownership component of shelter costs for the CPI–U. Now there are 3 components of shelter costs in the

CPI–U: renters' costs, homeowners' costs, and maintenance and repairs. Therefore, the Food Stamp Act references need to be changed.

The Committee's bill substitutes references to the "homeownership component" with references to the "homeowners' cost component" and the "maintenance and repair component", thereby leaving "renter's costs" as the determining component, as was the intent of the 1980 revision.

Energy Assistance Payments (Sec. 120)

The Committee adopted a provision to clarify that shelter expenses covered by any kind of Low-Income Home Energy Assistance Act (LIHEAA) payments do not qualify as household expenses for the purpose of calculating the excess shelter expense deduction. Such expenses would not be deductible whether the energy assistance payment was made directly to the household or to an energy supplier through a so-called "vendor payment".

In determining food stamp eligibility for most households, the Food Stamp Program looks primarily at a household's monthly gross income. Further, for purposes of determining actual benefit levels, the program considers the household's net, or countable, income after certain deductions are taken. For every dollar in net income, benefits are reduced by 30 percent (the benefit reduction rate). The primary effect of the various deductions is thus to lower the net income for participating households, and, consequently, to increase food stamp benefits.

One such deduction is for excess shelter costs and dependent care expenses. (Currently, actual amounts up to a maximum of $134 per month for these combined factors are permitted for most households.) By regulation, shelter costs include rent, mortgage, property taxes, heating or cooling expenses, water, sewerage, garbage and trash collection, and the basic service charge for one telephone. Excess shelter costs are defined as being those that exceed 50 percent of the countable income remaining after all other potential deductions and expenses have been subtracted out.

Several food stamp program policies, coupled with some court interpretations of another statute dealing with energy assistance, have created an anomoly in the food stamp program which the Committee's provision is intended to correct. This anomoly results because some court rulings have allowed households to claim as a shelter expense those energy expenses that were paid through assistance programs where the payment went directly to the energy provider, thus reducing or eliminating actual (out-of-pocket) costs to the household.

As a general principle, the Food Stamp Act excludes "expenses paid on behalf of the household by a third party" from deductible shelter expenses. This exclusion was added by the Agriculture and Food Act of 1981 (Public Law 97–98) to codify a regulation then in effect which disallowed a deduction for expenses paid for by a third party. The legislative history explicitly stated that no deduction would be allowed ". . . if a household's winter fuel bill is paid directly by an energy assistance program, i.e., the program pays money to the fuel provider directly . . ." (H.R. Report No. 106, 97th Congress, 1st session, pages 128–129).

As part of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35), the Congress established the Low-Income Home Energy Assistance Act, providing a block grant for previous Federal energy assistance programs. Under that statute, statutory language was included that specified that payments under the act should not be counted as income or resources "under any Federal or State law relating to taxation, food stamps, public assistance or welfare programs." The Food Stamp Program has consistently excluded as income any payments or allowances made under Federal laws dealing with energy assistance—both as a result of this LIHEAA reference and because of explicit Food Stamp Act language initially added by P.L. 96–249 in 1980 (now specified as section (5)(d)(11)(A)). The exclusion of Federal energy assistance payments as income, for food stamp purposes, is not changed by the Committee's modification.

Changes are made, however, with respect to the treatment of energy expenses paid by food stamp recipients using Federal energy assistance payments or paid directly to utilities on behalf of food stamp recipients.

Despite the clear intent of Congress in 1981 regarding the Food Stamp Program's handling of energy assistance vendor payments, the United States Court of Appeals for the Eighth Circuit in June 1982 upheld a lower court's adverse decision on the policy in the case *Schmiege* v. *Sec. of Agriculture, 693 F. 2nd 55 (8th Cir. 1982).* The decision overturned the Department's policy of not allowing deductions for vendor payments made under LIHEAA on the basis that LIHEAA took precedence over the Food Stamp Act even though the Food Stamp Act amendment (in P.L. 97–98) was approved subsequent to the LIHEAA (in P.L. 97–35). The decision has been implemented in the Eighth Circuit only. Another case (in Idaho) has also been recently decided against the Department on this issue, but is under appeal. The Idaho State agency is following the adverse court decision during the course of the appeal.

The Eighth Circuit decision was based on conference report language preceding that of both pieces of 1981 legislation (P.L. 97–35, and P.L. 97–98). The court's construction was thus based on provisions superseded by the 1981 legislation. The court relied on the Home Energy Assistance Act (as Title III of the Crude Oil Windfall Profit Tax Act of April 2, 1980, P.L. 96–223). Conference report language confused the issue. The report noted:

"The conference agreement requires that fuel assistance payments or allowances provided under this title will not be considered income or resources of an eligible household for any purpose under a Federal or State law. The conferees wish to emphasize that this provision applies regardless of whether the fuel assistance is paid directly to the household or to the supplier of energy to the household. Thus, under any law, such as the Food Stamp Act of 1977, which provides that benefits may depend on the expeditures of the household for fuel, any portion of these expenditures which may be paid by the fuel assistance program authorized in this conference agreement will not be considered a resource available to this household even if the payment is made directly to the energy supplier. Thus, under such a law, benefits will be computed as if the total cost of the fuel, including the amount of assistance provided, had been paid by the household." (Home Conference Report 96-817)

The difficulty in this legislative history is that the fourth and final sentence does not deal with the subject matter addressed by the first three sentences. The Committee provision does not change the fact that energy assistance payments are not counted as income or a resource available to the household. However, the conference report's fourth sentence does not follow, but rather deals with how expenses used to determine the excess shelter deduction shall be determined.

The Administration proposed, in S. 969, a statutory clarification to firmly restate the principle that deductions should not be allowed for expenses that are paid for by vendor payments excluded as income, regardless of the legislative authority under which the vendor payments are provided, and thus to override the Schmeige decision.

The Committee provision goes a step further to remedy a second inconsistency in the Department's administration of the excess shelter deduction. As described above, it had been the Department's position that vendor payments made on behalf of food stamp recipients could not be claimed as a deduction under the excess shelter deduction. The Committee provision reaffirms the Department's policy in this regard.

However, the Department has previously taken the position that energy expenses paid by food stamp recipients who receive direct, as opposed to vendor, energy assistance payments could be taken as excess shelter costs.

Thus, the policy or direct energy payments is contradictory to the Department's policy with regard to indirect, or vendor, payments.

In order to establish greater equity and logic, the Committee provisions explicitly provides that shelter expenses paid by any type of Low-Income Home Energy Assistance Act payments (direct or indirect) do not qualify as household expenses for the purpose of calculating the excess shelter expense deduction. Such expenses would be non-deductible whether the LIHEAA payment was made directly to the household or to an energy supplier.

The provision would also require State agencies to take into account only out-of-pocket expenses above and beyond LIHEAA payments for energy costs paid by households receiving LIHEAA payments when the State agencies calculate their standard utility allowances. If the current standard utility allowance is based on overall energy expenses without regard to the availability of LIHEAA payments, the State agency would be required to revise the standard downward to reflect only those out-of-pocket energy expenses of LIHEAA recipients, or the State could devise new standard utility allowances applied only to LIHEAA recipients.

However, the Committee's provision requires that any standard utility allowance applied to LIHEAA recipients must reflect only out-of-pocket expenses above and beyond any LIHEAA payment.

For the purpose of calculating shelter deductions, whether a standard utility allowance is used or not, the Committee envisions allowing the proration of LIHEAA payments over the period for which they are intended.

In summary, the intent of the provision is to make explicit the common-sense principle that deductions should not be allowed for expenses that are paid for payments (direct or indirect) that are excluded as income.

Self-Employment Income Sec. 121

The Committee adopted a provision to specify, in the statute, present regulatory policy with regard to the treatment of self-employment income. Specifically, the provision would require that self-employed households which receive their annual income over a period less than a year and have their income averaged over twelve months shall have their income calculated on anticipated earnings projected from the most currrent income data available, rather than earnings derived from last year's tax return, if the household has experienced a substantial increase or decrease in business.

The policy embodied by the provision is presently found in food stamp regulations at 7 C.F.R. Sec. 273.11(1)(ii). No change in policy is contemplated by the adoption of the provision. However, the Committee is concerned by reports that some States may not be following the policy specified by the regulation. Apparently some States are requiring self-employed food stamp applicants to supply prior year tax returns to make eligibility and benefit determinations even for some farm families who have experienced substantial decreases in income in the current year.

The availability to use anticipated earnings in such cases is explicitly provided by the existing regulations, and by the new provision adopted by the Committee. The Committee expects the Secretary to provide guidance to State agencies to ensure that all areas comply with this policy.

Monthly Reporting and Retrospective Budgeting (Sec. 122)

The Committee adopted a provision from S. 1142, introduced by Senator Dole, that modifies the required usage of monthly reporting and retrospective budgeting (MRRB).

Monthly reporting and retrospective budgeting were passed in 1981 as part of the Omnibus Budget Reconciliation Act (P.L. 97–35) to be implemented on October 1, 1983. Subsequent legislation (P.L. 98–107) delayed the mandatory implementation date until January 1, 1984 and further legislation (P.L. 98–204) modified the requirements.

For many years prior to the requirement for monthly reporting, households were responsible for voluntarily reporting changes in their circumstances that would affect benefits. However, in practice, households often did not report such changes, either because they forgot, did not realize it was an important consideration, or sought to conceal such changes. The monthly reporting requirement has been intended to target those households most likely to have changes, and require that they submit information on a monthly basis.

Certain households—i.e., households in which all adult members are elderly or disabled and have no earned income and migrant farmworker households—are legislatively exempted from monthly reporting, while others may be exempted, upon State request, if the State can demonstrate that monthly reporting would not be cost effective for such households. Under present procedures, States submit those categories of households from which they believe monthly reporting is not cost effective to the Secretary of Agriculture who may grant waivers in such cases from the monthly reporting requirement. Typically, the Department of Agriculture has found that monthly reporting is most effective in identifying changing household circumstances with larger households and those with earned income.

The General Accounting Office has found that most errors—benefits overpaid—occur because of errors in reporting or determining income, with errors in earned income the most prevalent error. When MRRB is targeted to those most likely to have fluctuations in earned income it can be an especially effective method of ensuring only the correct benefit goes to eligible households and thus aid in reducing the amount of money misspent in the food stamp program.

Retrospective budgeting, also known as retrospective accounting, is closely associated with monthly reporting. Under retrospective budgeting, the income actually received by the household in a past month, or similar measuring period, is used as the income base for calculation of benefits in the certification period, rather than an estimate as to anticipated future income based on the most current months income (known as prospective reporting). For all households, eligibility and benefits at application, and continuing eligibility after certification, are calculated prospectively.

Retrospective budgeting generally provides more accurate and verifiable information on household income, and hence, a more accurate computation of the household's food stamp eligibility and benefits. Waiver authority is granted to the Secretary with respect to retrospective budgeting similar to what was previously described for monthly reporting. In practice, the Secretary has always granted a waiver for retrospective budgeting, when sought, for categories of recipients for which he has granted a waiver from monthly reporting.

The provision adopted by the Committee continues the requirement that States use both monthly reporting and retrospective budgeting, but limits that requirement to those individuals who have earned income or have a recent work history and are deemed, therefore, more likely to return to work. States are permitted to expend coverage of MRRB to other categories of participants. Households with elderly or disabled members having no earned income and migrant farmworker households will continue to be legislatively exempt from both monthly reporting and retrospective budgeting and, therefore, have benefits calculated prospectively, as already provided in the Act. In addition, as also provided in the Act, the States may, with the approval of the Secretary, select categories of households which may report at specified less frequent intervals, if the requirement to report monthly would result in unwarranted expenditures for administration of this requirement.

By requiring MRRB only for those households with earnings or recent work history, unless a waiver is sought because MRRB is still not cost-effective, the provision will eliminate, in most cases, the time-consuming waiver process. The Committee believes that if such a waiver has been granted under existing provisions of law, that the State would not be required to reapply for waiver status until the existing waiver expires.

In essence, the Committee's provision changes the presumption of present law by permitting greater State flexibility while maintining a core requirement for MRRB for those households most likely to have fluctuations in income—i.e., those with current earned income and those who have a recent work history. Under the existing waiver system, States vary a great deal in their application of MRRB, from as low as 4 percent to as high as 94 percent of participating households. It also conforms food stamp MRRB rules with those in the AFDC program. Under the Committee provisions, the State would have maximum flexibility, and the sole discretion to determine whether, to apply monthly reporting and retrospective budgeting in nonrequired instances, provided that they may not require it in the case of those households legislatively exempted.

As at present, the Secretary should monitor carefully all waiver requests and the operational results of waivers granted for cost-effectiveness reasons. The reduction in the overissuance error rates is a primary concern of the Committee. The Secretary may at any time repeal a waiver if he determines the exclusion of a category of recipient otherwise required to report is contributing to higher error rates.

Burial Plots (Sec. 123)

The Committee adopted a provision to specify in the statute the existing regulatory policy excluding from the assets test the value of a burial plot for each household member.

The change is consistent with legislative provisions adopted by the Congress in recent years in the AFDC and SSI programs which have specified in the statute what has been the regulatory policy in each of these Federal programs—i.e., that one burial plot per household member is excluded from counting toward the applicable assets test.

The Omnibus Budget Reconciliation Act of 1983 (P.L. 97–253) specifically established the exemption for SSI recipients and the Deficit Reduction Act of 1984 (P.L. 98–369) specifically excluded a burial plot for AFDC recipients.

Categorical Eligibility (Sec. 124)

Under existing law, States may consider households in which all members receive Aid to Families with Dependent Children (AFDC) benefits as having met the food stamp assets (or resource) test, as long as they have a gross monthly income equal to or less than 130 percent of the Federal poverty level (the food stamp gross income eligibility standard).

In addition, AFDC household members complying with AFDC work requirements are exempt from work requirements imposed by the food stamp program. This simplifies food stamp eligibility determinations for AFDC households, since they already must meet AFDC assets or work requirements that are similar to or stricter than those imposed by the food stamp program. However, these households are still subject to food stamp income limits and certain other tests which offer little from AFDC procedures.

Eligibility standards for the AFDC program vary according to State. However, in many States, virtually all AFDC recipients have incomes below food stamp income limits, and meet other eligibility standards similar to or stricter than food stamp rules. In recognition of this situation, section 1411 of the bill would allow States to consider households in which all members are recipients of AFDC benefits and whose gross household income is below 130 percent of poverty (the food stamp gross income elgibility standard) categorically eligible for food stamps—that is, eligible because of their status, thereby removing further food stamp eligibility determination procedures.

In addition, because many recipients of Supplemental Security Income (SSI) benefits have income and assets below food stamp limits (or are exempt from certain food stamp rules), the bill would, similarly, extend categorical eligibility to them, as long as the household's gross income is at or below 130 percent of the poverty line. This extension of categorical eligibility to SSI households would not of course, apply in the two States (California and Wisconsin) where increased SSI benefits have replace food stamps.

Under the provisions of the bill, benefits would still be calculated using food stamp rules. Additionally, other rules, primarily under section 6 of the Act, would still apply. These other provisions disqualify households in cases where, for example, they fail to fulfill work or monthly reporting requirements or do not meet special alien and student limitation. Additionally, the Committee has included language that would ensure that any AFDC and SSI household that loses its eligibility for those programs (for example, if a father returns to the AFDC family or if an SSI recipient loses disability status) would not lose its food stamp eligibility without a determination under food stamp rules that the household fails to meet food stamp eligibility standards.

Households that may not qualify for categorical eligibility could still be evaluated for food stamp eligibility under regular food stamp eligibility rules. This may happen, especially in certain SSI situations, in cases in which a household's gross income exceeds 130 percent, but its net income falls within the net income eligibility ceiling of 100 percent of poverty.

Categorical food stamp eligibility for AFDC and SSI recipients was recommended by the President's Task Force on Food Assistance, based on its finding that administrative simplification is needed in the food stamp program.

Over one-third of all food stamp households are made up of households whose members are all AFDC or all SSI recipients. The Committee expects that the implementation of this provision will reduce the administrative time needed to handle their cases, thereby allowing administrative resources to be more efficiently allocated, without loosening food stamp eligibility requirements.

Job Training Partnership Act Benefits As Income (Sec. 125)

Section 125 would amend the Food Stamp Act to include allowances, earnings, and payments to participants in program under the Job Training Partnership Act (P.L. 97-300) as income for food stamp purposes.

The Job Training Partnership Act (JTPA) was enacted in October 1982 to replace the Comprehensive Employment and Training Act. JTPA is the central Federal job training legislation. Under JTPA, Federal funding is provided for training unskilled persons and dislocated workers. There are three types of income that JTPA participants may receive: (1) allowances during their training, (2) earnings for JTPA-subsidized jobs performed in conjuction with training, or (3) needs-based payments.

The Job Training Partnership Act currently prohibits programs other than those established by the Social Security Act from counting any of these three types of income received under the Act as income even though such funds are available for households' use without restriction. These JTPA allowances, earnings, and payments are all cash income which participating households may use for any purpose, including the purchase of food. Thus, the Committee agreed with the Administration's contention that there is no inherent reason for excluding any income from JTPA as income for food stamp purposes. Indeed, in certain situations, JTPA-related income may replace other income which is fully countable, such as AFDC grants.

The provision adopted by the Committee would delete the income exclusion for all JTPA income (i.e., allowances, earnings, and payments described above) in order to restore equity to the treatment of households with similar circumstances other than the receipt or nonreceipt of JTPA stipends. The Department of Labor does not collect information on the amount paid as stipends or allowances to JTPA participants. Thus, no information is available on the maximum or average JTPA income a household may receive. Whatever level of income a household does receive under current law, its exclusion under current law results in a JPTA household receiving a higher food stamp allotment than a similar household with the same income from other sources. Continuation of such an inequity cannot be justified since a household's total income is the basic financial determinant of the amount of food assistance needed.

Also, enactment of the proposal would improve coordination in this area between the Food Stamp Program and the AFDC program, as well as other programs established by the Social Security Act (SSA), in which all JTPA income (allowances, earnings, and payments) is generally counted as income for purposes of eligibility and benefit determinations. This will simplify program administration and eliminate one possibility for payment errors.

Employment and Training Program (Sec. 126)

The Committee adopted a provision to require States to begin operating an employment and training program to ensure that an increasing percentage of able-bodied food stamp recipients are involved in some work-related activity in exchange for the continued receipt of food stamp benefits.

Recent evidence from demonstration projects in work registration, job search and workfare show that efficiently operated work programs can increase recipients and reduce program costs. (See "Food Stamp Work Registration and Job Search Demonstration: Evaluation Report", June 1985.) Furthermore, the volume of work-related activities in the AFDC program (in which States share in benefit costs and savings) has increased substantially in the past several years.

The objective of the Committee provisions is to ensure that all States develop meaningful work programs to assist able-bodied recepients to move toward greater self-sufficiency by finding paid employment. In addition, the implementation of such work requirements will deter participation by able-bodied persons who refuse to comply with such requirements in exchange for their food stamp benefits.

The Committee's provision provides sufficient flexibility such that States would be able to employ a wide range of work programs similar to those available in the AFDC program.

Food stamp participants now required to register for work include most unemployed, able-bodied adult household members; in addition to registering for work, they must also fill job search requirements designed by the Secretary. Federal food stamp regulations have established a standardized system of required job contacts and follow-up similar to that utilized in the unemployment compensation program. However, job search requirements are not uniformly enforced nationwide and are funded differently from other food stamp administrative procedures. Job search administration is currently optional to State agencies and fully funded by the Federal government. Under the Act, the Department currently contracts with 39 States to enforce the federally described job search system, and the States are awarded a portion of a pool of job search administration funding set aside by the Department (rather than the normal 50 percent Federal cost-sharing arrangement). However, some States have not used this money and, in effect, have no job search requirements for able-bodied recipients in their States.

Because of concerns with the lack of State effort being used to encourage or require work-related activities for the able-bodied, the Committee adopted a mandatory program, in which every State will be required to initiate an employment and training program. The State will have considerable flexibility in establishing its program under guidelines to be established by the Secretary.

The State will have the option to establish an overall program which may include several components, or only one. Among the possible approaches that may be taken are workfare and various job search training and support programs (such as job finding clubs, job placement services, jobs skills assessments, training in techniques for employability, or other direct training or support activities).

The new program established by the Committee bill provides many of the same parameters and safeguards which currently exist under the optional workfare program. Household members in a employment and training program requiring work would work for the number of hours per month that is determined by dividing their food stamp benefit by the applicable minimum wage. Thus, for example, a household receiving $134 in food stamps per month would be required to work in employment and training program activities for 40 hours per month ($134 divided by 3.35 per hour=40 hours). As with food stamp workfare programs, the recipient may not be required to work or participate in other, non-work employment and training activities for more than 120 hours per month in combination with other hours worked—either hours of paid employment or other in-kind work such as workfare or other work-related requirements of other welfare programs.

Additionally, the State is to ensure that the new program does not have a displacement effect on ongoing employment and that the same benefits and working conditions are provided to program participants as are available to employees performing comparable work for comparable hours

Also, like existing workfare guidelines, States are required to reimburse participants for actual costs of transportation and other actual costs that are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month. The Federal Government would reimbures the State agency for 50 percent of these costs. These do not include costs of equipment, tools or materials used in connection with the work performed by participants, costs of supervising participants, or reimbursements for meals away from home. States would be permitted to pay for additional costs above $25 per participant, but these would be funded entirely by the State.

Two additional parameters are specified in the statute, although, in practice, these have generally governed the existing workfare programs. To the extent possible, the State agency is to take into account the prior training, experience, and skills of household members participating in the employment and training program. Such programs are limied to projects that serve a useful public purpose in a field such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, or day care.

The Committee bill authorizes grants, beginning at $40 million for fiscal year 1986, for the purpose of operating the new employment and training program. There annual grants would be increased to $50 million in fiscal year 1987, $60 million in fiscal year 1988, and $70 million in fiscal year 1989. Matching funds, at a regular 50 percent reimbursement, would be available to any State should State administrative costs associated with the program exceed the grant level allocated by the Secretary.

Those persons to be included in the program are those required to register for work and who have participated in the food stamp program for 30 days. (Depending on whether the State uses a calendar month or a budget month, the provision contemplates a one month period of approximately 30 days.)

In the case of households who are assigned to participate in the program, but do not comply, the household is ineligible for food stamp participation for two months, the same penalty period as exists presently for work registration and workfare violations.

The Committee provision phases in an escalating percentage of the able-bodied who each State must ensure are complying with the employment and training program. By the end of fiscal year 1987, 25 percent of recipients subject to the provision must be participating in the program. This level of participation must be maintained and increased through fiscal year 1988 such that by the end of that fiscal year 35 percent of the able-bodied are participating in the employment and training program. This level must be maintained and increased by the State through fiscal years 1989 and 1990 so that by the end of fiscal year 1990 and thereafter 45 percent of those subject to the requirement are participating.

Should the Secretary determine that the State fails to meet these performance standards, or other minimum standards prescribed by the Secretary under his authority to approve State plans (such as requiring a minimum number of hours in various employment and training activities) the Secretary may withhold the Federal share of administrative expenses by considering noncompliance as issuance to ineligible households for purposes of error rate liability.

Of those subject to work registration and who have participated in the Food Stamp Program for 30 days, the State may exempt categories of household members if it decides that application of such work requirements is not cost effective, or is impracticable because of limited work opportunities, remote location from employment opportunities or unavailbility of dependent care. However, such additional exemptions may not diminish the State's requirement to meet the performance standards outlined above—that is, that 25 percent of all work registrants must be in the program by September 30, 1987, etc.

The purpose of this program is to help certain food stamp participants move into regular employment by providing training and experience and improving the employability of the participants. It also allows States to coordinate employment and training activities under both the Food Stamp Program and the AFDC Program. A State will have considerable latitude in designing its program. The committee believes that flexibility is important if the program is to succeed. The ultimate success of the employment and training program depends on its ability to encourage recipients to seek and maintain paid private or public employment. In assigning recipients to employment and training activities, the State should give high priority to this objective by accommodating, to the extent praticable, the work schedules of participants who have part-time employment.

The Committee is aware that many States have found that persons not required to participate in employment and training programs often volunteer for these programs. It is to these person's advantage to participate in programs in which training and employment opportunities are available so that full time jobs can be obtained and opportunities expanded. The bill permits States to allow additional participation in the employment and training program. In addition, those participants required to participate in the employment and training who have fulfilled their current program requirments may also volunteer for additional employment and training opportunities.

The Committee also made several changes in the pool of work registrants subject to the employment and training program. The Committee bill extends the work registration and new employment and training program to 16- and 17-year old heads of households unless they are full-time students. This change establishes consistency with the AFDC program, and recognizes that such young heads of household who are not in school or working could especially benefit from such activities as work experience assignments and job search training. Further, food stamp State agencies would be given the same option that AFDC State agencies have to extend work requirements to caretakers of children between three and six years old when adequate chid care is available. Currently caretakers of children under six years old are exempt from all of the work requirements; also caretakers of children between six and twelve can refuse offered employment without penalty if adequate child care is not available for those children. Existing regulations outline conditions of inadequate child care, and would be expected to be extended to any new households covered by the Committee's provision.

The Committee also eliminates the "second parent" exemption from the food stamp workfare program. Currently, a second adult member of a household who is caring for a child (defined by regulation to be a child under age 18) is exempt from workfare requirements, although not exempt from work registration, when the first parent is already included in work registration or employed full time. The provision would establish consistency between the workfare and work registration provisions by requiring that all adult household members be subject to both work registration and, where applicable, workfare.

The bill also requires the Secretary of Agriculture to report to the Congress on the effectiveness of the new employment and training program by January 1, 1989.

Aliens (Sec. 127)

The Committee adopted a provision introduced by Chairman Helms which would require that all of the income and assets of an ineligible alien count in determining a household's eligibility and benefits, not such income less a pro-rata share and assets as under current law.

Illegal or temporarily resident aliens are not permitted to participate in the food stamp program. Congress adopted legislation in 1980 to require that the income and resources of ineligible aliens who live with eligible food stamp recipients should be counted in determining the eligibility and benefit levels for the remainder of the household.

However, the provision, as adopted, stated that all but a pro-rata share of the alien's income should be counted. A proration of the alien's income may understate the true income picture of the household's circumstances, particularly when, as is frequently the case, the alien is the primary wage-earner. Additionally, because there is no way to ensure that food stamp benefits received by the household are not used by the ineligible alien, all of the income of ineligible aliens residing with the household should be counted.

Regulations require the counting of all of the income and assets of ineligible residents of a household in the case of individuals made ineligible by fraudulent participation. During their period of ineligibility, all of their income and assets are now included in the eligibility and benefit determinations for the remainder of the household who remain in the food stamp program. The Committee's change with respect to aliens is consistent with this policy.

Sales Tax (Sec. 128)

Most States do not have sales taxes which apply to food purchases made in retail food stores. Several States have such sales taxes but exempt food stamp purchasers from such taxes. However, currently about 17 States have State or local (or both) sales taxes on food purchases which include sales taxes on food stamp purchases.

The Congressional Budget Office and the Administration estimate that approximately $107–$140 million of food stamp benefits will be diverted from actual food purchases to pay for sales taxes imposed on food stamp purchases in certain States during fiscal year 1986.

The Committee adopted a provision which effectively prohibits this practice by specifying that food stamp transactions in retail food stores are a nontaxable event. The Committee bill will thus provide significant increased food assistance—by increasing the purchasing power of existing levels of food stamp benefits—without cost to Federal taxpayers.

The following table outlines the sales tax policies in the States and the District of Columbia effective earlier this year:

State or local sales taxes on food

Alabama	4 percent tax on all food items—optional 1 percent or more local tax discretion of the county.
Alaska	No tax on food, but there is a local option.
Arizona	No tax on food, but there is a local option.
Arkansas	4 percent tax on all food items.
California	No tax on food, but 6 percent on soda, 6½ percent in certain transit districts.
Colorado	No State tax on supermarket foods—3½ percent added in some cities and counties.
Connecticut	No tax on food except 7½ percent on candy, soft drinks and meals served in restaurants or takeouts.
District of Columbia	No tax on food items purchases for home consumption. Items considered for immediate consumption, a half-pint container of milk, candy bars, and cans or bottles of soda smaller than a six-pack, are subject to an 8 percent sales tax. (No sales tax is charged on a quart container of milk, or a liter container of soda or fruit drink as these are considered to be for home consumption.)
Delaware	No tax on food.
Florida	No tax on food items except 5 percent on prepared foods, soda, candy, and novelty ice cream.
Georgia	3 percent on all food items—local option 1 percent and 1 percent add-on in some counties.
Hawaii	4 percent tax on all food items.
Idaho	4 percent tax on all food items.
Illinois	No tax on food stamp purchases.
Indiana	No tax on food except 5 percent on candy, gum, soda, confections, cocktail mixes, ice and takeout foods.
Iowa	No State tax on supermarket foods—No tax in cities and counties.
Kansas	3 percent State tax on supermarket foods—0.5 to 1 percent added in some cities and counties.
Kentucky	No tax on staple food, but 5 percent on candy, gum and soda.
Louisiana	No State tax on food—variable city taxes (as well as variable parish taxes).

State or local sales taxes on food—Continued

Maine	No tax on food, except 5 percent on meals and beverages served in restaurants or takeouts.
Maryland	No tax on food except 5 percent on soda and confectionary and candy items.
Massachusetts	No tax on food, except 5 percent on meals and beverages served in restaurants or takeouts.
Michigan	No tax on food, except 4 percent on seeds, plants, ice, cocktail mixes, and distilled and mineral water.
Minnesota	No tax on food except 5 percent on gum and distilled water, bags of popcorn, and sandwiches.
Mississippi	6 percent on all food items.
Missouri	4.225 percent State tax on supermarket foods—2½ percent added in some cities and counties.
Montana	No State tax on supermarket foods—No tax in cities and counties.
Nebraska	No State tax on supermarket foods—No tax in cities and counties.
Nevada	No tax on food.
New Hampshire	No tax on food, except 7 percent meals charge on restuarants or takeout meals.
New Jersey	No tax on food except 5 percent on confectionary items such as candy, toppings, chocolate-covered peanuts and soda.
New Mexico	4 percent tax on all food items, some additional city taxes.
New York	No tax on food except 5¼ to 8¼ percent on candy, fruit drinks, distilled water, chewing gum, soda and prepared sandwiches. This varies by county and city.
North Carolina [1]	4 percent tax on all food items—additional .05 to 1 percent local option in some counties.
North Dakota [2]	No State tax on supermarket foods—no tax in cities and counties.
Ohio	No tax on food except 5 percent on seeds, gum, soda, distilled water and some additional local taxes such as additional .05 percent in Franklin and Hamilton counties. In Cuyahoga County the added tax imposition is 1½ percent.
Oklahoma	3.25 percent tax on all foods items.
Oregon	No tax on food.
Pennsylvania	No tax on food except 6 percent on soda, fruit drinks and candy.
Rhode Island	No tax on food except 6 percent on candy, confections, soft drinks, fruit or artificial drinks, glazed dried fruits, restaurants or takeout meals.
South Carolina	5 percent tax on all food items.
South Dakota	5 percent State tax on supermarket foods—15 added in some cities and counties.
Tennessee	5.5 percent on all food items—1½ percent local option in some counties (tax exempt on seeds which produces food for home use).
Texas	No tax on food except 4.125 percent on prepared foods, plus a local option.
Utah	4½ percent State tax on supermarket foods—1¼ percent added in some cities and counties.
Vermont	No tax on food except 3 percent on yeast, food coloring, soda extract, and ice. Also, 6 percent on restaurant or takeout meals.
Virgin Islands	No tax on food
Virginia	4 percent on all food items.
Washington	No tax on food except 5½ percent on soda, seeds and plants, ice, bottled water, dietary supplements, and fast foods, plus a local option.
West Virginia	No tax on food except 5 percent tax on takeover food.
Wisconsin	No tax on food stamp purchases.

State or local sales taxes on food—Continued

Wyoming	3 percent State tax on supermarket foods—1 percent added in some cities and counties.

[1] North Carolina's sales tax on food stamp purchases has been repealed.
[2] North Dakota has since implemented a sales tax on certain food products.

Source: U.S. Department of Agriculture.

The practice of permitting food stamp coupons to be used to pay for any sales taxes on food imposed by State or local governments is a longstanding one, but one which has never been sanctioned in the statute. Section 3(g) of the Food Stamp Act of 1977 explicitly outlines eligible items which may be purchased with food stamp coupons. In general, most eligible food items are food or food products for home consumption except alcoholic beverages, tobacco, and hot foods or hot food products ready for immediate consumption.

The effect of such sales taxes is twofold. First, the purchasing power of the food stamp allotment is reduced for recipients in States where these taxes are imposed on food stamp purchases. Food stamp allotments are based on the thrifty food plan. The thrifty food plan is a research-based set of economical and nutritious diets that, insofar as possible, reflect food choices of households with limited food budgets. It is composed of an assortment of foods that represents as little change from average food consumption of person in U.S. households with relatively low costs as was required to provide a nutritious diet while controlling costs. Applicable sales taxes on food purchases are not included in formulating the cost of the plan.

For example, in States imposing a 4 percent sales tax on all food purchases, the real buying power for recipients in the grocery store is the equivalent of 96 percent of the thrifty food plan. Thus, the purchasing power of the food stamp allotment is reduced for recipients in States where sales taxes are imposed on food stamp purchases relative to the recipients in States with no such sales taxes and relative to the basis for the benefits, the thrifty food plan.

Secondly, from a Federal perspective, the existing policy serves as an indirect Federal subsidy—through the Federal Food Stamp Program—to those State and local governments imposing a sales tax on food stamp purchases.

The effect of the Committee's provision is twofold. First, food stamp coupons may no longer be used to pay for State or local sales taxes on food, and, second, no sales tax (to be paid in cash by the recipient) may be levied on food stamp purchases.

The national interest in protecting the buying power of food stamp recipients is considered paramount to the Committee in deciding to turn aside some expressed concerns that the limitation interferes with State taxing powers. However, as outlined above, the basis of food stamp benefits does not contemplate the imposition of sales taxes on food stamp purchases. Additionally, the States' authority to tax such benefits has never been legislatively sanctioned, and States remain free to reject this condition to participation in the Food Stamp Program and forego the benefits of the program to its citizens.

In recognizing that some States with such tax policies may desire some time to adjust their policies in order to continue participation in the Food Stamp Program, the Committee has adopted an implementation schedule that will phase-in the prohibition.

The prohibition is to take effect for the fiscal year beginning October 1 of the calendar year in which the State legislature next meets following adoption of the bill. Most State legislatures will meet in 1986, meaning that the provision will trigger into effect on October 1, 1986. However, legislatures in several are not scheduled to meet until 1987. According to available information, only two of these—Arkansas and North Dakota—presently have applicable sales taxes on food stamp purchases. Thus, these two States would have until October 1, 1987 to make any changes. Of course, if, for any reason, the legislature meets during 1986, the prohibition would be triggered on October 1, 1986.

Alternative Means of Coupon Issuance (Sec. 129)

The Committee adopted a provision to strengthen the Secretary's authority to require the use of alternative methods of coupon issuance in order to improve program integrity in the food stamp program.

The Food Stamp Act would be amended to require the Secretary to require the use of alternative methods of issuance, including electronic benefit transfer, when the Secretary, in consultation with the Inspector General, determines that program integrity would be improved by instituting a different method of issuance in an area. Currently, the Secretary may require alternative issuance methods under the same conditions.

Under the provision, the Secretary could require State agencies to change their issuance systems in areas with significant issuance problems, such as mail losses, thefts, and duplicate issuances. For example, demonstration projects have shown that fradulent duplicate issuances to recipients can be virtually eliminated by issuance systems utilizing direct delivery of households' authorization-to-participate (ATP) cards to issuers, using ATPs with short life-spans, or implementing computerized monitoring of issuance. Using the authority in this section, the Secretary would be required to require States, or parts thereof, to use such systems.

The Committee notes that the Secretary has not yet used the discretionary authority granted to him in 1982.

Simplified Applications and Standardized Benefits (Sec. 130)

The Committee bill permits all States to have the option to participate in simplified application and standardized benefit procedures which have been tested for the past two years as pilot projects in several States.

The Food Stamp and Commodity Distribution Amendments of 1981 (P.L. 97-98) authorized the Secretary to conduct several pilot projects to test certain simplifications in program application procedures and the determination of benefits.

Under the demonstration project, the Secretary determined to test how different levels of standardization and simplification affect benefits, administrative costs, and error raters in the Food Stamp Program. As provided in the statute, the pilot projects focused on food stamp recipients who also participate in one or more of the following programs: AFDC, SSI, or Medicaid.

Under the demonstration, food stamp eligibility determinations and benefit allotments for participants in these other programs were based on the household resources (that is, assets) and income concept used in these programs, which made it unnecessary to undertake separate computations of assets and income measures based on Food Stamp Program criteria. In addition, sites had the option of using standard benefit procedures under which all households within certain groups would receive the same food stamp allotments. The States of Oklahoma and Illinois and Fresno and San Diego Counties in California participated in the simplified application portion of the pilot project, while Illinois also implemented the standardized benefit portion.

The Department presented early results from the pilot projects to Congress in an interim report in July 1985: "Simplified Application Demonstration Evaluation for the Food Stamp Program". The interim report focused on preliminary findings, particularly from Illinois, the first of the sites to complete operations.

Among the key preliminary results were substantial administrative savings and significant reductions in overissuances.

Several sites note administrative savings in the course of the actual application process and the determination of benefits.

The success of the simplified application portion of the pilot projects was outlined in Committee testimony by Mr. Robert Fulton, Director of the Oklahoma Department of Human Services, on June 14:

> This demonstration project is proving that the Federal Government and the States can save a significant amount of administrative costs through categorical eligibility, common definitions, and reconciliation of other program rules . . . Workers have told us that (the pilot project) is much easier to administer and saves lots of time. This is substantiated by random . . . sampling which indicates almost 75% less staff time is required to process food stamps for AFDC recipients under (the pilot project).

Mr. Fulton also testified that the error rate for pilot project participants had declined.

One of the important elements to overall success of the standardized benefit portion of the pilot projects, and a critical factor in the Secretary approving additional States in the future, is the overall control on food stamp spending. Under the pilot projects, any State wishing to include the standardized benefit or simplified application portion of the demonstration was required to demonstrate that the establishment of such standardized benefits was in a manner that was not less than, in the aggregate, to the benefits which would have been issued had regular food stamp procedures been followed. Department officials confirmed that a substantiation by the State of budget neutrality with regard to total benefits would be the criterion governing the Secretary's approval under the State option being established.

Illinois demonstrated both substantial administrative savings and error rate reductions. Preliminary results from the Department's interim report indicate that participation was not affected materially by the change to standardized benefits.

The Committee believes that, based on the early reports from the pilot projects, the potential for improvements in the program would be enhanced by the expansion of the pilot projects into a state option, subject to approval by the Secretary.

Many States may be able to gain part of the advantages of the simplified application aspect of the provision by the use of the categorical eligibility established in the bill.

Redemption of Coupons/Bank Fees (Sec. 131)

Concerns have been expressed over what has apparently become a growing practice by certain financial institutions of charging food retailers a fee for the processing of food stamp coupon deposits.

The Committee is concerned about the long-term impact this practice could have on the food stamp program. Both retail food organizations and financial institutions play a part in the food stamp program, and are needed for its effective operation. The Committee wishes to foreclose the possibility that the practice of banks charging fees for certain deposits of food stamp coupons would ever result in retail food stores dropping out of the food stamp program, or in other adverse consequences on program recipients. In particular, the Committee is concerned about bank fees imposed on stores when the coupons are presented to the bank by stores in a manner consistent with all requirements of the Federal Reserve—which include certain guidelines on bundling by denomination—except cancellation.

For this reason, the bill prohibits financial institutions from charging retail food stores for the deposit of food stamp coupons that are submitted in a manner consistent with the requirements placed on these institutions when they present coupons to the Federal Reserve Banks. Charges would continue to be permitted in cases where retail food stores fail to follow these requirements.

Indeed, the Committee bill recognizes the previous and continuing right of financial institutions to assess fees for the processing of food stamp coupons which are redeemed or deposited by the institutions' retail food store customers. The only limitation imposed by the amendment is in the case where coupons are presented to the financial institution in a condition consistent with the requirements (except for cancellation) for subsequent presentation to the Federal Reserve Bank. These requirements are as prescribed by rules, regulations, and operating circulars of the Federal Reserve. Cancellation requirements are exempt (as is made clear in the bill), since that is a process which is a responsibility of the financial institution and can be performed only after receipt of coupons from the retail food store.

Thus, the very narrow limitation imposed by the amendment is meant to cover only the situation where the coupons are presented to the financial institution in a condition where essentially no further processing is necessary, except for cancellation.

This will minimize the type of handling that the financial institution will have to perform upon receiving coupons and obviate the rationale for the fees that some financial institutions are currently charging on these transactions.

The bill does not spell out in detail the requirements currently imposed on financial institutions in presenting coupons to the Federal Reserve Bank—the requirements which constitute the basic processes that retailers must follow to avoid redemption charges. These requirements are subject to change, and the requirements of the various Reserve Banks are not necessarily the same. The Secretary is, therefore, given sufficient flexibility to fashion regulations consistent with the provision.

Eligibility of the Homeless (Sec. 132)

The Food Stamp Act of 1977, as amended, sets forth, among other provisions, the eligibility criteria for persons applying for food stamp benefits. The Committee adopted a provision to clarify the eligibility of those not residing in permanent homes by explicitly specifying that State agencies provide a means of certifying and issuing food stamps to eligible households that do not reside in permanent dwellings or do not have fixed mailing addresses, if they meet other eligibility standards. The President's Task Force on Food Assistance recommended that action be taken to ensure the eligibility of the homeless for food stamps. The Task Force found that homelessness is a symptom of complex problems and "* * * Until we possess the means to deal with them as a whole, food assistance will remain a most necessary important source of help for these unfortunate people."

The Committee notes that any action to deny food stamp eligibility to any person simply because he or she has not fixed address is not provided for in the Act. However, the Committee believes it is important to clarify this eligibility, especially since the Task stated found that nineteen States require a fixed household address in order for an applicant household to be eligible for food stamps. This provision, therefore, emphasizes that homeless individuals are indeed eligible for the Food Stamp Program, if they meet program eligibility requirements, and that State agencies must establish methods for adequately serving them. This provision is thus a clarification and reinforcement of current law.

While the Committee recognizes the need to ensure the homeless are not denied benefits solely due to a lack of a fixed address, it emphasizes the need for States to take care that all food stamp eligibility factors are met before benefits are made available to such applicants. States may have used the fixed address as a means to protect against multiple participation of households in the food stamp program. While the absense of a fixed address does not preclude food stamp eligibility, neither does it relieve the State of its responsibility to protect against abuse of the food stamp program including the use of the system to prevent duplicate participation required by section 11(e)(21) of the Food Stamp Act.

Certification of Information and Liability for Overissuance of Coupons (Sec. 133 and 141)

The Committee adopted a modified version of a provision in Chairman Helms' bill, S. 616, to require all adult members of a household—or one adult member of a household being certified under expedited service procedures—to certify under penalty of perjury, the truth of all information on the household's application form and all other reports which the household is required to file.

The provision responds to requests from law enforcement officials and prosecutors that such a provision would tighten the administration of the program and aid in prosecution of fraudulent participation.

Those cases necessitating the change occur under the following scenario: One adult member makes application for food stamp benefits. The income of the other spouse, however, is not reported. When ultimately confronted with this fraudulent activity by program officials, the adult who made application claims not to have known about the job and correlary income from that spouse. In these cases, when the spouse successfully claims she (or he) did not know about the income of the other adult, the case is dismissed. Similarly, the employed spouse typically claims not to have known that the other spouse had applied for food stamp benefits.

The provision that all adult household members sign the application form and attest to its accuracy under penalty of perjury will ensure that, as such cases arise in the future, the signature of the other spouse, and all other adult household members, will be sufficient evidence of any of the adults knowlingly providing incorrect information thereby improving the State's case against the household.

Ellen J. Chesnutt, Chief Deputy District Attorney in Colorado Spirngs, Colorado, is President of the Colorado Welfare Fraud Council and the National Welfare Fraud Association. She testified before the Committee on March 21, 1984:

> It is an excellent requirement to have all adults sign the necessary forms. It just means another loophole closed. One pattern of cheating is for one spouse to apply and sign the forms, while the other spouse is one who is working. The non-working spouse states, "I didn't know my spouse was going to work," and the working spouse says, "I didn't know I was supposed to report."

Karen A. Ludwick of Grand Rapids, Michigan, President of the United Council on Welfare Fraud, Inc., submitted testimony at the same hearing as follows:

> Requiring that all adult food stamp applicants and all adult recipients who are required to file certain reports certify in writing, under penalty of perjury, the trust of the information contained in food stamp applications, monthly income reports, and other documents would maintain further consistency with the AFDC program.

She also noted:

> We have been extremely active in prosecutions of AFDC cases under our perjury statute in Kent County, Michigan. I will be extremely pleased to see this statement added to the food stamp applications.

The provision does not require that all adult household members come into the food stamp office.

In order not to delay certification procedures for expedited service recipients, the provision exempts all but one adult household member for the initial certification. Regardless of the initial method of certification, however, such households would not be exempt from the requirement for recertification, monthly reports, or other subsequent forms affecting food stamp benefits.

The Committee wishes to emphasize that this provision is not intended to alter the penalties prescribed by section 15 of the Food Stamp Act (7 U.S.C. 2024) for unlawful acquisition and use of coupons. While the meaning of the term "perjury" as used in this provision is intended to be set forth in 18 U.S.C. 1621, the penalties expressly provided in the Food Stamp Act would, by the terms in section 1621, remain in effect.

The Committee also a provision to make all adult household members jointly and severally liable for the value of any overissuance of benefits to the household. This provision would permit States to simultaneously pursue claims against several different households which contain adult members of a household which obtained an overpayment of benefits, to the extent permitted by the Act. It also clarfies that any adult member of a household is liable for the overissurance to the entire household. Thus, the government (Federal, State, or local) could pursue collection from the income or resources of any household member.

Fraud Detection Units and other Anti-Fraud Measures (Sec. 134, 135, 137, 148)

The General Accounting Office, the Office of Inspector General, and representatives from various law enforcement and fraud investigative groups have consistently testified to the need for more aggressive and effective Federal and State efforts to prevent fraud and abuse and to detect and prosecute that which has already occurred.

The Committee adopted a provision (section 137 requiring fraud detection units to be established and operated in project areas with 5,000 or more households participating in the Food Stamp Program. These units would be involved in detecting, investigating, and assisting in the prosecution of program fraud.

The Department indicates that approximately 250 project areas have 5,000 or more households. While many of these project areas have existing personnel specifically assigned to fraud detection, investigation, and prosecution, many do not.

It is the purpose of the Committee's provision that all of these larger project areas (serving more than 5,000 households) be required to have fraud detection units. It is not a requirement of the provision that a special or separate office be established for this purpose, but rather that some personnel in all project areas be targetted on fraud detection, investigation, and assistance in prosecution. In some cases, existing efforts will meet the criteria of the provision; however, in other cases, project areas will be required to initiate, or establish broader, efforts to comply with the intent of the provision. Those activities that are investigatory and prosecutorial would be eligible for enhanced funding at 75 percent. Verification activities are a basic certification function and would be funded at the normal rate (generally 50 percent).

The Committee bill also provides (in section 134 additional authority for the Secretary and State agencies to require greater verification by eliminating some of the restrictions that presently apply. The new provision would require State agencies to verify household size in any case in which household size is questionable. Currently, the Act requires verification only of non-excluded income and other eligibility factors determined by the Secretary to be necessary. The provision would permit State agencies, as well as the Secretary, to establish other factors that must be verified.

The Committee will (section 135 changes the criteria for requiring the use of photographic identification card by households in certain project areas. Under current law, the Secretary, after consulting with the Inspector General may require State agencies to require most households to present photographic identification cards to receive coupons in project areas where the Secretary determines that this practice would be useful to protest program integrity. The amendment would base the Secretary's determination on a finding that the practice would be cost-effective as well as useful to protect program integrity.

The provision also allows a State agency to permit households to comply with a requirement for a food stamp photographic identification card by presenting a photographic identification card used to receive assistance under a welfare or public assistance program.

The Committee expects that in applying the use of photographic identification cards, the Secretary will exempt areas using mail issuance.

The Committee bill (section 148 provides authority for the Secretary to require special certification procedures in project areas with high payment error rates. The Department's Inspector General would be authorized to use quality control (error rate) data to identify project areas with payment error rates that impair the integrity of the Food Stamp Program. The Secretary would be authorized to mandate States to employ new or modified certification procedures in such project areas if such procedures would improve program integrity in a cost-effective manner. The Secretary would be required to report one year after the date of enactment, and annually thereafter, to the Congress on project areas identified by the Inspector General that have high error rates and on what special certification activities the Secretary has required in those areas.

Reports indicate that a frequent location for high error rates are cities located near the boarder of two or more States. In such cases, recipients sometimes work in one State (drawing income) while drawing food stamp benefits in an adjacent State. Various existing matching techniques are generally effective only in detecting unreported income from sources within the same State as the one where the recipient is drawing benefits. Occasional cooperative efforts between States have identified fraudulent participation by matching income information from State against the food stamp participation in the adjacent State.

This is one of the types of improved techniques that the Secretary may require, if he judges it to be cost effective, in the event the Inspector General identifies such areas as having error rates that impair the program's integrity.

Staggering of Coupon Issuance (Sec. 136)

The methods of distributing food stamp benefits are determined by the States. Various methods are used within the States as well as by each of the States including the following—

Authorization to Participate (ATP).—An authorization to participate (ATP) card is mailed each month to food stamp participants. The ID card and the ATP card are presented at an issuance office (e.g. a bank). The ATP card is surrendered and the food stamps are issued. The ATP card is a negotiable document and must be sequentially numbered within each jurisdiction. ATP cards must be reconciled each month against the value of the stamps issued.

Mail Issuance.—A master list of eligible participants is prepared each month and food stamps are mailed directly to those on the list.

Household Issuance Record (HIR).—Food stamp participants come into the welfare office each month, present their ID cards and food stamps are issued. The master file is kept on Household Issuance Record (HIR) cards and when stamps are issued the HIR card is manually updated to reflect participation.

Online.—This is a computerized system in which the participant presents a specially encoded ID card which is inserted into a terminal (e.g. by a bank employee). The computer file is checked and stamps then issued in the amount indicated by the computer. The food stamp file is updated immediately to prevent duplicate issuances.

Direct Delivery.—Food stamp participants are notified where to go to obtain their food stamp benefits each month. In many instances it is a bank. They present their ID cards and the stamps are then issued.

The most commonly used method is the mailing of an authorization to participate (ATP) card. States are permitted to mail ATP cards with the first two weeks of a month. Participants then exchange ATP cards for food stamps at designated places. The President's Task Force on Food Assistance found that this could lead to two problems: first, allowing merchants to assign higher prices to perishable goods at the beginning of the month and second, greater demands on private food assistance programs at the end of the month when budgets and the supplementary food stamp benefits tend to run out. The Task Force therefore recommended that the delivery of food stamp benefits be staggered over the entire month.

The Committee agrees with the Task Force recommendation, and the bill allows States the option of issuing staggered benefits—the methods still to be chosen by the States—over the entire month. The Committee is concerned about the impact on recipients during any transition or phase in of the provision over a period of several months.

In order to ensure that the gap in benefit coverage is not too great, the Committee specified that in making a transition to staggered issuance, there may not be an interval of greater than 40 days for individual households receiving food stamp benefits.

Food Stamp Information and Applications At Social Security Administraton Offices (Sec. 138)

The Committee adopted a provision to reinforce existing Social Security Administration (SSA) responsibilities with regard to the food stamp program by providing improved accessibility to food stamp application procedures for certain elderly and disabled recipients of assistance under the Social Security Act.

Present law requires that the SSA inform Supplemental Security Income (SSI) recipients who live alone or only with other SSI recipients of the availability of food stamps; if the SSI recipient so desires, the recipient is to be permitted to apply for food stamp participation by executing a simple application at the social security office. The Committee's provision would expand the statutory requirement, a requirement that these procedures also apply to SSI applicants as well as recipients; under present SSA policy this service is already provided to SSI applicants. Food stamp applications received from SSI applicants and recipients at SSA offices must be forwarded promptly to the appropriate State food stamp agency. SSA also makes available any information that it collects for SSI program purposes which may be useful to the State agency in determining food stamp eligibility. The State agency remains responsible for all subsequent verification, applicant contact, and food stamp eligibility certification.

The Committee's provision also would require that applicants for, and recipients of, their Social Security benefits—that is, retirement and disability benefits under title II—be informed of the availability of food stamps and be provided with a simple food stamp application, if appropriate, when in SSA offices. Under existing law, this is an option for the Social Security Administration. The Committee does not intend that SSA require Social Security beneficiaries to come into SSA offices for the purpose of receiving this information, nor would SSA be obligated to inform beneficiaries by mail. The Social Security Administration's responsibilities are not as broad as with respect to SSI participants. For example, there is no requirement that SSA should assist Social Security applicants and recipients in completing the food stamp application, nor, unlike with SSI recipients, in forwarding the application to the State agency.

The provision does not require that completed applications must be reviewed or any determination as to eligibility be made in Social Security offices. Rather, as with all food stamp applications, the State food stamp agency is responsible for verifying the information on the application, contacting the applicant if necessary, and determining food stamp eligibility.

The Committee recognizes that significant dissimilarities between the food stamp and Social Security programs make it inefficient and undesirable to mandate that SSA take food stamp applications from Social Security applicants and recipients, as it does from certain SSI applicants and recipients. Nonetheless, the Committee also recognizes that, especially with the health and mobility limitations of many Social Security applicants and recipients, the opportunity for them to obtain food stamp applications at SSA offices will provide a considerable convenience.

The Committee's provision would require that the Secretary of Agriculture and the Secretary of Health and Human Services revise the memorandum of understanding currently in effect concerning food stamp services in SSA offices to reflect the changes mandated by this provision. The provision makes clear that all costs incurred by SSA relating to administration of the food stamp program will be reimbursed by the Secretary of Agriculture.

The provision also requires the Secrearty of Health and Human Services to report to the Congress within 6 months after enactment on the nature and extent of costs incurred in SSA's fulfillment of its food stamp responsibilities.

Special Supplemental Food Program for Women, Infants, and Children (WIC) (Sec. 139)

The Committee adopted two provisions to permit greater disclosure of information and coordination between the food stamp and WIC programs.

The Committee adopted a provision included in the Administration's bill, S. 969, to permit the disclosure of the information retail stores are required to submit under section 9(c) of the Food Stamp Act to State agencies that administer the special supplemental food program for women, infants, and children (WIC) in monitoring retail store compliance in their program. Currently, section 9(c) limits "use or disclosure" of information submitted by retail food stores to purposes directly connected to administration or enforcement of the Food Stamp Program.

The current limitation has prevented the sharing of food stamp retail monitoring information with WIC authorities, even though most of the approximately 50,000 retail stores authorized to participate in the WIC program also participate in the Food Stamp Program. (WIC legislation and regulations lack such constraints on information sharing with the Food Stamp Program.) For example, WIC State agencies cannot be informed of sales or redemption information on potentially high-risk vendors as indicated by a high ratio of food stamp redemptions to total food sales. Such information would be used in conjunction with other information available to WIC agencies to improve oversight of retail stores. The amendment is expected to increase the efficiency and effectiveness of retail oversight efforts and contribute to the prevention and detection of fraud, waste, and abuse in the WIC program.

Additionally, the Committee adopted a provision proposed by Chairman Helms in S. 616 to make retail food stores or wholesale food concerns which have been disqualified under the Food Stamp Program automatically ineligible to participate in the WIC program during the disqualification period. These periods may range from six months to permanent disqualification, depending on the severity and frequency of violations.

The provision will thus ensure cross-compliance between the two major Federal food assistance programs which operate through retail stores.

Disqualification of Retail Food Stores and Civil Money Penalties (Sec. 140)

The Committee adopted a provision, modeled on a proposal made by the Administration, to impose a civil money penalty when a disqualified store is sold or transferred before the disqualification period is completed.

Currently, some retail store violators avoid the imposition of food stamp disqualification penalties because the violator can sell, or transfer, the store to another person; the disqualification period now ends at the point of sale or transfer. Sometimes, according to the Administration, these sales or transfers are fictitious (or "paper") sales to relatives or friends, designed primarily to terminate the food stamp disqualification period.

The Committee's provision is intended to act as a deterrent to retail store abuses since it would curtail the avoidance of penalties currently available through the sale or transfer of disqualified stores.

The amount of the civil money penalty would be established by the Secretary and would reflect that portion of the disqualification period that has not expired. The Committee notes that the Secretary has announced his intention that in implementing the provision, the amount of the penalty would be calculated in a manner similar to that used for existing civil money penalties (levied in lieu of disqualifications). The current method consists of multiplying 10 percent of average monthly redemptions over the 12-month period prior to the finding of violations times the number of months for which the retailer or wholesaler would otherwise be disqualified. Under this method, the penalty would be based on multiplying this proportion of redemptions by the number of months remaining in the disqualification period. For the purpose of this provision, the amount of the penalty of a permanent disqualification would be equal to the penalty for a 20-year disqualification, double the maximum disqualification period of 10 years.

Under the Committee bill, the new owner of a disqualified store could not be authorized to accept food stamps until the previous owner paid the cash penalty. The Secretary could ask the Attorney General to institute a civil action in a United States District Court to collect the penalty. The Court would be prohibited from reviewing the validity and amount of the penalty. The previous owner (the original violator) would remain ineligible to redeem food stamp coupons for the duration of the original disqualification period of he established or bought another retail food store.

However, the Committee did modify the Administration's provision to ensure that sufficient notice of the disqualification is given to the new buyer in order to protect innocent buyers.

In most areas of high food stamp usage, the inability to have a store authorized to accept food stamps would create a serious barrier to the sale of that store. If a buyer were unaware of the outstanding penalty and bought such a store in an area of high food stamp participation, the buyer could lose a substantial part of his investment when the store could not be authorized to redeem food stamps because the previous owner had not paid the civil money penalty due upon the sale of the store. Thus, adequate notice to the buyer is necessary, and the Committee has added to the provision a stipulation that the buyer must be afforded actual or constructive notice of the outstanding penalty before the prohibition on the new store being authorized to accept food stamps is effective, although, the Committee does not intend to require the establishment of an elaborate system. Notice might be achieved, for example, by requiring a notice to be posted in all disqualified stores informing potential buyers that, while the store is disqualified, they should contact the local field office of the Food and Nutrition Service to inquire about possible outstanding penalties.

The bill also requires the Secretary to ensure, to the extent permitted under law, that the encumbrance created by the civil money penalty is recorded in an appropriate State or local public office. This would serve, much like a lien, to notify a potential buyer about the outstanding penalty.

The cumulative impact of the proposal would eliminate situations where a violating retailer reaps illegal profits until caught and disqualified and then completely evades all penalties through sale of the store. Also, the proposal would make it less attractive to disqualified store owners to engage in fictitious sales to relatives or friends as a means of avoiding disqualifications. Thus, by closing avenues for escaping punishment, the provisions would be a strong deterrent against retailer abuse.

Interest on Claims Against State Agencies (Sec. 142)

The Committee adopted a slightly modified version of the Administration's recommendation to specify in the statute that the Department's past-due claims against State agencies draw interest. The interest would be computed at rates prescribed by the U.S. Department of the Treasury under the Federal Claims Collection Act.

The proposed clarification is needed due to a recent adverse reling in *Perales* v. *Block* 751 F. 2nd (2nd Dir. 1984). Tis decision found invalid the current policy of charging interest on State agency debts under the food stamp program due to lack to specific authority in the Food Stamp Act.

Charging interest is a valid means to encourage prompt payment of debts. Debts owed by State agencies for losses incurred in operating the Food Stamp Program can be substantial. Typically, these debts would be for claims established by the Secretary for excessive payment error rates, issuance losses, and gross negligence or fraud in household certification. Charging interest on these debts is a means to discourage dilatory judicial appeals (since interest accrues during the appeal process) and way to hasten collection of the sometimes large amounts owed to the Federal government by State agencies. Interest is charged on certain State agency debts under the Social Security Act. Thus, the Administration has argued, there is a precedent for including the specific authority to levy interest charges against State agencies in the Food Stamp Act.

The Committee modified the Administration's proposal to specify that the interest charged on the claims may begin from the date of the final administrative determination made under section 14(a). However, beginning immediately at that point and during the course of any subsequent judicial appeal, interest would be owed.

The Committee does not intend that this provision set a precedent for not allowing interest on claims under other Acts which have not specific authority for interest. The Committee has taken this step only as a narrow response to a particular problem in the food stamp program caused by the court challenge to the existing policy, which the Committee, by this provision, endorses.

Collection of Claims (Sec. 143)

The Committee made several changes with regard to the collection of claims in order to increase the collection of such claims.

Historically, States have not recovered a very significant portion of overissuances from current or former food stamp recipients. In 1977, the General Accounting Office reported that States recovered only about 1 percent of overissued benefits and that much more could be done to identify and recover the value of overissuances. (See "The Food Stamp Program—Overissued Benefits Not Recovered and Fraud Not Punished", CED-77-112, July 18, 1977). The GAO concluded that a lack of financial incentives was a basic underlying cause of the States' poor performance in identifying overissuances. At that time, even if the States identified overissuances and collected them, all such collections were paid to the Federal government.

Congress responded to the need to increase overissuance recoveries and enacted legislation to strengthen collection procedures. The Omnibus Budget Reconciliation Act of 1981 required States to use recoupment, a procedure to recover overissuances from current food stamp participants by reducing their monthly benefits.

To give greater incentive to collect more overissued benefits, the Act also allowed States to keep 50 percent of their collections on claims caused by fraud and 25 percent of their collections on claims caused by nonfraud participant errors.

In February 1983, the General Accounting Office again reported on State collection efforts. The GAO found that States collected only about $20 million of $2 billion of overissuances for a 2-year period (fiscal year 1980 and 1981), or about 1 cent of each overissued food stamp dollar. (See "Need for Greater Efforts to Recover Cost of Food Stamps Obtained Through Errors or Fraud", GAO/RCED-83-40, February 4, 1983.) Representatives from the GAO had previously outlined these difficulties in testimony before the Committee.

The GAO noted that the recoupment of benefits provision (also known as benefit offset) specifically excludes its use for collecting overissuances from households still receiving food stamp benefits if the overissuances were caused by State agency error. However, no such exception is made with respect to reductions in monthly benefits to recover overpayment in the AFDC program. The GAO recommended that Congress further amend the Food Stamp Act of 1977 to establish a consistent policy in which all overissuances in the food stamp program would be subject to collection through the recoupment method, regardless of the source of the error which cause the overissuance (i.e., recipient or State agency). Approximately 30 percent of the dollar value of overpayments is attributable to agency-caused error, while the remainder is recipient-caused error. Under current food stamp law, States are permitted to use recoupment to collect overissuances caused by State agency error only if the household voluntarily agrees to this method of collection.

The GAO reported:

> Lack of authority to reduce current food stamp benefits to recover overissuances caused by State agency errors seriously impedes the collection of significant amounts of overissued benefits. To the extent that household that receive agency-caused overissued benefits remain in the program, the amounts owed—which could be substantial—could be subject to an expanded offset provision if the households involved were identified.

In January, 1985, the Office of the Inspector General (OIG) of the Department of Agriculture made the same recommendation—that the Administration propose a legislative change to require States to collect overissuances that result form administrative error as well as from participant error.

More recent data indicates that claim collections are increasing. In fiscal year 1984, claims collections rose to over $31 million-up from $11 million is fiscal year 1981. Nonetheless, overpayments in fiscal year 1984 totalled approximately $930 million, and the Committee believes that State agencies need additional tools for recovering overpayment errors.

The Committee's provision responds, in part, to the GAO and OIG recommendation by permitting—rather than requiring, as the GAO and OIG recommended—the use of benefit offset to recover overissuances (caused by State agency error) from current recipients. The rate of collection in such cases—as already provided in the statute for other instances of nonfraud overissuances—is limited to $10 or 10 percent of the household's monthly allotment, whichever would result in faster collection.

The GAO also noted that in the AFDC program, the State is required to take appropriate action under State law to recover overissuances from households no longer participating in the program, while in the food stamp program such collection activities are optional, at the discretion of the State.

The GAO also recommended that, in order to ensure more aggressive collection efforts, the Department of Agriculture should require States to take any and all appropriate action under State law to recover overissuances against the income or resources of individuals no longer receiving benefits. Current efforts consists primarily of "demand letter" seeking repayment.

The Committee's provision requires States to use other means of collection (aside from cash payment or allotment recoupment) to collect claims arising from intentional program violations, unless the State can demonstrate that such other collection methods are not cost-effective.

The GAO also identified collection techniques being used in other programs that also could be used in the food stamp program to increase collections from households not already subject to the recoupment of future benefits. These techniques included State retention (or interception) of State income tax refunds, Federal interception of Federal tax refunds, use of small claims courts and collection agencies, and generally more aggressive collection procedures. An additional method of collection has been provided in the Committee's bill, and is described elsewhere, to permit States to recover overissuances from unemployment compensation benefits.

Food Stamp Intercept of Unemployment Benefits (Sec. 144)

As a part of expanded efforts to improve collection of food overissuances, the Committee adopted a provision to permit the establishment of intercept systems to recover from unemployment compensation benefits food stamp overissuances resulting from fraud or intentional misrepresentation.

The provision parallels one adopted in the Omnibus Budget Reconciliation Act of 1981 for the aid to families with dependent children program. That program has required States to establish such a system to recover delinquent child support payments. However, the provision adopted by the Committee with respect to food stamp overissuances is optional, at the discretion of the States.

As noted consistently by officials from the General Accounting Office, the rate of recovery of overissuances due to fraud has been very low, usually less than one percent.

The Congress adopted several provisions in 1981 and 1982 to strengthen collections, and early indications are that these are permitting greater collection of overissuances.

Under existing law, the primary means of collecting overissuances are through cash repayment and benefit reduction. Benefit reduction is only effective, however, when the individual who defrauded the program is still a member of a household participating in the program or has returned to the program following a period of disqualification. Means of collecting overissuances from individuals who have left the food stamp programs have been severely limited.

The Committee provision is designed to permit States wishing to establish such intercept systems for food stamp overissuances to parallel those that they have established in the AFDC program. Both the Food Stamp and Social Security Acts are amended to permit such a system.

The State could recover the overissuance through entering into an agreement with an individual who has received an uncollected overissuance or by obtaining a court judgment requiring the withholding of amounts from the unemployment compensation.

The State food stamp agency would reimburse the agency administering the unemployment compensation program for the administrative costs associated with repayments under the unemployment compensation program.

Inasmuch as food stamp officials have reported that unreported receipt of unemployment compensation benefits is a common source of underreporting of income, States may find the intercept system useful in collecting overissuances. Only overissuances resulting from fraud or intentional misrepresentation may be collected under the intercept procedure. As with other collections on overissuances arising from fraud or intentional misrepresentation, the States would be permitted to retain 50 percent of all overissuances collected.

Administrative and Judicial Review (Sec. 145)

The Committee agreed to modify the criterion a retail food store, wholesale food concern, or State agency would need to meet in order to obtain a judicial stay of an administrative action of the Secretary. The modified provision would require the petitioner to show that the petitioner is likely to prevail on the merits of the case.

Under current law, a more lenient standard is used which permits such stays if the store, concern, or State agency can show that irreparable injury would result if the administrative action remained in force. Since most cases involve disqualifications (in the case of retail stores or food concerns) and fiscal penalties (for some stores and in the case of State agencies), it is relatively easy, under the present criterion, to plead that actions will result in "irreparable injury" and stays are frequently granted. The result of such stays is prolonged delays in implementing disqualifications and in collecting fiscal penalties. During these delays, retail stores and wholesale food concerns may continue to accept and redeem coupons. In such situations, the potential for continued abuse is high.

The proposed standard—likelihood of prevailing—is a usual condition which all petitioners must establish before stays are granted under most judicial systems. It has not been specially created for applicant and authorized retailers and wholesalers or State agencies; rather, the current stay criterion (irreparable harm) has been a special condition that has been inordinately favorable to such retailers, wholesalers, and State agencies.

Since it would be considerably more difficult for a firm to meet the proposed test than to merely show that irreparable injury would occur, fewer stays would be granted, resulting in more rapid implementation of disqualifications. Speedier disqualifications would more quickly eliminate abuse by violating retailers and wholesalers as well as serve as general deterrents to retailer/wholesalers abuse.

The provision also applies the likelihood-of-prevailing standard to State agencies seeking to obtain stays during the pendency of judicial reviews. Just as it would be good management practice to require appellant retailers to meet the usual conditions for obtaining stays of administrative actions, so would it be prudent to extend such conditions to State agencies. Also, in some cases, the current irreparable injury test has been pleaded to permit States to delay almost indefinitely billings for liabilities or implementation of formal warning disallowances. The proposal, by making it more difficult to obtain stays, would help to assure that judicial reviews would not be requested routinely merely as delaying tactics, but only when States genuinely believed their position would be upheld by the courts.

Hours of Operation (Sec. 146)

The President's Task Force on Food Assistance recommended encouraging States to keep food stamp offices open during some nonbusiness hours, for example from 5 to 9 p.m. on some weekdays or during some hours on Saturday. The Task Force noted, "The work incentives of the program will be more effective if recipients who are employed can have access to the system during nonworking hours".

The Committee approved a provision requiring that in establishing standards for the efficient and effective administration of the food stamp program, the Secretary include standards for periodic review of food stamp office hours to ensure that persons who are employed are adequately served. It is not the intent of the provision for the Secretary to mandate specific standards for the hours that food stamp offices shall be open. That decision remains one solely to be made by State and local food stamp agencies. Rather, the Secretary is charged with setting standards for State agencies to ensure that State agencies conduct their own reviews of the adequacy of the hours of operation of food stamp offices.

The Committee does not intend this assessment to be an administrative burden to States but should follow the normal evaluation of the needs of the community.

Error Rate Reduction Program (Sec. 147)

Error rates, which reflect both overissuances and underissuances, have been a significant problem in the Food Stamp Program for several years.

Overissuances alone, not including underissuances, account for 8.36 percent of all food stamp benefits issued, according to the most recent official figures from the Department of Agriculture. These benefits go to those who are either ineligible for food stamp assistance, or to those who, though eligible, receive more than the amount to which they are legitimately entitled. The following table outlines the most recent error rates as published by the Department of Agriculture:

ERROR RATES BY STATE—OCTOBER 1982–SEPTEMBER 1983

Region and State	Percent of dollars in error			Payment error rate[1]
	Ineligibles	Overissuances	Underissuances	
Connectucut	6.85	6.93	2.79	12.80
Maine	4.01	4.38	2.34	8.37
Massachusetts	6.37	5.71	1.81	12.96
New Hampshire	4.42	5.65	1.93	9.99
New York	4.83	5.51	3.05	10.43
Rhode Island	2.88	6.06	2.56	8.90
Vermont	6.93	9.36	2.68	16.22
Regional subtotal	5.08	5.60	2.78	10.86
Delaware	1.93	2.97	1.87	4.94
Dist. of Columbia	4.70	5.39	3.09	10.08
Maryland	2.99	4.12	2.19	7.12
New Jersey	3.70	4.08	2.44	7.95
Pennsylvania	5.24	5.12	2.02	10.37
Virginia	2.95	3.68	2.14	6.46
Virgin Islands	8.19	6.35	4.79	14.77
West Virginia	2.12	3.41	1.85	5.52
Regional subtotal	3.95	4.39	2.20	8.36
Alabama	2.62	4.64	1.96	6.98
Florida	4.33	5.88	3.10	10.20
Georgia	3.02	4.74	2.35	7.48
Kentucky	2.95	3.97	1.88	6.90
Mississippi	3.51	5.09	3.01	8.33
North Carlina	2.21	5.61	3.29	7.86
South Carolina	2.63	6.23	2.48	8.74

ERROR RATES BY STATE—OCTOBER 1982–SEPTEMBER 1983—Continued

Region and State	Percent of dollars in error			Payment error rate[1]
	Ineligibles	Overissuances	Underissuances	
Tennessee	2.51	4.33	1.94	6.83
Regional subtotal	3.07	5.03	2.50	7.99
Illinois	2.66	4.57	2.41	7.23
Indiana	3.07	5.70	2.06	8.77
Michigan	4.17	3.61	2.07	7.70
Minnesota	3.63	4.36	1.72	8.01
Ohio	2.93	3.95	1.38	6.90
Wisconsin	3.34	4.78	3.38	8.27
Regional subtotal	3.23	4.29	2.02	7.52
Arkansas	3.70	5.08	1.95	8.88
Louisiana	3.92	4.98	2.48	8.78
New Mexico	5.09	6.35	3.03	11.43
Oklahoma	4.44	4.37	3.40	8.79
Texas	3.04	4.51	2.40	7.57
Regional subtotal	3.57	4.81	2.49	8.37
Colorado	6.36	6.25	2.33	12.63
Iowa	3.97	4.54	1.97	8.51
Kansas	3.58	5.52	1.89	9.09
Missouri	2.16	4.48	2.29	7.20
Montana	2.47	3.13	1.32	5.52
Nebraska	3.76	3.58	2.36	7.22
North Dakota	2.21	2.78	.73	4.98
South Dakota	3.68	3.96	1.10	7.84
Utah	6.38	6.29	2.52	13.29
Wyoming	4.86	5.36	1.98	9.88
Regional subtotal	3.74	4.83	2.09	8.78
Alaska	7.72	6.06	2.39	13.86
Arizona	4.68	5.22	3.27	9.79
California	2.55	3.90	3.76	6.78
Guam	6.07	1.47	1.42	7.57
Hawaii	1.97	2.45	1.24	4.28
Idaho	4.66	4.18	1.64	8.48
Nevada	1.06	1.11	1.05	2.17
Oregon	3.21	7.05	2.49	10.22
Washington	5.43	4.54	1.56	10.08
Regional subtotal	3.27	4.34	3.02	7.77
United States	3.60	4.73	2.43	8.36

[1] Payment Error rate includes ineligibles and overissuances.

Source: U.S. Department of Agriculture.

The Omnibus Budget Reconciliation Act of 1982 established specific error rate targets in the Food Stamp Program. States are now required to have overissuance error rates at or below 5 percent for fiscal year 1985 and for each fiscal year thereafter.

Under current law, States that fail to meet this error rate target will incur a penalty based on a reduction of the percentage of the Federal reimbursement for administrative costs for the program. The Federal Government pays for all benefit costs of the program and, generally, for 50 percent of administrative costs.

Under the present system, the Federal share of administrative costs (normally about 50 percent of a State's total administrative costs) is reduced by 5 percent for each 1 percentage point, or fraction thereof, by which the State's overpayment rate exceeds the 5 percent target. If the the State's overpayment rate exceeds the target by more than 3 percentage points, it would lose an additional 5 percent (for a total of 10 percent) of its Federal administrative funding for each percentage point or fraction thereof exceeding the 3-percentage point difference.

To illustrate, overpayment rates above the target by 1, 2, and 3 percent now result in sanctions equal to reduction of 5, 10, and 15 percent of administrative costs, respectively; overpayment rates above the target by 4, 5, and 6 percent would result in sanctions of 25, 35, and 45 percent, respectively.

The Reagan administration had initially proposed in 1982, that the error rate tolerance level be established at a lower rate than that finally agreed on, with a phase-down of the tolerance level to zero over 3 years. Additionally, the original administration recommendation, unlike that adopted, provided that the basis for the sanction calculation was to be the actual dollars overissued, rather than a percentage of administrative expenses.

The President's Task Force on Food Assistance recommended in January 1984 that the error rate sanction be strengthened by requiring States to be fully responsible for overpayment errors above 5 percent. Under the task force recommendation, the basis for sanctions in the program would be the actual value of dollars overissued above the tolerance level, rather than the share of administrative expenses. Essentially, the task force recommendation for the basis of the sanction, actual dollars overissued, was the same as that which the administration had initially proposed in 1982 and each year subsequently, although the tolerance level, 5 pecent, was higher than the administration's proposals.

The new sanction formula established by the Committee is more equitable in that it bases liability strictly on losses to the Federal Government without regard to level of administrative spending.

The General Accounting Office reported in 1984 that the existing Food Stamp Sanction Program results in proportionately smaller sanctions for the same degree of error than the AFDC and SSI Programs. (See "Federal and State Liability for Inaccurate Payments of Food Stamp, AFDC, and SSI Program Benefits," GAO/RCED–84–155, April 25, 1984.) The GAO noted that this was because of: One, the Food Stamp Program's higher target error rate—AFDC's error rate is 3 percent, SSI's is 4 percent; and two, because of its specific procedures for calculating sanction amounts based on a percentage of federally reimbursed administrative costs instead of the amount of benefits issued as in the AFDC and SSI Programs. The GAO also reported that despite the sanction systems in both the AFDC and Food Stamp Programs, States had not actually reimbursed the Federal Government for any sanction amounts. Since the GAO report, one State—Connecticut—has reimbursed the Federal Government for the food stamp sanction, but is appealing the sanction through the courts.

The Committee notes that while error rates have improved somewhat, apparently in response to the initial error rate system established in 1982, overissuances remain unacceptably high, and are projected to remain so. The projection for overissuances in the Food Stamp Program under the current law system, both in dollars and as a percent of benefits, is as follows, according to the Congressional Budget Office:

	Fiscal year—				
	1986	1987	1988	1989	1990
In millions	$850	$869	$885	$903	$919
As percent of benefits	7.8	7.6	7.4	7.2	7

In response to this situation, the Committee has adopted a provision to tighten further the error rates sanction system in the Food Stamp Program. Specifically, the bill provides that States will reimburse the Federal Government for the full benefit cost of all errors which exceed 7 percent. The error rates between 5–7 percent, the States would reimburse the Federal Government for 75 percent of the value of benefits overissued in error.

Thus, a State with an error rate of 6.5 percent would be liable for an amount equal to 75 percent of 1.5 percent of the benefits issued in the State. A State with an error rate of 8.0 percent would be sanctioned an amount equal to 75 percent of 2 percent of the benefits issued in the State and 100 percent of 1 percent of the benefits issued in the State.

The Committee emphasizes that the sanction system does not affect benefits of legitimate recipients. Rather, it is expected that States will be given additional incentives to ensure that they administer the program in an effective and efficient manner in order to avoid the payment of sanctions for high error rates. At the present time, the Federal Government, and thus Federal taxpayers, absorb most of the loss of any overissuances which occur in the States. In recent years, these costs have been approximately $1 billion per year.

Several witnesses from both the Grace Commission, the General Accounting Office, and the Office of Inspector General of the Department of Agriculture have noted that increased State attention to overissuance errors would likely result from tightened error rate tolerance sanctions.

The Grace Commission report stated:

> The Food Stamp Program is the only major welfare program whose benefits are 100 percent funded by the Federal Government, yet which is administered at the State and local levels. Findings * * * indicate that States must be provided with greater incentives to reduce errors in the Food Stamp Program.

Dr. John Raisian, executive director of the President's Task Force, testified on March 21, 1984 and answered questions about the incentive feature of the increased sanction recommended by the Task Force. Said Dr. Raisian:

> What we do find in our daily lifetime circumstances is that oftentimes when a penalty goes up, people do respond to the size of the penalty. In the case of sanctions of individual States being responsible for errors in excess of 5 percent, I would emphasize that there will be a doubling in the size of the sanction relative to the current situation only if there were no responses. Now, presumably, if that

penalty is sufficiently high, then there would be a sizable response * * *

It is the Committee's expectation that States, like other entities, will respond to incentives. In all probability, not all States would be subjected to actual fiscal penalties under the error rate sanction system recommended by the Committee. Rather, it is hoped that States would respond to this new incentive by improving their administration of the Food Stamp Program. Federal taxpayers would be advantaged by the reduction in otherwise anticipated error rates and the consequent reduction in misspent Federal funds these error rates represent.

The bill, as reported from Committee, also would reduce the fiscal sanctions otherwise applicable by 75 percent of the value of claims established, collected, and remitted to the Federal Government beginning with overissuances occurring after October 1, 1985.

Cash Payment Pilot Projects (Sec. 149)

The Committee bill extends through September 30, 1989 the pilot projects which permit certain Supplemental Security Income (SSI) and elderly recipients to receive cash in lieu of food stamp benefits.

Under the pilot projects, households whose members are all 65 years old or older or participate in the Supplemental Security Income (SSI) Program may receive cash food stamp benefits in the form of checks rather than in the usual form of food coupons. Households in the pilot project areas apply for food stamp benefits under regular application procedures, but receive a check rather than coupons.

The Department of Agriculture reported on the findings from the first several years of the pilot projects in 1982 (see "Food Stamp SSI/Elderly Cashout Demonstration Evaluation", Final Report, June 1982).

The report indicated that issuance costs were reduced by approximately 36 percent and that there was no evidence that cashout weakened the link between program benefits and dietary intake. Food expenditures increased, whether the benefits were issued in the form of cash or coupons.

The following are areas with the SSI/elderly cashout pilot projects: the States of Vermont and Utah; Hennepin County, Minnesota; Monroe County, New York; Cuyahoga County, Ohio; Clackamas, Columbia, Multnomah, and Washington Counties, Oregon; Darlington, Dillon, Florence, and Marion Counties, South Carolina; and Arlington County, Virginia.

The Committee believes that the projects are worthy of continuation, and the Committee will reauthorize them for 4 years.

Cash Change Pilot Project (Sec. 150)

Concerns have been expressed that some food stamp participants cash food stamps by purchasing an item such as a candy bar at one or more locations or by going through the checkout counter several times buying inexpensive eligible food items and then using the accumulated change to buy ineligible items such as alcoholic beverages or cigarettes—thus circumventing the purpose of the program.

In 1982, the General Accounting Office identified three alternatives to the present policy of providing cash change for amounts up to $1. (See "Use of Scrip Versus Cash in Making Change for Food Stamp Purchases," letter report to Honorable William Whitehurst, House of Representatives, May 21, 1982.) Those alternatives were:

Return to the use of scrip (that is credit slips, usable for future food purchases). Scrip was previously used in the program between 1972 and 1977.

Use a combination of cash and scrip. In 1981, the Department of Agriculture proposed legislation to require that scrip be used as change in the case of all purchases totaling less than $5. In the case of all purchases of $5 and over, cash change of less than $1 could continue to be given. The administration stated that this option would minimize cash change abuses since most food stamp recipients might not be willing to spend $5 in food stamps to get less than $1 in cash change. At the same time, participants who purchase larger food orders would not need to deal with receiving scrip as change.

Require participants to pay cash for any cost over an even-dollar amount or purchase additional food. Under this option, a participant would use food stamps up to the nearest dollar of the purchase and either pay the balance in cash or purchase additional food (trade out) up to an even-dollar amount. A further refinement of this option would be to allow stores to give some small amount of cash change, for example 10 cents or so, so that participants would have some leeway in trading out.

Reports of abuses of the existing cash change system are commonplace. Senator James McClure (R-Idaho) had introduced a bill, S. 835, which included a provision to require the immediate elimination of cash change and the substitution of a requirement that recipients pay the excess above an even-dollar purchase.

The Committee adopted a provision to authorize the Secretary of Agriculture to conduct a pilot project on the effects of eliminating cash change as provided in the McClure bill. Under the pilot project, household members using coupons to purchase food would be required to pay cash for the amount of the purchase in excess of the value of the one dollar coupon (the smallest denomination). The Secretary would evaluate the effect of this requirement on retail stores and participating households.

The Committee's bill specifies this as one method to be employed in any pilot project on the subject to cash change. Of course, the Committee recognizes the Secretary's general authority to run pilot projects improving the operation of the program, and that this general authority could be used to test additional approaches to the cash change issue.

Authorization for Appropriations and Transfer of Fund (Sec. 151 and 152)

The Committee reauthorized the food stamp program for 4 years and set annual authorization ceilings for the program. These authorization ceilings are as follows:

AUTHORIZATION CEILING

[In billions of dollars]

Fiscal year:	
1986	$12.984
1987	13.572
1988	14.154
1989	14.695

The authorization ceilings have been arrived at by taking the Congressional Budget Office "current services baseline" (before accounting for any savings achieved in the Committee's bill) and adding 2.5 percent of the sum to the result.

Inasmuch as the Committee bill achieves some modest savings, the authorization ceilings are effectively established at approximately 3.5 percent above the cost of the Committee bill in the first year and higher rates in the outyears.

The establishment of annual appropriations ceilings serves the very useful purpose of ensuring that there will be continual close Congressional scrutiny of the program. If these "caps" are in danger of being reached, it may indicate the need for further action to hold costs within the authorized amounts.

It should be emphasized that the food stamp program is an authorization subject to appropriation, not, strictly speaking, an entitlement program. Under the Food Stamp Act of 1977—section 18(b)—the Secretary is to keep Congress advised monthly on food stamp expenditures. If the Secretary determines that food stamp allotments for the full year will exceed appropriations, the Secretary is to direct the State agencies to reduce the value of allotments to participating households to the extent necessary to remain within the appropriated funds.

Although section 18(b) remains in the statute, the benefit reduction portion has never been activated. Congress has thus far always decided to increase appropriations for the program rather than permit the Secretary of Agriculture to implement benefit reductions. In essence, although the program is an authorization subject to appropriations, it is quite similar to an entitlement program inasmuch as, in practice, Congress thus far has always fully funded the program as if it were an entitlement.

In recent years, agriculture appropriations bills have provided for certain transfers of funds from the food stamp program account to various other agencies of the Department of Agriculture—most notably the Office of Inspector General and the Office of General Counsel. Both of these offices do considerable work in connection with the food stamp program.

The Committee bill includes a provision to require that, beginning with fiscal year 1987, such transfers shall not be permitted. The Committee is concerned that appropriations for each program and office within the Department should be clearly delineated in the appropriations bill, and that significant funding for these small offices should not be "hidden" within the multibillion dollar food stamp appropriation.

The Committee's amendment is intended to permit more thorough Congressional review of the operation of these important offices within USDA.

Puerto Rico Block Grant Sec. 153

The Committee bill makes several modifications in the aspects of the nutritional assistance block grant for Puerto Rico. Since July 1982, the Commonwealth of Puerto Rico has operated a block grant in lieu of the Food Stamp Program. This nutrition assistance program (NAP) was established at $825 million annually. The $825 million grant approach was taken out of concern for what has been the enormous growth of the program which, in 1981, was serving approximately 56 percent of the population at an anticipated annual cost of $1.1 billion.

Funding for the Food Stamp Program in Puerto Rico was reduced, and total flexibility was provided to permit Puerto Rico to design a program to meets its needs. No limitation was put on the form which such assistance would, or should, take.

Under the block grant, Puerto Rico became responsible for the development and operation of the nutrition assistance block grant, with the Secretary of Agriculture maintaining oversight for the program's operation.

The Commonwealth made numerous changes in the administration of the program, many designed to improve the program's administration and make it less subject to waste, fraud, and abuse. Eligibility levels were slightly reduced, verification of information was increased, and the Commonwealth changed the means of distributing food assistance.

Rather than provide food stamp coupons, the Commonwealth opted to send recipients a monthly check which they were to use for the purchase of food. The Commonwealth calculated that savings would accrue from the elimination of substantial paperwork involved in the maintenance of paper coupons, reconciliation of such coupons from retail stores, theft, and other circumstances.

Concerns were raised in the House regarding the appropriateness of permitting cash in lieu of coupons. Legislation in the Omnibus Budget Reconciliation Act of 1982 (P.L. 97-253) required that Puerto Rico would have to develop a noncash system by October 1, 1983.

Subsequent legislation in 1983 postponed the date by which Puerto Rico would have to convert to a noncash system, first to January 1, 1984 (P.L. 98-107) and subsequently to October 1, 1985 (P.L. 98-204).

The Department of Agriculture has conducted two studies on the existing cash nutrition assistance program in Puerto Rico. The first, issued in early 1983, was based on the first few months of program operation and concluded that the cash system had not reduced the nutritional status of Puerto Rican recipients.

The second study, required by 1983 legislation was recently completed and submitted to Congress (see "Evaluation of the Nutrition Assistance Program in Puerto Rico", volumes I (March 1, 1985) and II (June 1, 1985).

The report again found that the new cash program "did not lead to major changes in household food expenditures or diet quality." The report said:

> The effects of NAP's cash issuance provision were analyzed separately from the effects of NAP's restrictions on

program eligibility and the level of benefits. The evaluation used two measures of household food expenditures—total food expenditure, which includes food used at home and away from home, and the money value of food used at home—and several measures of diet quality. The total food expenditure variable provides the most comprehensive measure of food expenditures, while the value of food used at home is more consistent with the nutrition measures, as they are based on food used at home. The analysis using these measures consistently shows that NAP, and particularly the cash issuance components of NAP, did not lead to major changes in household food expenditures or diet quality. In particular, while NAP led to small reduction in the total food expenditure of households, the change to cash issuance itself had no effect. Other measures of household food expenditure and nutrient availabilty showed small declines due to NAP and smaller still due to cash issuance. These changes are not different from zero in a statistical sense.

The report also concluded that administrative costs declined by $9.6 million, or 18 percent, primarily because of the cash issuance aspect of the program. These savings have allowed Puerto Rico to direct more funds to program beneficiaries. The program also eliminated the potential for food stamp trafficking which was reported as a common occurrence under the Food Stamp Program.

The Committee's provision eliminating the noncash benefit requirement for Puerto Rico does not constitute an endorsement of cash assistance per se. Rather, the Committee supports the principle of permitting the Commonwealth of Puerto Rico to choose the system of benefit delivery that is most appropriate to meet its particular needs. If the Commonwealth should choose to deliver benefits in noncash form, it would be free to do so, subject to the Secretary's approval of a revised program plan.

The Committee also makes a modification in the date by which the Commonwealth must submit its plan describing the provision of assistance to be provided during the coming fiscal year. The date would be moved from July 1 to April 1 of the year preceding the start of the fiscal year for which the plan is to be in effect.

The Committee also modified a requirement that the Commonwealth designate a single agency as responsible for the supervision of program administration. The change would permit Puerto Rico to designate one agency as responsible for the primary nutrition assistance program and different agencies for special projects.

Because of concerns about the dislocating effect the massive flow of food stamps may have had on the Puerto Rican economy prior to the grant program, Congress indicated that a portion of the grant could be used for the purpose of agricultural development in Puerto Rico. A small portion of the grant has been used for this purpose and is managed by a different government agency in Puerto Rico from the agency that handles the bulk of the nutrition assistance program. It is this split responsibility that necessitates the modification with regard to the single agency for supervision of the program. The Committee expressed concern about the uses to which these agricultural development funds are being put, and requests that the Secretary keep the Committee advised of the purposes of this portion of the grant.

The Committee has maintained the $825 million annual authorization ceiling on the Puerto Rican program. When the grant level was established in 1981, the $825 million level was projected to represent a 25 percent reduction in spending from fiscal year 1983 levels. Because actual food price inflation was less than anticipated in 1981, the actual reduction in the total monthly value of benefits issued in Puerto Rico during fiscal year 1983, for example, was about 15 percent less than would have been expected under the Food Stamp Program. In essence, the $825 million figure, which has been fully appropriated each year, resulted in a lower than anticipated reduction in the Puerto Rican program. Additionally, the Congress made additional reforms in the Omnibus Budget Reconciliation Act of 1982 to slow the costs of the Food Stamp Program. However, no reductions were made in that year with respect to the Puerto Rico program. The Committee believes that the $825 million grant level is a reasonable one for the next four fiscal years, especially given the overall budgetary constraints faced by the Congress.

Part 2—Commodity Distribution

Commodity Distribution Program, Commodity Supplemental Food Program, and Miscellaneous (Sec. 160, 161, 162, and 165)

The Committee adopted amendments extending and making revisions in the authority to operate commodity distribution programs. These amendments would amend the Agriculture and Consumer Protection Act of 1973 to extend, through fiscal year 1989, the Secretary's authority to purchase and distribute commodities to institutions, commodity supplemental food programs, disaster relief areas, summer camps for needy children, needy families on Indian reservations and in the Trust Territory of the Pacific Islands, and other commodity distribution programs. These programs provide nutrition assistance in situations where the food stamp program is not the most effective means of aid.

The Committee provision would also make a change in the age criteria by providing commodities to summer camps serving children age 18 and under, rather than under age 18 (as at present). The change will establish eligibility similar to that in the summer food service program.

In addition to the general extension of commodity distribution program authority, the Committee bill would specifically extend, through fiscal year 1989, the authority to provide administrative funds to operate commodity supplemental food programs serving low-income pregnant women, new mothers, infants, and children. Consistent with current practice, the Committee bill would also require that administrative funds: (1) come from annual appropriations; (2) be provided through State agencies, not directly to local agencies; and (3) be subject to a nationwide limit of 15 percent of the sum of the appropriations and the value of all commodities donated by the Secretary without charge which are included in food packages provided to participants.

Additionally, the Committee bill authorizes the Secretary to extend three pilot projects serving low-income elderly recipients through September 30, 1989.

When the Secretary determines that funds appropriated for the commodity supplemental food program exceed requirements at existing sites, then applications for new projects must be approved. In making determinations about the availability of funds, the Secretary is to take into consideration current and future funding needs of the existing sites.

The bill also authorizes the Secretary to permit State agencies to serve low-income elderly persons when unused caseload slots are available because of the lack of women, infants, and children to participate in the commodity supplemental food program. The bill provides that State agencies must ensure that services to the elderly do not displace services to these women, infants, and children.

The Committee bill also contains specific authority to permit a commissary store of the Department of Defense to donate non-USDA surplus, unmarketable food to a local food bank.

Temporary Emergency Food Assistance Program (Sec. 163 and 164)

The Temporary Emergency Food Assistance Act of 1983 requires the Secretary of Agriculture to make available surplus CCC commodities to States for food assistance. It also authorizes funds to assist States and local agencies with some of the costs associated with transporting, storing and distributing the commodities. The dual purpose of the program is the disposal of government-held surplus commodities to prevent waste and the provision of food assistance to low-income households.

Additionally, appropriations of $50 million in each of Fiscal Years 1983 and 1984 were approved by Congress to assist States in meeting the costs of storing and distributing the commodities. For FY 1985, an initial appropriation of $50 million for these costs was supplemented by a later appropriation of $7 million. The program and funding authorizations for this program expire September 30, 1985.

The Committee bill reauthorizes the authority for the Secretary to distribute surplus commodities. The Committee bill modifies the Federal funding for storage and distribution costs to require a matching amount of funds from the State. Under the Committee provision, beginning January 1, 1986, the $50 million Federal portion is available to match dollar-for-dollar cash expenditures by the State.

Background

In December of 1981, the Administration announced that beginning in January of 1982, 30 million pounds of surplus cheese would be released to State agencies under a special dairy donation program. This release was done under the discretionary authority of existing statutes that govern the disposal of surplus commodities to prevent waste. The wide range of outlets eligible for such commodities under this discretionary authority included child and elderly nutrition programs, needy persons on Indian reservations, charitable institutions, hospitals and certain approved food banks. In March of 1982, the USDA announced that an additional 70 million pounds of cheese would be made available under the special dairy donation program, and additional announcements of both cheese and butter availability quickly followed. Over the 15 month period of this discretionary donation program (January 1982–March 1983) a total of 304 million pounds of cheese and 83 million pounds of butter, valued at approximately $580 million was delivered to the States.

These substantial donations did little to reduce the overall quantity of cheese and butter in Commodity Credit Corporation inventories since these items continued to be Purchased in greater amounts than the amounts being released. Displacement of commercial sales, resulting in continued CCC purchases of dairy products, was another factor in the failure to reduce CCC inventories.

Creation of TEFAP

In March of 1983, an emergency supplemental appropriations bill ("the Jobs bill", P.L. 98–8) was passed by Congress. It included the Temporary Emergency Food Assistance Act of 1983 which formalized the earlier discretionary donation program. This new Act prompted the release of additional types of CCC commodities and appropriated $50 million for FY 1983 to assist States and local agencies in meeting the costs of storing and distributing these commodities to low-income and unemployed persons.

In practice, the majority of TEFAP commodities have gone for emergency feeding through less traditional commodity recipient agencies.

By and large, the so-called "emergency feeding organizations" receiving TEFAP commodities distributed them to individuals for at-home consumption, although some were distributed for soup kitchens and shelters.

The TEFAP commodities are generally distributed in forms suitable for home consumption. Foods distributed include: 5 pound blocks of process cheese, 1 pound prints of butter, 4 pound boxes of nonfat dry milk, 5 pounds bags of flour and cornmeal, 2 pound bags of white rice and 3 pound jars of honey.

In August, 1983, the Temporary Emergency Food Assistance Act was revised and extended through FY 1985 (P.L. 98–92). Among other things, the revised law specifically defined eligible agencies and recipients. It also set a priority for commodity allocations for certain types of agencies (i.e., those providing emergency food assistance to low-income and unemployed persons) if the amount of commodities allocated to a State was insufficient to meet all eligible agencies requests.

The revised law maintained the $50 million annual authorization for State and local agencies costs of storing and distributing commodities. Such support, however, was specifically limited to costs associated with the distribution of commodities by emergency feeding organizations. Thus, while the more traditional commodity outlets, such as schools, were among the agencies technically eligible for TEFAP commodities, they were explicitly precluded from receiving any Federal TEFAP administrative funding. This distinction, along with the lower priority for TEFAP commodity receipt by such agencies, was based on the fact that, unlike many emergency feeding organizations, traditional commodity recipient agencies generally received commodities under other programs, and had the facilities and resources for handling them, and did not target their benefits solely to the needy.

Under the earlier, discretionary donation program the volume of commodities provided to States had generally been based on state requests and the Secretary's discretion. Additionally, though some States confined commodity distributions to low-income populations, others did not, or left such eligibility decisions to local agency officials. This meant that in some cases persons with low incomes did not have access to commodities, while others with higher incomes did. In many States, all persons over a specific age had been eligible to receive commodities, regardless of income. Additionally, some organizations distributing commodities restricted receipt to their members, or based decisions about who could receive commodities on arbitrary or personal judgments of need.

Under P.L. 98–92, States had to establish criteria for recipient eligibility that takes need into account. Also, the Secretary of Agriculture was required to assure that, to the extent possible, the distribution of commodities does not interfere with commerical sales. As a consequence of these provisions, the overall volume of commodities made available by the USDA was stabilized; USDA regulations were implemented requiring States to limit commodity distributions to low-income persons; and commodity allocations to States were based on each State's proportion of the nation's low-income and unemployed population.

Along with making the program less discretionary, the TEFAP's other major feature was the authorization of Federal funds to assist States and local agencies with the costs of storing and distributing the commodites. Annual funding of $50 million for each of Fiscal Years 1984 and 1985 was authorized. The funds were allocated to states in grants based on the State's proportion of unemployed people and people under poverty. States generally receive funds (up to the grant level) based on demonstrated expenditures for storage or distribution of the commodities. If the funds are not fully expended, they are returned to the Federal government. Although advance payments could be made to States to assist emergency feeding organizations that demonstrated need.

The TEFAP law also required that not less than 20 percent of the amount appropriated for administrative costs be made available for paying or providing advance payments to cover the local costs of commodity distribution by emergency feeding organizations. Thus, by regulation, States were required to provide at least 20 percent of their allocation for such local agency costs. Advance payments were permitted for such agencies' costs, but by regulation were limited to 35 percent of the amount provided to the State. Additionally, local agencies are specifically prohibited from receiving Federal funding in excess of 5 percent of the value of the commodities they received for distribution.

The Committee is concerned that since the creation of TEFAP, the program has become almost totally federally funded. The Federal government is providing commodities valued at billions of dollars, processing those commodities, and transporting them to the States. During fiscal year 1984, the Secretary distributed commodities valued at $1.1 billion. Additionally, since 1983, the Federal government has provided $50 million annually to be used for storage and distribution costs within the States.

The Committee intends that there be greater shared responsibility with the States. Under the Committee's provision, the Secretary's basic authority to distribute surplus commodities is continued for 2 years. The Federal government will continue to provide, free of charge, the commodities and pay for processing of the commodities into usable form and transport the commodities to locations within the States. However, the provision requires that storage and distribution costs within the States, now funded by the $50 million authorization, be matched. Beginning January 1, 1986, these Federal funds will be available, on a dollar for dollar basis, to match funds from the State to pay for these storage and distribution costs. The Federal contribution will not exceed $50 million annually.

The Committee's provision does not restrict the State share of the match to State appropriated funds, but rather intends that private cash contributions may be used toward fulfilling the State's portion. It is also anticipated that Governors may use contingency funds available to them as well as regularly appropriated, but undesignated, State funds. All forms of contribution must be cash contributions. In-kind contributions do not count toward the available $50 million in Federal funds.

To the extent that some organizations and States have expressed a concern about the need for further funds to administer the program, this provision has the potential to double the level of administrative funds available. If a State fully matches its Federal grant, agencies will have twice as much money ($100 million) as if only the Federal grant were used. If a State does not provide a contribution, Federal funds will not be available for storage and distribution costs in that State, and the Secretary may reallocate the unused grant to other States.

Other provisions of the Committee bill require that the Secretary include a variety of surplus commodities available under several commodity distribution authorities. The bill amends section 1114 of the Agricultural and Food Act of 1981, which authorizes the Secretary to donate surplus commodities acquired under price support programs to food service programs, including the National School Lunch Program and nutrition programs under the Older Americans Act, to ensure that the following commodities are made available: dairy products, wheat or the products thereof, rice, honey, and cornmeal. As at present, these commodities would be distributed subject to the availability of surplus inventories for distribution and other requirements of the law.

The same type of amendment is added to the TEFAP authorization, requiring that these commodities are available: dairy products, wheat or the products thereof, rice, honey, and cornmeal. Again, these commodities may be distributed subject to the availability of surplus inventories for distribution and other requirements of law. To ensure that Congress is kept informed, the amendment requires the Secretary to submit a semiannual report to Congress on the types and amount of commodities available for distribution, starting January 1, 1986.

Displacement of Commercial Sales

An important purpose of TEFAP, in addition to providing food to needy persons, is to assist in reducing Government stocks of price-supported commodities by distributing such commodities to outlets, and ultimately to individuals, who would not otherwise purchase them. The legislation contains several provisions designed to ensure that TEFAP commodities do not serve to displace or substitute for commodities that would have been bought. The Committee reiterates its strong support for the displacement safeguards which are included in the reauthorized legislation.

In order to monitor more closely the potential displacement impact, the Committee bill requires an annual report to Congress on the extent to which displacement or substitution may be occurring as a result of commodity distribution under TEFAP.

If displacement or substitution occurs, there will be no net reduction in Government-held stocks, thereby negating an important purpose of the program. For example, if a recipient agency or individual recipient that currently purchases $40 worth of a commodity per month were provided the same amount of this commodity, and this is the only amount of the commodity that is desired, the program merely supplants normal market purchases of the commodity. Because the CCC stands ready to buy future dairy surpluses or to acquire other commodities through price-support activities, the Government may simply give away commodities with one hand and be forced to purchase or acquire additional stocks with the other.

The impact on agriculture of donating surplus commodities to needy households and organizations depends upon (1) whether donated commodities displace commodity purchases by the intended recipients, or (2) whether the donated commodities increase the food consumption of recipient households and organizations.

The Committee is concerned by several reports which point to considerable displacement impact from several commodities distributed under the program.

Concerns that displacement of cheese was having a major impact in the early days of the program (and in the discretionary program before it) led the Congress to include in Public Law 98–92 a specific provision to require States to determine which persons in the State shall qualify as needy person eligible for such commodities. The Secretary maintains ultimate discretion to approve or disapprove the State's submissions of criteria.

The issue of displacement carries with it the implication that nonneedy individuals are being served. In general, if the poor were the sole recipients, there should be little, or no, displacement. However, it is when higher income citizens—who might otherwise buy the product—begin participating that displacement becomes a counterproductive influence.

The General Accounting Office issued a 1984 report which indicated that under the pre-TEFAP program (the discretionary authority exercised by the Secretary) "displacement of commercial sales was greater than necessary". (See "Improved Administration of Special Surplus Dairy Product Distribution Program Needed", GAO/RCED-84-58, March 14, 1984.)

The GAO report examined the early cheese distribution in 8 States. The GAO concluded:

> Controls over the distribution of products were generally inadequate to prevent program abuse. Only two states required participants to show both identification and proof of eligibility. One state required participants to show identification only. In the remaining five states, local distributing agencies did not generally require participants to show either identification or proof of eligibility. Identification helps deter individuals from using fictitious names and provides a basis for checking on whether individuals received multiple issuances of products.

The GAO also recommended:

> The special distribution program could be made more effective in terms of reducing the amount of retail sales displacement and feeding the needy by providing better guidance on the population to be served and the controls needed to ensure that only the needy participate.

The GAO estimated that approximately 30 percent of the cheese distributed displaced commercial sales.

The Department's regulations following the tightened legislative parameters of the August, 1983 legislation may have served to improve somewhat the displacement impact, especially in the case of cheese.

However, reports persist about significant displacement resulting from other commodities distributed under the program, most notably the impact of the butter distribution.

The initial GAO report contained an examination of the butter displacement situation in only one State, Iowa.

The GAO's analysis indicated that the impact of the butter distribution resulted in almost pound-for-pound displacement of commercial sales of butter and margarine. The impact on margarine is much greater because lower income households consume much greater quantities of margarine than butter. For example, the GAO noted that USDA's Household Food Consumption Survey for the North Central Region (which included Iowa) showed households with incomes of less than 185 percent of poverty consumed an average of 2.23 pounds of margarine compared with only 0.43 pounds of butter.

The GAO projected that the butter distribution in Iowa displaced butter sales by 16 percent and margarine sales by 81 percent, for a total displacement impact of 97 percent.

More recent reports have indicated similar displacement impacts. Dr. James Zellner of the Economic Research Service of USDA issued a report indicating that during the 34 months of TEFAP operations an estimated 428 million pounds of butter were donated, displacing 370 million pounds of margarine.

In response to the reports of margarine displacement, the Secretary reduced by half the level of TEFAP butter donations effective August 1, 1985, from a monthly average of 12 million to 6 million pounds.

The Committee will expect the Secretary to respond to any further documentation of displacement by further reducing distribution of commodities found to cause commercial displacement. The annual report to the Congress may serve as a basis for such decisions, although the Secretary may certainly act before that report is submitted.

National Commodity Processing

Prior to 1983, in most States, State commodity distribution agencies that received commodities on behalf of recipient agencies—primarily schools—entered into inventory agreements or contracts with companies that processed the commodities into more usable end products.

For example, under commodity processing agreements, cheese distributed to the agency can be processed, in combination with other ingredients, into pizza or tacos for use in the school lunch program.

The advantage of such processing agreements is that commodities can be delivered first to the processor, thereby saving transportation and storage costs otherwise incurred by the States or the schools (the initial recipients of the commodities).

Because some States had not established their own processing agreements, the Congress acted in 1983 to establish national commodity processing (NCP) agreements in order to ensure that local schools in all States would have access to this type of inventory agreement. The national commodity processing program was also intended to reduce the surplus of dairy commodities by expanding the market for processed commodities.

It was expected that the use of this system would result in an expansion of surplus commodity usage and would benefit many participants in all the Department's food assistance programs.

The initiation of national commodity processing agreements was contained in the "jobs bill" of 1983, the emergency jobs appropriations act for fiscal year 1983 (P.L. 98-8). States could continue their own processing programs and were expected to do so. The national commodity processing program was available only for bonus commodities, primarily dairy products, while State processing usually included not only bonus, but also entitlement, commodities. The national program was aimed at assisting schools in States that did not operate State processing programs.

The Department has recently completed an evaluation of the first two years of the program (see "Evaluation of National Commodity Processing", April 3, 1985).

Among the evaluation's findings were that the program:

—fell far short of its objective of increasing consumption by 100 million pounds per year;

—Federal costs were 600 percent more to administer than was saved through reduced food storage costs;

—failed to expand significantly the sales to non-school recipient agencies and to States without bonus processing programs;

—resulted in a concentration of use, both of recipient agencies (concentrated in the Midwest) and among food processors (10 percent of the processors handled 97 percent of the sales);

—primarily displaced rather than supplemented State processing.

Under the national commodity processing agreements, products made from cheddar cheese, mainly pizza, account for nearly 85 percent of sales.

National commodity processing has always been intended to supplement existing State processing programs. The Committee is particularly concerned by the finding that "NCP sales reflect considerable displacement of State bonus processing". Since inception of the NCP program, eleven States have completely dropped bonus processing. All cited overlap with NCP as one of the reasons. Seven of these States also discontinued processing contracts for entitlement commodities. The reported number of State processing contracts has also dropped during this period.

The Committee notes the recent supplemental appropriations act (P.L. 99-88) extended the national commodity processing agreements through June 30, 1986. The Administration had proposed the termination of these national processing agreements and the substitution of State commodity processing agreements with improved Federal oversight.

The Committee is concerned that with the implementation of national commodity processing agreements in 1983, several States that had previously maintained their own systems dropped them and relinquished these responsibilities to the Federal government.

The Committee concurs with the 1-year extension included in the appropriations act, and includes in this bill a further extension through June 30, 1987, to provide a more adequate time for a transition from the national program to State operated programs. The Committee expects the Secretary to operate the program until a State operated processing system is established. The Committee expects the Secretary to provide ample advance notice about the parameters of the new system so that States will not experience transition difficulties in 1987 when the authority for the Federal processing agreements expires.

Part 3—Effective Dates

Effective Dates (Sec. 170)

The Committee continues to be concerned that provisions adopted by the Congress be implemented in a timely manner. Improvements have been made in recent years, but the Committee continues to desire that changes in regulations to implement changes in law be implemented quickly. This is particularly necessary for provisions which have a budget saving impact inasmuch as the savings are generally predicated on a particular implementation schedule.

The Committee recognizes that in recent years when the Secretary has attempted to expedite such implementation, the Department has been subject to lawsuits. Therefore, the Committee bill expressly provides that notwithstanding other provisions of the Food Stamp Act and the Administrative Procedures Act, the Secretary is to implement the provisins of the food stamp title as soon as possible but in no event later than March 1, 1986.

This would be done by implementing the provisions through interim regulations that would be subject to comment after issuance.

Subtitle C—Agricultural Credit

BACKGROUND

Introduction

Like many other Federal agencies, the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture was originally created to meet the needs of a particular time—the lingering economic depression in the farm sector during the 1930's. The agency's programs have been greatly expanded and revised as conditions have changed over its 50-year history.

Steadily worsening farm financial conditions between 1980 and 1985 have coincided with the need to reduce Federal expenditures. For FmHA's two most popular programs combined—the farm ownership and farm operating loan programs—the total amount loaned has risen from $1.9 billion in fiscal year 1980 to over $5 billion in fiscal year 1984. As a result of this and other factors, there has been renewed interest in reevaluating FmHA's role as the lender of last resort for American farmers.

Legislative history

The Farmers Home Administration had its beginnings in the Resettlement Administration, a rural rehabilitation agency established by Executive Order in 1935. This independent agency was created to advance short-term loans to low-income tenant farmers who did not qualify for credit from other lenders. These loans provided operating capital and were supervised loans. Each was based on a farm and home management plan worked out in cooperation with the borrowing family. The plans were designed to make the farms eventually self-supporting.

In January 1937, the Resettlement Administration was transferred to the USDA. Later that year, Congress passed the Bankhead-Jones Farm Tenant Act to expand the Resettlement Administration's farm lending programs. This Act authorized the Resettlement Administration, shortly thereafter renamed the Farm Security Administration (FSA), to make available supervised farm ownership loans with 40-year terms to tenant farmers who lacked other credit sources. These loans enabled tenant farmers to purchase their own land and improve their farms and homes. This was the beginning of the farm ownership loan program administered by FmHA.

Also in 1937, Congress enacted the Water Facilities Act. Under this Act, the Resettlement Administration, the USDA Soil Conservation Service and the Bureau of Agricultural Economics shared responsibility for providing loans for the development of water systems in the arid West. Thus began FmHA's role in administering rural water programs.

In 1946, Congress reorganized the Farm Security Administration under the Farmers Home Administration Act. This action reflected the consensus that some farm labor and cooperative farming programs of the old Resettlement Administraton should be abolished, and that there were post-war credit needs to be met. The Act authorized the new FmHA to insure loans made by commercial banks, other agencies, and private individuals, and to make direct loans using Government funds. The rural rehabilitation loan program of the Resettlement and Farm Security Administrations was ended, but the supervised farm ownership loans of the FSA continued. In addition, the new agency assumed responsibility for an emergency crop and feed loan program that had been implemented in 1933 through the Production Credit Associations of the Farm Credit System. The latter program was designed to make short-term loans for feed, seed, and fertilizer to farmers in designated hardship areas. This was the beginning of FmHA's emergency disaster loan program.

From 1949 to 1984, more than 20 pieces of legislation have expanded and redefined FmHA services. The following paragraphs briefly describe the programs that are the subject of the credit provisions in the committee bill.

The Disaster Loan Act of 1949 initiated the special emergency farm loan program to assist farmers in recovering from production losses and physical damage due to natural disasters such as drought, hail, floods, and tornados.

The Consolidated Farmers Home Administration Act of 1961 greatly expanded and revised the agency's authorities. The main provision raised the ceilings on farm ownership and farm operating loans; these limits have since been raised a number of times. Subsequent amendments to this Act further expanded these programs by authorizing loans to family farm members to establish farm-based recreational and other nonagricultural enterprises to supplement family income, and by making loans available to associations whose membership includes members and ranchers.

The Rural Development Act of 1972 gave the Department of Agriculture primary responsibility for Federal rural development activites. The Act authorized FmHA to make direct community facility loans to public or nonprofit organizations to build and equip more than 30 types of essential community facilities, including fire houses, hospitals, nursing homes, community halls, libraries and schools. This Act also authorized FmHA to guarantee farm loans made by commercial lenders, raised the lending limit on farm operating loans, and increased the authorizations for water and waste disposal system loans and grants. FmHA's program to attract industries to rural areas—the business and industry loan program—also began under this Act. These provisisons reflected growing Congressional concern about providing adequate financial assistance not only to farmers but to the greater rural community as well.

Reflecting concern about the cost of other FmHA programs, Congress, in the Agricultural Credit Act of 1978, also changed the interest rate for farm ownership loans to reflect the Government's cost of borrowing money. Prior to that time, the interest rate had been fixed by statute at 5 percent.

The Omnibus Budget Reconciliation Act of 1981 amended the emergency disaster loan program to increase the interest rate charged on loans made to cover actual losses. Further reflecting concerns about bringing growing Federal expenditures under control, this provision increased the portion of loss a producer would have to experience in order to be eligible for an emergency loan.

A severe drought in 1983 prompted Congressional consideration and enactment of the Emergency Agricultural Credit Act of 1984, which expanded the disaster loan program by widening the eligibility for loans, extending the application period, and changing the way in which collateral is valued. This Act also increased the loan limits for direct and guaranteed farm operating loans.

Current FmHA farm credit programs

Under the farm ownership loan program, FmHA makes direct loans (also called insured loans) in amounts of up to $200,000 for the purchase, improvement, or refinancing of farm real estate. Borrowers must have adequate equity and income, be operators of family-size farms, as defined in the regulations (7 CFR 1941.3(d) and 1943.3(d)), and be unable to obtain credit elsewhere. The interest rate for direct loans is determined by the Secretary of Agriculture and does not exceed the Government's cost of borrowing money, plus an additional charge not to exceed 1 percent. The current interest rate is 10¾ percent, and the repayment term is 40 years. Recipients of direct loans must refinance through commercial lenders when they are financially able. The security for the loans is one or more mortgages on the farm real estate.

Also under the farm ownership loan program, FmHA guarantees loans, in amounts of up to $300,000, made by banks and other private lenders to farmers who meet FmHA criteria. The interest rate for guaranteed loans is negotiated by the lender and the borrower, and approximates the market rate for similar agricultural loans.

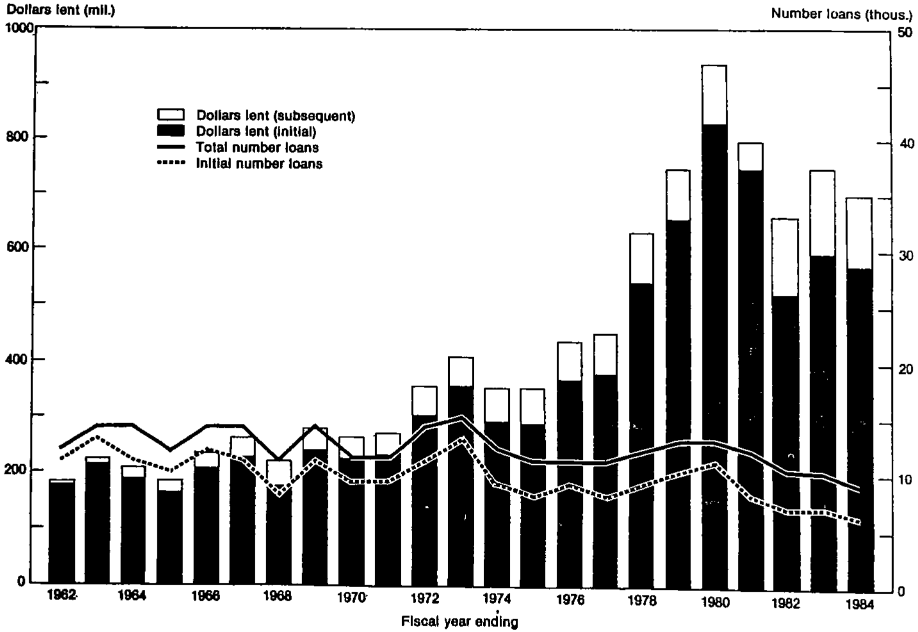
Direct farm ownership loans are also available to family-size operators who lack experience, equipment, capital, adequate financing, income or cash flow—i.e., low-income, limited-resource borrowers. The interest rate charged to these borrowers is not more than one-half the Government's cost of borrowing (but not less than 5 percent per year), and the rate of interest increases as periodic reviews indicate the borrower is able to pay a higher rate. The applicable interest rate charged low-income, limited recourse borrowers is increased by 2 percent if the project being financed involves the use of prime farmland for non-farm purposes. The current interest rate for farm ownership loans to low-income, limited-resource borrowers is 5¼ percent. Guaranteed farm ownership loans are not available to this category of borrower.

Under the farm ownership loan program, 4,240 limited resource loans were made through September 11, 1985. This number is about 58 percent of the total loans made under the farm ownership program for fiscal year 1985. The loan volume for farm ownership loans made at the limited resource rate is $394,561,140.

Under the farm ownership loan program, FmHA has made 396 thousand direct loans totaling $10.9 billion to regular and limited resource borrowers, from the beginning of the program through fiscal year 1984. Table A indicates the level of lending under this program since 1962.

TABLE A

Farm Ownership Loans, Number of Loans, Dollars Lent*



*Includes direct loan costs. Excludes insured loan costs.

Source: A Brief History of Farmers Home Administration, U.S. Department of Agriculture, Farmers Home Administration, February 1985.

Under the farm operating loan program, FmHA makes insured operating loans of up to $200,000 to enable family-size operators who are unable to obtain credit elsewhere to purchase feed, seed, fertilizer, livestock, poultry and other production supplies. Operating loans may be initially scheduled for payment over periods from 1 to 7 years, depending on loan purposes, and rescheduled for up to an additional 15 years. The operating loan interest rate is set by the Secretary of Agriculture under the same conditions as for the farm ownership loans, and is currently 10¼ percent.

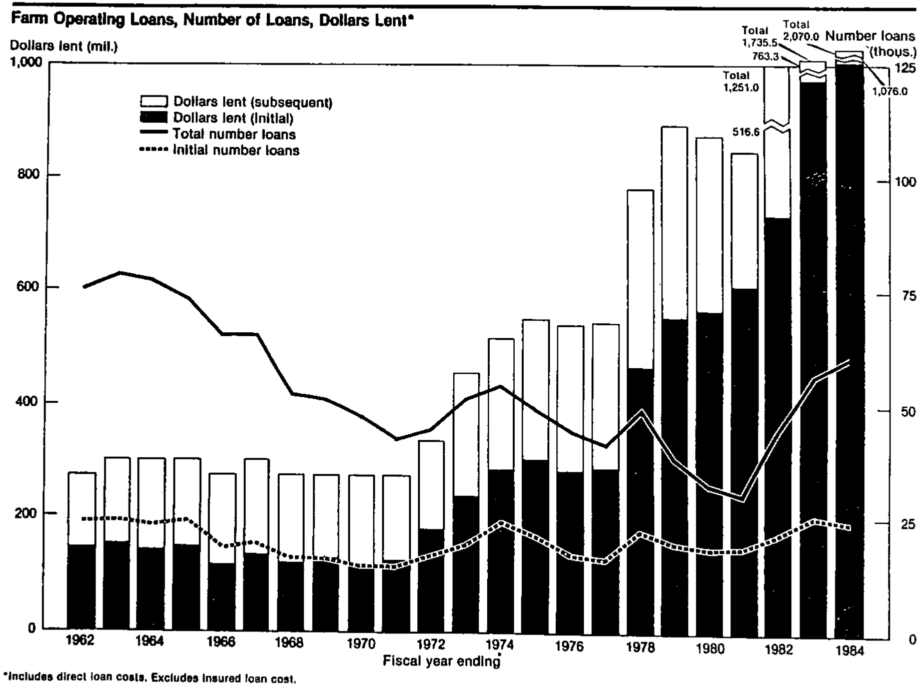
Loan guarantees for operating loans made by private lenders in amounts up to $400,000 are also available under FmHA's operating loan program. The interest rate for guaranteed loans is negotiated by the borrower and the lender.

Guaranteed farm operating loans are not available to low income, limited resource borrowers, but they can obtain direct loans under the farm operating loan program. The loans bear interest at a rate 3 percent below the cost of money to the Government, plus an additional charge not to exceed 1 percent; increases in the rate follow the same process as for the farm ownership loans. The current interest rate for operating loans to low-income, limited-resource borrowers is 7¼ percent.

Farm operating lending to low-income, limited resource borrowers has been greatly expanded by the current Administration to meet the extraordinary credit needs of FmHA applicants. The Secretary has provided these lower interest operating loans to many more applicants than in previous years. Through September 11, 1985, a total of 48,404 farm operating loans were made at the limited resource rate. The loan volume for these loans was $2,249,957,680. Therefore, about 65 percent of all loans made under the farm operating loan program in the current fiscal year were made at the limited resource rate of interest.

Under the farm operating loan program, FmHA has made 2.4 million loans totaling $16.3 billion to regular and limited resource borrowers, from the beginning of the program through fiscal year 1984. Table B shows the significant increases in the farm operating loan levels since 1986.

TABLE B



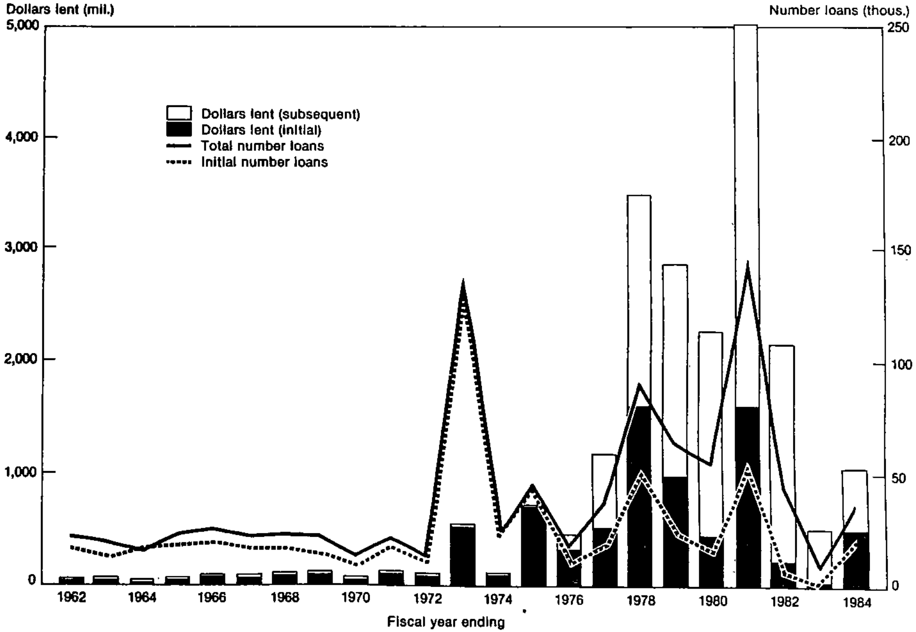
*Includes direct loan costs. Excludes insured loan cost.

Source: A Brief History of Farmers Home Administration, U.S. Department of Agriculure, Farmers Home Administration, February 1985.

Emergency disaster loans are available to applicants whose farms are located in counties that have been declared disaster areas by the President, the Secretary of Agriculture, or, under certain circumstances, the FmHA Administrator. Farmers can currently obtain emergency disaster loans even though crop insurance through the Federal Crop Insurance Corporation (FCIC) is available in their counties for their commodities. There is also no limit on the size of the farms eligible for emergency disaster loans. Farmers unable to obtain credit elsewhere may receive loans to cover 80 percent of their actual losses at subsidized interest rates. Those able to obtain credit elsewhere may still receive an FmHA loan covering their losses, but at interest rates prevailing in the private market. Loans are limited to $500,000 per disaster. The FmHA has made a cumulative total of 1.2 million loans totaling $22.2 billion under this program. Table C indicates the level of lending under this program since 1962.

TABLE C

Emergency Loans, Number of Loans, Dollars Lent*



*Includes direct loan costs. Excludes insured loan cost.

Source: A Brief History of Farmers Home Administration, U.S. Department of Agriculture, Farmers Home Administration, February 1985.

FmHA community loan programs affected by 1985 farm bill proposals

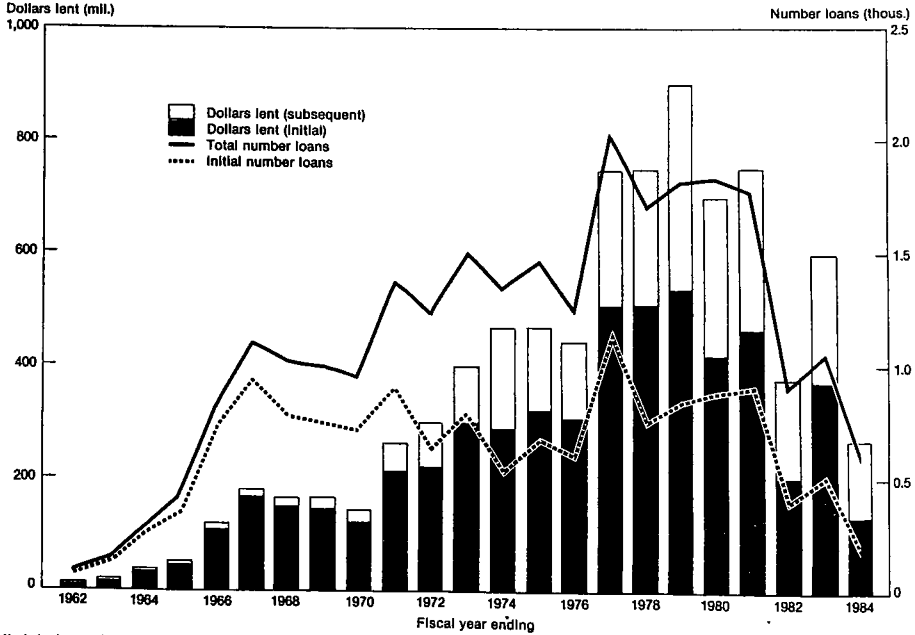
The Water Facilities Act of 1937 was amended in 1954 to apply to all states, not just the 17 arid Western States. Then in 1965, the water facilities loan program was revised to create a water and waste disposal loan and grant program. Subsequent legislation further increased FmHA's loan and grant authorizations in this area.

Under this program, public, quasi-public, and nonprofit associations, and certain Indian tribes, are eligible to borrow money for replacing or upgrading water and waste disposal systems. The program is limited to rural areas and towns of 10,000 or fewer residents. The interest rate for such loans cannot be more than the current market yield for comparable-term municipal obligations.

In areas where the median household income of the water service area is below the poverty level and the project is needed to meet health or sanitary standards, the interest rate cannot be more than 5 percent. Where the median household income of the water service area is greater than the poverty level, but less than 85 percent of the non-metropolitan median household income of the State, FmHA charges an intermediate interest rate that is one-half the difference between 5 percent (the poverty rate), and the market rate, which is then added to the 5 percent rate. The loan has a 40-year term. In situations where a water system's debt repayment load would result in unreasonably high service rates to users, FmHA makes money available in the form of a grant. Grants may not exceed 75 percent of the development costs of the project. Approximately 13,000 borrowers are currently covered under the water and waste system loan and grant program. Since the beginning of the program through fiscal year 1984, FmHA has made 39 thousand loans and grants totaling $11.1 billion. Table D shows the program levels for the water and waste disposal loans since 1962.

TABLE D

Water Waste Disposal Loans, Number of Loans, Dollars Lent*



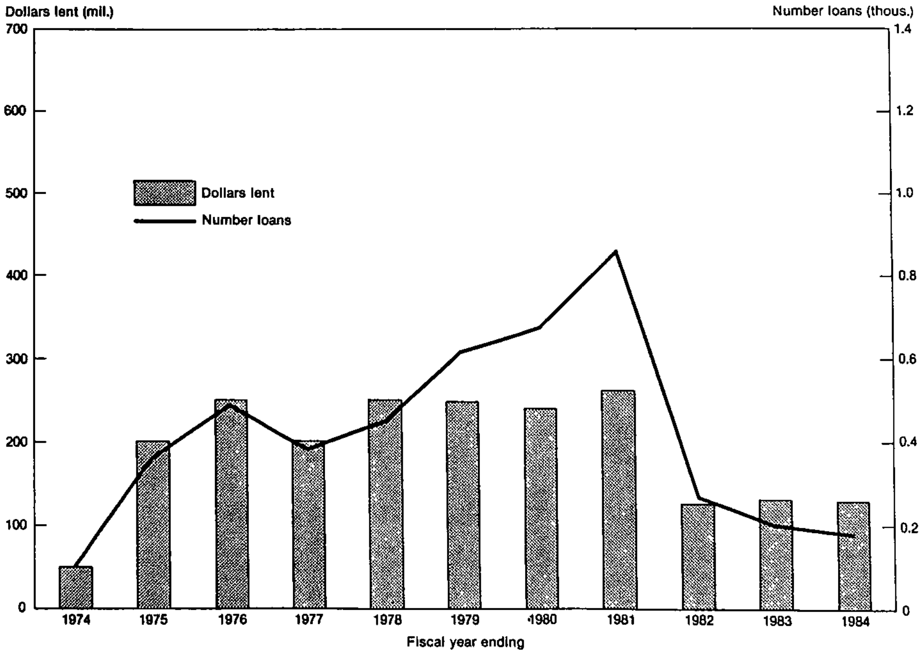
*Includes loan costs.

Source: A Brief History of Farmers Home Administration, U. S. Department of Agriculture, Farmers Home Administration, February 1985.

Through the community facilities loan program, FmHA makes loans for building facilities that provide essential services to residents of the rural countryside or towns up to 20,000 population. Interest rates are set in the same manner as for water and waste system loans. An additional 2 percent is added to the interest rate if projects are built on prime farmland, unless the borrower is a public body and there are no other suitable site. The loan term is up to 40 years. From the beginning of this program through FY 84, FmHA has made more than 4 thousand loans totaling $2 billion. Table E indicates loan levels under this program since 1974.

TABLE E

Community Facility Loans, Numbers of Loans, Dollars Lent

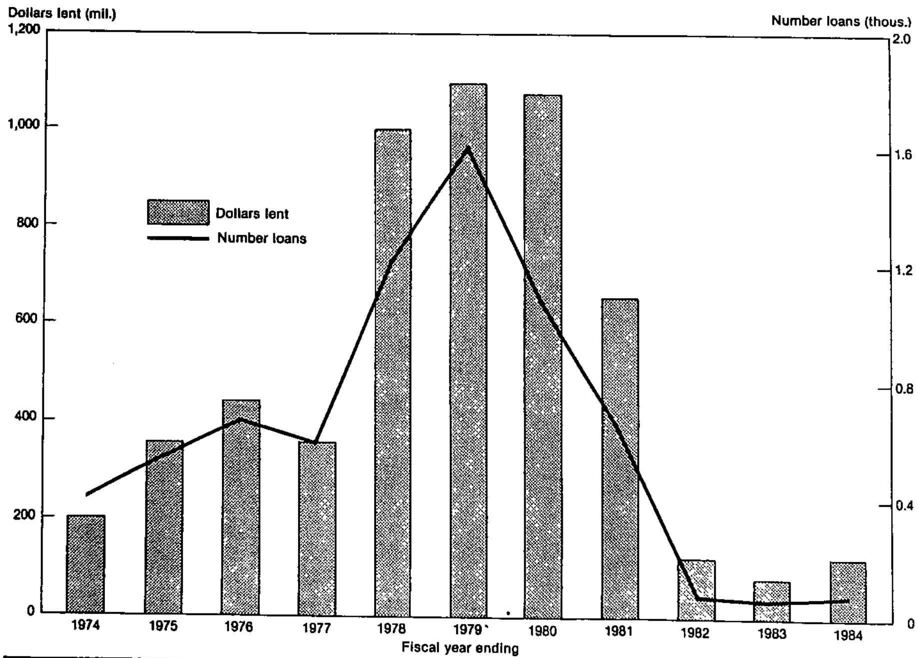


Source: A Brief History of Farmers Home Administration, U.S. Department of Agriculture, Farmers Home Administration, February 1985.

The business and industry (B&I) loan program is designed to attract business and industrial development to communities with fewer than 50,000 residents, with emphasis on communities half that size. From the start of the program through fiscal year 1984, FmHA has guaranteed more than 7,000 B&I loans totaling $5.6 billion. Individuals and corporations, profit and nonprofit, may apply for guaranteed loans of 7, 15, or 30-year terms, depending on the collateral offered. The interest rate is determined by the borrower and the lender. The loan limit is $10 million ($20 million for alcohol fuel production loans). Table F indicates loan levels of B&I loans since 1974.

TABLE F

Business and Industrial Loans, Number of Loans, Dollars Lent



Source: A Brief History of Farmers Home Administration, U.S. Department of Agriculture, Farmers Home Administration, February 1985.

PURPOSE AND NEED

Eligibility for real estate and operating loans

Section 181 provides that the Secretary may not restrict eligibility for loans made or insured under the real estate or operating loan programs solely to current borrowers.

The Committee was made aware of the intent by the Secretary to promulgate regulations to preclude from eligibility for the Farmers Home Administration farm operating and farm ownership loan programs, borrowers who do not currently have outstanding loans under these programs. The Committee, through this provision, intends that all qualified farmers have the opportunity of making application for such credit regardless of whether they currently borrow from FmHA. This provision provides that the farm ownership and farm operating loan programs shall remain open to eligible new borrowers.

Water, waste facility and community facility loans and grants

Section 182(a) requires the Secretary to take into consideration any recommendation by the loan applicant or borrower concerning the technical design or choice of materials to be used for such facility. If the Secretary rejects this recommendation, the applicant or borrower must be given a comprehensive justification for the Secretary's determination.

In the financing of rural water and sewer systems, the FmHA has formulated policies regarding the selection of pipe and other materials that have elicited protest from some program applicants and borrowers. A study by the National Academy of Sciences indicates a number of instances in which the FmHA has required the inclusion of specific piping material, in the bidding process, contrary to the wishes of the applicants or borrowers. Some borrowers and applicants have maintained that the use of such material, at the insistence of the FmHA, has resulted in unnecessary costs for repair and replacement. The FmHA does not accept liability for these costs.

The Committee intends that the Secretary give every appropriate consideration to the specific requests of borrowers and applicants concerning the technical design and choice of materials. If any such request cannot be accommodated, the Secretary is required to fully justify, in writing, the reasons why alternative designs or materials were required for the project.

Section 182(b) modifies the interest rate charged on loans for water and waste disposal facilities and essential community facilities. Current law authorizes the Secretary to set interest rates on loans (other than guaranteed loans). These rates cannot exceed the current market yield for outstanding municipal obligations with remaining maturity periods comparable to the average maturity for such loans and adjusted to the nearest ⅛ of 1 percent.

Under current law, the interest rate may not exceed 5 percent on loans made for the purpose of upgrading existing facilities or construction of new facilities that are required to meet applicable health standards in areas where the median household income of the persons to be served by the facility is below the poverty line prescribed by the Office of Management and Budget.

The Committee broadened the eligibility for the 5 percent interest rate by adopting a provision that would make applicants eligible for the 5 percent interest rate when the facility to be funded would serve persons having a median household income below 80 percent of the statewide nonmetropolitan median household income. This effectively removes the OMB poverty line as an eligibility requirement for such interest rate.

The Committee determined that 80 percent of statewide nonmetropolitan median household income was a more appropriate basis of eligibility for the lowest interest rate and would therefore provide this assistance to communities that might have difficulty making repayments at the higher rate.

Further, the Committee set a new interest rate ceiling of 7 percent for loans to applicants that do not qualify for the 5 percent rate and do not meet the requirements for loans at the market rate for municipal obligations. This rate would apply to loans to fund facilities serving persons having median household incomes of between 80 and 100 percent of the statewide nonmetropolitan median family income.

The Committee agreed to this provision in order to assure that loans offered under the FmHA water and waste disposal program are available at rates of interest deemed appropriate for applicants that are not eligible for the 5 percent rate of interest, yet may not be able to afford the municipal rate for such loans.

Under Section 182(c) of the bill, the Secretary is required to conduct a study of the practicality and cost effectiveness of making loans and grants for the construction of water and waste disposal facilities in rural areas at individual locations, rather than central or community locations. Currently, FmHA makes water and waste disposal facility loans for these purposes only for projects that serve communities, and not for facilities at individual locations. The Committee feels that additional information is needed to determine whether individual facilities might be perferable to central facilities in certain locations.

Sale of notes and security

Section 183 of the bill clarifies that the Secretary has the authority to sell notes and security from the Agricultural Credit Insurance Fund (ACIF) or the Rural Development Insurance Fund (RDIF) on a nonrecourse basis. However, any notes sold from the ACIF must have been held in the fund for at least four years.

Current law gives the Secretary the authority to make sales of notes and security from the Funds, but the Committee feels that clarification is necessary to remove any uncertainty that might reduce the value of such assets or make such sales difficult.

Generally, purchasers of such notes on the secondary market need the assurance that they can adequately service these loans. Certain administrative procedures under the Consolidated Farm and Rural Development Act that are not available to borrowers in the private sector would greatly restrict prudent servicing of these loans by potential purchasers. Therefore, the Committee adopted the provision to clarify that both the purchasers of such notes and the Secretary are relieved of any responsibilities that may have been imposed, had the borrower remained indebted to the Secretary.

The use of the authority provided in this provision will greatly facilitate the effective management of the FmHA loan portfolio. The sale of loans to the private sector will relieve a substantial burden on FmHA personnel to service these loans and will reduce associated costs. It is assumed by the Committee that sales of notes now held in the ACIF and RDIF will be necessary in the future. The implementation of this provision will make such sales attractive to the private sector, as well as more cost effective to the Government.

It is the Committee's understanding that the rate of interest on any notes sold may not be changed after that note is sold.

Rural industrialization lending

Section 184 reauthorizes and limits the business and industry loan program to the guaranty of loans make to applicants for the purpose of financing the production and distribution of ethanol in rural areas.

The Committee is aware of the abuses that have occurred in the administration of this program in the late 1970's, including the guaranty of loans for projects not deemed suitable. However, the Committee recognizes the need of financing ethanol plants. Therefore, the Committee adopted modifications in the business and industry loan program to limit eligibility under the program to ethanol projects and to eliminate the authority to make insured loans. The Committee emphasizes that eligible applicants must be creditworthly in order to obtain a loan guarantee.

Farm recordkeeping training for limited resource borrowers

Section 185 of the bill provides that a portion of the proceeds from loans made under the farm operating limited resource program may be used to pay for training in the maintenance of records of farming and ranching programs.

Adequate recordkeeping is integral to a well managed farm operation. Low-income, limited-resource borrowers often lack sufficient training in maintaining farm records. Therefore, the Committee agreed to permit the use of loan funds under the limited resource program for this purpose.

Emergency loans

Section 186 provides that an applicant may not use crop losses, which could have been insured against under the Federal Crop Insurance Act, as a basis of eligibility for an emergency disaster loan.

The annual cost to the taxpayers of the emergency disaster program is determined by the number and severity of natural disasters that cause crop losses. Therefore, the number of producers eligible for emergency loans varies widely from year to year. The interest rate on such loans, under current law, is set by the Secretary, but may not exceed 8 percent if the applicant cannot obtain credit from other sources. The Secretary has established the interest rate at 5 percent for the first $100,000 of credit for actual losses and 8 percent for addition losses up to the limit of $500,000. These interest rate subsidies are a significant burden on the Federal budget. The total amount of credit obligated under this program in 1984 was $1,051,627,160 down from a high of $5,112,290,430 in 1981.

Farmers, like other businessmen, generally regard insurance as a normal cost of doing business. However, a deeply subsidized loan program to extend credit to operators experiencing crop losses due to severe weather provides a disincentive to purchase crop insurance.

The Committee, in agreeing to restrict eligibility for crop losses under the emergency disaster loan program, recognizes the responsibility of producers to adequately insure their crops from weather related losses. In cases where Federal Crop Insurance is not available, producers who meet the eligibility requirements prescribed in current law can receive credit assistance. The Committee made no change in current law with respect to loans for physical losses as a result of natural disasters.

Loan funds extended to a farmer who lost crops due to a natural disaster, even at subsidized interest rates, will not help that producer recover lost income. The principal as well as interest must be repaid from the proceeds of subsequent crops. Indebtedness incurred as a rsult of disaster loans has caused a significant number of farmers to reach insolvency.

The most responsible form of disaster relief is a crop insurance program which will provide indemnity payments to producers so that adequate money will be available to deal with disasters. Loan programs and the resulting debt load incurred by participants should be discouraged when adequate crop insurance is available.

The Committee provided that the modification in eligibility for the emergency disaster loan program will not apply to eligibility based on damage to an annual crop planted before the date of enactment of the bill.

The Committee also modified the emergency loan program for those producers who remain eligible. Current law provides that no emergency loan may exceed the amount of the actual loss caused by the disaster, or $500,000, whichever is less, for each disaster. There is no limitation on the total amount of indebtedness per borrower under the emergency loan program.

The Committee adopted changes in current law that will limit the maximum amount of the emergency loan for each disaster to the amount of the actual loss, or $200,000, whichever is less. Further, the Committee provided that an individual borrower's total principal indebtedness outstanding under the emergency disaster loan program cannot exceed $400,000.

The Committee, in considering several proposed modifications to this program, pointed to the need to target assistance under this program to family size farmers. Losses deemed larger than those normally associated with family farm operations should not become the basis for loans at subsidized interest rates provided under the emergency disaster loan program.

Authority to make subsequent emergency loans to eligible borrowers for annual operating purposes for up to two years was repealed by the Committee. In considering this provision, the Committee indicated that loans under this program should only be made to producers who suffer loss of crops as a result of a disaster.

Settlement of claims

Section 187 of the bill broadens the Secretary's authority to settle the debt obligations of (FMHA) borrowers. There is a limited provision for the compromise settlement of debt in current law, but the Committee agreed that broader authority is needed. The Committee adopted this section because the Committee believes it is in the best interest of both the borrower and the Government to have greater flexibility to compromise repayment obligations.

Under this provision, a borrower may enter into negotiations with the FmHA prior to any liquidation to determine what assets he might be able to retain as a result of liquidation. It is the Committee's understanding that a borrower is presently required to liquidate all security property until the debt is settled. In some cases, the indebtedness exceeds the value of the collateral and the borrower remains obligated to repay the difference. In such cases, there is little incentive for a borrower who recognizes his inability to repay and the certainly of future liquidation or foreclosure, to liquidate voluntarily. The result is often a long protracted legal proceeding that does not benefit either the Government or the borrower.

It is the Committee's expectation that the Secretary will utilize this provision to negotiate in good faith with severely delinquent borrowers prior to liquidation to reach agreements that would allow the borrower to retain his home and some immediate real property to assist the borrower in making transition from agriculture to another livelihood. It is the Committee's intent that this provision be used on a case by case basis to meet the individual circumstances of each deliquent borrower, so that more consideration could be given to borrowers who have adequately maintained security property and made every effort in good faith to live up to the terms of the loan agreement.

Also, it is the intent of the Committee that the authority in this provision be used, when coupled with other authority granted to the Secretary, to provide for the repayment of certain FmHA loans using the proceeds from trees grown on land subject to an FmHA claim.

Transfer of loan accounts

Section 188 provides that the must allow, on a one-time basis, and with the approval of the FmHA State Director, a FmHA borrower to move his loan account from his county of residence to an adjacent county with the approval of the FmHA State Director.

In certain cases, FmHA borrowers may believe it would be in their best interest to permit agency personnel, other than those in their home county, to review loan applications or loan servicing requests. Under this provision, borrowers would be allowed to petition the Secretary to move their loan accounts to an adjacent county. If approval is granted by the FmHA State Director, this move would be final and permanent and no further such petitions would be allowed.

Oil and gas royalties

Section 189 provides that a FmHA borrower may make prospective payments on any loan under the Consolidated Farm and Rural Development Act and the Emergency Agricultural Credit Act of 1978 with the proceeds from (1) the leasing of oil or gas rights, or other mineral rights, associated with the real property used to secure such loan or (2) the sale of oil, gas, or other minerals removed from property, if the value of these assets has not been used to secure the loan and the collateral for the loan is otherwise adequate.

In adopting this provision, the Committee believes that in cases where the FmHA loan is adequately secured and the value of oil, gas or other minerals were not a part of the loan collateral, the borrower should be allowed to make prospective payments from the proceeds resulting from their sale or lease. The removal of such gas, oil, or minerals cannot reduce the value of the collateral that secures the loan, however. This provision will not apply to borrowers who have liquidation or foreclosure proceedings pending on the date of enactment of the bill.

Processing of applications

Section 190 establishes time limitations for the approval or disapproval of loan applications made with FmHA. A complete application must be approved or disapproved and the applicant notified within 90 days after the Secretary has received such application. If the application is not complete, the applicant must be informed the reasons why it is not complete within 20 days. If the application is disapproved, the applicant must be informed the reasons for its disapproval.

If an application for an insured loan is approved, the Secretary must provide the loan funds, when such funds are available, within 15 days after the application is approved. The applicant may request a longer period or multiple advances, however.

The Secretary must approve or disapprove the application from a lending institution for designation as an approved lender within 15 days after receipt of a complete application.

The Secretary must make personnel and other resources of the Department of Agriculture available to FmHA to expeditiously process loan applications from farmers and ranchers.

In adopting these provisions the Committee recognizes the need of farmers and ranchers for an orderly and expeditious review of loan applications. Applicants should be informed as to the basis for decisions on their applications and of any omissions in their applications that would delay a timely decision.

The Committee acknowledges the efforts made by the FmHA to expedite loan application decisions, but is aware of the need to prescribe specific time periods for the orderly processing of applications. The Committee wants to ensure that adequate human and financial resources be made available for to meet the time tables established in the bill.

Appeals

Section 191 of the bill provides that the Secretary make certain information and privileges available to applicants and borrowers who have been adversely affected by a decision of the Secretary.

The Secretary shall notify the applicant or borrower not later than 10 days after an adverse decision of the opportunity for an informal meeting and a hearing and the procedures to formally appeal the decision. The applicant or borrower shall have the right to inspect his loan file and reproduce the contents at a reasonable cost. The applicant or borrower must also be afforded the opportunity to be represented by an attorney or nonattorney during any proceeding or file inspection.

In adopting these provisions, the Committee wants to insure that any FmHA borrower or applicant has ample opportunity to obtain fair and adequate review of his case after an adverse decision has been made. The applicant should be made fully aware of his rights for such review and of the opportunity to discuss the adverse decision at an informal meeting with FmHA personnel. It is hoped that such an informal meeting will resolve misunderstandings between the applicant and the FmHA and would, therefore, reduce the need for formal appeals.

In order for the Committee to gain a better understanding of the appeal process and to determine whether modifications may be needed, the Secretary must conduct a study of the procedures used for appeals in the farm loan programs of FmHA. This study will focus on the number and types of appeals, the number of appeals that are reversed, the reasons that administrative actions are reversed, modified or sustained, whether the fact that an appellant was represented by legal counsel had any bearing on the final decision, the time frame for the completion of the appeal action, and the desirability of electing members of county FmHA committees.

Disposition and leasing of farmland

Section 192 of the bill makes modifications in the procedures used by the Secretary in selling and leasing farmland. The Secretary, to the extent practicable, must first make farmland available for sale to operators of farms that are not larger than family-size prior to the purchase of the additional land. If this is not possible, the Secretary must, to the extent practicable, lease this land to operators of farms that are not larger than family-size at the time the lease is executed.

The Committee believes that farmland made available from FmHA inventory should first be made available to family farmers in order that these operators have a fair and equitable chance to obtain it before it is offered to the general public.

The Secretary, in leasing farmland, must give special consideration to a previous owner or operator if that person is adequately qualified and the Secretary determines that the previous owner or operator has reasonable prospects for success in the proposed farming operation. The Secretary must also issue regulations which would permit the leasing of farmland with the option to purchase it.

The Committee recognizes the benefit in providing an opportunity for the previous owner or operator of the land to continue farming it if the circumstances that made it necessary for the land to be conveyed to the Secretary can be overcome by the applicant. Through the lease of such farmland, eligible farmers may improve their financial situations to the point they could regain ownership of the property in the future. In carrying out this provision, the Secretary should determine if the lease to the previous owner is appropriate before such land may be sold. The Committee recognizes, however, that not all previous owners or operators of conveyed farmland will be able to qualify for this program.

When the Secretary sells farmland through an installment sale or similar device, he must do so in a manner that protects the Government's investment in such land. The Secretary may subsequently sell this contract. Through the use of this sales devise, the Committee anticipates that the sale of property will not be limited to financing made available under applicable FmHA loan programs. It may be advisable for the Secretary to sell this contract on the secondary market and the Committee explicitly grants this authority under this section.

The sale price for land offered by the Secretary must reflect the average annual income anticipated to be generated from farming such land. The Committee is fully aware of the damage done to agriculture as a result of the inflationary pressures on farmland values in the 1970's and early 1980's. It is therefore advisable that the price of land to be sold by the Secretary accurately reflect the income to be derived from this property, in order that the debt incurred from its purchase can reasonably be managed by a farm operator.

The Committee intends that the Secretary take such measures as are necessary to ensure that the sales of FmHA-owned farmland do not depress the value of surrounding privately owned farmland.

The Secretary must subdivide any parcel of land that is not suitable for sale to a family-size farmer. This provision will enable the Secretary to sell large tracts to family farmers by subdividing these farms into smaller units that can reasonably be purchased by family farmers. It would also make farmland available to more prospective buyers who wish to purchase family farms.

The Secretary must advertise the availability of this farmland as prescribed in the bill to ensure, as far as possible, that all potential buyers are aware of its impending sale.

The Committee supports the use of appropriate conservation practices on land to be sold or leased by the Secretary. Therefore, certain restrictions involving the use of conservation practices may be placed on the use of such property as a condition of its sale or lease.

Release of normal income security

Section 193 provides that the Secretary must release to FmHA borrowers an amount of money sufficient from the sale of security property to pay the essential household and farm operating expenses of the borrower.

This provision applies to farm borrowers who pledge the products of their farming operation as collateral for loans obtained from

FmHA. Normally, when these products are sold, the borrower repays his indebtedness. In some cases the proceeds from the sale of the collateral is not sufficient to both repay the loan and leave the borrower enough money to pay essential household and farm operating expenses. When this situation occurs, the Secretary shall release enough money from the proceeds, as provided in the borrower's plan of operation, so that the borrower can pay essential household and farm operating expenses.

Loan summary statements

Section 194 requires that a loan summary statement be provided to an FmHA borrower when the borrower requests such a statement. The statement would include: the amount of principal outstanding on each loan at the beginning of the summary period, the interest rate charged on each loan, an explanation of the application of all payments received, the amount of principal and interest due at the end of the summary period, any delinquency in repayment, a schedule of the amount and date of payments due on each loan, and the procedure the borrower can use to obtain additional information concerning his loan or loans.

Authorization of loan amounts

The Committee, in Section 195, reauthorized the real estate and farm operating loan programs for fiscal years 1986–88. The amounts provided for each of these programs is contained in a consolidated authorization level of $4 billion.

The amounts authorized by the Committee are as follows:

Fiscal year 1986—$2,000,000,000 for insured loans (of which not less than $260,000,000 must be for farm ownership loans), and $2,000,000,000 for guaranteed loans (of which not less than $260,000,000 must be for guarantees of farm ownership loans).

Fiscal year 1987—$1,500,000,000 for insured loans (of which not less than $195,000,000 must be for farm ownership loans), and $2,500,000,000 for guaranteed loans (of which not less than $325,000,000 must be for guarantees of farm ownership loans).

Fiscal year 1988—$1,000,000,000 for insured loans (of which not less than $130,000,000 must be for farm ownership loans), and $3,000,000,000 for guaranteed loans (of which not less than $390,000,000 must be for guarantees of farm ownership loans).

The Secretary was also given the authority to transfer up to 25 percent of the funds authorized for guaranteed loans to funds authorized for insured loans.

The Committee recognizes the necessity for farm borrowers to find alternative credit sources to the FmHA insured loan programs. In 1975, FmHA held only 3 percent of the nonreal estate farm debt, or $1.11 billion. In 1984, the market share of the nonreal estate debt held by FmHA had grown to an astounding 15 percent or 15.48 billion. This percentage continues to grow in 1985.

The Committee believes that a gradual transition to loan guarantees is an acceptable alternative to our current loan programs, which rely more heavily on direct Government lending. Providing for the credit needs of our nation's farmers and ranchers should be a joint effort between Government and the private sector. Commercial bankers, lenders of the cooperative Farm Credit System, the

Farmers Home Administration, as well as others, should each meet their obligation in providing a level of loan assistance. The Committee recognizes that the role of Government in providing credit should more appropriately be in guaranteeing loans made by the private sector. Through aggressive use of Government loan guarantees, credit will be made available from the private sector to all borrowers who can adequately demonstrate repayment ability, experience and other factors which indicate a reasonable chance for success.

Furthermore, through the use of loan guarantees, FmHA exposes the borrowers to a wide range of loan servicing and counseling available in the private sector. The tremendous demands placed upon FmHA personnel in recent years makes adquate loan servicing nearly impossible. Many farm borrowers derive great benefit from financial advice available from commercial loan officers in making decisions affecting their operations. A cooperative arrangement in which the Government's role is that of issuing loan guarantees to viable borrowers who have obtained credit from private lenders will benefit agriculture now and in the future.

The Committee reauthorized the emergency disaster loan program for three years, with the previously described modifications, with funding necessary to meet the needs resulting from natural disasters. This continues the current level of funding, which is necessary due to the impossibility of accurately predicting the occurrence and severity of future disasters.

The Committee reauthorized the business and industry loan program for three years with a level of $150 million annually for guaranteed loans. Eligible applicants are limited to projects for the production and distribution of ethanol in rural areas.

The Committee reauthorized the water and waste disposal program for fiscal year 1986 with an authorization level of $75 million.

The Committee also adopted a provision that requires the Secretary to lend no less than 25 percent of the aggregate farm ownership and farm operating loan funds to low-income limited resource borrowers. This is an increase of 5 percent over the current requirement of 20 percent.

Interest rate reduction program

Section 196 of the bill authorizes an interest rate reduction program for three years, ending on September 30, 1988. This program will be established to make payments to legally regulated lending institutions that reduce the interest rates of borrowers of loans guaranteed by the Secretary.

The Committee placed several eligibility conditions on both borrowers and lending institutions:

(1) The borrower must be unable to obtain sufficient credit at reasonable rates and terms for another lender.

(2) The borrower must be unable to make payments on his loan in a timely manner without the interest rate reduction.

(3) The borrower must have a projected cash flow of at least 100 percent.

(4) The lender must agree to reduce the interest rates charged to the borrower by a minimum percentage specified by the Secretary.

In return for the contract made by the lender for the reduction of the interest rates charged to the borrower, the Secretary must make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the interest rates to the borrower, except that the Secretary's payments may not exceed the cost of reducing the borrower's annual rates of interest by more than 2 percent.

The term of the contract between the Secretary and the lending institution may not exceed the outstanding term of the borrower's loan, or 3 years, whichever is less.

Funding of the interest rate buy down will be obtained from the Agricultural Credit Insurance Fund and must not exceed $490,000,000 over three years.

Study of farm and home plan

Section 197 requires the Secretary to conduct a study of the appropriateness of the Farm and Home Plan (Form 431-2) used by FmHA in reviewing loan applications. If the findings in the study indicate that the Farm and Home Plan is inappropriate for continued use, the Secretary must evaluate alternative farm plan forms for use in connection with loan applications, evaluate the need for a new form, and specify what steps should be taken to improve or replace the current form. The study shall be completed and provided to the Senate and House Agriculture Committees within 120 days after the date of enactment of the bill.

Study of farm credit system

Section 198 requires the Governor of the Farm Credit Administration to conduct a study of the need to establish a fund to insure Farm Credit System institutions against losses and assist in stabilizing the financial condition of the Farm Credit System and protect the capital invested in the System by its borrowers.

The Governor must consider the advisability of using the revolving fund provided for under Section 4.1 of the Farm Credit Act of 1971 to provide initial capital for the fund. The Governor must also estimate the amount and level of future assessments to be levied on institutions of the Farm Credit System that would be necessary to ensure the long term liquidity of the fund.

The study must be completed within 180 days and submitted to the House Agriculture Committee and the Senate Committee on Agriculture, Nutrition and Forestry.

COMMITTEE CONSIDERATION—RECONCILIATION

Committee consideration of a budget reconciliation bill was made in conjunction with the Committee's consideration of the 1985 farm bill.

The adoption of the provision mandating the export sale of dairy products took place within the context of the Committee's consideration of the export title of the farm bill.

Committee consideration of the food stamp and credit titles of the farm bill began on July 25. On August 1, Senators Helms and Zorinsky proposed to the Committee a package to strengthen the farm credit operations of the Farmers Home Administration by gradually shifting funds from direct to guaranteed loans, and by establishing an interest rate buy-down program.

Consideration of the title was resumed on September 10, at the conclusion of the August recess. Policy changes made in the consideration of the food stamp and credit programs are detailed elsewhere in this report.

SECTION BY SECTION ANALYSIS

Subtitle A—Agricultural Exports

Export sales of dairy products

Section 101(a) directs the Secretary of Agriculture to sell for export, during each of the fiscal years 1986, 1987, and 1988, at least 150,000 metric tons of dairy products owned by the Commodity Credit Corporation at prices determined appropriate by the Secretary.

Section 101(b) provides that these sales of dairy products are to be made through the CCC under existing authorities available to the Secretary or the CCC.

Section 101(c) requires the Secretary to report semiannually, through September 30, 1988, to the Senate and House agriculture committees on the volume of sales made under this section.

Subtitle B—Food Stamps and Commodity Distribution

Part 1—Food Stamps

Publicly operated community health centers

Section 111 amends section 3 of the Food Stamp Act of 1977 to permit publicly operated community health centers to accept food stamps from their residents who are participating in drug addiction or alcoholic treatment programs. Section 111 would also make residents of such programs eligible to participate in the Food Stamp Program. Currently, only drug addiction or alcoholic treatment programs run by private nonprofit institutions may be authorized to accept food stamps and their residents be certified for participation. Finally, section 111 would amend section 10 of the Food Stamp Act to prohibit such community health centers from redemptions only through retail food stores and wholesale food concerns.

Thrifty food plan

Section 112 amends section 3(o) of the Food Stamp Act of 1977 to change one of the age ranges in the 4-person reference family used in calculating the amount of the thrifty food plan on which food stamp allotments are based. The ages of the adults in the reference family would be 20–50 years old instead of 20–54 years old.

Disabled members

Section 113 amends section 3(r) of the Food Stamp Act of 1977 to modify the definition of a disabled person for purposes of the Food Stamp Program. This section would define as disabled anyone receiving Federal benefits based on or for whom a determination of disability or blindness under criteria substantially similar to the criteria used in the supplemental security income (SSI) program to determine disability or blindness. Currently, the Act defines as disabled several special categories of people, including disabled veterans and disabled surviving spouses and children of disabled veterans.

Food distribution program on Indian reservations

Section 114 amends 4(b) of the Food Stamp Act of 1977 to authorize the Secretary of Agriculture and State agencies to match social security account numbers of participants in the Food Stamp Program against the account numbers of applicants for assistance under the Commodity Distribution Program. The section also amends section 4(a) of the Agriculture and Consumer Protection Act to require the Secretary, in carrying out the Commodity Distribution Program, to require that each household member particpating in such program furnish the State agency with the social security account number of such member.

Third party payments

Section 115 amends section 5 of the Food Stamp Act of 1977 to clarify current regulatory practice which is to include as income benefits provided to third parties on behalf of households by the Aid to Families with Dependent Children (AFDC) program and by State and local governments. However, as in current regulations, medical, energy, and child care assistance would not be included as income. The Secretary of Agriculture would also be authorized to provide, by regulation, an exclusion for third-party payments for emergency and special assistance.

Educational loans

Section 116 amends section 5 of the Food Stamp Act of 1977 to require that educational grants, loans and scholarships, to the extent they provide assistance beyond that for tuition and mandatory fees, be counted as income if they are provided in the form of vendor payments. This section also clarifies that no portion of a grant, scholarship or loan may be excluded from income because it is a reimbursement for expenses.

Nonrecurring lump sum payments

Section 117 amends section 5 of the Food Stamp Act of 1977 to provide that food stamp benefits would not be adjusted to reflect a reduction in AFDC or SSI benefits due to receipt of a nonrecurring lump sum payment. Currently, when a household receives such a lump sum payment, its AFDC or SSI benefits are generally reduced, sometimes terminated for a number of months, because the payment is counted as income available to the household. Lump sum payments are applied prospectively for AFDC purposes, and AFDC benefits lost for the number of months derived by dividing the lump sum amount by the State's AFDC need standard. Food stamp benefits must now be increased to reflect the loss of this other assistance, since lump sum payments are not counted as income under the Food Stamp Program. (They are counted as resources.) Section 117 would remove the need for such adjustments by requiring that income for food stamp purposes include the value of SSI or AFDC payments a household would have received if it had not received a lump sum payment.

Child support payments

Section 118 amends section 5(d) of the Food Stamp Act of 1977 to exclude from income, at State option, child support payments that are excluded for purposes of the AFDC program, if a State agrees to pay for the additional food stamp benefit costs that are due to such an exclusion. The Secretary of Agriculture would prescribe the manner in which the State would pay for the added benefit costs.

Homeownership component of shelter costs

Section 119 amends section 5(e) of the Food Stamp Act of 1977 to update references to the homeownership component of shelter costs. The term is used in describing the method for calculating the annual adjustments in the standard deduction and the cap on the excess shelter expense deduction, the dependent care deduction and the combined deduction for shelter and dependent care. The homeownership component was one of two components of shelter costs in the Consumer Price Index for all urban consumers (CPI–U) until the components of shelter costs were redefined as homeowners' costs, renters' costs and the costs of maintenance and repairs. This section would substitute "homeowners' cost, maintenance, and repair component" for the outdated reference to "homeownership component." The change in terminology would not affect how these costs are used in adjusting the deductions. They would continue to be excluded from the CPI–U when making the adjustments.

Energy assistance payments

Section 120 amends section 5(e) of the Food Stamp Act of 1977 to clarify that shelter expenses paid by any kind of Low-Income Home Energy Assistance Act payments do not qualify as household expenses for the purpose of calculating the excess shelter expense deduction. Such expenses would not be deductible whether the LIHEA payment was made directly to the household or to an energy supplier. Section 120 would also require State agencies to take into account out-of-pocket expenses for energy costs paid by households receiving LIHEA payments when the State agencies calculate their standard utility allowances. Thus, this section clarifies that LIHEA recipients are eligible to use the State's standard utility allowance and that States may use separate allowances for households receiving LIHEA assistance and other households or a combined allowance.

Self-employment income

Section 121 amends section 5(f) of the Food Stamp Act of 1977 to require that self-employed households that receive their annual income over a period less than a year and have their income averaged over twelve months shall have their income calculated on anticipated earnings, rather than earnings in the previous year, if the household has experienced a substantial increase or decrease in business earnings. This provision is currently contained in Food Stamp Program regulations.

Monthly reporting and retrospective budgeting

Section 122 amends section 5(f) of the Food Stamp Act of 1977 to require retrospective budgeting for all households with earnings or a recent work history. It would retain the requirement that prospective budgeting be used for migrants and would also require prospective budgeting for households with no earnings and only elderly or disabled adult members. In addition, this section would retain the current authority to use, with the approval of the Secretary of Agriculture, prospective budgeting for households reporting at intervals less frequent than monthly or not reporting at any specified intervals. Finally, this section would give States the option of using either prospective or retrospective budgeting for all other types of households.

Section 122 also amends section 6(c) of the Act relating to reporting requirements. First, it would require all households with earnings or recent work history to report monthly, or with the Secretary's approval, at less frequent periodic intervals. This section would also enable State agencies to require periodic reports from all other households (except migrants and households with no earnings and only elderly or disabled adult members).

Burial plots

Section 123 amends section 5(g) of the Food Stamp Act of 1977 to exclude from resources the value of a burial plot for each household member. Currently, one burial plot per household member is excluded by regulation.

Categorical eligibility

Section 124 amends section 5(j) of the Food Stamp Act of 1977 to authorize States to consider households containing only persons receiving AFDC or SSI benefits as automatically meeting the food stamp income and resources eligibility tests if the gross income of such households does not exceed 130 percent of the poverty level. Section 124 would also prohibit automatic termination of food stamp benefits or automatic denial of food stamp eligibility based on termination or denial of AFDC or SSI benefits. Finally, section 124 removes the legislative authority to conduct demonstration projects to test simplified food stamp eligibility and benefit determination for AFDC, SSI or Medicaid recipients.

Job training benefits

Section 125 amends section 5 of the Food Stamp Act of 1977 to include as income allowances, earnings and payments received under programs authorized by the Job Training Partnership Act (JTPA). Currently, such payments must be excluded as income for the Food Stamp Program, under a requirement in the JTPA statute. That requirement would be overridden by this section.

Employment and training program

Section 126 amends section 6(d) of the Food Stamp Act of 1977 to require that all States establish employment and training programs. Under this section, States would have to develop programs, under guidelines set by the Secretary of Agriculture, that could include job search training programs, employment experience programs, workfare programs under section 20 of the Act, or other employment activities approved by the Secretary. The maximum number of hours that a person subject to work requirements could be required to participate in employment and training activities would be the number of hours equal to the household's allotment divided by the higher of the applicable State or Federal minimum wage, up to a maximum of 120 hours per month. State agencies would be required to reimburse participants for actual costs of transportation and other actual expenses directly related and necessary for participation in the work activities, up to $25 a month. The Secretary would have to ensure, in cooperation with the Secretary of Labor that employment and training programs are provided to Indians residing on Indian reservations.

Starting in fiscal year 1987, States would be required to place in work activities set percentages of persons subject to work requirements and participating in the Food Stamp Program for more than 30 consecutive days. State agencies would have to place 25 percent of such work registrants in employment and training activities by the end of fiscal year 1987, 35 percent by the end of fiscal year 1988, 35 percent by the end of fiscal year 1989, and 45 percent by the end of fiscal year 1990.

Section 126 also amends section 6 and section 20 of the Act to expand the categories of persons subject to work requirements. It would require participants between 16 and 18 years of age to comply with work requirements unless such persons do not head a household or are attending school full-time. This section would also permit State agencies to require caretakers of children from 3 to 6 years of age to comply with work requirements if adequate child care is available. This section would further amend the categories of persons required under section 20 of the Act to comply with workfare requirements to delete the exemption currently provided for the second parent or caretaker in a household if one parent or caretaker is employed or subject to work requirements. It would also provide that hourly obligations for households exempt from food stamp work requirements due to participation in a community work experience program operated for the Aid to Families with Dependent Children (AFDC) program under title IV of the Social Security Act would be based on the household's food stamp allotment plus its AFDC grant.

Section 1416 provides a grant of $40 million in fiscal year 1986, $50 million in fiscal year 1987, $60 million, in fiscal year 1988, and $75 million in fiscal year 1989 to be distributed to States for employment and training programs without a requirement for State matching. It would authorize 50 percent Federal funding for costs incurred by State agencies over the amount they receive from this grant.

Aliens

Section 127 amends section 6(f) of the Food Stamp Act of 1977 to count all income of an ineligible alien as available to his or her household. Currently, the Act requires that an ineligible alien's income less a prorata share be counted as income available to the household. Section 127 would also make technical changes to the references in section 6(f) to the Immigration and Nationality Act in order to reflect changes in terminology that have been made in that law.

Sales tax

Section 128 amends section 7(b) of the Food Stamp Act of 1977 to prohibit the charging of sales tax on food purchases made with food stamp coupons. This would be accomplished by providing that the transaction of food stamp coupons would not be a taxable event. This section would delay the application of the prohibition against charging sales tax on food stamp purchases until the beginning of the fiscal year following the first session of a State legislature held after enactment of the provision.

Alternative means of coupon issuance

Section 129 amends section 7(g)(1) of the Food Stamp Act of 1977 by requiring the Secretary of Agriculture to require the use of alternative methods of food stamp coupon issuance, including electronic benefit transfer, when the Secretary in consultation with the Inspector General determines that program integrity would be improved by instituting a different method of issuance in an area. Currently, under section 7(g)(1), the Secretary may require alternative issuance methods under the same conditions.

Simplified application and standardized benefits

Section 130 amends section 8 of the Food Stamp Act of 1977 to authorize, at State option and subject to the Secretary's approval, further use of simplified application and benefit determination procedures for households containing one or more members that receive Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or Medicaid benefits and whose household income does not exceed the applicable food stamp income standard of eligibility. This section would enable States to provide standardized, average allotments to such households, provided that such averaged allotments are not less than the average value of food stamp benefits that would be provided under standard Food Stamp Program procedures.

Redemption of coupons

Section 131 amends section 10 of the Food Stamp Act of 1977 to prohibit banks and savings and loan associations from charging authorized retailers for the redemption of food stamps accepted from participating households to defray the cost of complying with a requirement, other than a cancellation requirement, for the presentation of coupons to a Federal reserve bank. Currently, there is no prohibition against banks charging fees for redeeming food stamps.

Eligibility of the homeless

Section 132 amends section 11(e)(2) of the Food Stamp Act of 1977 to require State agencies to provide a means of certifying and issuing food stamps to eligible households that do not reside in permanent dwellings or have fixed mailing addresses. Section 132 would also require State agenices to take actions necessary to ensure that only eligible homeless persons participate.

Certification of information

Section 133 amends section 11(e)(2) of the Food Stamp Act of 1977 to require all adult members of a household, or one adult member of a household being certified under expedited service procedures, to certify under penalty of perjury, the truth of all information on the household's application form and all other reports which the household is required to file.

Verification

Section 134 amends section 11(e)(3) of the Food Stamp Act of 1977 to require State agencies to verify household size in any case in which household size is questionable. Currently, the Act requires verification only of nonexcluded income and other eligibility factors determined by the Secretary of Agriculture to be necessary. Section 134 would also permit State agencies, as well as the Secretary, to establish other factors that must be verified.

Photographic identification cards

Section 135 amends section 11(e) of the Food Stamp Act of 1977 to change the criteria for requiring the use of photographic identification cards by households in certain project areas. Under current law, the Secretary of Agriculture, after consulting with the Inspector General may require State agencies to require most households to present photographic identification cards to receive coupons in project areas where the Secretary determines that this practice would be useful to protect program integrity. The amendment would also require the Secretary to determine that the practice would be cost-effective.

In addition, section 135 would allow a State agency to permit households to comply with a requirement for a food stamp photographic identification card by presenting a photographic identification card used to receive assistance under a welfare or public assistance program.

Staggered issuance of coupons

Section 136 amends section 11(e) of the Food Stamp Act of 1977 to permit State agencies to stagger food stamp coupon issuance throughout a month. While State agencies would be allowed to stagger their coupon issuance schedule over the course of the entire month, no household could go more than 40 days between coupon issuances as a result of changes in scheduling.

Fraud detection

Section 137 amends section 11(e) of the Food Stamp Act of 1977 to require State agencies to establish and operate fraud detection units in all project areas with 5,000 or more participating households. The responsibilities of such units would include fraud detection, fraud investigation, and assistance in fraud prosecution.

Social Security office application procedures

Section 138 amends section 11 of the Food Stamp Act of 1977 to require that applicants for and recipients of Social Security benefits be informed at the Social Security office of the availability of the Food Stamp Program and the availability of assistance in making an application for food stamp benefits. This section also requires the Secretary of Agriculture and the Secretary of Health and Human Services to revise their memorandum of understanding relating to services provided in Social Security offices to reflect these changes.

Special supplemental food program

Section 139 amends section 12 of the Food Stamp Act of 1977 to add a new subsection (e) to make a retail food store or wholesale food concern that has been disqualified under the Food Stamp Program ineligible to participate in the special supplemental food program for women, infants, and children (WIC) established under section 17 of the Child Nutrition Act of 1966.

This period of ineligibility would last until the food stamp disqualification period ended. These periods may range from 6 months to permanent disqualification, depending on the severity and frequency of violations.

In addition, section 139 amends section 9(c) of the Act to authorize information obtained from retail food stores and wholesale food concerns to be used in administration of the special supplemental food program (WIC). Current law limits the disclosure and use of this information to purposes directly connected with Food Stamp Program administration.

Disqualification of retail food stores and civil money penalties

Section 140 amends section 12 of the Food Stamp Act of 1977 to add a new subsection (f) to subject retail food stores or wholesale food concerns that are sold during a disqualification period to a civil money penalty. The amount of the penalty would be established by the Secretary of Agriculture and reflect the portion of the disqualification period that has not expired on the sale of the store or concern. the penalty for a permanently disqualified store or concern would be twice the amount imposed for a 10-year disqualification. The disqualification would remain in effect after the money penalty was imposed. The Secretary could request the Attorney General to collect the money penalty in a United States district court. The validity and amount of the penalty would not be subject to judicial review.

The section also amends section 9(b) of the Food Stamp Act of 1977 to prohibit the buyer of the store or concern from accepting food stamps until the money penalty is fully paid if the buyer had actual or constructive notice of the penalty when the store or concern was sold. The Secretary would be required, to the extent permitted under law, to record encumbrances created under this provison with an appropriate State or local public office. The seller of a disqualified store or concern would be required to advise a prospective buyer of the restrictions on authorizing the store to redeem coupons prior to the sale. the buyer could not be required to furnish a bond as a result of the disqualification of the prior owner.

Liability for overissuance of coupons

Section 141 amends section 13 of the Food Stamp Act of 1977 to make all adult household members jointly and severally liable for the value of any overissuance of benefits to the household. This provision would permit States to simultaneously pursue claims against several different households which contain adult members of a household that obtained an overpayment of benefits.

Interest on claims against State agencies

Section 142 amends sections 13(a) of the Food Stamp Act of 1977 to make State agencies liable for interest on claims assessed against the State by the Secretary of Agriculture. However, interest would not begin to accrue until the State agency exhausted the administrative review process. This provision would apply to claims established by the Secretary for excessive payment error rates, issuance losses, and gross negligence or fraud in household certification.

Collection of claims

Section 143 amends section 13(b) of the Food Stamp Act of 1977 to require States to use other means of collection to collect claims arising from intentional program violations, which are not collected through cash payment or allotment reduction, unless the State agency can demonstrate that other collection methods are not cost-effective. Under current law, State agencies are authorized to use alternative collection methods to pursue these claims, but are not required to do so.

In addition, section 143 allows State agencies to reduce household allotments to collect claims arising from State agencies' errors.

Food stamp intercept of unemployment benefits

Section 144 amends sections 13, 11(e), 16(a), and 18(e) of the Food Stamp Act of 1977 to authorize the intercept of unemployment compensation benefits to collect claims arising from a food stamp overissuance caused by an intentional program violation. State agencies that elect this option would determine if individuals against whom such claims had been established were due unemployment compensation benefits. In addition, State unemployment compensation agencies could ask applicants, for unemployment compensation whether they owe a claim based on an intentional program violation, and inform the State food stamp agency about individuals who indicate that they owe such a claim and are eligible for unemployment compensation. State food stamp agencies would obtain authorization for an intercept of unemployment compensation benefits either by securing the consent of the individual against whom a claim has been made or obtaining permission from a court. The State food stamp agency would provide this authorization to the State agency that administers the unemployment compensation program. This agency would deduct the amount of the food stamp claim from the individual's unemployment compensation benefits and transfer the withheld amount to the State food stamp agency. State food stamp agencies would be required to reimburse the State agencies that administer unemployment compensation programs for their the administrative costs incurred in intercepting benefits. States would retain 50 percent of the amount of claims recoved through such intercepts.

Administrative and judicial review

Section 145 amends section 14(a) of the Food Stamp Act of 1977 by changing the criterion a retail food store, wholesale food concern, or State agency would need to meet to obtain a judicial stay of an administrative action of the Secretary of Agriculture. Under current law, a store, concern, or State agency can obtain a judicial stay if it can show that irreparable injury would result if the administrative action remained in force. The provision would require the petitioner to show that it is likely to prevail on the merits of the case.

In addition, the section corrects a typographical error in section 14(a) of the Act.

Hours of operation

Section 146 amends section 16(b) of the Food Stamp Act of 1977 to require the Secretary of Agriculture to set standards for States' periodic reviews of office hours of operations. Such reviews would determine whether the needs of employed persons are met by the hours of certification and issuance offices.

Error rate sanction program

Section 147 amends section 16 of the Food Stamp Act of 1977 to change the basis for calculating and applying fiscal sanctions against State agencies that have overpayment error rates in excess of 5 percent of benefits issued in fiscal year 1986 and fiscal years thereafter. Currently, fiscal sanctions are calculated as a percentage of State administrative costs. Under this section, sanctions would be based on benefits overissued and calculated in two stages. This section would first hold a State agency liable for 75 percent of the dollar value of benefits issued erroneously between 5 and 7 percent. A State agency would be further liable for 100 percent of benefits issued in error in excess of 7 percent. Finally, this section would reduce fiscal sanctions otherwise applicable by 75 percent of the value of claims collections remitted to the Federal government for claims established during the fiscal year in question.

Geographical error prone profiles

Section 148 amends section 16 of the Food Stamp Act of 1977 by adding a new subsection (h) to authorize the Secretary of Agriculture to require special certification procedures in project areas with high payment error rates. The Department's Inspector General would be authorized to use quality control data to identify project areas with payment error rates that impair the integrity of the Food Stamp Program. The Secretary would be authorized to mandate States to employ new or modified certification procedures in project areas if such procedures would improve program integrity in a cost-effective manner. The Secretary would be required to report one year after the date of enactment of the bill, and annually thereafter, to the Congress on project areas identified by the Inspector General and on special certification activities required by the Secretary.

SSI/elderly cash-out demonstration projects

Section 149 amends section 17(b)(1) of the Food Stamp Act of 1977 to require the Secretary of Agriculture to extend until September 30, 1989, at State request, projects in which cash is provided in lieu of food stamps to households all of whose members are either elderly or receiving Supplemental Security Income (SSI) benefits under title XVI of the Social Security Act.

Cash change pilot project

Section 150 amends section 17 of the Food Stamp Act of 1977 to authorize the Secretary of Agriculture to conduct a pilot project on the effects of eliminating cash change. The Secretary would be allowed to operate a demonstration project in which household members using coupons to purchase food would be required to pay cash for the amount of the purchase in excess of the value of the one dollar coupon. The Secretary would evaluate the effect of this requirement on retail stores and participating households.

Authorization for appropriations

Section 151 amends section 18 of the Food Stamp Act of 1977 to authorize appropriations to carry out the Food Stamp Program through September 30, 1989. Authorization levels would be $12.984 billion for fiscal year 1986, $13.572 billion for fiscal year 1987, $14.154 billion for fiscal year 1988, and $14.695 billion for fiscal year 1989.

Transfer of funds

Section 152 amends section 18 of the Food Stamp Act of 1977 to prohibit funds appropriated under the Act to be transferred to the Department of Agriculture's Office of the Inspector General or Office of the General Counsel. These offices would be reqired to secure funding for their activities currently financed under the Food Stamp Act through other appropriations channels.

Puerto Rico block grant

Section 153 amends section 19 of the Food Stamp Act of 1977 to modify the provisions governing the Puerto Rico block grant in three ways. First, the requirement that Puerto Rico provide noncash benefits beginning October 1, 1985, would be deleted. Puerto Rico has provided nutrition assistance benefits through checks since the inception of its Nutrition Assistance Program on July 1, 1982, but is required to adopt a noncash benefit system effective October 1, 1985. This provision would permit the Commonwealth to continue to provide cash assistance. Second, the date by which the Commonwealth must submit its plan describing the provision of assistance would be changed from July 1 to April 1 of the prior fiscal year. Third, the requirement that the Commonwealth designate a single agency as responsible for the supervision of program administration would be modified to allow different agencies to be responsible for different phases of the nutrition assistance program.

This change would permit the Commonwealth to designate one agency as responsible for certain special projects while a different agency would be responsible for the primary nutrition assistance program.

Part 2—Commodity Distribution

Transfer of section 32 commodities

Section 160 permits transfer of perishable agricultural commodities purchased under surplus removal operations authorized under section 32 of Public Law 74–320 by a public or private nonprofit organization that receives these commodities under clause (2) of the second sentence of that section to another such organization which agrees to use the commodities in providing nutrition assistance to individuals in low-income groups without cost or waste.

Commodity Distribution Program

Section 161 extends the Commodity Distribution Program under section 4(a) of the Agriculture and Consumer Protection Act of 1973 through September 30, 1989. This section also would change the eligibility standards for the Commodity Distribution Program for Summer Camps to be more consistent with the Summer Food Service Program for Children.

Commodity Supplemental Food Program

Section 162 extends the Commodity Supplemental Food Program under section 5(a) of the Agriculture and Consumer Protection Act of 1973 through September 30, 1989.

This section also extends the authority of the Secretary of Agriculture to conduct pilot projects (increasing the number from 2 to 3) directed at low-income elderly persons. This authority would be extended through September 30, 1989. The section authorizes local agencies operating the Commodity Supplemental Food Program, with the approval of the Secretary, to use unused caseload to serve low-income elderly. The Secretary would be required to approve additional applications for eligible projects to participate in the Commodity Supplemental Food Program if the Secretary determines that the funds appropriated exceed the requirement for current operating sites.

Temporary Emergency Food Assistance Program

Section 163 amends section 202 of the Temporary Emergency Food Assistance Act of 1983 to make section 32 commodities available for Temporary Emergency Food Assistance Program (TEFAP) distribution in addition to the price-support commodities already distributed. The section also requires States to encourage distribution of TEFAP commodities in rural areas; specifies that the commodities made available under TEFAP would include dairy products, wheat and wheat products, rice, honey, and cornmeal; requires a semiannual report from the Secretary of Agriculture to the House and Senate agriculture committees on the types and amounts of commodities made available for distribution under TEFAP; and requires annual publication in the Federal Register of available commodities.

The bill extends the authorization for appropriations for the payment of storage and distribution costs of State and local operating agencies at $50 million for each of fiscal years 1986 and 1987. The bill adds a requirement that to be eligible to receive payments for storage and distribution costs, however, a State must match on a dollar for dollar basis the amount of the Federal payments made to the State.

The bill extends the TEFAP for 2 years through September 30, 1987, extends the National Commodity Processing Program through June 30, 1987, and continues through September 30, 1989, the provision to include bonus commodities in the calculation of the 15 percent limitation on administrative cost reimbursements under the Commodity Supplemental Food Program.

Distribution of surplus commodities to special nutrition projects

Section 164 amends section 1114(a) of the Agriculture and Food Act of 1981 to specify that the commodities made available under that provision would include dairy products, wheat and wheat products, rice, honey, and cornmeal.

Donations by military commissaries

Section 165 permits a commissary store of the Department of Defense to donate non-USDA surplus, unmarketable food to a local food bank.

Part 3—Effective dates

Section 170 provides that changes contained in the food stamp title of the bill shall be effective upon enactment. It further requires the Secretary of Agriculture to promulgate interim regulations to assure implementation of these changes no later than March 1, 1986.

Subtitle C—Agricultural Credit

Section-by-Section Analysis

Eligibility for real estate and operating loans

Section 181 amends section 302 of the Consolidated Farm and Rural Development Act to provide that the Secretary of Agriculture may not restrict eligibility for (1) direct or insured real estate loans made for the purposes specified in section 303 of such Act or (2) direct or insured farm operating loans made for the purposes specified in section 312 of such Act solely to those borrowers who had such loans outstanding on the date of enactment of the Consolidated Omnibus Budget Reconiliation Act of 1985.

Water, waste facility, and community facility loans and grants

Section 182(a) amends section 306(a) of the Consolidated Farm and Rural Development Act to provide that, in the approval and administration of a loan made or insured for the installation or improvement of a water or waste disposal facility, the Secretary must consider fully any recommendation made by the loan applicant to borrower concerning the technical design and choice of materials to be used. If the Secretary determines that a design or materials, other than those that were recommended by the applicant or borrower, should be used, the Secretary must give the applicant or borrower a comprehensive justification for the Secretary's determination.

Section 182(b) amends section 307(a)(3)(A) of the Act to broaden the eligibility for water and waste disposal facility loans, made at interest rates of no more than 5 percent, to communities in which the median family income of those to be served by the facility is below 80 percent of the statewide nonmetropolitan median household income. Under current law, eligibility is restricted to communities in which the median family income is below the Federal poverty line.

Section 182(b) also provides for an interest rate cap of 7 percent for water and waste disposal facility loans made to communities in which the median family income of those to be served by the facility is equal to or greater than 80 percent of the statewide nonmetropolitan median household income, but does not exceed 100 percent of such income.

Section 182(c) provides that the Secretary must study the practicality and cost effectiveness of making loans and grants for the construction of water and waste disposal facilities in rural areas at individual locations, rather than central or community locations, and report his findings to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 120 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sale of notes and security

Section 183(a) amends section 309(d) of the Consolidated Farm and Rural Development Act to provide that notes in the Agricultural Credit Insurance Fund may be sold on a nonrecourse basis, if such notes have been held in the fund for at least 4 years. The amendment also provides that the Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis will be relieved of any responsibilities that might have been imposed, had the makers of the notes remained indebted to the Secretary.

Section 183(b) amends section 309A(e) of the Act to provide that notes in the Rural Development Insurance Fund may be sold on a nonrecourse basis and that the Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis will be relieved of any responsibilities that might have been imposed, had the makers of the notes remained indebted to the Secretary.

Rural industrialization lending

Section 184(a) amends section 310B of the Consolidated Farm and Rural Development Act to restrict activity in rural industrialization lending to the guaranty of loans to finance the production and distribution of ethanol in rural areas.

Section 184(b) also makes a number of conforming changes to other sections of the Act to reflect the change in rural industrialization lending made by section 1704(a).

Farm recordkeeping training

Section 185 amends section 312(a) of the Consolidated Farm and Rural Development Act to authorize limited resource borrowers holding farm ownership loans made or insured under section 310D of the Act to use the proceeds from a Farmers Home Administration farm operating loan to pay for training in the maintenance of records of farming and ranching operations.

Emergency loans

Section 186(a) amends subsection (b) of section 321 of the Consolidated Farm and Rural Development Act to repeal the Secretary's authority to make or insure emergency loans to loan applicants who are able to obtain credit elsewhere. The section also provides that persons suffering crop losses, which could have been insured against under the Federal Crop Insurance Act, may not use such losses as a bsis of eligibility for an emergency loan.

Section 186(b) amends section 324 of the Act to limit the size of each emergency loan made or insured under the Act to the actual loss caused by the disaster or $200,000, whichever is less, for each disaster. The section also limits to $400,000 the amount of an individual borrower's total principal indebtedness which may be outstanding at any time under the emergency loan program.

Section 186(c) makes a conforming amendment to section 323(b) of the Act.

Section 186(d) repeals the Secretary's authority to make subsequent emergency loans to eligible borrowers for annual operating purposes for up to 2 years following the year in which the initial emergency loan was made to the borrower.

Section 186(e) provides that the limitation on eligibility for emergency loans (contained in section 186(a)) will not apply to those persons whose eligibility for such emergency loans is based on damage to an annual crop planted before the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Settlement of claims

Section 187 amends subsection (d) of the second paragraph of section 331 of the Consolidated Farm & Rural Development Act to broaden and streamline the Secretary's authority to compromise, reduce, or change-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstance may require, to carry out the Consolidated Farm & Rural Development Act. The section also provides that the Secretary may release borrowers or others obligated on a debt incurred under the Act from personal liability, with or without the payment of any consideration, at the time of the adjustment, reduction, or change-off of any claim.

The section retains the restriction in current law that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out—

(a) on terms more favorable than those recommended by the Farmers Home Administration county loan committee; or

(b) after the claim has been referred to the Attorney General for collection; unless the Attorney General approves.

Transfer of loan accounts

Section 188 adds a new section 331C to the Consolidated Farm and Rural Development Act to require that the Secretary permit a borrower of a loan made or insured under that Act to transfer, on a one-time basis and with the approval of the appropriate Farmers Home Administration State Director, the borrower's Farmers Home Administration loan accounts to a Farmers Home Administration county office in an adjacent county.

Oil and gas royalties

Section 189(a) adds a new section 3310 to the Consolidated Farm and Rural Development Act to require that the Secretary permit a borrower of a loan made or insured under that Act to make prospective payments on the loan with the proceeds from—

(a) the leasing of oil, gas, or other mineral rights to real property used to secure the loan, or

(b) the sale of oil, gas, or other minerals removed from any real property used to secure the loan, if—

(1) the value of the rights to the oil, gas, or other minerals has not been used to secure the loan, and

(2) the security for the loan is otherwise adequate.

The new section does not apply to borrowers of loans with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Section 189(b) amends section 204 of the Emergency Agricultural Credit Adjustment Act of 1978 to require that the Secretary permit a borrower of a loan made or insured under such Act to make prospective payments on the loan from the proceeds of the lease or sale of mineral rights in the same manner as was previously set forth in the explanation of section 189(a).

Processing of loan applications

Section 190 adds new section 333A to the Consolidated Farm and Rural Development Act to provide that—

(a) the Secretary must approve or disapprove an application for a loan or loan guarantee made under the Act, and notify the applicant of the Secretary's action, not later than 90 days after the receipt of a complete application;

(b) if an application for a loan or loan guarantee made under the Act is incomplete, the Secretary must inform the applicant of the reasons such application is incomplete not later than 20 days after receipt of the application;

(c) if an application for a loan or loan guarantee made under the Act is disapproved by the Secretary, the Secretary must state the reasons for the disapproval in the notice of the Secretary's action that must be supplied to the applicant;

(d) if an application for an insured loan is approved, the Secretary must provide the loan proceeds to the applicant not later than 15 days after the application is approved (or not later than 15 days after the Secretary receives sufficient funds for such purpose), unless the loan applicant agrees to a longer period;

(e) in carrying out the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, the Secretary must ensure that each request made by a lending institution for designation as an approved lender under the program is reviewed, and a decision made on the application for designation, not later than 15 days after a complete application is received.

These provisions will be effective for all applications received by the Secretary after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

New section 333A also provides that, as soon as is practicable after the date of enactment of the bill, the Secretary must take the necessary steps to make personnel and other departmental resources available to the Farmers Home Administration as are sufficient to enable the Farmers Home Administration to expeditiously process loan applications submitted by farmers and ranchers. In carrying out this provision, the Secretary may use any authority of law provided to the Secretary, including the Agricultural Credit Insurance Fund and the employment procedures used in connection with the emergency loan program.

Appeals

Section 191(a) adds a new section 333B to the Consolidated Farm and Rural Development Act. The new section provides that the Secretary must—

(a) give an applicant or borrower of a loan, or applicant for or recipient of a loan guarantee, under the Consolidated Farm and Rural Development Act who has been directly and adversely affected by a decision of the Secretary made under such Act (hereafter referred to as the "appellant") written notice of the decision, an opportunity for an informal meeting, and an opportunity for a hearing with respect to such decision and must issue regulations spelling out these procedures;

(b) not later than 10 days after an adverse decision, provide the appellant with written notice of the decision, an opportunity for an informal meeting, an opportunity for a hearing, and the procedures to appeal the adverse decision; and

(c) upon the request of the appellant and in order to resolve differences and minimize formal appeals, the Secretary must hold an informal meeting with the appellant prior to the initiation of any formal appeal of the Secretary's decision.

New section 333B also provides that an appellant shall have the right to have—

(a) access to the appellant's personal file, including a reasonable opportunity to inspect and reproduce the file at a Farmer's Home Administration office located in the area of the appellant; and

(b) representation by an attorney or nonattorney during the inspection and reproduction of files and at any informal meeting or hearing.

The Secretary may charge any appellant for reasonable costs incurred in reproducing files.

Section 191(b) requires that the Secretary conduct a study of the administrative appeals procedures used in the farm loan programs, of the Farmers Home Administration. In conducting the study, the Secretary must examine—

(a) the number and type of appeals initiated by loan applicants and borrowers;

(b) the extent to which initial administrative actions are reversed on appeal;

(c) the reasons that administrative actions are reversed, modified, or sustained on appeal;

(d) the number and disposition of appeals in which the loan applicant or borrower is represented by legal counsel;

(e) the quantity of time required to complete action on appeals and the reasons for delays;

(f) the feasibility of the use of administrative law judges in the appeals process; and

(g) the desirability of electing members of the Farmers Home Administration county committees.

The Secretary must submit a report describing the results of this study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than September 12, 1986.

Disposition and leasing of farmland

Section 192(a) amends section 335 of the Consolidated Farm and Rural Development Act by adding a new subsection (e). The new subsection specifies additional procedures for the disposition and leasing of farmland, as follows:

(a) To the extent practicable, the Secretary must sell or lease farmland administered by the Farmers Home Administration in the following order of priority:

(1) Sale of farmland to operators (as of the point in time immediately before the sale) of not larger than family-size farms.

(2) Lease of farmland to operators (as of the point in time immediately before such lease is entered into) of not larger than family-size farms.

(b) The Secretary must consider granting leases with options to purchase farmland administered by the Farmers Home Administration to operators of not larger than family-size farms. The Secretary must also issue regulations providing for the leasing, or leasing with the option to purchase, of such farmland on a fair and equitable basis. In the leasing of such land, the Secretary must give special consideration to a previous owner or operator of the land, if the owner or operator has the financial resources, and farm management skills and experience, that the Secretary determines are sufficent to assure a reasonable prospect of success in the proposed farming operations.

(c) The Secretary may sell farmland administered by the Farmers Home Administration through an installment sale or a similar devise containing such terms as the Secretary determines are necessary to protect the Federal Government's investment in such land. Notwithstanding the foregoing, however, the Secretary must offer to sell such land to operators of not larger than family-size farms at a price that reflects the average annual income that can normally be anticipated to be generated from farming the land. The Secretary may subsequently sell any installment contract or other device entered into for the purpose of selling farmland administered by the Farmers Home Administration.

(d) If two or more qualified operators of not larger than family-sized farms desire to purchase, or lease with an option to purchase, the same parcel of land; the Farmers Home Administration county committee must select, by majority vote, the operator who will be allowed to purchase or lease the land. The county committee must base its decision on regulations dealing with this topic that are to be issued by the Secretary.

(e) If the Secretary determines that certain tracts of farmland administered by the Farmers Home Administration are not suitable for sale or lease to an operator of not larger than a family-size farm (because the tracts are larger than necessary for family-size farms), the Secretary must divide the farmland into smaller tracts suitable for such operators and dispose of the land using the new procedures specified in section 192(a) of the bill.

(f) If the Farmers Home Administration holds farmland that is suitable for sale or lease to qualified operators of not larger than family-size farms, the Secretary must—

(1) publish an announcement of the availability of the farmland in at least one newspaper that is widely circulated in the county in which the farmland is located, and

(2) post an announcement of the availability of the farmland in a prominent place in the local Farmers Home Administration office serving the county in which the farmland is located.

(g) In the case of farmland administered by the Farmers Home Administration that is highly erodible land (as that term is defined in paragraphs (7) of new subsection (e)), the Secretary may require the use of specified conservation practices on such land as a condition of its sale or lease.

In those instances in which it is impracticable for the Secretary to sell or lease farmland administered by the Farmers Home Administration under the provision of section 192(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the Secretary may dispose of such farmland under the provisions of the Consolidated Farm and Rural Development Act that were in effect prior to the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985

Section 192(b) provides that the Secretary must implement the provisions contained in section 192(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 not later than 90 days after the date of enactment of that Act.

Release of normal income security

Section 193 amends section 335 of the Consolidated Farm and Rural Development Act by adding a new subsection (f). The new subsection (f) provides that, until such time as the Secretary determines that a loan made or insured under the Consolidated Farm and Rural Development Act should be liquidated, the Secretary must release, from the normal income security provided for the loan, an amount of money sufficient to pay the borrower's essential household and farm operating expenses, as determined by the Secretary. The term "normal income security" had the meaning given to that term in section 1962.17(b) of title 7, Code of Federal Regulations (as of January 1, 1985).

Loan summary statements

Section 194 amends section 337 of the Consolidated Farm and Rural Development Act to provide that, upon the request of a borrower of a loan made or insured under that Act, the Secretary must issue a loan summary statement that reflects the activity in the borrower's loan amount during the summary period. The loan summary statement must cover each of the borrower's loans made or insured under the Act and must include—

(a) the outstanding amount of principal due on each loan at the beginning of the summary period;

(b) the interest rate charged on each loan;

(c) the amount of payments made on and their application to each loan during the summary period and an explanation of the basis for the application of such payments;

(d) the amount of principal and interest due on each loan at the end of the summary period;

(e) the total amount of unpaid principal and interest on all loans outstanding at the end of the summary period;

(f) any delinquency in the repayment of any loan;

(g) a schedule of the amount and date of payments due on each loan; and

(h) the procedure the borrower can use to obtain more information concerning the status of each loan.

Authorization of loan amounts

Section 195(a) amends subsection (b) of section 346 of the Consolidated Farm and Rural Development Act to provide the following authorizations of loan amounts:

(a) For fiscal years 1986, 1987, and 1988, real estate and operating loans may be insured, made to be sold and insured, or guaranteed under subtitles A and B of the Consolidated Farm and Rural Development Act from the Agricultural Credit Insurance Fund in an amount equal to $4,000,000,000, of which not less than $520,000,000 must be for farm ownership loans.

(1) The $4,000,000,000 in authorized lending will be apportioned as follows:

(A) For fiscal year 1986—

(i) $2,000,000,000 for insured loans, of which not less than $260,000,000 must be for farm ownership loans, and

(ii) $2,000,000,000 for guaranteed loans, of which not less than $260,000,000 must be for guarantees of farm ownership loans.

(B) For fiscal year 1987—

(i) $1,500,000,000 for insured loans, of which not less than $195,000,000 must be for farm ownership loans, and

(ii) $2,500,000,000 for guaranteed loans, of which not less than $325,000,000 must be for guarantees of farm ownership loans.

(C) For fiscal year 1988—

(i) $1,000,000,000 for insured loans of which not less than $130,000,000 must be for farm ownership loans, and

(ii) $3,000,000,000 for guaranteed loans, of which not less than $390,000,000 must be for guarantees of farm ownership loans.

(2) For each of the fiscal years 1986, 1987, and 1988, the Secretary is authorized to transfer up to 25 percent of the amounts authorized for loan guarantees to the amounts authorized for insured loans.

(b) For fiscal years 1986, 1987, and 1988, emergency loans may be insured, made to be sold and insured, or guaranteed under subtitle C of the Consolidated Farm and Rural Development Act from the Agricultural Credit Insurance Fund in such amounts as are necessary to meet the needs resulting from natural disasters.

(c) For each of the fiscal years 1986, 1987, and 1988, loans for the production and distribution of ethanol in rural areas may be guaranteed under section 310B of the Consolidated Farm and Rural Development Act from the Rural Development Insurance Fund in the amount of $150,000,000.

(d) For fiscal year 1986, water and waste facility loans may be insured or made to be sold and insured under section 306 of the Consolidated Farm and Rural Development Act from the Rural Development Insurance Fund in the amount of $75,000,000.

Section 195(b) amends section 346(e)(1) of the Act to raise from 20 to 25 percent the minimum percentage of aggregate farm ownership and operating loan amounts that must be made available for use by low-income, limited resource borrowers. The amendment also makes these changes in section 346(e)(1) permanent.

Section 195(c) makes a technical amendment to the Act.

Interest rate reduction program

Effective through September 30, 1988, section 196 amends the Consolidated Farm and Rural Development Act by adding a new section 349 to the Act. Section 349 provides that the Secretary must establish and carry out an interest rate reduction program for loans guaranteed under the Act. Under this program—

(a) The Secretary must enter into a contract with and make payments to a legally organized lending institution to reduce, during the term of the contract, the interest rate paid by a borrower on a guaranteed loan made by the institution. The Secretary must enter into the contract if—

(1) the borrower—

(A) is not able to obtain sufficient credit elsewhere to finance the borrower's actual credit needs at reasonable rates and terms, taking into consideration private and cooperative rates and terms for loans for a similar purpose and period of time in the community in or near which the borrower resides;

(B) is otherwise unable to make payment on the guaranteed loan in a timely manner;

(C) has a total estimated yearly cash income that equals or exceeds the total estimated yearly expenses which the borrower will incur (including all farm and nonfarm expenses); and

(2) the lender reduces, during the term of his contract with the Secretary, the annual rate of interest payable by the borrower on the guaranteed loan by a minimum percentage specified by the Secretary in the contract.

(b) In return for the contract entered into by the lender for the reduction of the interest rate on the borrower's loan, the Secretary must make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the annual rate of interest payable on the loan, except that the payments made by the Secretary may not exceed the cost of reducing the annual rate of interest by more than 2 percent.

(c) The term of the contract between the Secretary and the lending institution entered into for the purpose of reducing the rate of interest on a guaranteed loan may not exceed the outstanding term of the loan, or 3 years, whichever is less. In doing so, however, the total amount of funds used by the Secretary may not exceed $490,000,000.

(d) The Secretary may use the Agricultural Credit Insurance fund for purposes of carrying out this program. In doing so, however, the total amount of funds used by the Secretary may not exceed $490,000,000.

Study of farm and home plan

Section 197 provides that the Secretary must conduct a study of the appropriateness of the Farm and Home Plan form used by the Farmers Home Administration in connection with loans made or insured under the Consolidated Farm and Rural Development Act. If, after completing the study, the Secretary finds that the plan is not appropriate, the Secretary must—

(a) evaluate other alternative farm plan forms for use by the Farmers Home Administration;

(b) evaluate the need to develop a new farm plan form for use by the Farmers Home Administration; and

(c) specify the steps that should be taken to improve or replace the current form.

The Secretary must also report the results of the study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 120 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Study of Farm Credit System

Section 198 provides that the Governor of the Farm Credit Administration must conduct a study of the need for the establishment of a fund to be used—

(a) to insure Farm Credit System institutions against losses on loans made by those institutions; or

(b) for any other purpose that would—

(1) assist in stabilizing the financial condition of the Farm Credit System; and

(2) protect the capital that borrowers of Farm Credit System loans have invested in the System.

In conducting this study, the Governor must—

(a) consider the advisability of using the revolving funds provided for under section 4.1 of the Farm Credit Act of 1971 to provide initial capital for the fund; and

(b) estimate the amount and level of future assessments to be levied on institutions of the Farm Credit System that would be necessary to ensure the long-term liquidity of the fund.

The Governor of the Farm Credit Administration must submit a report containing the results of the study to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate not later than 180 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

CBO COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee has estimated the cost of carrying out the provisions of this legislation for fiscal years 1986 through 1988. The Congressional Budget Office provided cost estimates that were the basis for the Committee's projections.

Because the savings achieved by this legislation are required under the provisions of the First Concurrent Resolution on the budget for fiscal year 1986 (Report No. 99-249), the Committee chose to adopt the cost estimates provided by the Congressional Budget Office.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate:

U.S. CONGRESS,
CONGRESSION BUDGET OFFICE,
Washington, DC, September 27, 1985.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the request of your staff, the Congressional Budget Office has estimated outlay savings from the budget resolution baseline for fiscal years 1986 through 1988 of selected provisions of S. 616, the Agriculture, Food, Trade, and Conservation Act of 1985, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, September 19, 1985. The provisions specified by the Committee staff are those included in Title I, Subtitle A, Section 105—Export Sales of Dairy Products; Title XIV, Subtitle A—Food Stamps; and Title XVII—Agricultural Credit. We have slightly revised the estimate previously transmitted and the table below supersedes the previous one.

Estimated budget impact of selected provisions of S. 616, The Agriculture, Food, Trade, and Conservation Act of 1985:

RELATIVE TO THE BUDGET RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986-88
Export sales of dairy products (function 350)	−107	−110	−114	−331
Agricultural credit (functions 350 and 450)[a]	−1,998	−2,259	−2,910	−7,167
Food Stamps (function 600)	−117	−192	−277	−586
Subtotal—Functions 350, 450 and 600	−2,222	−2,561	−3,301	−8,084
Interest received by the Treasury from FmHA and the FFB[b]		245	533	778
Total	−2,222	−2,316	−2,768	−7,306

[a] Includes savings from not authorizing water and waste facility loans beyond fiscal year 1986.
[b] Reductions in agricultural credit programs result in reduced borrowing from the Treasury by the Farmers Home Administration (FmHA) and the Federal Financing Bank (FFB). The savings in credit programs shown above therefore include reductions in interest payments to the Treasury, which result in lower receipts (i.e., increased outlays) in function 900.

We would be pleased to answer any questions that you might have about this estimate. Please call me if you need additional information, or your staff can contact Roger Hitchner (226-2860).

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with subsection 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact associated with the implementation of the bill, as reported.

Subtitle A—Agricultural Exports

Section 101 directs the Secretary to sell for export not less than 150,000 metric tons of CCC-owned dairy products for each of the fiscal years 1986 through 1988. These sales are to be made through existing authorities; they would represent a modest expansion of Department activities in this area. This provision would have no regulatory impact.

Subtitle B—Food Stamp Program

Individuals and businesses affected; paperwork burden.

The Committee's recommendations would impact on those individuals who wish to receive food stamp benefits, program administrators, those firms that choose to accept food stamps for food purchases, and financial institutions that redeem food stamps for those retailers. The Committee's intent is to improve program administration and strengthen work requirements. While the bill would reduce program costs to some extent, these reductions arise from attempts to improve program administration by making treatment of various forms of income and deductions more logical and equitable and from strengthening the error rate liability system.

Generally, the Committee is not significantly changing basic program eligibility rules. The eligibility and benefit levels of most applicant and participant households would not be affected by the Committee's bill.

Modifications were made by the Committee which will result in a more equitable treatment of recipients of certain kinds of public assistance. First, households containing an individual receiving payments under the Job Training Partnership Act (JTPA) would have those payments, which are now excluded as income, counted as income as is done in the Aid to Families with Dependent Children (AFDC) program, and would thus receive lower food stamp benefits than if current law were retained. Second, households receiving any form of assistance under the Low Income Home Energy Assistance Act (LIHEAA) would not have any energy costs met by LIHEAA payments counted as a shelter expense when the household's excess shelter deduction is computed. This treatment would result in a benefit adjustment being made for any household receiving LIHEAA cash assistance and for households receiving LIHEAA aid through payments to energy suppliers in States affected by recent court rulings requiring that costs met by such payments be considered deductible expenses. (The change would not affect households not receiving any shelter deduction now or households already receiving the maximum shelter deduction although their shelter costs exceed that level.) Third, households would not receive increased food stamp benefits, as they do now, due to decreased payments under the AFDC or Supplemental Security Income (SSI) programs because of those programs' treatment of one-time lump sum payments.

The Committee's bill would address the issue of households containing an ineligible alien by requiring that all income of the alien be considered available to the household, rather than subtracting a pro rata share of the income.

The Committee's bill would result in slightly increased food stamp benefits for households in States that choose to disregard child support payments also excluded in the AFDC program. This change would impact those State agencies that choose this option by requiring them to track and pay for any increased benefit costs due to the exclusion of these child support payments. The bill would also broaden the definition of disabled persons and would thus raise benefits for households containing persons who meet the new criteria of disability, due to special benefit calculation procedures applied to such households.

The Committee's bill would increase the actual value of food stamps available to participants for purchasing food in those States which now impose some sales tax on food by prohibiting the charging of sales tax on food purchases made with food stamps.

The Committee's bill would allow program access for several categories of households by (1) allowing participation of persons in residential drug addict and alcoholic treatment programs run by certain community mental health centers; (2) requiring State agencies to have a method for certifying households without fixed residences or mailing addresses; and (3) incorporating into statute the current regulatory requirements that eligibility shall be based on the anticipated income, rather than past income, in cases of self-employed households which have their income averaged over a year and which have experienced significant increases or decreases in business.

The Committee's bill has a new procedural requirement that will strengthen program accountability by requiring all adult household members verify under penalty of perjury the truth of information on applications (except only one adult is required to sign those processed under expedited service provisions) and other reports submitted to the State agency. The bill also holds each adult member jointly and severably liable for overissued coupons. While requiring signatures from all adult members is an additional procedural requirement placed on households, it is expected to further tighten the program against abuse and improve State agencies' ability to collect claims for overissued food stamps.

The Committee is strengthening the program's work requirements by requiring all State agencies to implement work programs, starting in Fiscal Year 1986, and sets performance standards for States for participants who are subject to work requirements and have participated for 30 consecutive days, starting in Fiscal Year 1987. Most State agencies currently operate job search programs for some of their work registrants. This requirement would impact on State agencies, all of which would have to design and implement work programs that may include job search training, work experience and training, workfare, or other components approved by the Secretary, as well as on work-eligible participants in every State who would be required to comply with work assignments or subject their households to disqualification for two months. (If the noncompliant member joins a new household, the bill would make the new household ineligible for the remainder of the disqualification period and remove the disqualification from the previous household.) Households would be required to participate for the number of hours derived by dividing the household's allotment by the higher of the State or Federal minimum wage, up to maximum of 120 hours per month. State agencies would be required to reimburse households for the actual costs of participating up to $25 per month.

The bill expands the categories of people subject to work requirements by lowering the minimum age for participation from 18 to 16 except for 16 and 17-year-olds who do not head households or who attend school full-time. The bill also gives State agencies the option of requiring caretakers of children from 3 to 6 years old to comply with work requirements if adequate child care is available. It also removes the exemption in the legislation authorizing workfare for the second parent in a household where one parent or caretaker is working or subject to work requirements. These changes would slightly increase the number of program participants subject to work requirements and would improve consistency between requirements in this program and the AFDC program.

The Federal government would disburse $40 million in Fiscal Year 1986, $50 million in Fiscal Year 1987, $60 million in Fiscal Year 1988, and $75 million in fiscal years thereafter without requiring States to match these funds and would pay for half of costs above these levels. In general, the Committee's bill is intended to result in stronger work programs that are more likely to assist participants to become self-sufficient. The impact of the programs will depend on the categories of work registrants each State selects to serve, the types of services the State provides, and the nature of the State's current work registrant/job search program.

In addition to the provisions already discussed according to their impact on participants, which also entail a burden upon State agencies as program administrators, other provisions impact primarily upon State agencies. Many of these have been adopted in order to reduce fraud, waste, or abuse on the part of participants or State agencies themselves through more effective program administration.

The Secretary would be required to direct State agencies to use alternative means of coupon issuance when it is determined in consultation with the Department's Inspector General that an alternative means would improve program integrity. Currently, the Secretary is authorized to require use of alternative issuance systems; however, this authority has not been exercised. Examples of alternative systems would be those using a central computer hook-up with authorized retail firms, such as the electronic benefit transfer project conducted in Reading, Pennsylvania, or reusable credit card type documents. The installation of such systems would increase the administrative burden of State agencies; however complete implementation should mean a reduction in the issuance workload burden as well as decreased fraud and abuse.

State agencies would be required to verify household size whenever an application contains a number of persons in a household which is questionable. This provision enacts current regulatory policy so should have no effect on verification activity. Also, the State agency would have sole responsibility for determing which eligibility factors other than those required by the Secretary (i.e., gross included income, alien status, utility expenses in certain situations, medical expenses, Social Security Numbers, residency, identity, and questionable information that affects eligibility or benefits amounts) will be verified. This part of the provision enhances a State agency's ability to reduce fraud, waste, and abuse through its more detailed knowledge of the caseload.

State agencies would be required to mandate photographic identification cards whenever the Secretary and the Department's Inspector General determine that their use would be cost effective. Currently, State agencies are required to mandate photo IDs only when their use has been determined to protect program integrity. The provision should result in an increase in mandatory photo ID use and diminished fraud and abuse.

State agencies would be required to establish fraud detection units in any project area with 5,000 or more participating households. It is estimated that there are about 250 such project areas. Although the provision represents a newly-mandated administrative activity, it is one that many State agencies are already performing. Some State agencies would be able to satisfy the requirement by designating existing personnel as fraud detection units but others would have to shift or hire personnel for this purpose.

The Committee's bill would establish liability against State agencies for interest on any food stamp claims assessed against them. The liability would begin at the point at which administrative review procedures, if any, were completed. The provision somewhat mitigates current Administration policy which institutes a claim for interest beginning 30 days after a claim is established. Interest would accumulate during any judicial review. The bill also revises the error rate liability calculation to tie it more directly to Federal dollars lost through errors rather than using a formula based on administrative costs. The effect of the provision would increase most State agencies' liability, especially where error rates exceed 7 percent.

State agencies would be required to use other means of collection (e.g., collection agents) to recover fraud-intentional misrepresentation claims if they cannot be collected through direct payments or allotment reductions, unless the State agency can demonstrate that it would not be cost effective to do so. Also, State agencies would be authorized to use allotment reduction to recover overissuances stemming from State agencies' errors. The new requirement and authority would add to State agencies' claims collection activity.

State agencies would have the option of recovering overissuances through offsets against unemployment compensation benefits. State agencies would have to either enter into an agreement with the unemployment compensation recipient or obtain a court order. The State agency would be compensated for this and other activities voluntarily entered into, including reimbursements to unemployment compensation authorities, through retention of 50 percent of any amounts recovered.

State agencies could be required by the Secretary to implement new certification procedures or modify existing procedures in project areas where the Department's Inspector General determines through the use of quality control information that error rates impair program integrity. This provision would represent an initial workload burden on State agencies that would moderate upon full implementation.

The Committee adopted several other proposals which impact upon State agencies by either simplifying current procedures or expanding State agencies' flexibility to make administrative decisions. For example, the monthly reporting/retrospective budgeting requirements would be revised to align them more closely to those of the AFDC program and to expand State agencies' options.

The bill also contains State agency options for categorical eligibility and standardized benefits. State agencies would have the option to consider households where all members receive AFDC, SSI, or benefits under titles I, X, XIV, or XVI of the Social Security Act to be categorically eligible for the Food Stamp Program to the extent such households' gross income does not exceed 130 percent of the poverty line. While this provision would reduce State agencies' certification burden somewhat, it would have no effect on benefit calculations. The option to standardize benefits to households with AFDC, SSI, or Medicaid recipients would represent a substantial early workload for State agencies who opt for it. Categories of households would have to be defined, average benefits calculated, evidence furnished to the Department that the average benefit for each household category is approximately equal to actual benefits, and households notified of changes. Upon completion of start-up procedures, however, the State agency's workload for these categories of households should be substantially reduced.

State agencies would be provided the flexibility of issuing food stamps over the entire month rather than, as now required by regulation, only during the first 15 days of the month. The only stipulation would be that no household receive its food stamps more than 40 days after its prior issuance due to staggered issuance procedures.

One provision would only affect the food stamp State agency in the Commonwealth of Puerto Rico. It would permit the Commonwealth to continue to provide food assistance to its citizens in the form of cash or to switch, at its option, to a noncash form of assistance. Also, the Commonwealth's annual plan of providing food assistance would be due April of each year rather than July 1.

In a final category of provisions which impact on State agencies is one designed to enhance program services to those people it is intended to assist. State agencies would be required to meet standards established by the Secretary for reviewing the hours certification and issuance offices are open and determining the adequacy of those hours for serving employed people. The provision does not represent a serious administrative task for State agencies but merely recognizes their responsibility to serve all eligible individuals.

The Committee's bill would have a general positive impact on participating retail stores by prohibiting financial institutions from charging them fees for food stamp redemptions. Most of the bill's provisions on retailers, however, are intended to enhance program integrity and would affect retailers who do not comply with program rules. The Committee's bill would improve the oversight of food stores participating in both this program and the special supplemental food program for women, infants and children (WIC) by permitting information collected from retailers for food stamp purposes to be shared with WIC State agencies. The bill would also disqualify from WIC participation retail stores disqualified from the Food Stamp Program. Additionally, the bill would make it more difficult for retail stores found to have committed program violations to delay or escape penalties. Retail stores (along with State agencies) would be required to meet a stricter standard to obtain judicial stays of administrative penalties and the owner of a disqualified store would have to pay a civil money penalty if the store is sold during the disqualification period. These provisions are intended to make punishment for violations swifter and more certain to be carried out and thus serve as a stronger deterrent against retailer abuses. Except for the provision allowing disclosure of information to WIC agencies, they will not affect the vast majority of stores which comply with program rules.

Privacy impact

The legislation is not expected to have a significant impact on personal privacy. Those provisions with some potential impact are designed to improve program integrity by strengthening compliance procedures relating to retail food stores (and wholesale food concerns) that participate in the Food Stamp Program. The increased use of Social Security numbers for participants in the commodity distribution program will establish equity for participants in that program with those in the food stamp and AFDC programs, where such requirements already exist.

Subtitle C—AGRICULTURAL CREDIT

This subtitle revises and reauthorizes the farm and rural development credit programs of the Farmers Home Administration (FmHA), and provides for amendments in the authorizing language for the Federal Crop Insurance Corporation (FCIC).

These provisions would not have an impact on the personal privacy of individuals, nor would additional paperwork or recordkeeping of USDA and rural residents be required. The specific provisions and their economic impact are considered below.

Credit

The Famers Home Administration (FmHA) was established in 1946. The agency administers loan and grant programs in three broad areas—farm credit, rural housing, and rural community development. This legislation addresses farm and community programs.

FmHA makes both direct loans and guaranteed loans made by other lenders. Most lending is limited to those who are unable to obtain adequate credit from other sources at reasonable rates.

Farm Loans

Farm ownership loans are made to improve or purchase farms, refinance debts, finance nonfarm enterprises, or make additions to farms. Loans are made at the government cost of money (currently, 10.7 percent), except for loans to limited resource borrowers at rates half the cost of funds (5.25 percent).

Operation loans provide short-to-intermediate term production or chattel credit. Loan terms include a repayment period of up to 7 years, renewable to 15 years and extended if necessary for up to 15 additional years. Loans are made at the government cost of short-term funds (10.25 percent), except for limited resource rates at rates three percentage points less than regular rates (7.25 percent).

Emergency loans are made to farmers in disaster areas designated by the Secretary to restore production. Farmers unable to obtain credit elsewhere are eligible for loans up to $500,000 per disaster at an interest rate of 5 percent for the first $100,000 and 8 percent up to the $500,000 limit. Credit worthy borrowers can obtain emergency loans at market interest rates.

The provisions in this subtitle relating to farm credit establish lending limits for these programs. Currently, the farm credit programs of FmHA serve about 270,000 borrowers with a direct loan portfolio totaling about $25 billion. In fiscal year 1985 the agency made about 110 thousand farm loans for a total of about $5.8 billion.

Revisions in farm credit authority of FmHA (1) affect emergency lending, (2) affect loan servicing procedures, (3) provide for an interest buy-down program, and (4) reauthorize existing direct and guaranteed farm lending programs as follows:

(1) Emergency loan authority is revised to prohibit loans for losses where crop insurance coverage is available. Since crop insur-

ance is available for most crops in virtually every farming county, the provision would reduce the current emergency loan level from about $500 million to less than $100 million annually. In effect, the authority to make emergency loans would be limited to losses of livestock and certain monor crops for which insurance programs have not yet been established.

The maximum loan per individual per disaster is also reduced from $500,000 to $200,000, and an over-all indebtedness ceiling for direct loans to an individual is set at $400,000. These provisions will contribute, along with the crop insurance provisions, to reductions in emergency loan levels, although the authority for emergency loans on an as-needed basis is maintained.

(2) Loan servicing procedures are revised in serveral ways. The legislation mandates studies of the FmHA loan application form and election of the county committees, and revises the way in which loan repayment can be accomplished with the proceeds derived from mineral rights. Minimal economic impact on the agency or the public is expected from these provisions.

Another provision would revise inventory management procedures of the agency to provide greater benefits to beginning and limited resource borrowers. Current farm property in inventory totals about two thousand farms, with about 500 thousand acres, worth about $500 million. The provision would give beginning and limited resource borrowers an advantage in acquiring property, but may also increase costs of inventory management. Other USDA program costs may also increase as new entrants into farming are encouraged.

The procedures guiding release of claims against borrowers is also revised to provide the Secretary with greater discretion in adjusting debt obligations of borrowers under stress. Report language refers to adjustments in debt settlement allowing the borrowers with negative net worth to keep some personal property, and also allows for the use of timber proceeds in repaying deferred delinquent debt.

Under current debt adjustment procedures over 100 thousand borrowers have benefitted annually from rescheduling and loan deferral provisions. The greater discretion provided the Secretary through these provisions to adjust debt obligations would assure borrowers ever more opportunity to continue farming or to make a transition to nonfarm employment.

Statutory language also directs the Secretary to continue making direct loans to both existing and new borrowers. While termination of direct loans to new borrowers would reduce loan level and administrative requirements, such a change is considered by the Committee at this time to be inconsistent with the role of FmHA in providing critical financial assistance to farmers under financial stress.

(3) Also authorized is an interest buy-down program. The one-year program allows reduction in interest rates for borrowers under stress with the government providing up to 2 point reductions if matched by lender reductions. $490 million would be provided over three years by FmHA, and $490 million by other lenders.

Recent USDA reports show cash shortfall averaging about $13,000 for farms with debt asset ratios between 40 and 70 percent and sales between $100,000 and $250,000. Interest costs total $29,000 on average debt of $272,000. A four percentage point reduction in the average interest rate would reduce the annual interest cost to about $18,000 and the annual cash shorfall to about $2,000. The average benefit is the difference in interest costs before and after the write-down: $11,000. At this rate, the federal and private contributions could benefit approximately 30,000 farm borrowers annually.

(4) Farm lending programs are reauthorzed with a combined direct program for real estate and operating loans for 1986, 1987, and 1988 of $2.0 billion, $1.5 billion, and $1.0 billion. The combined guaranteed real estate and operating loan program for the same period is authorized at $2.0 billion, $2.5 billion, and $3.0 billion.

The interest buy-down program is estimated at $163.3 million per year for three years, and emergency loans, appropriated on an as-needed basis, are estimated at $100 million per year due to language shifting assistance from lending to crop insurance programs. Three year outlay costs for the farm lending program are estimated by the Congressional Budget Office to total $6.2 billion.

Community programs

Depending on the income of the community, loans for water and waste disposal and for other community facilities are made by FmHA at interest rates of 5 percent where the median family income is below the OMB poverty line. Interest rates to communities with higher incomes pay up to market rates for comparable municipal tax-exempt obligations. Water and waste grants are made to reduce the household cost of repaying loans to an affordable level. Grants may not exceed 75 percent of project cost.

This subtitle changes the eligibility for the 5 percent loan to the higher of either the poverty line or 80 percent of nonmetropolitan median income, and sets a ceiling of 7 percent on loans not meeting the 5 percent eligibility standard where median comunity income is less than 100 percent of the non-metro median income.

Community program loans and grants obligated in fiscal year 1985 total about $500 million. Currently, about 10 percent of water and waste loans are obligated at 5 percent rates. The change in eligibility should increase the number of loans obligated at the 5 percent rate, and will have a moderate impact on rural areas as the distribution of funds is affected. The 7 percent ceiling on interest rates compares to the current rate of about 9 percent and would have a moderate economic impact in reducing financing costs of affected communities.

The subtitle also directs the agency to give full consideration to recommendations of the applicant regarding project design and materials. No significant economic impact is expected from the directive.

TITLE XIV—FOOD STAMPS AND COMMODITY DISTRIBUTION

FOOD STAMP ACT OF 1977

SHORT TITLE

SECTION 1. This Act may be cited as the "Food Stamp Act of 1977".

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act, the term:

* * * * * * *

(f) "Drug addiction or alcoholic treatment and rehabilitation program" means any such program conducted by a private nonprofit organization or institution [which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Public Law 91–616 (Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970) and Public Law 92–255 (Drug Abuse Office and Treatment Act of 1972) as providing], *or a publicly operated community health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide* treatment that can lead to the rehabilitation of drug addicts or alcoholics.

* * * * * * *

(i) "Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, or (2) a group of individuals who live together and customarily purchase food and prepared meals together for home consumption; except that parents and children, or silblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents or siblings is an elderly or disabled member. Notwithstanding clause (1) of the preceding sentence, an individual who lives with others, who is sixty years of age or older, and who is unable to purchase food and prepare meals because such individual suffers, as certified by a licensed physician, from a disability which would be considered a permanent disability under section 221(i) of the Social Security Act (42 U.S.C. 421(i)) or from a severe, permanent disabling physical or mental infirmity which is not symptomatic of a disease shall be considered, together with any of the others who is the spouse of such individual, an individual household, without regard to the purchase of food and preparation of meals, if the income (as determined under section 5(d)) of the others, excluding the spouse, does not exceed the poverty line, as described in section 5(c)(1), by more than 65 per centum. In no event shall any individual or group of individuals constitute a household if they reside in an institution or boarding house, or else live with others and pay compensation to the others for meals. For the purposes of this subsection, residents of federally subsidized housing for the elderly, disabled or blind recipients of benefits under title II or title XVI of the Social Security Act who are residents in a public or private nonprofit group living arrangement that serves no more than sixteen residents and is certified by the appropriate State agency or agencies under regulations issued under section 1616(e) of the Social Security Act, temporary residents of public or private nonprofit shelters for battered women and children, and narcotics addicts or alcoholics who live under the supervision of a private nonprofit institution, *or a publicly operated community health center,* for the purpose of regular participation in a drug or alcoholic treatment program shall not be considered residents of institutions and shall be considered individual households.

* * * * * * *

(o) "Thrifty food plan" means the diet required to feed a family of four persons consisting of a man and a woman twenty through [fifty-four] *fifty,* a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall (1) make household-size adjustments (based on the unrounded cost of such diet) taking into account economies of scale, (2) make cost adjustments in the thrifty food plan of Hawaii and the urban and rural parts of Alaska to reflect the cost of food in Hawaii and urban and rural Alaska, (3) make cost adjustments in the separate thrifty food plans for Guam, and the Virgin Islands of the United States to reflect the cost of food in those States, but not to exceed the cost of food in the fifty States and the District of Columbia, (4) through January 1, 1980, adjust the cost of such diet every January 1 and July 1 to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the six months ending the preceding September 30 and March 31, respectively, (5) on January 1, 1981, adjust the cost of such diet to the nearest dollar increment to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding September 30, (6) on October 1, 1982, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twenty-one months ending June 30, 1982, reduce the cost of such diet by 1 per centum, and round the result to the nearest lower dollar increment for each household size, (7) on October 1, 1983, and October 1, 1984, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30, reduce the cost of such diet by 1 per centum, and round the result to the nearest lower dollar increment for each household size, and (8) on October 1, 1985, and each October 1 thereafter, adjust the cost of such diet to reflect changes in the cost of the thrifty food plan for the twelve months ending the preceding June 30 and round the result to the nearest lower dollar increment for each household size: *Provided,* that the periods upon which such adjustments are based shall be subject to revision by Act of Congress.

* * * * * * *

(r) "Elderly or disabled member" means a member of a household who—

(1) is sixty years of age or older; *or*

[(2) receives supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

[(3) receives disability or blindness payments under title I, II, X, XIV, or XVI of the Social Security Act (42 U.S.C. 301 et seq.):

[(4) is a veteran who—

[(A) has a service-connected disability which is rated as total under title 38, United States Code; or

[(B) is considered in need of regular aid and attendance or permanently housebound under such title;

[(5) is a surviving spouse of a veteran and—

[(A) is considered in need of regular aid and attendance or permanently housebound under title 38, United States Code; or

[(B) is entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i)); or

[(6) is a child of a veteran and—

[(A) is considered permanently incapable of self-support under section 414 of title 38, United States Code; or

[(B) is entitled to compensation for a service-connected death or pension benefits for a non-service connected death under title 38, United States Code, and has a disability considered permanent under section 221(i) of the Social Security Act (42 U.S.C. 421(i)).]

(2) receives benefits, assistance, or payments under a Federal law based on a determination of blindness or disability, or for whom such determination is made, under criteria that the Secretary determines are the same as, or provide for substantially the same degree of disability or blindness as, the criteria for disability or blindness established under sections 216(i), 221(i), and 223(d) of the Social Security Act (42 U.S.C. 416(i), 421(i), and 423(d)).

SEC. 4. (a) * * *

(b) In jurisdictions where the food stamp program is in operation, there shall be no distribution of federally donated foods to households under the authority of any law, except that distribution may be made (1) on a temporary basis under programs authorized by law to meet disaster relief needs, or (2) for the purpose of the commodity supplemental food program. Distribution of commodities, with or without the food stamp program, shall also be made whenever a request for concurrent or separate food program operations, respectively, is made by a tribal organization. In the event of distribution on all or part of an Indian reservation, the appropriate agency of the State government in the area involved shall be responsible for such distribution, except that, if the Secretary determines that the tribal organization is capable of effectively and efficiently administering such distribution, then such tribal organizations shall administer such distribution: *Provided,* That the Secretary shall not approve any plan for such distribution which permits any households on any Indian reservation to participate simultaneously in the food stamp program and the distribution of federally donated foods. *For purposes of preventing dual participation in the food stamp program and the commodity distribution program established under section 4(a) of the Agriculture and Consumer Protection Act (7 U.S.C. 612c note), the Secretary and State agencies may match the social security account numbers of participants in the food stamp program against the account numbers of applicants for assistance under the commodity distribution program.* The Secretary is authorized to pay such amounts for administrative costs of such distribution on Indian reservations as the Secretary finds necessary for effective administration of such distribution by a State agency or tribal organization.

* * * * * * *

ELIGIBLE HOUSEHOLDS

SEC. 5. (a) * * *

(d) Household income for purposes of the food stamp program shall include all income from whatever source excluding only (1) any gain or benefit which is not in the form of money payable directly to a household, *except as provided in subsection (k),* (2) any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter, subject to modification by the Secretary in light of section 5(f) of this Act, (3) all educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of higher education or school for the handicapped, (4) all loans other than educational loans on which repayment is deferred, (5) reimbursements which do not exceed expenses actually incurred and which do not represent a gain or benefit to the household: *Provided,* That no portion of benefits provided under title IV–A of the Social Security Act, to the extent it is attributable to an adjustment for work-related or child care expenses, *and no portion of any educational loans on whch payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like,* shall be considered such reimbursement, (6) moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member, (7) income earned by a child who is a member of the household, who is a student, and who has not attained his eighteenth birthday, (8) moneys received in the form of nonrecurring lump-sum payments, including, but not limited to, income tax refunds, rebates, or credits, retroactive lump-sum social security or railroad retirement pension payments and retroactive lump-sum insurance settlements, *except as provided in subsection (1): Provided,* That such payments shall be counted as resources, unless specifically excluded by other laws, (9) the cost of producing self-employed income, (10) any income that any other Federal law specifically excludes from consideration as income for purposes of determining eligibility for the food stamp program, (11) any payments or allowances made under (A) any Federal law for the purpose of providing energy assistance, or (B) any State or local laws for the purpose of providing energy assistance, designated by the State or local legislative body authorizing such payments or allowances as energy assistance, and determined by the Secretary to be calculated as if provided by the State or local government involved on a seasonal basis for an aggregate period not to exceed six months in any year even if such payments or allowances (including tax credits) are not provided on a seasonal basis because it would be administratively infeasible or impracticable to do so, [and] (12) through September 30 of any fiscal year, any increase in income attributable to a cost-of-living adjustment made on or after July 1 of such fiscal year under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq.), section 3(a)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231b(a)(1)), or section 3112 of title 38, United States Code, if the household was certified as eligible to participate in the food stamp program or received an allotment in the month immediately preceding the first month in which the adjustment was effective, *and (13) at the option of a State agency and subject to subsection (m), child support payments that are excluded under section 402(a)(8)(A)(vi) of the Social Security act (42 U.S.C. 602(a)(8)(A)(vi)).*

(e) In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household, except that households in Alaska, Hawaii, Guam, and the Virgin Islands of the United States shall be allowed a standard deduction of $145, $120, $170, and $75, respectively. Such standard deductions shall be adjusted (1) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food and [the homeownership component of shelter costs.] *the homeowners' cost, maintenance, and repair component of shelter costs,* as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (2) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, and (3) on October 1, 1985, and each October 1 thereafter, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30. All households with earned income shall be allowed an additional deduction of 18 per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses. Households, other than those households containing an elderly or disabled member, shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to (1) a dependent care deduction, the maximum allowable level of which shall be the same as that for the excess shelter expense deduction contained in clause (2) of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of dependent's age, when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment, or (2) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter, *excluding expenses of the household paid (directly or indirectly) under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.),* exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed: *Provided,* That the amount of such excess shelter expense deduction shall not exceed $115 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $200, $165, 140, and $85, respectively, adjusted (i) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the shelter (exclusive of [homeownership costs], *the homeowners' cost, maintenance, and repair component of shelter costs*), fuel, and utilities components of housing costs in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (ii) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, and (iii) on October 1, 1985, and each October 1 thereafter, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30, or (3) a deduction combining the dependent care and excess shelter expense deductions under clauses (1) and (2) of this subsection, the maximum allowable level of which shall not exceed the maximum allowable deduction under clause (2) of this subsection, on January 1, 1981, adjusted to the nearest $5 increment to reflect such changes for the eighteen-month period ending the preceding September 30, and on January 1, 1982, adjusted to the nearest $5 to reflect such changes for the twelve months ending the preceding September 30 and the subsequent three months ending December 31 as projected by the Secretary in light of the best available data, and on every January 1 thereafter, adjusted annually to the nearest $5 increment to reflect such changes for the nine months ending the preceding September 30 and the subsequent three months ending December 31 projected by the Secretary in light of the best available data. In computing the excess shelter expense deduction under clause (2) of the preceding sentence, 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 which does not fluctuate within a year to reflect seasonal variations. *If a State agency elects to use a standard utility allowance, the agency shall use a separate allowance for households receiving assistance under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) and a separate allowance for other households or a combined allowance for all such households. In the case of a standard utility allowance that applies to households receiving such assistance, such allowance shall reflect utility expenses in excess of such expenses paid, directly or indirectly, under such Act.* An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense, as the case may be, or does incur a heating or cooling expense but is located in a public housing unit which has central utility meters and charges household, with regard to such expense, only for excess utility costs. No such allowance may be used for a household that shares such 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. Household containing an elderly or disabled member shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to—

(A) an excess medical expense deduction for that portion of the actual cost of allowable medical expenses, incurred by elderly or disabled members, exclusive of special diets, that exceed $35 a month;

(B) a dependent care deduction, the maximum allowable level of which shall be the same as that for the excess shelter expense deduction contained in clause (2) of the fourth sentence of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education that is preparatory for employment; and

(C) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter *, excluding expenses of the household paid (directly or indirectly) under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.),* exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed.

(f)(1)(A) Household income for those households that, by contract for other than an hourly or piecework basis or by self-employment, derive their annual income in a period of time shorter than one year shall be calculated by averaging such income over a twelve-month period.

(B) If the average amount of self-employment income of a household does not reflect accurately the actual monthly circumstances of such household because such household experienced a substantial increase or decrease in business earnings, the self-employment income of such household shall be calculated on the basis of the anticipated earnings of such household.

[(B)]*(C)* Household income for those households that receive nonexcluded income of the type described in subsection (d)(3) of this section shall be calculated by averaging such income over the period for which it is received.

(2) [(A) Household income for migrant farmworker households shall be calculated on a prospective basis, as provided in paragraph (3)(A).]*(A) Household income shall be calculated on a prospective basis, as provided in paragraph (3)(A), in the case of—*

(i) migrant farmworker households; and

(ii) households—

(I) that have no earned income; and

(II) in which all adult members are elderly or disabled members.

(B) Household income for households that (i) are permitted *under the first sentence of section 6(c)(1)* to report household circumstances at specified intervals less frequent than monthly, [under section 6(c)(1) of this Act, (ii) have no earned income and in which all adult members are elderly or disabled members,] or [(iii)] *(ii)* are any other households, [other than a migrant household], *other than a household described in subparagraph (A)* not required *under the first sentence of section 6(c)(1)* to report monthly or at less frequent intervals [under section 6(c)(1) of this Act], may, with the approval of the Secretary, be calculated by a State agency on a prospective basis, as provided in paragraph (3)(A) of this subsection.

[(C) Household income for all other households shall be calculated on a retrospective basis as provided in paragraph (3)(B).]

(C) Except as provided in subparagraphs (A) and (B), household income for households that have earned income, and for households that include any member who has recent work history, shall be calculated on a retrospective basis, as provided in paragraph (3)(B).

(D) Household income for all other households may be calculated, at the option of the State agency, on a prospective basis as provided in paragraph (3)(A) or on a retrospective basis as provided in paragraph (3)(B).

* * * * * * *

(g) The Secretary shall prescribe the types and allowable amounts of financial resources (liquid and nonliquid assets) and eligible household may own, and shall, in so doing, assure that a household otherwise eligible to participate in the food stamp program will not be eligible to participate if its resources exceed $1,500, or, in the case of a household consisting of two or more persons, one of whom is age 60 or over, if its resources exceed $3,000. 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 shall, in addition, include in financial resources any boats, snowmobiles, and airplanes used for recreational purposes, any vacation homes, any mobile homes used primarily for vacation purposes, any licensed vehicle (other than one used to produce earned income or that is necessary for transportiaton of a physically disabled household member) used for household transportation or used to obtain or continue employment to the extent that the fair market value of any such vehicle exceeds $4,500, and, regardless of whether there is a penalty for early withdrawal, any savings or retirement accounts (including individual accounts). *The Secretary shall exclude from financial resources the value of a burial plot for each member of a household.*

[(j) Notwithstanding subsections (a) through (i), a State agency may consider a household in which all members of the household receive benefits under a State plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and whose income does not exceed the applicable income standard of eligibility described in subsection (c)(2) to have satisfied the resource limitations prescribed under subsection (g).]

(j) Notwithstanding subsections (a) through (i), a State agency may consider a household to have satisfied the income and resource limitations for participation in the food stamp program prescribed under this section if—

(1) each member of the household receives benefits under—

(A) a state plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C 601 et seq.);

(B) the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.); or

(C) a State plan approved under title I, X, XIV, or XVI of such act (42 U.S.C. 301 et seq.); and

(2) the income of the household does not exceed the applicable income standards of eligibility established under subsection (c)(2).

(k)(1) For purposes of subsection (d)(1), except as provided in paragraph (2), assistance provided to a third party on behalf of a household by a State or local government shall be considered money payable directly to the household if the assistance is provided in lieu of—

(A) a regular benefit payable to the household for living expenses under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(B) a benefit payable to the household for living expenses under—

(i) a State or local general assistance program; or

(ii) other basic assistance program (as determined by the Secretary).

(2) Paragraph (1) shall not apply to—

(A) medical assistance;

(B) child care assistance;

(C) energy assistance;

(D) assistance provided by a State or local housing authority; or

(E) emergency and special assistance, to the extent excluded in regulations prescribed by the Secretary.

(3) For purposes of subsection (d)(1), educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like, provided to a third party on behalf of a household, shall be treated as money payable directly to the household.

(l) If the amount of benefits received by a household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) or the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.) is reduced or terminated as the result of the receipt of a nonrecurring lump-sum payment, the income of the household for purposes of the food stamp program shall include the amount of such benefits the household would have received but for such payment.

(m) If a State agency excludes payments from income for purposes of the food stamp program under subsection (d)(13), such State agency shall pay to the Federal Government, in a manner prescribed by the Secretary, the cost of any additional benefits provided to households in such State that arise under such program as the result of such exclusion.

(n) Notwithstanding section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)), allowances, earnings, and payments received by individuals as a result of participation in a program authorized under such Act shall be considered income for purposes of the food stamp program.

ELIGIBILITY DISQUALIFICATIONS

SEC. 6. (a) * * *

(c) No household shall be eligible to participate in the food stamp program if it refuses to cooperate in providing information to the State agency that is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility.

(1) State agencies shall require [certain categories of households, including all households with earned income, except migrant farmworker households, all households with potential earners, including individuals receiving unemployment compensation benefits and individuals required by section 6(d) of this Act to register for work, and all households required to file a similar report under title IV–A of the Social Security Act, but not including households that have no earned income and in which all adult members are elderly or disabled members,] *households with respect to which household income is required by section 5(f)(2)(C) to be determined on a retrospective basis* to file periodic reports of households circumstances in accordance with standards prescribed by the Secretary, except that a State agency may, with the prior approval of the Secretary, select categories of households which may report at specified less frequent intervals upon a showing by the State agency, which is satisfactory to the Secretary, that to require households in such categories to report monthly would result in unwarranted expenditures for administration of this subsection. The Secretary may permit State agencies to accept, as satisfying the requirement that households report at such specified less frequent intervals, (i) recertifications conducted in accordance with section 11(e)(4) of this Act, (ii) in-person interviews conducted during a certification period, (iii) written reports filed by households, or (iv) such other documentation or actions as the Secretary may prescribe. *State agencies may require households, other than households with respect to which household income is required by section 5(f)(2)(A) to be calculated on a prospective basis, to file periodic reports of household circumstances in accordance with standards prescribed under the preceding provisions of this paragraph by the Secretary.* Each household that is not required to file such periodic reports on a monthly basis shall be required to report or cause to be reported to the State agency changes in income or household circumstances which the Secretary deems necessary in order to assure accurate eligibility and benefit determinations.

(d)(1) Unless otherwise exempted by the provisions of paragraph (d)(2) of this subsection, no household shall be eligible for assistance under this Act if it includes a physically and mentally fit person between the ages of [eighteen] *sixteen* and sixty who (i) refuses at the time of application and once every twelve months thereafter to register for employment in a manner determined by the Secretary; [(ii) refuses to fulfill whatever reasonable reporting and inquiry about employment requirements as are prescribed by the Secretary, which may include a requirement that, at the option of the State agency, such reporting and inquiry commence at the time of application;] *(ii) refuses without good cause to participate in an employment and training program under paragraph (4), to the extent required under such paragraph, including such reasonable employment requirements as are prescribed by the State agency in accordance with such paragraph, except that the period of ineligibility under this clause shall be two months;* (iii) is head of the household and voluntarily quits any job without good cause: *Provided,* That the period of ineligibility shall be ninety days; or (iv) refuses without good cause (including the lack of adequate child care for children above the age of five and under the age of twelve) to accept an offer of employment at a wage not less than the higher of either the applicable State or Federal minimum wage, or 80 per centum of the wage that would have governed had the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), been applicable to the offer of employment, and at a site or plant not then subject to a strike or lockout. An employee of the Federal Government, or of a State or political subdivision of a State, who engaged in a strike against the Federal Government, a State or political subdivision of a State and is dismissed from his job because of his participation in the strike shall be considered to have voluntarily quit such job without good cause. *A period of ineligibility for a violation of a requirement of this paragraph shall terminate when the household member who committed the violation complies with such requirement. If the household member who committed the violation leaves the household during the period of ineligibility, such household shall no longer be subject to a sanction for such violation and, if the household is otherwise eligible, may resume participation in the program. Any other household that such person thereafter joins shall be ineligible for the balance of the period of ineligibility.*

(2) A person who otherwise would be required to comply with the requirements of paragraph (1) of this subsection shall be exempt from such requirements if he or she is (A) currently subject to and complying with a work registration requirement under title IV of the Social Security Act, as amended (42 U.S.C. 602), or the Federal-State unemployment compensation system, in which case, failure by such person to comply with any work requirement to which such person is subject that is comparable to a requirement of paragraph (1) shall be the same as failure to comply with that requirement of paragraph (1); (B) a parent or other member of a household with responsibility for the case of [a dependent child under age six or of an incapacitated person] *(i) a dependent child under age six, except that a State agency may require such parent or guardian to comply with such work requirements if the child is age three or over and adequate child care is available, or (ii) an incapacitated person;* (C) a bona fide student enrolled at least half time in any recognized school, training program, or insitution of higher education (except that any such person enrolled in an institution of higher education shall be ineligible to participate in the food stamp program unless

he or she meets the requirements of subsection (e) of this section); (D) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; [or] (E) employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(a)(1)), multipled by thirty hours*; or (F) a person between the ages of sixteen and eighteen who is not a head of a household or who is attending school on a full-time basis.*

* * * * * * *

(4)(A) A State agency shall implement an employment and training program designed by the State agency, pursuant to guidelines established by the Secretary, to assist members of households receiving benefits under this Act in gaining skills, training, or experience that will increase their ability to obtain regular employment.

(B) In the case of persons who participated in the food stamp program for a period of more than 30 consecutive days and who are subject to employment requirements under this section, a State agency shall place in such program not less than—

(i) by September 30, 1987, 25 percent of such persons;

(ii) by September 30, 1988, 35 percent of such persons; and

(iii) by September 30, 1990 and thereafter, 45 percent of such persons.

(C) For purposes of this Act, an "employment and training program" means a program that—

(i) contains one or more of the components described in subparagraph (D), (E), (F), or (G); and

(ii) meets criteria established by the Secretary.

(D) A job search training program described in this subparagraph shall include, to the extent determined appropriate by the State agency, reasonable job search training and support activities that may consist of jobs skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including education programs, determined by the State agency to expand the job search abilities or employability of persons subject to the program.

(E)(i) A program described in this subparagraph shall be designed—

(I) to improve the employability of household members through actual work experience or training, or both; and

(II) to enable individuals employed under such program to become employed promptly in regular public or private employment.

(ii) A State agency may use a facility of a State public employment office or agency operating a program under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) to find employment and training opportunities for household members under the program described in this subparagraph.

(iii) A State agency shall limit an employment or training experience assignment under such program to a project that serves a useful public purpose in a field such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, or day care.

(iv) To the extent possible, a State agency shall use the prior training, experience, and skills of a member participating in such program in making appropriate employment experience assignments under such program.

(v) In carrying out a program under this subparagraph, a State agency—

(I) shall not provide any work that has the effect of replacing the employment of an individual not participating to such program; and

(II) shall provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(F) A program described in this subparagraph shall include a workfare program operated under section 20.

(G) A program described in this subparagraph shall include other programs, projects, and experiments (such as a supported work program), approved by the Secretary, that are aimed at accomplishing the purposes of employment and training programs established under this paragraph.

(H) A State agency may provide that participation in an employment and training program established under this paragraph may supplement or supplant other requirements imposed on individuals subject to such program.

(I)(i) In carrying out a program under this paragraph, a State agency may exempt, in accordance with criteria established by the Secretary, a category of household members from a requirement imposed under such program if the State agency determines that the application of such requirement to such category is impracticable due to factors such as the availability of work opportunities and the cost effectiveness of employment requirement requirements.

(ii) In making a determination under clause (i), a State agency may designate a category consisting of all such household members residing in a specified area of a State.

(iii) A State agency shall also exempt from such requirement, or suspend the application of such requirement to, an individual household member not incuded in such category but with respect to whom the State agency determines that the application of such requirement is impracticable due to personal circumstances such as a lack of job readiness and employability, the remote location of work opportunities, and unavailability of dependent care.

(iv) An exemption of a category or member by a State agency under this subparagraph shall not affect the requirement of such agency to comply with subparagraph (B).

(J)(i) The total number of hours of work in an employment and training program carried out under this paragraph required of members of a household in any month collectively, together with the hours of work of such members in any program carried out under section 20, may not exceed a number of hours equal to the allotment of the household for such month divided by the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(ii) The total number of hours of participation in such program required of any member of a household, individually, in any month, together with any hours worked in any program carried out under

section 20 and any hours worked for compensation (in cash or in kind) in any other capacity, may not exceed 120 hours per month.

(K)(i) A State agency shall establish such requirements as the State agency determines to be appropriate for individuals required to participate in a program described in subparagraph (C) that the State agency has not selected as a result of such subparagraph. Such requirements may vary among participants.

(ii) A State agency may operate a program described in subparagraph (C) that the State agency has not selected as a result of such subparagraph.

(iii) A State agency shall permit individuals not required to participate in an employment and training program, or who have completed or are in the process of participating in such program, to participate in any program established under this paragraph.

(L) The Secretary shall issue guidelines that, to the maximum extent practicable, enable a State agency to design and operate an employment and training program under this paragraph that is compatible and consistent with similar programs operated within the State.

(M) A State agency shall reimburse participants for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in the program but not to exceed $25 in the aggregate per month.

(N)(i) The Secretary shall assure that State agencies comply with the requirements of this paragraph and section 11(e)(22).

(ii) If the Secretary determines that a State agency has failed to comply with such a requirement, the Secretary may withhold from such State in accordance with section 16 (a), (c), and (h) such funds as the Secretary determines to be appropriate, subject to administrative and judicial review under section 14.

(o) The Secretary shall ensure, to the extent practicable and in cooperation with the Secretary of Labor, that employment and training programs are provided to Indians residing on an Indian reservation in proportion to the number of persons described in subparagraph (B) that reside on such reservation.

*   *   *   *   *   *   *

(f) No individual who is a member of a household otherwise eligible to participate in the food stamp program under this section shall be eligible to participate in the food stamp program as a member of that or any other household unless he or she is (1) a resident of the United States and (2) either (A) a citizen or (B) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 8 U.S.C. 1101(a)(20)), excluding among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country; or (C) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, has continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and

Nationality Act (8 U.S.C. 1259); or (D) an alien who has qualified for conditional entry pursuant to [section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity] *sections 207 and 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158);* or (E) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)); or (F) an alien within the United States as to whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act (8 U.S.C. 1253(h)) [because of the judgment of the Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion]. No aliens other than the ones specifically described in clauses (B) through (F) of this subsection shall be eligible to participate in the food stamp program as a member of any household. The income [less a pro rata share] and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection shall be considered in determining the eligibility and the value of the allotment of the household of which such individual is a member.

ISSUANCE AND USE OF COUPONS

SEC. 7. (a) Coupons shall be printed under such arrangements and in such denominations as may be determined by the Secretary to be necessary, and shall be issued only to households which have been duly certified as eligible to participate in the food stamp program.

(b) Coupons issued to eligible households shall be used by them only to purchase food in retail food stores which have been approved for participation in the food stamp program at prices prevailing in [such stores], *except that the transaction of coupons may not be a taxable event: Provided,* That nothing in this Act shall be construed as authorizing the Secretary to specify the prices at which food may be sold by wholesale food concerns or retail food stores; *Provided further,* That eligible households using coupons to purchase food may receive cash in change therefor so long as the cash received does not equal or exceed the value of the lowest coupon denomination issued.

* * * * * * *

(g)(1) If the Secretary determines, in consultation with the Inspector General of the Department of Agriculutre, that it would improve the integrity of the food stamp program, the Secretary [may] *shall* require a State agency.

(A) to issue or deliver coupons using alternative methods, including an automtic data processing and information retrieval system; or

(B) to issue, in lieu of coupons, reusable documents to be used as part of an automatic data processing and information retrieval system and to be presented by, and returned to, recipients at retail food stores for the purpose of purchasing food.

(2) The cost of documents or systems that may be required pursuant to this subsection may not be imposed upon a retail food store participating in the food stamp program.[70] (7 U.S.C. 2016)

Sec. 8. (a) * * *

* * * * * * *

(e)(1) The Secretary may permit a State, on request, to operate a program under which a household shall be considered to have satisfied the application requirements prescribed under section 5(a) and the income and resource requirements prescribed under subsections (d) through (g) of section 5 if such household—

(A) includes one or more members who are recipients of—

(i) aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(ii) supplemental security income under title XVI of such Act (42 U.S.C. 1381 et seq.); or

(iii) medical assistance under title XIX of such Act (42 U.S.C. 1396 et seq.); and

(B) has an income that does not exceed the applicable income standard of eligibility described in section 5(c).

(2) Except as provided in paragraph (3), a State that elects to operate a program under this subsection shall base the value of an allotment provided to a household under subsection (a) on—

(A)(i) the size of the household; and

(ii)(I) benefits paid to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act; or

(II) the income standard of eligibility for medical assistance under title XIX of such Act; or

(B) at the option of the State, the standard of need for such size household under the programs referred to in clause (A)(ii).

(3) The Secretary shall adjust the value of allotments received by households under a program operated under this subsection to ensure that the average allotment by household size for households participating in such program and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment that would have been provided under this Act but for the operation of this subsection, for each category of households, respectively, in a State, for any period during which such program is in operation.

(4) The Secretary shall evaluate the impact of programs operated under this subsection on recipient households, administrative costs, and error rates.

(5) The administrative costs of such programs shall be shared in accordance with section 16.

(6) In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such programs, the processing of applications for, and determinations of eligibility to receive, food stamp benefits are simplified and are unified with the processing of applications for, and determinations of

eligibility to receive, benefits under such titles of the Social Security Act (42 U.S.C. 601 et seq.).

APPROVAL OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 9. (a) Regulations issued pursuant to this Act shall proivde for the submission of applications for approval by retail food stores and wholesale food concerns which desire to be authorized to accept and redeem coupons under the food stamp program and for the approval of those applicants whose participation will effectuate the purposes of the food stamp program. In determining the qualifications of applicants, there shall be considered among such other factors as may be appropriate, the following: (1) the nature and extent of the food business conducted by the applicant; (2) the volume of coupon business which may reasonably be expected to be conducted by the applicant food store or wholesale food concern; and (3) the business integrity and reputation of the applicant. Approval of an applicant shall be evidenced by the issuance to such applicant of a nontransferable certifcate of approval.

(b)*(1)* No wholesale food concern may be authorized to accept and redeem coupons unless the Secretary determines that its participation is required for the effective and efficient operation of the food stamp program. In addition, no firm may be authorized to accept and redeem coupons as both a retail food store and as a wholesale food concern at the same time.

(2)(A) If a buyer or transferee of a retail food store or wholesale food concern has actual or constructive notice of an outstanding civil penalty imposed under section 12(f) at the time of the sale or transfer of such store or concern, such store or concern may not accept or redeem coupons until the Secretary receives full payment of such penalty.

(B) To the extent permitted under law, the Secretary shall ensure that an encumbrance created under this paragraph is recorded in an appropriate State or local public office.

(C) The seller or transferor of such store or concern shall advise a buyer or transferee prior to the sale or transfer of the limitation imposed by this paragraph.

(D) The store or concern of the buyer or tansferee may not, as a result of the sale or transfer of such store or concern, be required to furnish a bond under section 12(d).

(c) Regulations issued pursuant to this Act shall require an applicant retail food store or wholesale food concern to submit information which will permit a determination to be made as to whether such applicant qualifies, or continues to qualify, for approval under the provisions of this Act or the regulations issued pursuant to this Act. Regulations issued pursuant to this Act shall provide for safeguards which limit the use or disclosure of information obtained under the authority granted by this subsection to purposes directly connected with administration and enforcement of the provisions of [this Act or the regulations isssued pursuant to this Act] *this Act or section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) or the regulations issued to carry out this Act or such section.* Such purposes shall not exclude the audit and examination of such information by the Comptroller General of the United States authorized by any other provisions of law.

REDEMPTION OF COUPONS

SEC. 10. Regulations issued pursuant to this Act shall provide for the redemption of coupons accepted by retail food stores through approved wholesale food concerns or through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, with the cooperation of the Treasury Department, except that retail food stores defined in section 3(k)(4) of this Act shall be authorized to redeem their members' food coupons prior to receipt by the members of the food so [purchased, and] *publicly operated community health centers or* private nonprofit organizations or institutions which serve meals to narcotics addicts or alcoholics in drug addiction or alcoholic treatment and rehabilitation programs, public and private nonprofit shelters that prepare and serve meals for battered women and children, and public or private nonprofit group living arrangements that serve meals to disabled or blind residents shall not be authorized to redeem coupons through financial institutions which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. *A financial institution may not impose on, or collect from, a retail food store a fee or other charge for the redemption of coupons that are submitted to the financial institution in order to defray the costs of complying with a requirement, other than a requirement relating to the cancellation of coupons, for the presentation of coupons by the financial institution to a Federal Reserve bank.*

SEC. 11. (a) * * *

* * * * * * *

(e) The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

(1) that the State agency shall (A) not conduct food stamp outreach activities with funds provided under this Act; and (B) use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English;

(2) that each household which contacts a food stamp office in person during office hours to make what may reasonably be interpreted as an oral or written request for food stamp assistance shall receive and shall be permitted to file, on the same day that such contact is first made, a simplified, uniform national application form for participation in the food stamp program designed by the Secretary, unless the Secretary approves a deviation from that form by a particular State agency because of the use by that agency of a dual public assistance food stamp application form pursuant to subsection (i) of this section, the requirements of an agency's computer system, or other exigencies as determined by the Secretary. Each application form shall contain a description in understandable terms

in prominent and boldface lettering of the appropriate civil and criminal provisions dealing with violations of this Act, including the penalties therefor, by members of an eligible household. Each application shall also contain in understandable terms and in prominent and boldface lettering a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subjected to criminal prosecution for knowingly providing incorrect information. The State agency shall comply with the standards established by the Secretary for telephone contact by, mail delivery of forms to and mail return of forms by, and subsequent home or telephone interview with, the elderly, physically or mentally handicapped, and persons otherwise unable, solely because of transportation difficulties and similar hardships, to appear in person at a certification office or through a representative pursuant to paragraph (7) of this subsection, so that such persons may have an adequate opportunity to be certified properly【;】. *The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses. In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households. Each adult member of a household that is applying for a coupon allotment (or in the case of a household described in paragraph (9)(A), an adult member of such household that is applying for a coupon allotment) or is required to file a periodic or other report under section 6(c)(1) shall be required to certify in writing, under penalty of perjury, the truth of the information contained in the application for the allotment or the report, respectively;*

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification 【only】 of income other than that determined to be excluded by section 5(d) of this Act (in part through the use of the information, if any, obtained under section 16(e) of this Act) *household size (in any case such size is questionable),* and such other eligibility factors as the Secretary determines to be necessary to implement sections 5 and 6 of this Act, although the State agency may verify prior to certification, whether questionable or not, the size of any applicant household and 【any factors of eligibility involving households that fall within the State agency's error-prone household profiles as developed by the State agency from the error rate reduction system conducted under section 16 of this Act and as approved by the Secretary】 *such other eligibility factors as the State agency determines are necessary,* so as to complete certification of and provide an allotment retroactive to the period of application to

any eligible household not later than thirty days following its filing of an application;

* * * * * * *

(16) that the State agency shall require each household certified as eligible to participate by methods other than the out-of-office methods specified in the [*last sentence*] *fourth sentence* of paragraph (2) of this subsection in those project areas or parts of project areas in which the Secretary, in consultation with the Department's Inspector General, finds that it would be useful to protect the program's integrity, *and would be cost effective,* to present a photographic identification card when using its authorization card in order to receive its coupons[;]. *The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;*

(17) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality act;

(18) at the option of the State agency, for the establishment and operation of an automatic data processing and information retrieval system that meets such conditions as the Secretary may prescribe and that is designed to provide efficient and effective administration of the food stamp program;

(19) that—

(A) in any case in which information is available from agencies administering State unemployment compensation laws under section 303(d) of the Social Security Act (42 U.S.C. 503(d)), the information shall be requested and utilized by the State agency to the extent permitted under such section; or

(B) in any case in which information is not available from agencies administering State unemployment compensation laws under section 303(d) of the Social Security Act—

(i) information available from the Social Security Administration under section 6103(l)(7) of the Internal Revenue Code of 1954 shall be requested and utilized by the State agency to the extent permitted under such section; or

(ii) similar information available from other sources shall be requested and utilized by the State agency to the extent approved by the Secretary and permitted by any law controlling access to the information;

(20) that, in project areas or parts thereof where authorization cards are used, and eligible households are required to present photographic identification cards in order to receive their coupons, the State agency shall include, in any agreement or contract with a coupon issuer, a provision that (A) the

issuer shall (i) require the presenter to furnish a photographic identification card at the time the authorization card is presented, and (ii) record on the authorization card the identification number shown on the photographic identification card, and (B) if the State agency determines that the authorization card has been stolen or otherwise was not received by a household certified as eligible, the issuer shall be liable to the State agency for the face value of any coupons issued in the transaction in which such card is used and the issuer fails to comply with the requirements of clause (A) of this paragraph; [and]

(21) that the State agency shall establish a system and take action on a periodic basis to verify and otherwise assure that an individual does not receive coupons in more than one jurisdiction within the State*; and*

(22) the plans of the State agency for carrying out employment and training programs under section 6(d)(4), including the nature and extent of such programs and the geographic areas and households to be covered under such programs;

(23) at the option of the State agency, for the staggered issuance of coupons to recipients throughout a month, except that not more than 40 days may elapse between the issuance of coupons to a household as a result of such staggered issuance;

(24) in a project area in which 5,000 or more households participate in the Food Stamp Program, for the establishment and operation of a unit for the detection of fraud in the Food Stamp Program, including the investigation, and assistance in the prosecution, of such fraud;

(25) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 13(c).

(i) Notwithstanding any other provision of law, the Secretary and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program under part A of title IV of the Social Security Act; (2) households in which all members are *applicants for or* recipients of supplemental security income shall be [permitted to apply for participation in the food stamp program by executing a simple application at the social security office] *informed of the availability of benefits under the food stamp program, and the availability of assistance in making a simple application to participate in such program, at a local office of the Social Security Administration* and be certified for eligibility utilizing information contained in files of the Social Security Administration; (3) households in which all members are included in a federally aided public assistance or State or local general assistance grant shall have their application for participation in the food stamp program contained in the public assistance or general assistance application form; and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance or general assistance, shall be certified for participation in the food stamp program based on information in the public assistance or general assistance case file to the extent that reasonably verified information is available in such case file. Each State agency shall implement clauses (1) and (2) and may implement clause (3) or (4), or both such clauses. *A State agency may not deny or terminate benefits to a household under the food stamp program solely on the basis of the denial or termination of benefits to such household under a State plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the supplemental security income program established under title XVI of such Act (42 U.S.C. 1381 et seq.), or a State plan approved under title I, X, XIV, or XVI of such Act (42 U.S.C. 301 et seq.) without a separate determination by such agency that such household has failed to satisfy the eligibility requirements for participation in the Food Stamp Program.*

[(j) The Secretary, in conjunction with the Secretary of Health and Human Services, is authorized to prescribe regulations permitting applicants for and recipients of social security benefits to apply for food stamps at social security offices and be certified for food stamp eligibility in such offices in order that the application and certification for food stamp assistance may be accomplished as efficiently and conveniently as possible.]

(j)(1) Under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services, an individual who is an applicant for or recipient of benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.) shall be informed of the availability of benefits under the Food Stamp Program, and the availability of a simple application to participate in such program, at a local office of the Social Security Administration.

(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, regarding services to be provided in such an office under this subsection and subsection (i), in a manner to ensure that—

(A) an applicant for or recipient of benefits under title II of the Social Security Act is adequately notified in such office that assistance may be available to such applicant or recipient under this Act;

(B) an application for assistance under this Act received from a household in which all members of such household are applicants for or recipients of assistance under the supplemental security income program established under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) be forwarded immediately after receipt to the State agency in an efficient and timely manner; and

(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to carry out this subsection and subsection (i).

CIVIL MONEY PENALTIES AND DISQUALIFICATION OF RETAIL FOOD STORES AND WHOLESALE FOOD CONCERNS

SEC. 12. (a) Any approved retail food store or wholesale food concern may be disqualified for a specified period of time from further participating in the food stamp program, or subjected to a civil money penalty of up to $10,000 for each violation if the Secretary determines that its disqualification would cause hardship to food stamp households, on a finding, made as specified in the regulations, that such store or concern has violated any of the provisions of this Act or the regulations issued pursuant to this Act.

(b) Disqualification under subsection (a) shall be—

(1) for a reasonable period of time, of no less than six months nor more than five years, upon the first occasion of disqualification;

(2) for a reasonable period of time, of no less than twelve months nor more than ten years, upon the second occasion of disqualification; and

(3) permanent upon the third occasion of disqualification or the first occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern.

(c) The action of disqualification or the imposition of a civil money penalty shall be subject to review as provided in section 14 of this Act.

(d) As a condition of authorization to accept and redeem coupons, the Secretary may require a retail food store or wholesale food concern which has been disqualified or subjected to a civil penalty pursuant to subsection (a) to furnish a bond to cover the value of coupons which such store or concern may in the future accept and redeem in violation of this Act. The Secretary shall, by regulation, prescribe the amount, terms, and conditions of such bond. If the Secretary finds that such store or concern has accepted and redeemed coupons in violation of this Act after furnishing such bond, such store or concern shall forfeit to the Secretary an amount of such bond which is equal to the value of coupons accepted and redeemed by such store or concern in violation of this Act. Such store or concern may obtain a hearing on such forfeiture pursaunt to section 14.

(e) Notwithstanding section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), a retail food store or wholesale food concern that has been disqualified under subsection (a) shall be ineligible during the period of disqualification to participate in the special supplemental food program established under section 17 of such Act.

(f)(1)(A) If a retail food store or wholesale food concern disqualified under subsection (a) is sold or otherwise transferred, such store or concern shall be subject to a civil money penalty.

(B) The amount of such penalty shall—

(i) be established by the Secretary through regulations; and

(ii) reflect that portion of the disqualification period that has not yet expired.

(C) If such store or concern has been disqualified permanently, the amount of such penalty shall be double the penalty imposed for a 10-year disqualification period, as determined under regulations issued by the Secretary.

(D) Notwithstanding the imposition of such penalty, the disqualification period imposed under subsection (b) shall continue in effect as to the seller or transferor of such store or concern.

(2)(A) After a civil money penalty imposed under paragraph (1) has become final pursuant to section 14(a), the Secretary may request the Attorney General to institute a civil action to collect such

penalty in a district court of the United States for any district in which the person against whom the penalty is imposed is found, resides, or transacts business.

(B) Such court shall have jurisdiction to hear and decide such action.

(C) The validity and amount of such penalty shall not be subject to review in such action.

COLLECTION AND DISPOSITION OF CLAIMS

SEC. 13. (a)*(1)* The Secretary shall have the power to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any such claim or claims arising under the provisions of this Act or the regulations issued pursuant to this Act, including, but not limited to, claims arising from fraudulent and nonfraudulent overissuances to recipients, including the power to waive claims if the Seretary determines that to do so would serve the purposes of this Act. Such powers with respect to claims against recipients may be delegated the Seretary to State agencies. The Secretary shall have the power to reduce amounts otherwise due to a State agency under section 16 of this Act to collect unpaid claims assessed against the State agency if the State agency has declined or exhausted its appeal rights under section 14 of this Act.

(2) Each adult member of a household shall be jointly and severally liable for the value of any overissuance of coupons.

(3) A State agency shall be liable for interest on a claim assessed against the State agency under this Act from the date of the final administrative determination made with respect to such claim under section 14(a).

(b)(1)(A) In the case of any ineligibility determination under section 6(b) of this Act, the household of which such ineligible individual is a member is required to agree to a reduction in the allotment of the household of which such individual is a member, or payment in cash, in accordance with a schedule determined by the Secretary, that will be sufficient to reimburse the Federal Government for the value of any overissuance of coupons resulting from the activity that was the basis of the ineligibility determination. If a household refuses to make an election within thirty days of a demand for an election, or elects to make a payment in cash under the provisions of the preceding sentence and fails to do so, the household shall be subject to an allotment reduction.

(B) State agencies [may] *shall* collect any claim against a household arising from the overissuance of coupons based on an ineligibility determination under section 6(b), other than claims collected pursuant to subparagraph (A), by using other means of collection, *unless the State agency demonstrates to the satisfaction of the Secretary that such other means are not cost effective.*

(2)(A) State agencies shall collect any claim against a household arising from the overissuance of coupons, other than claims the collection of which is provided for in paragraph (1) of this subsection and claims arising from an error of the State agency, by reducing the monthly allotments of the household. *State agencies may collect any claim against a household arising from the overissuance of coupons as the result of an error of the State agency by reducing the* *monthly allotments of the household.* [These collections] *Collections under this subparagraph* shall be limited to 10 per centum of the monthly allotment for $10 per month, whenever that would result in a faster collection rate).

(B) State agencies may collect any claim against a household arising from the overissuance of coupons, other than claims collected pursuant to paragraph (1) or subparagraph (A), by using other means of collection.

(c)(1) As used in this subsection, the term "uncollected overissuance" means the amount of an overissuance of coupons, as determined under subsection (b)(1), that has not been recovered pursuant to subsection (b)(1).

(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)), whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

(3) A State agency may recover an uncollected overissuance—

(A) by—

(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.

ADMINISTRATIVE AND JUDICIAL REVIEW

SEC. 14. (a) Whenever an application of a retail food store or wholesale food concern to participate in the food stamp program is denied pursuant to section 9 of this Act, or a retail food store or wholesale food concern is disqualified or subjected to a civil money penalty under the provisions of section 12 of this Act, or a retail food store or wholesale food concern forfeits a bond under section 12(d) of this Act, or all or part of any claim of a retail food store or wholesale food concern is denied under the provisions of section 13 of this Act, or a claim against a State agency is stated pursuant to the provisions of section 13 of this Act, notice of such administrative action shall be issued to the retail food store, wholesale food concern, or State agency involved. Such notice shall be delivered by certified mail or personal service. If such store, concern, or State agency is aggrieved by such action, it may, in accordance with regulations promulgated under this Act, within ten days of the date of delivery of such notice, file a written request for an opportunity to submit information in support of its position to such person or persons as the regulations may designate. If such a request is not made or if such store, concern, or State agency fails to submit information in support of its position after filing a request, the administrative determination shall be final. If such request is made by such store, concern, or State agency, such information as may be submitted by the store, concern, or State agency, as well as such other information as may be available, shall be reviewed by the person or persons designated by the Sectretary, who shall, subject to the right of judicial review hereinafter provided, make a determination which shall be final and which shall take effect thirty days after the date of the delivery or service of such final notice of determination. If the store, concern, or State agency feels aggrieved by such final determination, it may obtain judicial review thereof by filing a complaint against the United States in the United States court for the district in which it resides or is engaged in business, or, in the case of a retail food store or wholesale food concern, in any court of record of the State having competent jurisdiction, within thirty days after the date of delivery or service of the final notice of determination upon it, requesting the court to set aside such determination. The copy of the summons and complaint required to be delivered to the official or agency whose order is being attacked shall be sent to the Secretary or such person or persons as the Secretary may designate to receive service of process. The suit in the United States distirct court or State court shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action in issue. If the court determines that such administrative action is invalid, it shall enter such judgment or order as it determines is in accordance with the law and the evidence. During the pendency of such judicial review, or any appeal therefrom, the administative action under review shall be and remain in full force and effect, unless [an application] *on application* to the court on not less than ten days' notice, and after hearing thereon and a [showing or irreparable injury] *showing that the applicant is likely to prevail on the merits of the case,* the court temporarily stays such administrative action pending disposition of such trial or appeal.

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ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. (a) The Secretary is authorized to pay to each State agency an amount equal to 50 per centum of all administrative costs involved in each State agency's operation of the food stamp program, which costs shall include, but not be limited to, the cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of coupons after their delivery to receiving points within the State, (3) the issuance of coupons to all eligible households, and (4) fair hearings: *Provided,* That the Secretary is authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further authorized at the Secretary's discretion to pay any State agency administering the food stamp program on all or part of an Indian reservation under section 11(d) of this Act such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the food stamp program, as well as to permit each State to retain 50 per centum of the value of all funds or allotments recovered or collected pursuant to section [13(b)(1) of this

Act] *13(b)(1) and (c)* and 25 per centum of the value of all funds or allotments recovered or collected pursuant to section 13(b)(2) of this Act, except the value of funds or allotments recovered or collected pursuant to section 13(b)(2) which arise from an error of a State agency.[118] The officials responsible for making determinations of ineligibility[119] under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) The Secretary shall (1) establish standards for the efficient and effective administration of the food stamp program by the States, *including standards for the periodic review of the hours that food stamp offices are open during the day, week, or month to ensure that employed individuals are adequately served by the food stamp program,* and (2) instruct each State to submit, at regular intervals, reports which shall specify the specific administrative actions proposed to be taken and implemented in order to meet the efficiency and effectiveness standards established pursuant to clause (1) of this subsection.

(c) The Secretary is authorized to adjust a State agency's federally funded share of administrative costs pursuant to subsection (a), other than the costs already shared in excess of 50 per centum under the proviso in the first sentence of subsection (a) or under subsection (g), by increasing such share to 60 per centum of all such administrative costs in the case of a State agency which has—

(1) a payment error rate as defined in subsection (d)(1) which, when added to the total percentage of all allotments underissued to eligible households by the State agency, is less than 5 per centum; and

(2) a rate of invalid decisions in denying eligibility which is less than a nationwide percentage which the Secretary determines to be reasonable.

(d)(1) As used in this subsection, the term "payment error rate" means the total percentage of all allotments issued in a fiscal year by a State agency which are either—

(A) issued to households which fail to meet basic program eligibility requirements; or

(B) overissued to eligible households.

[(2)(A) The Secretary shall institute an error rate reduction program under which, if a State agency's payment error rate exceeds—

[(i) 9 per centum for fiscal year 1983;

[(ii) 7 per centum for fiscal year 1984; or

[(iii) 5 per centum for fiscal year 1985 or any fiscal year thereafter,

then the Secretary shall, other than for good cause shown or as provided in subparagraph (B), reduce the State agency's federally funded share of administrative costs provided pursuant to subsection (a), other than the costs already shared in excess of 50 per centum under the proviso in the first sentence of subsection (a) or under subsection (g), by the amounts required under paragraph (3).

[(B) The Secretary may not reduce a State agency's federally funded share of administrative costs pursuant to subparagraph (A)—

[(i) on the basis of the State agency's payment error rate for fiscal year 1983, if such payment error rate represents a reduction from the State agency's payment error rate for the period beginning on October 1, 1980, and ending on March 31, 1981, of at least 33.3 per centum of the difference between the State agency's payment error rate for such period and 5 per centum; or

[(ii) on the basis of the State agency's payment error rate for fiscal year 1984, if such payment error rate represents a reduction from the State agency's payment error rate for the period beginning on October 1, 1980, and ending on March 31, 1981, of at least 66.7 per centum of the difference between the State agency's payment error rate for such period and 5 per centum.

[(3)(A) The Secretary shall reduce a State agency's federally funded share of administrative costs, except as provided in subparagraph (B), by—

[(i) 5 per centum for each per centum or fraction thereof that the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2); and

[(ii) if the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2) by more than 3 per centum, an additional 5 per centum (for a total of 10 per centum) for each per centum or fraction thereof that the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2) by more than 3 per centum.

[(B) The Secretary may not reduce a State agency's federally funded share of administrative costs for a fiscal year by an amount that exceeds the product of multiplying—

[(i) the per centum by which the State agency's payment error rate exceeds the maximum payment error rate allowed for the fiscal year under paragraph (2); by

[(ii) the total dollar value of all coupons issued by the State agency during the fiscal year.]

(2) If the payment error rate of a State agency for a fiscal year exceeds 5 percent, the State agency shall, other than for good cause shown, be liable to the Secretary for such fiscal year in an amount equal to—

(A) the sum of—

(i) the product obtained by multiplying—

(I) the number of percentage points (or a fraction thereof) by which such rate exceeds 5 percent (but not to exceed 2 points); by

(II) 75 percent of the total value of all coupons issued by the State agency for such fiscal year; and

(ii) the product obtained by multiplying—

(I) the number of percentage points (or a fraction thereof) by which such rate exceeds 7 percent; by

(II) the total value of all coupons issued by the State agency for such fiscal year; less

(B) 75 percent of the value of any amounts that—

(i) are recovered or collected by the State agency during such fiscal year under this Act for allotments—

(I) issued to ineligible households; or

(II) overissued to eligible households; and

(ii) are not retained by the State agency in accordance with subsection (a).

(3) If the liability of a State agency under this subsection is not contested by such agency or is ultimately determined to be valid, such penalty shall be collected by the Secretary by means of—

(A) payment by such State agency;

(B) withholding amounts otherwise payable to such agency under subsection (a); or

(C) other means of collection authorized under chapter 37 of title 31, United States Code.

(4) The Secretary may require a State agency to report any factors which the Secretary considers necessary to determine [the appropriate level of a State agency's federally funded share of administrative costs under this subsection.] *the payment error rate of a State agency.* If a State agency fails to meet the reporting requirements established by the Secretary, the Secretary shall base the determination on all pertinent information available to the Secretary.

(5) If the Secretary [reduces a State agency's federally funded share of administrative costs] *determines that a State agency is liable* under this subsection, the State may seek administrative and judicial review of the action pursuant to section 14.

* * * * * * *

(h)(1) For the payment to each State agency of the full cost (except as otherwise provided in this subsection) of carrying out an employment and training program under section 6(d)(4), the Secretary shall allocate from funds appropriated for such fiscal year under section 18(a)(1)—

(A) for the fiscal year ending September 30, 1986, $40,000,000;

(B) for the fiscal year ending September 30, 1987, $50,000,000;

(C) for the fiscal year ending September 30, 1988, $60,000,000; and

(D) for the fiscal year ending September 30, 1989, $75,000,000.

(2) If in carrying out such program a State agency incurs costs that exceed the amount payable to the State agency under paragraph (1), the Secretary shall pay such State agency in accordance with subsection (a) an amount equal to 50 percent of such additional costs.

(3) The Secretary shall in accordance with subsection (a) reimburse each State agency in an amount equal to 50 percent of the total amount of payments made or costs incurred by the State agency to reimburse participants for the actual costs of transportation, and other actual costs, that are reasonably necessary and directly related to participation in an employment and training established under section 6(d)(4) but not to exceed $25 in the aggregate per month.

(4) Funds provided to a State agency under this subsection—

(A) may be used only for operating an employment and training program under section 6(d)(4); and

(B) may not be used for carrying out other provisions of this Act.

(5)(A) The Secretary shall monitor the employment and training programs carried out by State agencies under section 6(d)(4) to measure their effectiveness in terms of—

(i) the increase in the numbers of household members who obtain employment; and

(ii) the numbers of such members who retain such employment,

as a result of their participation in such programs.

(B) Not later than January 1, 1989, the Secretary shall report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of such employment and training programs.

(i)(1) The Inspector General of the Department of Agriculture may use quality control information made available under this section to determine which project areas have payment error rates (as defined in subsection (d)(1)) that impair the integrity of the food stamp program.

(2) The Secretary may require a State agency to carry out new or modified procedures for the certification of households in areas identified under paragraph (1) if the Secretary determines such procedures would improve the integrity of the food stamp program and be cost effective.

(3) Not later than 12 months after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and each 12 months thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that lists project areas identified under paragraph (1) and describes any procedures required to be carried out under paragraph (2).

RESEARCH, DEMONSTRATION, AND EVALUATIONS

SEC. 17. (a) The Secretary may, by way of making contracts with or grants to public or private organizations or agencies, undertake research that will help improve the administration and effectiveness of the food stamp program in delivering nutrition-related benefits.

(b)(1) The secretary may conduct on a trial basis, in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the food stamp program and improve the delivery of food stamp benefits to eligible households, including projects involving the payment of the value of allotments or the average value of allotments by household size in the form of cash to eligible households all of whose members are age sixty-five or over or any of whose members are entitled to supplemental security income benefits under title XVI of the Social Security Act or to aid to families with dependent children under part A of title IV of the Social Security Act, the use of countersigned food coupons or similar identification mechanisms that do not invade a household's privacy, and the use of food checks or other voucher-type forms in place of food coupons. The Secretary may waive the requirements of this Act to the degree necessary for such projects to be conducted, except that no project, other than a project involving the payment of the average value of allotments by household size in the form of cash to eligible households, shall be implemented which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act. Any pilot or experimental project implemented under this paragraph and operating as of October 1, 1981, involving the payment of the value of allotments in the form of cash to eligible households all of whose members are either age sixty-five or over or entitled to supplemental security income benefits under title XVI of the Social Security Act shall be continued until October 1, [1985] *1989*, if the State so requests.

* * * * * * *

[(d) The Secretary may conduct no more than two statewide pilot projects (upon the request of a State) and no more than fourteen pilot projects in political subdivisions of States (upon the request of any such political subdivison) in which households that include one or more recipients of aid to families with dependent children under part A of title IV of the Social Security Act, of supplemental security income under title XVI of the Social Security Act, or of medical assistance under title XIX of the Social Security Act, and whose income does not exceed the applicable income standard of eligibility described in section 5(c) of this Act shall be deemed to satisfy the application requirements prescribed under section 5(a) of this Act and the income and resource requirements prescribed under subsections (d) through (g) of section 5 of this Act. For any pilot project carried out under this subsection, allotments provided pursuant to section 8(a) of this Act shall be based upon household size and (1) benefits paid to such household under part A of title IV or title XVI of the Social Security Act, or (2) income as determined for eligibility under title XIX of the Social Security Act, or at the option of the political subdivision or the State, the standard of need for such size household under such programs, except that the Secretary shall adjust the value of such allotments as may be necessary to ensure that the average allotment by household size for households participating in such pilot project and receiving such aid to families with dependent children, such supplemental security income, or such medical assistance, as the case may be, is not less than the average allotment which would have been provided under this Act but for the operation of this subsection, for each category of households, respectively, in such pilot project area, for any period during which such pilot project is in operation. The Secretary shall evaluate the impact of such pilot projects on recipient households, administrative costs, and error rates. The administrative costs of such projects shall be shared in accordance with the provisions of sections 16 of this Act. In implementing this section, the Secretary shall consult with the Secretary of Health and Human Services to ensure that to the extent practicable, in the case of households participating in such pilot projects, the processing of applications for, and determinations of eligibility to receive food stamp benefits are simplified and are unified with the processing of applications for, and determinations of eligibility to receive, benefits under such title of the Social Security Act.]

[(e)]*(d)* (1) As used in this subsection, the term "qualification period" means a period of time immediately preceding—

(A) in the case of a new applicant for benefits under this Act, the date on which application for such benefits is made by the individual; or

(B) in the case of an otherwise continuing recipient of coupons under this Act, the date on which such coupons would otherwise be issued to the individual.

(2) Upon application of a State or political subdivision thereof, the Secretary may conduct one pilot project involving the employment requirements described in this subsection in each of four project areas selected by the Secretary.

(3) Under the pilot projects conducted pursuant to this subsection, except as provided in paragraphs (4), (5), and (6), an individual who resides in a project area shall not be eligible for assistance under this Act if the individual was not employed a minimum of twenty hours per week, or did not participate in a workfare program established under section 20, during a qualification period of—

(A) thirty or more consecutive days, in the case of an individual whose benefits under a State or Federal unemployment compensation law were terminated immediately before such qualification period began; or

(B) sixty or more consecutive days, in the case of an individual not described in clause (A).

(4) The provisions of paragraph (3) shall not apply in the case of an individual who—

(A) is under eighteen or over fifty-nine years of age;

(B) is certified by a physician as physically or mentally unfit for employment;

(C) is a parent or other member of a household with responsibility for the care of a dependent child under six years of age or of an incapacitated person;

(D) is a parent or other caretaker of a child under six years of age in a household in which there is another parent who, unless covered by clause (A) or (B), or both such clauses, is employed a minimum of twenty hours per week or participating in a workfare program established under section 20;

(E) is in compliance with section 6(d) and demonstrates, in a manner prescribed by the Secretary, that the individual is able and willing to accept employment but is unable to obtain such employment; or

(F) is a member of any other group described by the Secretary.

(5) The Secretary may waive the requirements of paragraph (3) in the case of all individuals within all or part of a project area if the Secretary finds that such area—

(A) has an unemployment rate of over 10 per centum; or

(B) does not have a sufficient number of jobs to provide employment for individuals subject to this subsection.

(6) An individual who has become ineligible for assistance under this Act by reason of paragraph (3) may reestablish eligibility for assistance after a period of ineligibility by—

(1) becoming employed for a minimum of twenty hours per week during any consecutive thirty-day period; or

(2) participating in a workfare program established under section 20 during any consecutive thirty-day period.

[(f)] *(e)* The Secretary shall conduct a study of the effect of reductions made in benefits provided under this Act pursuant to part 1 of subtitle A of title I of the Omnibus Budget Reconciliation Act of 1981, the Food Stamp and Commodity Distribution Amendments of 1981, the Food Stamp Act Amendments of 1982, and any other laws enacted by the Ninety-seventh Congress which affect the food stamp program. The study shall include a study of the effect of retrospective accounting and periodic reporting procedures established under such Acts, including the impact on benefit and administrative costs and on error rates and the degree to which eligible households are denied food stamp benefits for failure to file complete periodic reports. The Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an interim report on the results of such study no late than February 1, 1984, and a final report on the results of such study no later than March 1, 1985.

(f) The Secretary may conduct a pilot project to test the effect on households and retail food stores that participate in the Food Stamp Program of requiring households that use coupons to purchase food to pay cash for the amount of such purchase that exceeds the value of the lowest coupon denomination issued.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. (a)(1) To carry out the provisions of this Act, there are hereby authorized to be appropriated not in excess of $5,847,600,000 for the fiscal year ending September 30, 1978; not in excess of $6,778,900,000 for the fiscal year ending September 30, 1979; not in excess of $9,491,000,000 for the fiscal year ending September 30, 1980; not in excess of $11,480,000,000 [136] for the fiscal year ending September 30, 1981; not in excess of $11,300,000,000 for the fiscal year ending September 30, 1982; not in excess of $12,874,000,000 for the fiscal year ending September 30, 1983; not in excess of $13,145,000,000 for the fiscal year ending September 30, 1984; [and] not in excess of $13,933,000,000 for the fiscal year ending September 30, 1985; *not in excess of $12,984,000,000 for the fiscal year ending September 30, 1986; not in excess of $13,572,000,000 for the fiscal year ending September 30, 1987; not in excess of $14,154,000,000 for the fiscal year ending September 30, 1988; and not in excess of $14,695,000,000 for the fiscal year ending September 30, 1989.*

* * * * * * *

(e) Funds collected from claims against households or State agencies, including claims collected pursuant to sections 7(f), 11 (g) and (h), and [13(b) of this Act] *13 (b) and (c),* claims resulting from resolution of audit findings, and claims collected from households receiving overissuances, shall be credited to the food stamp program appropriation account for the fiscal year in which the collection occurs Funds provided to State agencies under section 16(c) of this Act shall be paid from the appropriation account for the fiscal year in which the funds are provided.

(f) No funds appropriated to carry out this Act may be transferred to the Office of the Inspector General, or the Office of the General Counsel, of the Department of Agriculture.

BLOCK GRANT

SEC. 19. (a)(1)(A) From the sums appropriated under this Act the Secretary shall, subject to the provisions of this subsection and subsection (b), pay to the Commonwealth of Puerto Rico not to exceed $825,000,000 for each fiscal year to finance 100 per centum of the expenditures for food [noncash] assistance provided to needy persons, and 50 per centum of the administrative expenses related to the provision of such assistance.

(B) The payments to the Commonwealth for any fiscal year shall not exceed the expenditures by that jurisdiction during that year for the provision of the assistance the provision of which is included in the plan of the Commonwealth approved under subsection (b) and 50 per centum of the related administrative expenses.

(2) The Secretary shall, subject to the provisions of subsection (b), pay to the Commonwealth for the applicable fiscal year, at such times and in such manner as the Secretary may determine, the amount estimated by the Commonwealth pursuant to subsection (b)(1)(A)(iv), reduced or increased to the extent of any prior overpayment or current underpayment which the Secretary determines has been made under this section and with respect to which adjustment has not already been made under this subsection.

(b)(1)(A) In order to receive payments under this Act for any fiscal year, the Commonwealth shall have a plan for that fiscal year approved by the Secretary under this section. By [July 1] *April 1* of each year, if the Commonwealth wishes to receive payments, it shall submit a plan for the provision of the assistance described in subsection (a)(1)(A) for the following fiscal year which—

(i) designates [a single agency which shall be] *the agency or agencies directly* responsible for the administration, or supervision of the administration, of the program for the provision of such assistance;

(ii) assesses the food and nutrition needs of needy persons residing in the Commonwealth;

(iii) describes the program for the provision of such assistance, including the assistance to be provided and the persons to whom such assistance will be provided, and any agencies designated to provide such assistance, which program must meet such requirements as the Secretary may by regulation prescribe for the purpose of assuring that assistance is provided to the most needy persons in the jurisdiction;

(iv) estimates the amount of expenditures necessary for the provision of the assistance described in the program and related administrative expenses, up to the amount provided for payment by subsection (a)(1)(A); and

(v) includes such other information as the Secretary may require.

* * * * * * *

WORKFARE

SEC. 20. (a)(1) The Secretary shall permit any political subdivision, in any State, that applies and submits a plan to the Secretary in compliance with guidelines promulgated by the Secretary to operate a workfare program pursuant to which every member of a household participating in the food stamp program who is not exempt by virtue of the provisions of subsection (b) of this section shall accept an offer from such subdivision to perform work on its behalf, or may seek an offer to perform work, in return for compensation consisting of the allotment to which the household is entitled under section 8(a) of this Act, with each hour of such work entitling that household to a portion of its allotment equal in value to 100 per centum of the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938.

(2)(A) The Secretary shall promulgate guidelines pursuant to paragraph (1) which, to the maximum extent practicable, enable a political subdivision to design and operate a workfare program under this section which is compatible and consistent with similar workfare programs operated by the subdivision.

(B) A political subdivision may comply with the requirements of this section by operating—

(i) a workfare program pursuant to title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) any other workfare program which the Secretary determines meets the provisions and protections provided under this section.

[(b) The household members who shall be exempt from workfare requirements are those who are either (1) mentally or physically unfit; (2) under eighteen years of age; (3) sixty years of age or over; (4) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least twenty hours a week in a work training program under a work registration requirement pursuant to title IV of the Social Security Act; (5) a parent or other member of a household with responsibility for the care of a child under age six or of an incapacitated person; (6) a parent or other caretaker of a child in a household where there is another member who is subject to the requirements of this subsection or is employed full time; (7) a regular participant in a drug addiction or alcoholic treatment and rehabilitation program; or (8) an individual described in section 6(d)(2)(D) or (F) of this Act.]

(b)(1) A household member shall be exempt from workfare requirements imposed under this section if such member is—

(A) exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2); or

(B) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program required under title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(2)(A) Subject to subparagraphs (B) and (C), in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42

U.S.C. 609), the number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month; by

(ii) the higher of the Federal or State minimum wage in effect for such month.

(B) In no event may any such member be required to participate in such program more than 120 hours per month.

(C) For the purpose of subparagraph (A)(i), the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.

AGRICULTURE AND CONSUMER PROTECTION ACT OF 1973

(Public Law 93–347)

* * * * * * *

COMMODITY DISTRIBUTION PROGRAM

SEC. 4. (a)(*1*) Notwithstanding any other provision of law, the Secretary may, [during fiscal years 1982, 1983, 1984, and 1985] *during the period beginning October 1, 1985, and ending September 30, 1989,* purchase and distribute sufficient agricultural comodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions, supplemental feeding programs wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

(2) In carrying out the program described in paragraph (1), the Secretary shall—

(A) require, as a condition of eligibility for participation in such program, that each household member furnish to the State agency the social security account number or numbers of such members; and

(B) use such account numbers in the administration of such program.

(b) The Secretary may furnish commodities to summer camps for children in which the number of adults participating in camp activities as compared wth the number of children under [18] *19* years of age so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

(c) Whoever embezzles, willfully misapplies, steals or obtains by fraud any agricultural commodity or its products (or any funds, assets, or property deriving from donation of such commodities) provided under this section, or under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), section 32 of the Act of August 24 1935 (7 U.S.C. 612c), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or the Temporary Emergency Food Assistance Act of 1983, whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such commodities, products, funds, assets or property for personal use or gain, knowing such commodities, products, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such commodities, products, funds, assets, or property are of a value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such commodities, products funds, assets, or property are of value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

COMMODITY SUPPLEMENTAL FOOD PROGRAM

SEC. 5. (a) In carrying out the supplemental feeding program (hereinafter referred to as the "commodity supplemental food program") under section 4 of this Act, the Secretary (1) may institute [two pilot projects] *three pilot projects* directed at low-income elderly persons, including, where feasible, distribution of commodities to such persons in their homes, which projects shall operate no longer than [two years] *September 30, 1989,* and (2) shall provide to the State agencies administering the commodity supplemental food program, for each of the fiscal years 1982 through [1985] *1989,* funds appropriated from the general fund of the Treasury in amounts equal to the administrative costs of State and local agencies in operating the program, except that the funds provided to State agencies each fiscal year may not exceed 15 per centum of the sum of (A) the amount appropriated for the commodity supplemental food program and (B) the value of the additional commodities donated by the Secretary of State or local agencies for use in such program which are provided without charge against funds appropriated for such program and are included in food packages distributed to program participants.

(b) During the first three months of any commodity supplemental food program, or until such program reaches its projected caseload level, whichever comes first, the Secretary shall pay those administrative costs necessary to commence the program successfully: *Provided,* That in no event shall administrative costs paid by the Secretary for any fiscal year exceed the limitation established in subsection (a) of this section.

(c) Administrative costs for the purpose of the commodity supplemental food program shall include, but not be limited to, 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.

(d) During each fiscal year the commodity supplemental food program is in operation, the types and varieties of commodities and their proportional amounts shall be determined by the Secretary, but, if the Secretary proposes to make any significant changes in the types, varieties, or proportional amounts from those that were available or were planned at the beginning of the fiscal year (or as were available during the fiscal year ending June 30, 1976, whichever is greater) the Secretary shall report such changes before implementation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(e) The Secretary of Agriculture is authorized to issue such regulations as may be necessary to carry out the commodity supplemental food program.

(f)(1) If the Secretary determines that the amount of funds appropriated to carry out this section exceeds the requirement for operating sites in existence, and at levels of assistance, in effect on the date of such determination, the Secretary shall approve additional applications made for eligible projects to participate in the commodity supplemental food program.

(2) In making such determination, the Secretary shall consider the funding needs of existing operating sites for both the current and succeeding fiscal years.

(g) If a local agency that administers the commodity supplemental food program determines that the amount of funds made available to the agency to carry out this section exceeds the amount of funds necessary to provide assistance under such program to women, infants, and children, the agency, with the approval of the Secretary, may permit low-income elderly persons to participate in and be served by such program under such terms and conditions as are prescribed by the Secretary.

* * * * * * *

AGRICULTURE AND FOOD ACT OF 1981

(Public Law 97–98)

DISTRIBUTION OF SURPLUS COMMODITIES; SPECIAL NUTRITION PROJECTS

SEC. 1114. (a) Notwithstanding any other provision of law, whenever Government stocks of commodities are acquired under the price support programs and are not likely to be sold by the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, such commodities shall be made available without charge or credit to nutrition projects under the authority of the Older American Act of 1965 (42 U.S.C. 3001 et seq.), to child nutrition programs providing food service, and to food banks participating in the special nutrition projects established under section 211 of the Agricultural Act of 1980. Such distribution may include bulk distribution to congregate nutrition sites and to providers of home delivered meals under the Older Americans Act of 1965. The Commodity Credit Corporation is authorized to use available funds to operate the program under this subsection and to further process products to facilitate bonus commodity use. *Com-*

modities made available under this section shall include, but not be limited to, dairy products, wheat or the products thereof, rice, honey, and cornmeal.

* * * * * * *

TEMPORARY EMERGENCY FOOD ASSISTANCE ACT OF 1983

* * * * * * *

AVAILABILITY OF CCC COMMODITIES

SEC. 202. (a) Notwithstanding any other provision of law, in order to complement the domestic nutrition progams, make maximum use of the Nation's agricultural abundance, and expand and improve the domestic distribution of price-supported commodities, commodities acquired by the Commodity Credit Corporation that the Secretary of Agriculture (hereinafter referred to as the "Secretary") determines, in his discretion, are in excess of quantities needed to—

(1) carry out other domestic donation programs

(2) meet other domestic obligations (including quanitites needed to carry out a payment-in-kind acreage diversion program).

(3) meet international market development and food aid commitments, and

(4) carry out the farm price and income stabilization purposes of the Agricultural Adjustment Act of 1938, the Agricultural Act of 1949, and the Commodity Credit Corporation Charter Act.

shall be made available by the Secretary, without charge or credit for such commodities, for use by eligible recipient agencies for food assistance.

(b) Notwithstanding any other provision of law, if wheat stocks acquired by the Commodity Credit Corporation are not available for the purposes of this Act, up to 300,000 metric tons of wheat designated under section 302(b)(1) of the Food Security Wheat Reserve Act of 1980 may be used for the purposes of this Act. Any amount of wheat used from the Food Security Wheat Reserve under this Act shall be replenished by an equivalent quantity of wheat under the provisions of section 302(b) of the Food Security Wheat Reserve Act of 1980 as soon as practicable, but before October 1, 1985.

(c) In additin to any commodities described in subsection, (a), in carrying out this Act, the Secretary may use agricultural commodities and the products thereof make available under clause (2) of the second sentence of 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).

(d) Commodities made available under this Act shall include, but not be limited to, dairy prodcts, wheat or the products thereof, rice, honey, and cornmeal.

(e) Effective January 1, 1986, the Secretary shall submit semiannually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of

the Senate a report on the types and amounts of commodities made available for distribution under this Act.

FEDERAL AND STATE RESPONSIBILITIES

SEC. 203B.[56] (a) The Secretary shall, as expeditiously as possible, provide the commodities made available under this Act in such quantities as can be used without waste to State agencies designated by the Governor or other appropriate State official for distribution to eligible recipient agencies, except that the Secretary may provide such commodities directly to eligible recipient agencies and to private companies that process such commodities for eligible recipient agencies under sections 203 and 203A of the Act. *Each State agency shall encourage distribution of such commodities in rural areas.*

ASSURANCES; ANTICIPATED USE

SEC. 203C. (a) The Secretary shall take such precautions as the Secretary deems necessary to assure that any eligible recipient agency receiving commodities under this Act will provide such commodities to persons served by the eligible recipient agency and will not diminish its normal expenditures for food by reason of the receipt of such commodities. The Secretary shall also take such precautions as the Secretary deems necessary to assure that commodities made available under this Act will not displace commercial sales of such commodities or the products thereof. The Secretary shall not make commodities available for donation in any quantity or manner that the Secretary, in the Secretary's discretion, determines may, substitute for the same or any other agricultural produce that would otherwise be purchased in the market. *The Secretary shall submit annually to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the existence and extent of such displacements and substitutions.*

AUTHORIZATION AND APPROPRIATIONS

SEC. 204. (a) There is appropriated for the period ending September 30, 1983, $50,000,000 for the Secretary to make available to the States for storage and distribution costs, of which not less than $10,000,000 shall be made available for paying the actual costs incurred by charitable institutions, food banks, hunger centers, soup kitchens, and similar nonprofit organizations providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons, provided that in no case shall such payments exceed five per centum of the value of commodities distributed by any such agency.

(b)*(1)* There are hereby authorized to be appropriated $50,000,000 for each of [the fiscal years ending September 30, 1984, and September 30, 1985,] *each of the fiscal years ending September 30, 1984, through September 30, 1987,* for the Secretary to make available to the States for storage and distribution costs of which not less than twenty per centum of the amount appropriated under this subsection in any fiscal year shall be made available for paying or providing advance payments to cover the actual costs incurred by charitable institutions, food banks, hunger centers, soup kitchens, and similar nonprofit eligible recipient agencies providing nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons: *Provided,* That in no case shall such payments exceed five per centum of the value of commodities distributed by any such agency.

(2) Effective January 1, 1986, to be eligible to receive payments for storage and distribution costs under paragraph (1), a State must match on a dollar for dollar basis the amount of such payments made to such State.

* * * * * * *

REGULATIONS

SEC. 210. (a) The Secretary shall issue regulations within 30 days to implement this Act.

(b) In administering this Act, the Secretary shall minimize, to the maximum extent practicable, the regulatory, recordkeeping, and paperwork requirements imposed on eligible recipient agencies.

[(c) With respect to the commodity distribution program under this Act in effect during the fiscal years ending September 30, 1984, and September 30, 1985, the Secretary shall, not later than October 1, 1983 publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available during the first twelve months of the program; and, prior to the beginning of the fiscal year ending September 30, 1985, the Secretary shall publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available during the second twelve months of the program under this Act: *Provided,* That the actual types and quantities of commodities made available by the Secretary under this Act may differ from the estimates.]

(c)(1) Not later than October 1, 1985, and October 1, 1986, the Secretary shall publish in the Federal Register an estimate of the types and quantities of commodities that the Secretary anticipates are likely to be made available under this Act during each of the fiscal years ending September 30, 1986, and September 30, 1987, respectively.

(2) The actual types and quantities of commodities made available under this act may differ from such estimates.

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[PROGRAM TERMINATION

[SEC. 212. The provisions of this Act, with the exception of 207, shall terminate September 30, 1985.]

PROGRAM TERMINATION

SEC. 212. (a) Except for section 207 and as provided in subsections (b) and (c), this Act shall terminate on September 30, 1987.

(b) Section 203 shall terminate on June 30, 1987.

(c) The amendment made by section 209 shall terminate on September 30, 1989.

TITLE 10, UNITED STATES CODE

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COMMISSARY STORES [: PRIVATE OPERATION]

SEC. 2482. *(a)* Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve.

(b) A commissary store of the Department of Defense may donate surplus, unmarketable food to a local food bank.

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WAGNER-PEYSER ACT

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SEC. 3. (b) It shall be the duty of the Secretary of Labor to assure that unemployment insurance and employment service offices in each State, as appropriate, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act or of a public agency charged with any duty or responsibility under any program [or], activity authorized or required under part D of title IV of such Act *or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.),* shall (and, notwithstanding any other provision of law, is authorized to) furnish to such agency making the request, from any data contained in the files of any such office, information with respect to any individual specified in the request as to (1) (whether such individual is receiving, has received or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (2) the current (or most recent) home address of such individual, and (3) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

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SOCIAL SECURITY ACT

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SEC. 303. (d)(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

* * * * * * *

(2)(A) For purposes of this paragraph, the term "unemployment compensation" means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977, or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act, and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overis-

suance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

[2] *(3)* 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 he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

[3] *(4)* For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 which administers the food stamp program established under such Act.

SECTION 32 OF THE ACT OF AUGUST 24, 1935

* * * * * * *

SEC. 32. There is hereby appropriated for each fiscal year beginning with the fiscal year ending June 30, 1936 an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws during the period January 1 to December 31, both inclusive, preceding the beginning of each fiscal year. Such sums shall be maintained in a separate fund and shall be used by the Secretary of Agriculture only to (1) encourage the exportation of agricultural commodities and products thereof by the payment of benefits in connection with the exportation thereof or of indemnities for losses incurred in connection with such exportation or by payments to producers in connection with the production of that part of any agricultural commodity required for domestic consumption; (2) encourage the domestic consumption of such commodities or products by diverting them, by the payment of benefits or indemnities or by other means, form the normal channels of trade and commerce or by increasing their utilization through benefits, indemnities, donations or by other means, among persons in low income groups as determined by the Secretary of Agriculture; and (3) reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption. Determinations by the Secretary as to what constitutes diversion and what constitutes normal channels of trade and commerce and what constitutes normal production for domestic consumption shall be final.

The sums appropriated under this section shall be expended for such one or more of the above-specified purposes, and at such times, in such manner, and in such amounts as the Secretary of Agriculture finds will effectuate substantial accomplishment of any one or more of the purposes of this section. Notwithstanding any other provision of this section, the amount that may be devoted during any fiscal year after June 30, 1939, to any one agricultural commodity or the products thereof in such fiscal year, shall not exceed 25 per centum of the funds available under this section for such fiscal year. The sums appropriated under this section shall be devoted principally to perishable nonbasic agriculture commodities (other than those receiving price support under title II of the Agricultural Act of 1949) and their products. The sums appropriate under this section shall, notwithstanding the provisions of any other law, continue to remain available for the purposes of this section until expended; but any excess of the amount remaining unexpended at the end of any fiscal year over $300,000,000 shall, in the same manner as though it has been appropriated for the service of such fiscal year, be subject to the provisions of section 3690 of the Revised Statutes (U.S.C., title 31, sec. 712), and section 5 of the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-five and for other purposes." *A public or private nonprofit organization that receives agricultural commodities or the products thereof under clause (2) of the second sentence may transfer such commodities or products to another public or private nonprofit organization that agrees to use such commodities or products to provide, without cost or waste, nutrition assistance to individuals in low-income groups.*

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TITLE XVII—AGRICULTURAL CREDIT

Consolidated Farm and Rural Development Act

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TITLE III—AGRICULTURAL CREDIT

*   *   *   *   *   *   *

Subtitle A.—Real Estate Loans

Sec. 302. (*a*) The Secretary is authorized to make and insure loans under this subject subtitle to farmers and ranchers in the United States, and to farm cooperatives and private domestic corporations and partnerships that are controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the United States, subject to the conditions specified in this section. To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations and partnerships, members, stockholders, or partners, as applicable, holding a majority interest in such entity, must (1) be citizens of the United States, (2) have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) be or will become owner-operators of not larger than family farms (or in the case of cooperatives, corporations, and partnerships in which a majority interest is held by members, stockholders, or partners, as applicable, who are related by blood or marriage, as defined by the Secretary, such individuals must be or will become either owners or operators of not larger than a family farm and at least one such individual must be or will become an operator of not larger than a family farm), and (4) be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. In addition to the foregoing requirements of this section, in the case of corporations and partnerships, the family farm requirement of clause (3) of the preceding sentence shall apply as well to the farm or farms in which the entity has an ownership and operator interest and the requirement of clause (4) of the preceding sentence shall apply as well to the entity in the case of cooperatives, corporations, and partnerships.

(b) The Secretary may not restrict eligibility for loans made or insured under this subtitle for purposes set forth in section 303 solely to borrowers of loans that are outstanding on the date of enactment of the Consolidated Omnibus Budget Reconcilation Act of 1985.

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SEC. 306. (a)(1) The Secretary is also authorized to make or insure loans to associations, including corporations not operated for profit, Indian tribes on Federal and State reservations and other federally recognized Indian tribes, and public and quasi-public agencies to provide for the application or establishment of soil conservation practices, shifts in land use, the conservation, development, use, and control of water, and the installation or improvement of drainage or waste disposal facilities, recreational developments, and essential community facilities including necessary related equipment, all primarily serving farmers, ranchers, farm tenants, and to furnish financial assistance or other aid in planning projects for such purposes. When any loan made for a purpose specified in this paragraph is sold out of the Agricultural Credit Insurance Fund (after December 31, 1970) as an insured loan, the interest or other income thereon paid to an insured holder shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954. With respect to loans of less than $500,000 made or insured under this paragraph that are evidenced by notes and mortgages, as distinguished from bond issues, borrowers shall not be required to appoint bond counsel to review the legal validity of the loan whenever the Secretary has available legal counsel to perform such review.

* * * * * * *

(16)(A) In the approval and administration of a loan made under paragraph (1) for a water or waste disposal facility, the Secretary shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such facility.

(B) If the Secretary determines that a design or materials, other than those that were recommended, should be used in the water or waste disposal facility, the Secretary shall provide such applicant or borrower with a comprehensive justification for such determination.

SEC. 307. (a)(1) The period for repayment of loans under this subtitle shall not exceed forty years.

(2) Except as otherwise provided in paragraphs (3), (4), (5), and (6) of this subsection, the interest rates on loans under this subtitle shall be as determined by the Secretary, but not in excess of the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed 1 per centum, as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum.

(3)(A) Except as provided in paragraph (6), the interest rates on loans (other than guaranteed loans), to public bodies or nonprofit associations (including Indian tribes on Federal and State reservations and other federally recognized Indian tribal groups) for water and waste disposal facilities and essential community facilities shall be set by the Secretary, at rates not to exceed the current market yield for outstanding municipal obligations with remaining periods to maturity comparable to the average maturity for such loans, and adjusted to the nearest one-eighth of 1 per centum; and not in excess of 5 per centum per annum for any such loans which are for the upgrading of existing facilities or construction of new facilities as required to meet applicable health or sanitary standards in areas where the median family income of the persons to be served by such facility is below [the poverty line prescribed by the Office of Management and Budget as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d)] *the higher of (i) 80 percent of the statewide nonmetropolitan median household income, or (ii) the poverty line as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)*, and in other areas as the Secretary may designate where a significant percentage of the persons to be served by such facilities are of low income, as determined by the Secretary. *The interest rate on a loan for such facility may not exceed 7 percent per annum if such facility does not qualify for the 5 percent per annum interest rate, but is located in an area where the median household income of the persons to be served by the facility does not exceed 100 percent of the statewide nonmetropolitan median household income.*

*   *   *   *   *   *   *

(4) Except as provided in paragraph (6), the interest rates on loans under [sections 304(b), 306(a)(1), and 310B] *sections 304(b) and 306(a)(1)* of this title (other than guaranteed loans and loans as described in paragraph (3) of this subsection) shall be as determined by the Secretary, but not less than such rates as determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturities comparable to the average maturities of such loans, adjusted in the judgment of the Secretary of the Treasury to provide for rates comparable to the rates prevailing in the private market for similar loans and considering the Secretary's insurance of the loans, plus an additional charge, prescribed by the Secretary, to cover the Secretary's losses and cost of administration, which charge shall be de-

posited in the Rural Development Insurance Fund, and further adjusted to the nearest one-eighth of 1 per centum.

* * * * * * *

(6)(A) Notwithstanding any other provision of this section, in the case of loans (other than guaranteed loans) made or insured under the authorities of this Act specified in subparagraph (B) for activities that involve the use of prime farmland as defined in subparagraph (C), the interest rates shall be the interest rates otherwise applicable under this section increased by 2 per centum per annum. Wherever practicable, construction by a State, municipality, or other political subdivision of local government that is supported by loans described in the preceding sentence shall be placed on land that is not prime farmland, in order to preserve the maximum practicable amount of prime farmlands for production of food and fiber. Where other options exist for the siting of such construction and where governmental authority still desires to carry out such construction on prime farmland, the 2 per centum interest rate increase provided by this clause shall apply, but such increased interest rate shall not apply where such other options do not exist.

(B) The authorities referred to in subparagraph (A) are—

(i) clauses (2) and (3) of section 303(a),

(ii) the provisions of section 304(a) relating to the financing of outdoor recreational enterprises or the conversion of farming or ranching operations to recreational uses,

(iii) section 304(b),

(iv) the provisions of section 306(a)(1) relating to loans for recreational developments and essential community facilities,

(v) section 306(a)(15), *and*

[(vi) clause (1) of section 310B(a)

[(vii) subsections (d) and (e) of section 310B, and**]**

[(viii)**]** *(vi)* section 310D(a) as it relates to the making or insuring of loans under clauses (2) and (3) of section 303(a).

* * * * * * *

SEC. 309. * * *

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(d) Notes and security acquired by the Secretary in connection with loans insured under this subtitle and under prior authority shall become a part of the fund. Notes may be held in the fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof at the balance due thereon, or on such other basis as the Secretary may determine from time to time**[**.**]**, *including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary. All such notes sold on a nonrecourse basis must have been held in the fund for at least 4 years.* All net proceeds from such collections, including sales of notes or property, shall be deposited in and become a part of the fund.

SEC. 309A. * * *

*   *   *   *   *   *   *

(e) Notes and security acquired by the Secretary in connection with rural development loans made, guaranteed, or insured under this title or transferred by subsection (b) of this section shall become a part of the Insurance Fund. Notes may be held in the Insurance Fund and collected in accordance with their terms or may be sold by the Secretary with or without agreements for insurance thereof at the balance due thereon, or on such other basis as the Secretary may determine from time to time[.], *including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed, had the borrower remained indebted to the Secretary.* All net proceeds from such collections, including sales of notes or property, shall be deposited in and become a part of the Insurance Fund.

*   *   *   *   *   *   *

(g) The Secretary may utilize the Insurance Fund—

*   *   *   *   *   *   *

(8) to pay the Secretary's costs of administration necessary to insure loans under the programs referred to in subsection (a) of this section, make grants under [sections 306(a) and 310B] *section 306(a)* of this title, service, and otherwise carry out such programs, including costs of the Secretary incidental to guaranteeing rural development loans under this title, either directly from the Insurance Fund or by transfers from the Fund to, and merger with, any appropriations for administrative expenses.

SEC. 310B. (a) The Secretary may [also make and insure loans] *guarantee loans made* to public, private, or cooperative organizations organized for profit or nonprofit, to Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups or to individuals for the purposes of [(1) improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities, including pollution abatement and control, (2) the conservation, development, and use of water for aquaculture purposes in rural areas, and (3) reducing the reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems, including the modification of existing systems, in rural areas.] *financing the production and distribution of ethanol in rural areas.* [For the purposes of this subsection, the term "solar energy" means energy derived from sources (other than fossil fuels) and technologies included in the Federal Nonnuclear Energy Research and Development Act of 1974, as amended.] Such loans, when originated, held, and serviced by other lenders, may be guaranteed by the Secretary under this section without regard to subsections (a) and (c) of section 333. [As used in this subsection, the term "aquaculture" means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of creating or augmenting publicly owned and regulated stocks of fish.]

[(b) The Secretary may make grants, not to exceed $50,000,000 annually, to eligible applicants under this section for pollution abatement and control projects in rural areas. No such grant shall exceed 50 per centum of the development cost of such a project.]

[(c) The Secretary may also make grants, not to exceed $50,000,000 annually, to public bodies for measures designed to facilitate development of private business enterprises, including the development, construction or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services and fees.]

[(d) The Secretary may participate in joint financing to facilitate development of private business enterprises in rural areas with the Economic Development Administration, the Small Business Administration, and the Department of Housing and Urban Development and other Federal and State agencies and with private and quasi-public financial institutions, through joint loans to applicants eligible under subsection (a) for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural areas or through joint grants to applicants eligible under subsection (c) for such purposes, including in the case of loans or grants the development, construction, or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services and fees.]

(*b*)(1) No financial or other assistance shall be extended under any provision of sections 304(b), 310B, and 312(b), except for cases in which such assistance does not exceed $1,000,000 or for cases in which direct employment will not be increased by more than fifty employees, that is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant, but this limitation shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

* * * * * * *

[(e)(1) The Secretary may also insure and guarantee loans under this section to public, private, or cooperative organizations organized for profit or nonprofit, or to individuals for the purpose of constructing or improving subterminal facilities if——

[(A) the construction or improvement of such facilities is consistent with the appropriate approved State or regional plans and the recommendations of the local plan review commission established pursuant to the Agricultural Subterminal Facilities Act of 1980;

[(B) the Secretary determines that the ownership and operation of such subterminal facilities will result in the efficient and competitive movement of bulk agricultural commodities and will return increased benefits to the local producers served by such facilities; and

[(C) the Secretary determines that the rail carrier designated to provide service to any such facility will be able to provide adequate service.

Such loans may be made available for purchase of rail rolling stock (including locomotives), motor trucks, barges, and other bulk agricultural commodities transport equipment to be used in conjunction with the operation of subterminal facilities.

[(2) The Secretary may only insure or guarantee loans under this subsection if the Secretary finds that applicants are unable to obtain credit from commercial lending institutions (including specialized lending institutions established to provide credit to agricultural producers) on reasonable terms and conditions.

[(3) In order to preserve local ownership and control of agricultural transportation facilities, the Secretary shall give preference under this subsection to existing agricultural elevator operators and local producers in areas in which subterminal facilities are proposed to be located.

[(4)(A) The total amount of loan authority made available for use for the purpose of this subsection for any fiscal year shall be allocated by the Secretary on the basis of need among those States that have approved State or regional plans as defined in the Agricultural Subterminal Facilities Act of 1980. Such allocation shall be based on such formula as the Secretary shall prescribe by regulation.

[(B) Any loan authority available for use in any State in any fiscal year that is not used by such State shall be reallocated, to the extent practicable, among other States eligible for the assistance provided under this section, in accordance with the same formula developed by the Secretary for the initial allocation of loan authority under this subsection.

[(5) As used in this subsection, the term "subterminal facility" has the same meaning as provided in the Agricultural Subterminal Facilities Act of 1980.

[(6) Within one hundred and eighty days after the effective date of the Agricultural Subterminal Facilities Act of 1980, the Secretary shall establish such rules and regulations as may be necessary to implement the provisions of this subsection.]

* * * * * * *

SUBTITLE B.—OPERATING LOANS

SEC. 311. (a) The Secretary is authorized to make and insure loans under this subtitle to farmers and ranchers in the United States, and to farm cooperatives and private domestic corporations and partnerships that are controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the United States, subject to the conditions specified in this section. To be eligible for such loans, applicants who are individuals, or, in the case of cooperatives, corporations, and partnerships, members, stockholders, or partners, as applicable, holding a majority interest in such entity, must (1) be citizens of the United States, (2) have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations, (3) be or will become operators of not larger than family farms (or in the case of cooperatives, corporations, and partners in which a majority interest is held by members, stockholders, or partners, as applicable, who are related by blood or marriage, as defined by the Secretary, such individuals must be or will become either owners or operators of not larger than a family farm and at least one such individual must be or will become an operator of not larger than a family farm), and (4) be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. In addition to the foregoing requirements of this subsection, in the case of corporations and partnerships, the family farm requirement of clause (3) of the preceding sentence shall apply as well to the farm or farms in which the entity has an operator interest and the requirement of clause (4) of the preceding sentence shall apply as well to the entity in the case of cooperatives, corporations, and partnerships.

(b)(1) Loans may also be made under this substitle without regard to the requirements of clauses (2) and (3) of subsection (a) to youths who are rural residents to enable them to operate enterprises in connection with their participation in 4-H Clubs, Future Farmers of America, and similar organizations and for the purposes specified in section 312.

(2) A person receiving a loan under this subsection who executes a promissory note therefore shall thereby incur full personal liability for the indebtedness evidenced by such note in accordance with its terms free of any disability of minority.

(3) For loans under this subsection the Secretary may accept the personal liability of a cosigner of the promissory note in addition to the borrowers' personal liability.

(C) The Secretary may not restrict eligibility for loans made or insured under this subtitle for purposes set forth in section 312 solely to borrowers of loans that are outstanding on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sec. 312. (a) Loans may be made under this subtitle for (1) paying costs incident to reorganizing the farming system for more profitable operations, (2) purchasing livestock, poultry, and farm equipment (including equipment which utilizes solar energy), (3) purchasing feed, seed, fertilizer, insecticides, and farm supplies and to meet other essential farm operating expenses including cash rent, (4) financing land and water development, use, and conservation, (5) without regard to the requirements of section 311(a) (2) and (3), to farmers or ranchers to finance outdoor recreational enterprises or to convert to recreational uses their farming or ranching operations, including those heretofore financed under this title, (6) enterprises needed to supplement farm income, (7) refinancing existing indebtedness, (8) other farm and home needs including but not limited to family subsistence, (9) loan closing costs, (10) for assisting farmers or ranchers in effecting additions to or alterations in the equipment, facilities, or methods of operation of their farms or ranches in order to comply with the applicable standards promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 or standards adopted by a State pursuant to a plan approved under section 18 of the Occupational Safety and Health Act of 1970, if the Secretary determines that any such farmer or rancher is likely to suffer substantial economic injury due to such compliance without assistance under this paragraph, [and] (11) assisting farmers and ranchers in reducing their dependence on nonrenewable energy resources through the development and construction of solar energy systems, including the modification of existing systems , *and (12) training in maintaining records of farming and ranching operations for limited resource borrowers receiving loans under section 310D.* For the purposes of this subtitle, the term "solar energy" means energy derived from sources (other than fossil fuels) and technologies included in the Federal Non-Nuclear Energy Research and Development Act of 1974, as amended.

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SUBTITLE C.—EMERGENCY LOANS

Sec. 321. * * *

[(b) Notwithstanding the credit elsewhere requirements of subsection (a) of this section and section 333(a) of this title, the Secretary shall implement a program under which the Secretary may make or insure loans under this subtitle to applicants able to obtain sufficient credit elsewhere, subject to the other terms and conditions for loans made or insured under this subtitle and such other terms and conditions as the Secretary may, by regulation, prescribe.]

(b) An applicant shall be ineligible for financial assistance under this subtitle for crop losses if crop insurance was available to the applicant for such crop under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

* * * * * * *

Sec. 324. [(a)(1) Except as otherwise provided in paragraph (2) of this subsection, no loan made or insured under this subtitle may exceed the amount of the actual loss caused by the disaster or $500,000, whichever is less, for each disaster.

[(2) Through September 30, 1982, loans may be made or insured under this subtitle in amounts in excess of the amount of actual loss (as limited under paragraph (1) of this subsection) to applicants who are not able to obtain sufficient credit elsewhere, within the following limits:

[(A) Through the end of fiscal year 1980, no such loan may be made or insured in an amount that would cause the total unpaid principal indebtedness of the applicant for loans or portions of loans in excess of the amount of actual loss to exceed $1,500,000;

[(B) During fiscal year 1981, no such loan may be made or insured in an amount that would cause the total unpaid principal indebtedness of the applicant for loans or portions of loans in excess of the amount of actual loss to exceed $1,000,000;

[(C) During fiscal year 1982, no such loan may be made or insured in an amount that would cause the total unpaid principal indebtedness of the applicant for loans or portions of loans in excess of the amount of actual loss to exceed $500,000; and

[(D) No loan or portion of a loan in excess of the amount of actual loss that is for more than $300,000 may be made or insured under this subtitle unless the Secretary determines that the applicant is not able to obtain from a private or cooperative lending agency a loan guaranteed by the Secretary under this subtitle sufficient to finance the applicant's actual needs at reasonable rates and terms (taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time).]

(a)(1) No loan made or insured under this subtitle may exceed the amount of the actual loss caused by the disaster or $200,000, whichever is less, for each disaster.

(2) The total principal indebtedness outstanding at any one time for loans made or insured to a borrower under this subtitle may not exceed $400,000.

(b) Loans under this subtitle shall be at rates of interest as follows:

(1) For loans or portions of loans up to the amount of the applicant's actual loss caused by the disaster, as limited under subsection (a)(1) of this section, the interest shall be at rates prescribed by the Secretary, [but (A) if the applicant is not able to obtain sufficient credit elsewhere, not in excess of 8 per centum per annum, and (B) if the applicant is able to obtain sufficient credit elsewhere, not in excess of the rate prevailing in the private market for similar loans, as determined by the Secretary] *but not in excess of 8 percent per annum;* and

[SEC. 330. Subsequent loans to continue the farming, ranching, or aquaculture operation may be made under this subtitle on an annual basis, for not to exceed two additional years, to eligible borrowers, subject to the limits on loans and the rates of interest established under section 324 of this title.]

SUBTITLE D.—ADMINISTRATIVE PROVISIONS

SEC. 331.* * *

[(d) compromise, adjust, or reduce claims, and adjust and modify the terms of mortgages, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require, but compromises, adjustments, or reductions of claims of $25,000 or more shall not be made without the approval of the Administrator: *Provided, however,* That—

[(1) compromise, adjustment, or reduction of claims shall be based on the value of the security and a determination by the Secretary of the debtor's reasonable ability to pay considering his other assets and income at the time of the action and with or without the payment of any consideration at the time of such adjustment or reduction;

[(2) releases from personal liability may also be made with or without payment of any consideration at the time of adjustment of claims against—

[(A) borrowers who have transferred the security property to approved applicants under agreements assuming the outstanding secured indebtedness;

[(B) borrowers who have transferred the security property to approved applicants under agreements assuming that portion of the secured indebtedness equal to the current market value of the security property or transferred the security property to the Secretary;

[(C) borrowers who have transferred the security property to other than approved applicants under agreements assuming the full amount of, or that portion of the secured indebtedness equal to, the current market value of the security property on terms not to exceed five annual installments with interest on the unpaid balance at a rate determined by the Secretary; and

[(D) borrowers who transfer security property under subparagraphs (B) and (C) above for amounts less than the indebtedness secured thereby may be released from personal liability only on a determination by the Secretary that each such borrower has no reasonable debt-paying ability considering his assets and income at the time of the transfer and the county committee certifies that the borrower has cooperated in good faith, used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to his loan to the best of his ability;

[(3) no compromise, adjustment, or reduction of claims shall be made upon terms more favorable than recommended by the appropriate county committee utilized pursuant to section 332 of this title; and

[(4) any claim which has been due and payable for five years or more, and where the debtor has no assets or no apparent future debt-paying ability from which the claim could be collected, or is deceased and has left no estate, or has been absent from his last known address for a period of at least five years, has no known assets, and his whereabouts cannot be ascertained without undue expense, may be charged off or released by the Secretary upon a report and favorable recommendation of the county committee and of the employee having charge of the claim, and any claim involving a principal balance of $150 or less may be charged off or released whenever it appears to the Secretary that further collection efforts would be ineffectual or likely to prove uneconomical; and

[(5) partial releases and subordination of mortgages may be granted either where the secured indebtedness remaining after the transaction will be adequately secured or the security interest of the Secretary will not be adversely affected, and the transaction and use of proceeds will further the purposes for which the loan was made, improve the borrower's debt-paying ability, permit payments on indebtedness owed to or insured by the Secretary, or permit payment of reasonable costs and expenses incident to the transaction, including taxes incident to or resulting from the transaction which the borrower is unable to pay from other sources:

Provided further, That no such compromise, adjustment, or reduction shall be made hereunder after the claim has been referred to the Attorney General unless agreed to by the Attorney General.]

(d) compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require, to carry out this title. The Secretary may release borrowers or others obligated on a debt incurred under this title from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim may be made or carried out—

(1) on terms more favorable than those recommended by the appropriate county committee utilized pursuant to section 332; or

(2) after the claim has been referred to the Attorney General, unless the Attorney General approves;

* * * * * * *

SEC. 331b. * * *

SEC. 331C. The Secretary shall permit a borrower of a loan made or insured under this title, with the approval of the head of the appropriate State office of the Farmers Home Administration, to transfer, on a one-time basis, the accounts of such borrower for such loans to a county office of the Farmers Home Administration in an adjacent county.

SEC. 331D. (a) The Secretary shall permit a borrower of a loan made or insured under this title to make a prospective payment on such loan with proceeds from—

(1) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

(2) the sale of oil, gas, or other minerals removed from real property used to secure such loan if—

(A) the value of the rights to such oil, gas, or other minerals has not been used to secure such loan; and

(B) the security for such loan is otherwise adequate.

(b) Subsection (a) shall not apply to a borrower of a loan made or insured under this title with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Agriculture, Food, Trade, and Conservation Act of 1985.

* * * * * * *

SEC. 333. * * *

SEC. 333A. (a)(1) The Secretary shall approve or disapprove an application for a loan or loan guarantee made under this title, and notify the applicant of such action, not later than 90 days after the Secretary has received a complete application for such loan or loan guarantee.

(2) If an application for a loan or loan guarantee under this title is incomplete, the Secretary shall inform the applicant of the reasons such application is incomplete not later than 20 days after the Secretary has received such application.

(3) If an application for a loan or loan guarantee under this title is disapproved by the Secretary, the Secretary shall state the reasons for the disapproval in the notice required under paragraph (1).

(b)(1) Except as provided in paragraph (2), if an application for an insured loan under this title is approved by the Secretary, the Secretary shall provide the loan proceeds to the applicant not later than 15 days (or such longer period as the applicant may approve) after the application for the loan is approved by the Secretary.

(2) If the Secretary is unable to provide the loan proceeds to the applicant within such 15-day period because sufficient funds are not available to the Secretary for such purpose, the Secretary shall provide the loan proceeds to the applicant as soon as practicable (but in no event later than 15 days unless the applicant agrees to a longer period) after sufficient funds for such purpose become available to the Secretary.

(c) In carrying out the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, the Secretary shall ensure that each request of a lending institution for designation as an approved lender under such program is reviewed, and a decision made on the application, not later than 15 days after the Secretary has received a complete application for such designation.

(d)(1) As soon as practicable after the date of enactment of the Consolidated Omnibus Reconciliation Act of 1985, the Secretary shall take such steps as are necessary to make personnel and other resources of the Department of Agriculture available to the Farmers Home Administration as are sufficient to enable the Farmers Home Administration to expeditiously process loan applications that are submitted by farmers and ranchers.

(2) In carrying out paragraph (1), the Secretary may use any authority of law provided to the Secretary, including—

(A) the Agricultural Credit Insurance Fund established under section 309; and

(B) the employment procedures used in connection with the emergency loan program established under subtitle C.

SEC. 333B. (a) The Secretary shall provide an applicant for or borrower of a loan, or an applicant for or recipient of a loan guarantee, under this title who has been directly and adversely affected by a decision of the Secretary made under this title (hereafter in this section referred to as the "appellant") with written notice of the decision, an opportunity for an informal meeting, and an opportunity for a hearing with respect to such decision, in accordance with regulations issued by the Secretary consistent with this section.

(b)(1) Not later than 10 days after such adverse decision, the Secretary shall provide the appellant with written notice of the deci-

sion, an opportunity for an informal meeting, an opportunity for a hearing, and the procedure to appeal such decision (including any deadlines for filling appeals).

(2) Upon the request of the appellant and in order to provide an opportunity to resolve differences and minimize formal appeals, the Secretary shall hold an informal meeting with the appellant prior to the initiation of any formal appeal of the decision of the Secretary.

(c)(1) An appellant shall have the right to have—

(A) access to the personal file of the appellant maintained by the Secretary, including a reasonable opportunity to inspect and reproduce the file at an office of the Farmers Home Administration located in the area of the appellant; and

(B) representation by an attorney or nonattorney during the inspection and reproduction of files under subparagraph (A) and at any informal meeting or hearing.

(2) The Secretary may charge an appellant for any reasonable costs incurred in reproducing files under paragraph (1)(A).

* * * * * * *

SEC. 335. (a) * * *

(b) [Real] *Except as provided in subsection (e), real* property administrerd under the provisions of this title may be operated or leased by the Secretary for such period or periods as the Secretary may deem necessary to protect the Government's investment therein.

(c) [The] *Except as provided in subsection (e), the* Secretary may determine whether real property administered under this title is suitable for disposition to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration. Any property which the Secretary determines to be suitable for such purposes shall, whenever practicable, be sold by the Secretary as expeditiously as possible to such eligible persons in a manner consistent with such provisions hereof. Real property which is not determined suitable for sale to such eligible persons or which has not been purchased by such persons within a period of three years from the date of acquisition, shall be sold by the Secretary after public notice at public sale and, if no acceptable bid is received then by negotiated sale, at the best price obtainable for cash or on secured credit without regard to the laws governing the disposition of access or surplus property of the United States. The terms of such sale shall require an initial downpayment and the remainder of the sales price payable in installments with interest on unpaid balance at the rate determined by the Secretary, but not in any event at rates and terms more favorable than those legally permissible for eligible borrowers. Any conveyances under this section shall include all of the interest of the United States, including mineral rights.

* * * * * * *

(e)(1) The Secretary shall to the extent practicable sell or lease farmland administered under this title in the following order of priority:

(A) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

(B) Lease of such farmland to operators (as of the time immediately before such leases are entered into) of not larger than family-size farms.

(2)(A) The Secretary shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with paragraph (3), a lease with an option to purchase farmland administered under this title.

(B) The Secretary shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

(C) In leasing such land, the Secretary shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the Secretary determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

(3)(A)(i) The Secretary may sell farmland administered under this title through an installment sale or similar device that contains such terms as the Secretary considers necessary to protect the investment of the Federal Government in such land.

(ii) The Secretary may subsequently sell any contract entered into to carry out clause (i).

(B) The Secretary shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

(C) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the appropriate county committee shall, by majority vote, select the operator who may purchase such land, on such basis as the Secretary may prescribe by regulation.

(4)(A) If the Secretary determines that farmland administered under this title is not suitable for sale or lease to an operator of not larger than a family-size farm because such farmland is in a tract or tracts that the Secretary determines to be larger than that necessary for family-size farms, the Secretary shall subdivide such land into tracts suitable for such operator.

(B) The Secretary shall dispose of such subdivided farmland in accordance with this subjection.

(5) If suitable farmland is available for disposition under this subsection, the Secretary shall—

(A) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

(B) post an announcement of the availability of such farmland in a prominent place in the local office of the Farmers Home Administration that serves the county in which the farmland is located.

(6) In the case of farmland administered under this title that is highly erodible land (as defined in paragraph (7)), the Secretary may require the use of specified conservation practices on such land as a condition of the sale or lease of such land.

(7) As used in paragraph (6), the term "highly erodible land" means land classified by the Soil Conservation Service as class IIIe, IVe, VI, VII, or VIII land under the land capability classification system in effect on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(f)(1) As used in this subsection, the term "normal income security" has the same meaning given such term in section 1962.17(b) of title 7, Code of Federal Regulations (as of January 1, 1985).

(2) Until such time as the Secretary determines that a loan made or insured under this title should be liquidated, the Secretary shall release from the normal income security provided for such loan an amount sufficient to pay the essential household and farm operating expenses of the borrower, as determined by the Secretary.

* * * * * * *

SEC. 337. *(a)* The Secretary may provide voluntary debt adjustment assistance between farmers and their creditors and may cooperate with State, territorial, and local agencies and committees engaged in such debt adjustment, and may give credit counseling.

(b)(1) As used in this subsection, the term "summary period" means—

(A) the period beginning on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and ending on the date on which the first loan summary statement is issued after such date of enactment; or

(B) the period beginning on the date of issuance of the preceding loan summary statement and ending on the date of issuance of the current loan summary statement.

(2) On the request of a borrower of a loan made or insured (but not guaranteed) under this title, the Secretary shall issue to such borrower a loan summary statement that reflects the account of activity during the summary period for each loan made or insured under this title to such borrower, including—

(A) the outstanding amount of principal due on each such loan at the beginning of the summary period;

(B) the interst rate charged on each such loan;

(C) the amount of payments made on their application to each such loan during the summary period and an explanation of the basis for the application of such payments;

(D) the amount of principal and interest due on each such loan at the end of the summary period;

(E) the total amount of unpaid principal and interest on all such loans at the end of the summary period;

(F) any delinquency in the repayment of any such loan;

(G) a schedule of the amount and date of payments due on each such loan; and

(H) the procedure the borrower may use to obtain more information concerning the status of such loans.

* * * * * * *

SEC. 346 (a) Effective October 1, 1979, the aggregate principal amount of loans under the programs authorized under each subtitle of this title during each three-year period thereafter shall not exceed such amounts as may be authorized by law after the date of enactment of this section. There shall be two amounts so established for each of such programs and for any maximum levels provided in appropriation Acts for the programs authorized under this title, one against which direct and insured loans shall be charged and the other against which guaranteed loans shall be charged, with or without authority for the Secretary to transfer amounts between such categories within a given program for more effective administration.

(b)(1) Loans for each of the fiscal years 1980, 1981, and 1982 are authorized to be insured, or made to be sold and insured, or guaranteed under the Agricultural Credit Insurance Fund as follows:

(A) real estate loans, $1,615,000,000, including $1,500,000,000 for farm ownership loans of which $1,400,000 may be for insured loans and $100,000,000 may be for guaranteed loans with authority to transfer 25 per centum of such amounts between categories, and $100,000,000 for water development, use, and conservation loans of which $90,000,000 may be for insured loans and $10,000,000 may be for guaranteed loans with authority to transfer 25 per centum of such amounts between categories;

[(B) operating loans, $1,200,000,000 of which $1,150,000,000 may be for insured loans and $50,000,000 may be for guaranteed loans with authority to transfer 25 per centum of such amounts between categories; and

[(C) emergency insured and guaranteed loans in amounts necessary to meet the needs resulting from natural disasters.

[Not more than 75 per centum of the insured loans authorized for farm ownership purposes and not more than 75 per centum of the insured loans authorized for farm operating purposes may be for applicants other than low-income, limited-resource borrowers.

[(2) Loans for each of the fiscal years 1980, 1981, and 1982 are authorized to be insured, or made to be sold and insured, or guaranteed under the Rural Development Insurance Fund as follows:

[(A) insured water and sewer facility loans, $1,000,000,000;

[(B) industrial development loans, $1,500,000,000 of which $100,000,000 may be for insured loans and $1,400,000,000 may be for guaranteed loans with authority to transfer amounts between categories; and

[(C) insured community facility loans, $500,000,000.]

(b)(1)(A) For each of the fiscal years ending September 30, 1986, through September 30, 1988, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, from the Agricultural Credit Insurance Fund established under section 309 in an amount equal to $4,000,000,000, of which not less than $520,000,000 shall be for farm ownership loans under subtitle A.

(B) Subject to subparagraph (C), such amount shall be apportioned as follows:

(i) For the fiscal year ending September 30, 1986—

(I) $2,000,000,000 for insured loans, of which not less than $260,000,000 shall be for farm ownership loans; and

(II) $2,000,000,000 for guaranteed loans, of which not less than $260,000,000 shall be for guarantees of farm ownership loans.

(ii) For the fiscal year ending September 30, 1987—

(I) $1,500,000,000 for insured loans, of which not less than $195,000,000 shall be for farm ownership loans; and

(II) $2,500,000,000 for guaranteed loans, of which not less than $325,000,000 shall be for guarantees of farm ownership loans.

(iii) For the fiscal year ending September 30, 1988—

(I) $1,000,000,000 for insured loans, of which not less than $130,000,000 shall be for farm ownership loans; and

(II) $3,000,000,000 for guaranteed loans, of which not less than $390,000,000 shall be for guarantees of farm ownership loans.

(C) For each of the fiscal years referred to in subparagraph (A), the Secretary may transfer not more than 25 percent of the amounts authorized for guaranteed loans to amounts authorized for insured loans.

(D) For each of the fiscal years ending September 30, 1986, through September 30, 1988, emergency loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitle C from the Agricultural Credit Insurance Fund in such amounts as are necessary to meet the needs resulting from natural disasters.

(2)(A) For each of the fiscal years ending September 30, 1986, through September 30, 1988, loans for the production and distribution of ethanol in rural areas may be guaranteed in accordance with section 310B from the Rural Development Insurance Fund established under section 309A in the amount of $150,000,000.

(B) For the fiscal year ending September 30, 1986, water and waste facility loans may be insured, or made to be sold and insured, in accordance with section 306 from the Rural Development Insurance Fund in the amount of $75,000,000.

* * * * * * *

[(d) Notwithstanding any contrary provisions of subsection (b) of this section, for fiscal year 1982, loans are authorized to be insured, or made to be sold and insured, as follows:

[(1) From the Agricultural Credit Insurance Fund—

[(A) insured real estate loans for farm ownership purposes, $700,000,000, and

[(B) insured operating loans, $1,325,000,000.

Not less than 20 per centum of the insured loans authorized for farm ownership purposes and not less that 20 per centum of the insured loans authorized for farm operating purposes shall be for low-income, limited-resource applicants.

[(2) From the Rural Development Insurance Fund—

[(A) insured water and waste disposal loans, $300,000,000, and

[(B) insured community facility loans, $130,000,000.]

[(e)] *(d)* per centum of the loans for farm ownership purposes under subtitle A of this title, and not less than [20] *25* per centum of loans for farm operating purposes under subtitle B of this title, authorized to be insured, or made to be sold and insured, from the Agricultural Credit Insurance Fund during [fiscal year 1984] *each fiscal year* shall be for low-income, limited-resource borrowers.

(2) The Secretary shall provide notification to farm borrowers under this title, as soon as practicable after the date of enactment of the Emergency Agricultural Credit Act of 1984 and in the normal course of loan making and loan servicing operations, of the provisions fo this title relating to low-income, limited-resource borrowers and the procedures by which persons may apply for loans under the low-income, limited-resource borrower program.

* * * * * * *

SEC. 350. (a) The Secretary shall establish and carry out in accordance with this section an interest rate reduction program for loans guaranteed under this title.

(b) Under such program, the Secretary shall enter into a contract with, and make payments to, a legally organized institution to reduce the term of such contract the interest rate paid by a borrower on a guaranteed loan made by such institution if—

(1) the borrower—

(A) is unable to obtain sufficient credit elsewhere to finance the actual needs of the borrower at reasonable rates and terms, taking into consideration private and cooperative rates and terms for a loan for a similar purpose and period of time in the community in or near which the borrower resides;

(B) is otherwise unable to make payments on such loan in a timely manner; and

(C) has a total estimated cash income during the 12-month period beginning on the date such contract is entered into (including all farm and nonfarm income) that will equal or exceed the total estimated cash expenses to be incurred by the borrower during such period (including all farm and nonfarm expenses); and

(2) the lender reduces during the term of such contract the annual rate of interest payable on such loan by a minimum percentage specified in such contract.

(c) In return for a contract entered into by a lender under subsection (b) for the reduction of the interest rate paid on a loan, the Secretary shall make payments to the lender in an amount equal to not more than 50 percent of the cost of reducing the annual rate of interest payable on such loan, except that such payments may not exceed the cost of reducing such rate by more than 2 percent.

(d) The term of a contract entered into under this section to reduce the interest rate on a guaranteed loan may not exceed the outstanding term of such loan, or 3 years, whichever is less.

(e)(1) Notwithstanding any other provision of this title, the Agricultural Credit Insurance Fund established under section 309 may be used by the Secretary to carry out this section.

(2) The total amount of funds used by the Secretary to carry out this section may not exceed $490,000,000.

EMERGENCY AGRICULTURAL CREDIT ADJUSTMENT ACT OF 1978

SEC. 201. This title may be cited as the "Emergency Agricultural Credit Adjustment Act of 1978".

* * * * * * *

SEC. 204. (a) The Secretary may guarantee under this title the principal and interest on any loan that is made by a legally organized lending agency, and that otherwise meets the purposes and conditions of this title, except that such guarantee shall not exceed 90 per centum of the principal and interest of the loan.

(b) Loans guaranteed under this title shall bear interest at rates to be agreed upon by the lender and borrower. Loans insured under this title shall bear interest at rates determined by the Secretary taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed 1 per centum, as determined by the Secretary, and adjusted to the nearest one-eighth of 1 per centum.

(c) Loans insured and guaranteed under this title shall be repayable at such times as the Secretary may determine, taking into account the purpose of, and need for, the loan, but not later than provided for loans for similar purposes under the Consolidated Farm and Rural Development Act: *Provided,* That, if the loan is for a purpose described in subtitle B of such Act, the Secretary may make the loan repayable at the end of a period not exceeding twenty years if the Secretary determines that the need of the applicant justifies a longer repayment period.

(d) No fees or charges shall be assessed by the Secretary for any loan insured or for any guarantee provided under this title.

(e)(1) The Secretary shall permit a borrower of a loan made or insured under this title to make a prospective payment on such loan with proceeds from—

(A) the leasing of oil, gas, or other mineral rights to real property used to secure such loan; or

(B) the sale of oil, gas, or other minerals removed from real property used to secure such loan if—

(i) the value of the rights to such oil, gas, or other minerals has not been used to secure such loan; and

(ii) the security for such loan is otherwise adequate.

(2) Paragraph (1) shall not apply to a borrower of a loan made or insured under this title with respect to which a liquidation or foreclosure proceeding is pending on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

COMMITTEE ON ARMED SERVICES

Title II

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United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, DC 20510

September 27, 1985

Honorable Pete V. Domenici and Honorable Lawton Chiles
Chairman and Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

Section 2(c) of the First Concurrent Resolution on the Budget for Fiscal Year 1986 directs the Senate Armed Services Committee to report changes in laws under its jurisdiction sufficient to achieve outlay savings of $100 million in FY 1986, $200 million in FY 1987, and $300 million in FY 1988.

We understand that the intent of this language was to encourage this Committee to enact legislation which would substantially reform the military retirement system. The Armed Services Committee debated the issue of reform of the military retirement system during consideration of S. 1160, the Department of Defense Authorization Act, 1986, and the conference report accompanying S. 1160 contains a provision which, when enacted, will represent another major step in bringing about the first major reform of a Federal retirement program in many years. That provision limits the level of appropriations which are authorized to be made to the Department of Defense for the payment of, among other things, the amount required to be paid into the Department of Defense Military Retirement Fund pursuant to Section 1466(a) of Title 10, United States Code, and in that regard constitutes a change to existing law. Furthermore, when enacted, those provisions will require the Secretary of Defense to submit to Congress legislative proposals to reform the military retirement benefit structure for persons entering the Armed Forces in the future. A cornerstone of those provisions, and one insisted upon by a large majority of both the Senate and House Armed Services Committees, was that structural changes contained in reform legislation should apply only to those who initially become members of the Armed Forces after its enactment; that is, benefits for those already in the Service or already retired should not be reduced merely to reduce the cost of the system.

The Committee is currently waiting to receive the legislative recommendations of the Secretary of Defense which are required under Section 666 of the FY 1986 DOD Authorization Conference Report, and extensive hearings are planned for the month of October. We expect to report a bill to the Senate before the end of this session which would significantly revise the current military retirement system for new military members. We believe we are very close to enacting substantial cost-saving reform of the military retirement system in a way that will not adversely affect our ability to man our Armed Forces. The savings that will be realized from that reform will far exceed the savings envisioned by the First Concurrent Budget Resolution and will set the stage for similar reforms elsewhere in the Federal government. However, we are not prepared to report this sweeping legislation under the deadline set in the budget resolution for the reconciliation process.

Accordingly, the Committee forwards legislative language for inclusion in the reconciliation bill which limits appropriations in FY 1986 for the Department of Defense payment to the military retirement trust fund. This language is identical to that included in the DOD Authorization Conference Report which has passed the Senate but which is awaiting House action.

In order to comply with the short-term spending savings set forth in the reconciliation instructions, however, the Committee also forwards as part of its reconciliation response two additional provisions which provide outlay savings in Fiscal Years 1986, 1987, and 1988 as set forth in the CBO cost estimate included in the accompanying report language.

The first of these provisions delays for one month the effective date of the military pay raise contained in the FY 1986 DOD Authorization Conference Report. That bill authorizes a three percent increase in the pay of members of the military beginning on October 1, 1985, and the effect of the Committee's reconciliation action is to delay the pay increase until November 1, 1985.

The second provision would require institutions that provide services under Medicare to provide services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). A similar provision was included in S. 2723, the Omnibus Defense Authorization Act, 1985, as reported to the Senate. However, a floor amendment to strike the provision was successful, and substitute language required a joint study of the proposal by the Department of Defense and the Department of Health and Human Services. The provision forwarded for inclusion in this reconciliation bill makes this proposal effective beginning in FY 1987 and requires that the previously requested study be submitted to Congress by December 1, 1985.

Sincerely,

Barry Goldwater
Chairman

Sam Nunn
Ranking Minority Member

MILITARY RETIREMENT

Background

In the past ten years, six major studies of the military retirement system have been conducted. All have recommended structural changes in the system, but none of the proposals generated by those studies has been adopted. Nonetheless, since 1958, the military retirement system has been revised on a piecemeal basis a number of times. These changes have included: providing for adjustments in retired pay tied to the Consumer Price Index, first annually, then semi-annually and then back to annually; providing that retired pay for those entering the service after September 7, 1980, be based on the "high-three" average basic pay instead of final basic pay; and providing that retired pay be rounded down to the next lower whole dollar whenever adjustments to that pay are made. In addition, Congress has attempted to obtain short-term savings on more than one occasion by limiting the amount of retired pay cost-of-living adjustments payable to some military retirees.

Prior to Fiscal Year 1985, appropriations were provided each year to cover the cost of military retired pay actually paid to retirees during that year. That is, the Department of Defense had to pay, and the defense budget reflected, the retirement benefits earned in the past. In Fiscal Year 1985, a revised accounting system for military retirement was implemented and a new retirement fund was established outside of the defense budget. Under this new program, the Department of Defense each year is required to budget for and pay into the new retirement fund the projected retirement benefits for those persons who are members of the military during that year but who will retire in the future. Under this system, the Department of Defense must pay, and the defense budget must reflect, retirement benefits as they are earned. Under the existing military retirement entitlement law, it has been determined that $18.2 billion must be paid into the new retirement fund by the Department of Defense in Fiscal Year 1986. The Department of Defense has included this amount in its FY 1986 budget request for military personnel apropriations which totals $73.4 billion.

A permanent change in the military retirement system would result in a change in the amount which the Department of Defense is required to pay into the retirement fund, the so-called accrual charge. A change in the law providing for a reduction in future benefits means that less money must be paid into that fund to pay for the future benefits of those affected by the change. But the effect of such a change on the Federal budget and its components varies. Within the defense budget, the accrual charge is reflected as part of Department of Defense budget authority. Furthermore, since the Department must transfer the accrual charge to the retirement fund outside the Department, the transfer creates an outlay to the defense budget.

Therefore, a reduction to the accrual charge in a fiscal year results in a reduction of budget authority and outlays in the defense budget. Within the context of the Federal budget, a change in the accrual charge will result in a corresponding change in Federal budget authority. However, the only way to accomplish a reduction in Federal budget outlays under the military retirement system is to actually reduce the benefits to be paid during that fiscal year to persons who have already served and are already receiving military retired pay. In sum, a change in the military retirement system affecting only those who enter the service after enactment, while not changing short-term Federal outlays, would immediately effectuate a change in Federal budget authority, defense budget authority, and defense outlays.

Recommendation

The Committee recommends a ceiling on total funds available for the payment of basic pay and for payment of the accrual charge in Fiscal Year 1986. The ceiling represents a reduction of $2.9 billion from the defense budget request. Since present law requires that the funds affected be used for the pay of the present force and for payment of the accrual charge into the retirement fund, the Department of Defense must recommend, and the Congress must now enact, legislation changing the current military retirement system to meet these savings in FY 1986.

The Committee's recommendation directs that the Secretary of Defense, not later than ten days after enactment, submit two alternative legislative proposals either of which, if enacted, would reduce the accrual charge in Fiscal Year 1986 by $2.9 billion. Such changes, when enacted, would produce a reduction of $2.9 billion in defense budget authority, $2.8 billion in defense budget outlays, and $3.1 billion in Federal budget authority. Accompanying the proposed legislative changes would be a report on the anticipated effects such changes would have on recruiting and retention in the military. To reduce the possible adverse effects of such changes on recruiting and retention, the Committee has specifically directed that the proposed legislative changes apply to those who initially enter the service after enactment of those changes.

The Committee views this proposal as a deliberative step to bring about substantive reform of the military retirement system, while at the same time remaining mindful of its responsibility to ensure that the Armed Forces are manned and ready to provide for defense of the nation. The Committee's recommendation represents a responsible approach to reform of the military retirement system which, when fully implemented, will result in a substantial immediate reduction in Federal budget authority and in both budget authority and outlays in the defense budget.

DELAY IN MILITARY PAY RAISE

The Department of Defense Authorization Act for Fiscal Year 1986, S. 1160, has been passed by both the Senate and the House of Representatives, and the conference report on that bill has been agreed to by the Senate. The conference version of S. 1160 provides that the rates of basic pay, basic allowance for quarters, and basic allowance for subsistence for all members of the uniformed services be increased by 3 percent effective on October 1, 1985.

In order to comply with the instructions contained in the First Concurrent Resolution on the Budget for Fiscal Year 1986 to obtain savings in Federal outlays in FY 1986, the Armed Services Committee reluctantly recommends that these increases in military pay be delayed until November 1, 1985. This delay has been estimated to result in a savings of $150 million in Federal outlays in FY 1986 and would be accomplished by directing the Secretary of the Senate to make a change in S. 1160 upon enrollment to reflect the delay.

LINKAGE OF CHAMPUS AND CHAMPVA TO MEDICARE

Section 931 of the Department of Defense Authorization Act for Fiscal Year 1985 included provisions authorizing the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) to utilize Medicare reimbursement procedures in paying for care under these programs. However, CHAMPUS beneficiaries form a relatively small proportion of the health care beneficiaries in the nation (less than 1 percent of the number of Medicare enrollees and less than 3 percent of the hospital revenues) and there is little incentive for health care providers to agree to provide care to CHAMPUS beneficiaries under the cost-containing reimbursement procedures with CHAMPUS was authorized to use. This results in CHAMPUS beneficiaries being required to pay the entire cost of their care or being denied care by these providers.

Therefore, the Committee recommends provisions, requested by the Administration, which would require that any institution which chooses to participate in Medicare must also participate in CHAMPUS and CHAMPVA. These provisions would continue the important voluntary feature of Medicare, inasmuch as a provider would still retain the right to elect to participate or not to participate in the Medicare system. However, if providers elect to participate in Medicare, which because of the large market share represented by Medicare enrollees they are likely to do, they would be required also to participate in

CHAMPUS and CHAMPVA and provide care to the much smaller group covered by these programs.

The Department of Defense has estimated average annual savings of approximately $150 million during the first five years of enactment of these provisions. However, the Committee is also aware of concerns about the effect these changes might have on various segments of the medical care provider community. Because some segments of that community bear a greater share of the costs of indigent health care, concern has surfaced about whether the addition of CHAMPUS and CHAMPVA beneficiaries, under Medicare reimbursement procedures, might not exacerbate an already difficult financial situation for those segments of the provider community.

In order to ensure that these recommended provisions may be implemented without undue adverse effects on those segments of the medical provider community, the provisions would not become effective until October 1, 1987. In the interim, a study by the Secretary of Defense and the Secretary of Health and Human Services of the issues involved would be required, and the results of that study would be transmitted to the interested committees of the Congress not later than December 1, 1985.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 27, 1985

Honorable Barry Goldwater
Chairman
Committee on Armed Services
U.S. Senate
Washington, D.C. 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for the reconciliation proposals ordered reported by the Senate Committee on Armed Services on September 26, 1985.

If you wish further details on this estimate, we will be pleased to provde them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Sam Nunn
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 27, 1985

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE: Not yet assigned.

3. BILL STATUS:

   As ordered reported by the Senate Committee on Armed Services to the Budget Committee, on September 26, 1985.

4. BILL PURPOSE:

   To comply with reconciliation instructions through the following:

   The first section reduces the payments by the Department of Defense (DoD) for military retirement accrual charges. The section further requires the Secretary of Defense to submit a report (including draft legislation) describing two separate changes to the military retirement system that would result in accrual savings of $2.9 billion. One of the Secretary's proposals must change an element of military retirement compensation other than the cost-of-living adjustment, and both proposals are to be applied only to those entering the military after the effective date of the proposed legislation.

   The second section postpones the military pay raise for fiscal year 1986 from October to November.

   The third section requests a joint study from the Departments of Defense and Health and Human Services on the linkage of Civilian Health and Medical Care Program for the Uniformed Services (CHAMPUS) and Medicare rates. Beginning in fiscal year 1987, the bill would require that any institution that wishes to participate in Medicare also accept CHAMPUS patients at Medicare reimbursement rates.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   Table 1 shows that the Committee's reconciliation proposals could reduce net federal outlays relative to the baseline used for the first budget resolution by $366 million in 1986-1988 and by $712 million in 1986-1990.

TABLE 1. TOTAL NET BUDGETARY EFFECT OF COMMITTEE'S RECONCILIATION PROPOSALS (By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Function 050					
Budget Authority	-3,048	-144	-159	-175	-186
Outlays	-2,946	-118	-150	-167	-179
Function 602					
Budget Authority	-3,043	-1	0	0	0
Outlays	0	0	0	0	0
Function 950					
Budget Authority	2,847	1	0	0	0
Outlays	2,847	1	0	0	0
Net Budgetary Impact					
Budget Authority	-3,244	-144	-159	-175	-186
Outlays	-99	-117	-150	-167	-179

Basis of Estimate

The estimated budget authority savings in the first section of the bill in 1986 are a result of the committee's direct reduction of accrual payments to the military retirement trust fund (in budget function 602) of $2.9 billion from the current law amounts. The bill limits the authorization for appropriations in the military pay accounts in anticipation of legislation that would reduce the accrual for military retirement. The CBO estimate includes these savings even though this bill would not change the military retirement entitlement--additional legislation is required.

No reductions to the baseline as a result of the accrual proposal were made for 1987-1990, since the bill does not affect military pay account totals for these years. However, the intent of the Committee is to effect a permanent change in the military retirement system. If the legislation that is submitted by the Secretary of Defense passes, there will be reductions to the net budget authority in 1987-1990. Under the baseline methodology, these budget authority reductions could be over $3 billion each year, depending upon the type of legislation submitted. In the next budget cycle, the method for calculating the 1987-1990 accrual charge will change. Using the new method, the reductions in budget authority could be no greater than $1.5 billion in fiscal year 1987, and not more than $7.6 billion for fiscal year 1987-1990. Legislation completely eliminating all retirement benefits to those entering the service after enactment would be necessary to achieve savings of this magnitude.

Savings in the second section from a one-month delay in the military pay raise were calculated using the baseline methodology.

The third section requires institutions wishing to participate in Medicare to accept CHAMPUS patients at the same reimbursement rates applied to Medicare users. Since Medicare rates are generally lower, this section would result in savings to the federal government within funciton 050. Estimates of these savings were supplied by DoD. For the savings to the Federal Government by section of this bill, see Table 2.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENT: None.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

CBO prepared estimates for S. 1160 and H.R. 1872, the Senate and House versions of the Defense Authorization Bill for Fiscal Year 1986. This estimate focuses on the provisions described in the Armed Services Committee's bill for budget reconciliation purposes. The provisions in this bill are different from those in either S. 1160 or H.R. 1872. Therefore, this estimate is not directly comparable to the previous CBO estimates.

9. ESTIMATE PREPARED BY: Gene Bryton (226-2840)
Barbara Hollinshead (226-2840)
Michael McCord (226-2840)

10. ESTIMATE APPROVED BY:

C. G. Nuckols
for James L. Blum
Assistant Director
for Budget Analysis

TABLE 2. BUDGETARY EFFECT BY SECTION OF THE SENATE ARMED SERVICES BILL (By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
SECTION 1:					
Function 050					
Budget Authority	-2,900	a/	a/	a/	a/
Outlays	-2,800	a/	a/	a/	a/
Function 602					
Budget Authority	-3,000	a/	a/	a/	a/
Outlays	0	0	0	0	0
Function 950					
Budget Authority	2,800	a/	a/	a/	a/
Outlays	2,800	a/	a/	a/	a/
SECTION 2:					
Function 050					
Budget Authority	-148	0	0	0	0
Outlays	-146	-3	0	0	0
Function 602					
Budget Authority	-43	-1	0	0	0
Outlays	0	0	0	0	0
Function 950					
Budget Authority	47	1	0	0	0
Outlays	47	1	0	0	0
SECTION 3:					
Function 050					
Budget Authority	0	-144	-159	-175	-186
Outlays	0	-115	-150	-167	-179
Net Budgetary Impact					
Budget Authority	-3,244	-144	-159	-175	-186
Outlays	-99	-117	-150	-167	-179

a/ See the Basis of Estimate discussion of the bill's first section.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Title III

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KENNETH A. McLEAN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510

October 1, 1985

Senator Pete V. Domenici, Chairman
Senate Committee on the Budget

Senator Lawton Chiles, Ranking Member

Dear Senators:

This letter is in regard to budget reconciliation instructions to the Senate Banking, Housing and Urban Affairs Committee.

Members of the Committee agree about meeting the required amounts of savings through changes to the four programs as assumed by the Congress in determining those amounts. The one minor exception to this is with regard to terminating the Section 108 loan guarantee program. Although I, and some other Committee members, believe that there is justification for terminating the program, a consensus exists that the savings can also be achieved by prohibiting use of the Federal Financing Bank after July 1, 1986 while retaining future guarantees on loans sold in the private investment market. In addition, the Committee has made modifications in the UDAG selection criteria.

In light of this late compromise there will be no formal committee report. The recommended legislative language is attached.

Sincerely,

Jake Garn

William Proxmire

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

October 2, 1985

Honorable Jake Garn
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached tables analyzing the impacts of Title III of the Omnibus Reconciliation Act of 1985. The first table shows the costs of Title III relative to current law. The second table displays the estimated changes relative to the budget resolution baseline, with the legislation extrapolated through 1988.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner

cc: Honorable William Proxmire
Ranking Minority Member

TABLE 1: FEDERAL COSTS OR SAVINGS (-) RELATIVE TO CURRENT LAW (by fiscal year, in millions of dollars)

	1986	1987	1988	Three-Year Total
Public Housing Debt Forgiveness				
Budget Authority	-497	-467	-463	-1,427
Outlays	-1,567	-1,567	-1,567	-4,701
Public Housing Operating Subsidies				
Budget Authority	1,279	---	---	1,279
Outlays	639	640	---	1,279
Section 108 Community Development Loans				
Budget Authority	116	137	69	322
Outlays	28	22	-25	25
Rural Housing Loans				
On-Budget				
Budget Authority	1,152	-602	43	593
Outlays	135	1	176	312
Off-Budget				
Budget Authority	746	591	92	1,429
Outlays	746	591	92	1,429
Urban Development Action Grants				
Budget Authority	352	366	---	718
Outlays	18	89	161	268
Interest Payments to the Treasury a/				
Budget Authority	1,536	1,466	1,415	4,417
Outlays	1,536	1,466	1,415	4,417
TOTAL - COSTS RELATIVE TO CURRENT LAW				
Budget Authority	4,684	1,491	1,156	7,331
Outlays	1,535	1,242	252	3,029

a. The budget impact shown in the table for public housing debt forgiveness and rural housing loans includes effects on payments of interest by the agencies to the Treasury. These are intragovernmental transactions, and this entry shows the offsetting effects of these payments (which appear in function 900).

TABLE II: COSTS OR SAVINGS (-) RELATIVE TO RESOLUTION BASELINE--WITH LEGISLATION EXTRAPOLATED THROUGH 1988 (by fiscal year, in millions of dollars)

	1986	1987	1988	Three-Year Total
Public Housing Debt Forgiveness				
Budget Authority	-497	-467	-463	-1,427
Outlays	-1,567	-1,567	-1,567	-4,701
Public Housing Operating Subsidies				
Budget Authority	-288	-327*	-360*	-975*
Outlays	-144	-307*	-342*	-793*
Section 108 Community Development Loans				
Budget Authority	-4	12	-62	-54
Outlays	-12	-46	-78	-136
Rural Housing Loans (RHIF)				
On-Budget				
Budget Authority	-247	171*	109*	33*
Outlays	170	356*	313*	839*
Off-Budget				
Budget Authority	-1,341	-2,120*	-2,141*	-5,602*
Outlays	-1,341	-2,120*	-2,141*	-5,602*
Total Rural Housing Loans				
Budget Authority	-1,588	-1,949*	-2,032*	-5,569*
Outlays	-1,171	-1,764*	-1,828*	-4,763*
Urban Development Action Grants				
Budget Authority	-88	-91	-95*	-274*
Outlays	-4	-22	-45*	-71*
TOTAL - FUNCTIONS 370, 450 AND 600				
Budget Authority	-2,465	-2,822*	-3,012*	-8,299*
Outlays	-2,898	-3,706*	-3,860*	-10,464*
Interest Payments to the Treasury (Function 900)				
Budget Authority	1,624	1,783*	2,002*	5,409*
Outlays	1,624	1,783*	2,002*	5,409*
TOTAL TITLE III				
Budget Authority	-841	-1,039*	-1,010*	-2,890*
Outlays	-1,274	-1,923*	-1,858*	-5,055*

NOTE: At the request of the Budget Committee staff, this table displays the savings that would result if those program levels specified in the bill for less than three years are extrapolated through 1988, by inflating the specified levels using baseline rates of increase. For this purpose, RHIF loans and public housing operating subsidies were projected from the specified 1986 levels, while UDAG was projected from the 1987 authorization. Figures affected by this extrapolation are marked with an asterisk (*) in the table.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Title IV

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W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are submitting herewith the legislative changes in programs within the jurisdiction of the Committee on Commerce, Science, and Transportation to achieve the savings required under the reconciliation procedures contained in S. Con. Res. 32, the First Budget Resolution for 1986.

This Committee is well aware of its responsibility to achieve significant budget reductions. In discharging this responsibility, we are recommending legislative changes in programs within the Committee's jurisdiction which will achieve a savings of $815.6 million.

If you should have any questions, please feel free to contact us.

Sincerely,

Fritz Hollings
Ernest F. Hollings

Jack Danforth
John C. Danforth

TITLE IV

The Committee on Commerce, Science, and Transportation has included in its reconciliation materials total reductions of $815.6 million from the baseline provided in the Committee's reconciliation instructions. The following chart illustrates the manner in which such savings are achieved. Following the chart, the Committee provides a section-by-section analysis which explains those savings.

SAVINGS ($ Million)

	FY 86	FY 87	FY 88	3 Year Total
Local Rail Service Assistance	7.20	7.80	8.20	23.20*
Amtrak	131.00	136.50	142.00	409.50
Corporation for Public Broad-casting	1.00	-2.00	-11.00	-12.00
Federal Communica-tions Commission	0.70	30.30	30.30	61.30
Construction-Differential Subsidy	200.00			200.00
National Oceanic and Atmospheric Administration	32.00	33.00	37.00	102.00
Maritime Programs	10.00	10.20	10.40	30.60
U.S. Travel & Tourism Administration	1.00			1.00
				815.60

*Actual savings for the Local Rail Service Assistance (LRSA) program are $4 million in fiscal year 1986, $4 million in fiscal year 1987, and $4.25 million in fiscal year 1988, for a total savings of $12.25 million in this three-year period. The higher figures appearing in this chart reflect the fact that the LRSA budget baseline in S. Con. Res. 32 inflated the actual size of the program by $11.1 million over the three years.

SECTION-BY-SECTION ANALYSIS

SECTION 401 -- LOCAL RAIL SERVICE ASSISTANCE

Local rail service assistance is a Federal-State matching grant program to help the States to pay for rail planning and the purchase and rehabilitation of low-volume railroad lines, which might otherwise be abandoned.

Section 401 provides that, for purposes of the LRSA program, not more than $11.8 million shall be appropriated in fiscal year 1986; not more than $12.2 million shall be appropriated in fiscal year 1987; and not more than $12.8 million shall be appropriated in fiscal year 1988. These figures represent a reduction of 25 percent from the baseline for the LRSA program provided to the Committee by the Congressional Budget Office. The effect of this provision is to achieve savings of $7.2 million in fiscal year 1986, $7.8 million in fiscal year 1987, and $8.2 million in fiscal year 1988. These savings are not entirely the result of reductions in the LRSA program, but are calculated from the baseline provided in the Committee's reconciliation instructions.

SECTION 402 -- NATIONAL RAILROAD PASSENGER CORPORATION

The National Railroad Passenger Corporation (Amtrak) is the federally-subsidized railroad passenger carrier that provides intercity service throughout the United States.

Section 402 provides that, for purposes of the Rail Passenger Service Act (which authorizes appropriations for Amtrak), not more than $582 million shall be appropriated in fiscal year 1986; not more than $606.1 million shall be appropriated in fiscal year 1987; and not more than $630.3 million shall be appropriated in fiscal year 1988. The effect of this provision is to achieve savings of $131 million in fiscal year 1986, $136.5 million in fiscal year 1987, and $142 million in fiscal year 1988.

SECTION 403 -- CORPORATION FOR PUBLIC BROADCASTING

Section 403 authorizes appropriations for the activities of the Corporation for Public Broadcasting (CPB) for fiscal years 1987 through 1990, and authorizes appropriations for activities of the Public Telecommunications Facilities Program (which is administered by the National Telecommunications and Information Administration of the Department of Commerce) for fiscal years 1986 through 1988. This section includes the provisions of S. 1084, which was reported by the Committee on May 16, 1985 (S. Rpt. 99-61), with the following changes:

(1) Authorizations are provided for CPB for fiscal year 1989 of $238 million, and for fiscal year 1990 of $254 million.

(2) Authorizations are provided for the Public Telecommunications Facilities Program for fiscal year 1987 of $28 million, and for fiscal year 1988 of $32 million.

SECTION 404 -- FEDERAL COMMUNICATIONS COMMISSION

Section 404 authorizes appropriations for activities of the Federal Communications Commission (FCC) for fiscal years 1986 and 1987. This section includes the provisions of S. 999, which was reported by the Committee on May 16, 1985 (S. Rpt. 99-63), with the following changes in the fee schedule:

(1) Reductions have been made in cellular systems fees to reflect more accurately the FCC's cost of processing cellular radio applications.

(2) The public safety and government exemption provision has been revised to define more completely the public safety and governmental radio services, which are exempted from paying fees.

The effect of these provisions is to achieve savings of $700,000 in fiscal year 1986, $30.3 million in fiscal year 1987, and $30.3 million in fiscal year 1988.

SECTION 405 -- CONSTRUCTION-DIFFERENTIAL SUBSIDY

This section cites those provisions of the Merchant Marine Act, 1936, which authorize repayment to the Federal Government of construction-differential subsidy (CDS) grants with interest.

The CDS program was designed to assist U.S. vessels engaged in the U.S. foreign trade. Because there is no corresponding construction subsidy program for U.S. vessels engaged solely in the domestic trade, restrictions are placed on the operations of CDS vessels in that domestic trade. Upon repayment of the CDS funds originally provided for its construction, the vessel would be free to engage in domestic trading activities (such as carriage of Alaskan oil) without the restrictions which would otherwise apply. The Maritime Administration expects thirteen tankers to take advantage of CDS payback in order to engage in the more lucrative domestic trade without the restrictions associated with CDS.

The Maritime Administration has promulgated a final rule (50 Fed. Reg. 19170-78, May 7, 1985) to allow vessel owners or operators to repay CDS grants with interest, as authorized by the Merchant Marine Act, 1936. This administrative action obviates the need for legislative action to achieve the desired savings.

SECTION 406 -- NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Section 406 includes the provisions of S. 990, which was reported by the Committee on May 9, 1985 (S. Rpt. 99-72) and passed by the Senate with amendments on June 19, 1985 (Cong. Rec., S 8405-8498).

The effect of these provisions is to achieve savings of $32 million in fiscal year 1986, $33 million in fiscal year 1987, and $37 million in fiscal year 1988.

SECTION 407 -- MARITIME PROGRAMS

Section 407 includes the provisions of S. 679, which was reported by the Committee on May 29, 1985 (S. Rpt. 99-64) and passed by the Senate on June 5, 1985 (Cong. Rec. S 7481).

These provisions authorize appropriations during fiscal year 1986 for the Maritime Administration and the Federal Maritime Commission, and achieve savings of $10 million in fiscal year 1986, $10.2 million in fiscal year 1987, and $10.4 million in fiscal year 1988.

SECTION 408 -- UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

The United States Travel and Tourism Administration (USTTA) is the Federal agency that promotes travel and tourism activities abroad.

Section 408 provides funding of $12 million for USTTA in fiscal year 1986, $13 million in fiscal year 1987, and $14 million in fiscal year 1988. This provision restores USTTA to the level of funding proposed by the Committee in S. 374, which was reported by the Committee on June 11, 1985 (S. Rpt. 99-80).

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the following record vote occurred during consideration by the Committee on Commerce, Science, and Transportation of matters related to budget reconciliation:

Senator Rockefeller offered an amendment to reduce appropriations for Amtrak by 11.8 percent; subsequently, Senator Gorton offered an amendment to Senator Rockefeller's amendment to reduce such appropriations by 15 percent. On Senator Gorton's amendment, the vote was as follows:

YEAS--9	NAYS--8
Mr. Danforth	Mr. Hollings
Mr. Packwood[1]	Mr. Long
Mr. Goldwater[1]	Mr. Inouye[1]
Mrs. Kassebaum[1]	Mr. Ford
Mr. Pressler	Mr. Riegle
Mr. Gorton	Mr. Exon[1]
Mr. Stevens	Mr. Gore
Mr. Kasten[1]	Mr. Rockefeller
Mr. Trible	

[1] By proxy

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 27, 1985

Honorable John C. Danforth
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
508 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached tables analyzing the impacts of Title IV of the Omnibus Reconciliation Act of 1985, as adopted by the Senate Committee on Commerce, Science, and Transportation, September 24, 1985. The first table shows the costs of Title IV relative to current law. The second table displays the estimated changes relative to the budget resolution baseline.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Ernest F. Hollings
Ranking Minority Member

TABLE I: FEDERAL COSTS RELATIVE TO CURRENT LAW

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Section 401 - Local Rail Service Assistance					
Authorization Level	11.8	12.2	12.8	---	---
Estimated Outlays	2.4	5.4	10.3	---	---
Section 402 - National Railroad Passenger Corporation					
Authorization Level	582.0	606.1	630.3	---	---
Estimated Outlays	506.9	566.2	625.7	---	---
Section 403 - Corporation for Public Broadcasting					
Authorization Level	24.0	228.0	246.0	238.0	254.0
Estimated Outlays	2.0	217.0	241.0	266.0	263.0
Section 404 - Federal Communications Commission 1/					
Authorization Level	98.1	70.4	---	---	---
Estimated Outlays	91.7	70.1	6.7	---	---
Section 405 - Construction Differential Subsidy					
Budget Authority	-200.0	---	---	---	---
Estimated Outlays	-200.0	---	---	---	---
Section 406 - National Oceanic and Atmospheric Administration					
Authorization Level	227.7	233.6	---	---	---
Estimated Outlays	150.3	218.0	75.4	12.4	5.1
Section 407 - Maritime Programs					
Authorization Level	93.8	---	---	---	---
Estimated Outlays	75.0	16.0	2.8	---	---
Section 408 - Travel and Tourism					
Authorization Level	12.0	13.0	14.0	---	---
Estimated Outlays	8.6	11.7	13.6	3.8	1.3
TOTAL - COSTS RELATIVE TO CURRENT LAW					
Authorization Level	849.4	1,163.2	903.1	238.0	254.0
Estimated Outlays	636.9	1,104.4	975.5	282.2	269.4

1. The estimated costs for the FCC only assume receipts for 1987, although they would continue to be received in future years if the FCC is authorized. If continued, receipts are estimated to be about $34 million in 1988, and $35 million in each of the years 1989 and 1990.

TABLE II: FEDERAL COSTS RELATIVE TO BUDGET RESOLUTION BASELINE

(by fiscal years, in millions of dollars)

	1986	1987	1988
Section 401 - Local Rail Service Assistance			
Budget Authority	-7.2	-7.8	-8.2
Outlays	-1.4	-3.4	-6.5
Section 402 - National Railroad Passenger Corporation			
Budget Authority	-131.0	-136.5	-142.0
Outlays	-114.1	-127.6	-141.0
Section 403 - Corporation for Public Broadcasting			
Budget Authority	-1.0	2.0	11.0
Outlays	-0.1	-0.5	7.4
Section 404 - Federal Communications Commission 1/			
Budget Authority	0.9	-30.8	-34.8
Outlays	0.9	-30.8	-34.7
Section 405 - Construction Differential Subsidy			
Budget Authority	-200.0	---	---
Outlays	-200.0	---	---
Section 406 - National Oceanic and Atmospheric Administration 2/			
Budget Authority	-32.0	-33.0	-37.0
Outlays	-26.0	-33.0	-37.0
Section 407 - Maritime Programs 3/			
Budget Authority	-10.0	-10.2	-10.4
Outlays	-8.1	-9.8	-10.3
Section 408 - Travel and Tourism			
Budget Authority	-0.5	---	0.4
Outlays	-0.3	---	0.2
TOTAL - COSTS RELATIVE TO BUDGET RESOLUTION BASELINE			
Budget Authority	-380.8	-216.3	-221.0
Outlays	-349.1	-204.1	-221.9

1. The estimated savings for the FCC assume fee collections of approximately \$34 million in 1988.
2. Savings for NOAA for 1988 have been projected by assuming an estimated authorization level in that year of \$237 million, the 1987 authorization level inflated on the basis of SBC economic assumptions.
3. Savings for maritime programs for 1987 and 1988 have been projected by assuming an estimated authorization level in those years of \$95.9 million in 1987 and \$98.4 million in 1988, the 1986 authorization level inflated on the basis of SBC economic assumptions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE COMMUNICATIONS ACT OF 1934

Section 4 of that Act

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a)-(f) * * *

(g)(1) * * *

(2)(A)-(C) * * *

(D) The provisios of this paragraph shall cease to have any force or effect at the end of fiscal year [1985] *1987.*

(E) Funds which are received by the Commission as reimbursements under the provisions of this paragraph after the close of a fiscal year shall remain available for obligation.

(h)-(o) * * *

Section 5 of that Act

ORGANIZATION AND FUNCTIONING OF THE COMMISSION

SEC. 5. (a)-(f) * * *

(g) The Commission shall submit an annual report to the Congress not later than [January 31] *March 31* of each year. Such report shall—

(1) list the specific goals, objectives, and priorities of the Commission which shall be projected over 12-month, 24-month, and 36-month periods;

(2) describe in detail the programs which are, or shall be, established to meet or carry out such goals, objectives, and priorities;

(3) provide an evaluation of actions taken during the preceding year with regard to fulfilling the functions of the Commission; and

(4) contain recommendations for legislative action required to enable the Commission to meet its objectives.

Section 6 of that Act

AUTHORIZATION OF APPROPRIATIONS

[SEC. 6. There are authorized to be appropriated for the administration of this Act by the commission $91,156,000, together with such sums as may be necessary for increases resulting for adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1984 and 1985.]

AUTHORIZATION OF APPROPRIATIONS

Sec. 6. There are authorized to be appropriated for the administration of this Act by the Commission, $98,100,000 for fiscal year 1986 and $97,600,000 for fiscal year 1987, together with such sums as may be necessary for increases resulting from adjustments in salary, pay, retirement, other employee benefits required by law, and other nondiscretionary costs, for each of the fiscal years 1986 and 1987.

Section 7 of that Act

NEW TECHNOLOGIES AND SERVICES

SEC. 7. * * *

CHARGES

SEC. 8. (a) The Commission shall assess and collect charges listed in this subsection at the rates listed or at such modified rates as it shall establish pursuant to the provisions of subsection (b) of this section.

Schedule of Charges

Private Radio Bureau

Service:	*Fee amount*
1. Marine coast stations (New, Modifications, Renewals)	*$60*
2. Operational Fixed Microwave Stations (New, Modifications, Renewals).	*135*
3. Aviation (Ground Stations) (New, Modifications, Renewals)	*60*
4. Land Mobile Radio Licenses (New, Modifications, Renewals)	*30*

Equipment Approval Service

1. Certification:	
a. Receivers (Except TV and FM Receivers)	*$250*
b. All Other Devices	*650*
2. Type Acceptance:	
a. Approval of Subscription TV Systems	*2,000*
b. All Others	*325*
3. Type Approval:	
a. Ship (Radio Telegraph) Automatic Alarm Systems	*6,500*
b. Ship and Lifeboat (Radio Telegraph) Transmitters	*3,250*
c. All Others (With Testing)	*1,300*
d. All Others (Without Testing)	*150*
4. Notifications	*100*

Mass Media Bureau

1. Commercial TV Stations:	
a. New and Major Change Construction Permits Application Fees	*$2,250*
b. Minor Changes Application Fees	*500*
c. Hearing Charge	*6,000*
d. License Fee	*150*
2. Commercial Radio Stations:	
a. New and Major Change Construction Permits:	
(1) Appl. Fee AM Sta.	*2,000*
(2) Appl. Fee FM Sta.	*1,800*
b. Minor Changes Appl. Fee-AM & FM	*500*
c. Hearing charge	*6,000*
d. License Fee:	
(1) AM	*325*
(2) FM	*100*
e. Directional Antenna License Fee (AM only)	*375*
3. FM/TV Translators and LPTV Stations (New & Major Change Const. Permits:	
a. Application Fee	*375*
b. License Fee	*75*
4. Station Assignment and Transfer Fees:	
a. AM, FM and TV Commercial Stations:	
(1) Application Fee (Forms 314/315)	*500*
(2) Application Fee (Form 316)	*70*
b. FM/TV Translators & LPTV Stations	*75*
5. Auxiliary Services Major Actions-Application Fee	*75*
6. Renewals—All Services	*30*

7. Cable Television Service:	
a. Cable Television Relay Service-Constr. Permits, Assignments & Transfers, Renewals & Modifications	*135*
b. Cable Special Relief Petitions-Filing Fee	*700*
8. Direct Broadcast Satellite New & Major Change CPs:	
a. Application for Auth. to Construct a Direct Broadcast Satellite	*1,800*
b. Issuance of CP & Launch Authority	*17,500*
c. License to Operate Satellite	*500*
d. Hearing Charge	*6,000*

COMMON CARRIER BUREAU

1. Domestic Public Land Mobile Stations (Base, Dispatch, Control & Repeater Stations):	
a. New or Additional Facility Authorizations, Assignments and Transfers (Per transmitter/per station)	*200*
b. Renewals and Minor Modifications (Per station)	*20*
c. Air-Ground Individual License Renewals and Modifications	*20*
2. Cellular Systems:	
a. Initial Construction Permits and Major Modification Applications (Per cellular systems	200
b. Assignments & Transfers (Per station)	200
c. Initial covering license (Per cellular system)	
(1) Wireline carrier	525
(2) Nonwireline carrier	50
d. Renewals	20
e. Minor modifications and additional licenses	50
3. Rural Radio (Central Office, Interoffice or Relay Facilities:	
a. Initial Construction Permits, Assignments and Transfers (Per transmitter)	*90*
b. Renewals & Modifications (Per station)	*20*
4. Offshore Radio Service:	
a. Construction Permits, Assignment and Transfers (Per transmitter)	*90*
b. Renewals and Modifications (Per station)	*20*
5. Local Television or Point To Point Microwave Radio Service:	
a. Construction Permits, Modifications of Construction Permits, and renewals of licenses	*135*
b. Assignments & Transfers of Control (Per Station)	*45*
c. Initial License for New Frequency	*135*
6. Internatioal Fixed Public Radio (Public & Control Stations):	
a. Initial Construction Permits, Assignments & Transfers	*450*
b. Renewals & Modifications	*325*
7. Satellite Services:	
a. Transmit Earth Stations:	
(1) Initial Station Auth	*1,350*
(2) Assignments & Transfers of Station Authorizations	*450*
(3) All Other Applications	*90*
b. Small Transmit/Receive Earth Stations (2 meters or less):	
(1) Lead Authorization	*3,000*
(2) Routine Authorization	*30*
(3) All Other Applications	*90*
c. Receive Only Earth Stations:	
(1) Initial Station Auth	*200*
(2) All Other Applications	*90*
d. Applications For Authority To Construct a Space Station	*1,800*
e. Applications For Authority To Launch & Operate a Space Station	*18,000*
f. Satellite System Application:	
(1) Initial Station Authorization	*5,000*
(2) Assignments & Transfers of Systems	*1,333*
(3) All Other Applications	*90*
8. Multipoint Distribution Service:	
a. Construction Permits, Renewals & Modifications of Const. Permits	*135*
b. Assignments & Transfers of Control (Per Station)	*45*
c. Initial License (per channel)	*400*
9. Section 214 Applications:	
a. Applications for Overseas Cable Construction	*8,100*
b. Applications For Domestic Cable Construction	*540*
c. All Other 214 Applications	*540*
10. Tariff Filings:	
a. Filing Fee	*250*
b. Special Permission Filings	*200*

11. Telephone Equip. Registration	*135*
12. Digital Electronic Message Service:	
a. Construction Permits, Renewals & Modifications of Construction Permits	*135*
b. Assignments & Transfers of Control (Per Station)	*45*
c. Initial License (First License or Licence Adding a New Frequency)	*135*

The Schedule of Charges established by this subsection shall be implemented not later than 360 days after the date of enactment of this subsection.

(b) (1) The Schedule of Charges established by this section shall be reviewed by the Commisison every 2 years after the date of enactment of this section and adjusted by the Commission to reflect changes in the Consumer Price Index. Increases or decreases in charges shall apply to all categories of charges, except that individual fees shall not be adjusted until the increase or decrease, as determined by the net change in the Consumer Price Index since the date of enactment of this section, amounts to at least $5 in the case of fees under $100, or 5 percent in the case of fees of $100 or more. All fees which require adjustment will be rounded upward to the next $5 increment. The Commission shall transmit to the Congress notification of any such adjustment not later than 90 days before the effective date of such adjustment.

(2) Increases or decreases in charges made pursuant to this subsection shall not be subject to judicial review.

(c)(1) The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of charges required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the charge which was not paid in a timely manner.

(2) The Commission may dismiss any application or other filing for failure to pay in a timely manner any charge or penalty under this section.

(d) (1) The charges established in this section shall not be applicable to the following radio services: Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, Public Safety, and Special Emergency Radio. or to governmental entities licensed in other services.

(2) The Commision may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest.

(e) Moneys received from charges established in or prescribed pursuant to this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for uses by the Commission in carrying out its functions under this Act.

(f) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

SECTION 391 OF THAT ACT

AUTHORIZATION OF APPROPRIATIONS

SEC. 391. There are authorized to be apporpriated $40,000,000 for each of the fiscal years 1979, 1980, and 1981, $20,000,000 for fiscal year 1982, $15,000,000 for fiscal year 1983, [and] $12,000,000 for fiscal year 1984, *$24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, and $32,000,000 for fiscal year 1988,* to be used by the Secretary of Commerce to assist in the planning and construction of public telecommunications facilities as provided in this subpart. Sums appropriated under this subpart for any fiscal year shall remain available until expended for payment of grants for projects for which applications approved by the Secretary pursuant to this subpart have been submitted within such fiscal year. Sums appropriated under this subpart may be used by the Secretary to cover the cost of administering the provisions of this subpart.

SECTION 393 OF THAT ACT

CRITERIA FOR APPROVAL AND EXPENDITURES BY SECRETARY OF COMMERCE

SEC. 393. (a)-(b) * * *

[(c) Of the funds appropriated pursuant to section 391 for any fiscal year, not less than 75 percent shall be available to extend delivery of public telecommunications services to areas not receiving such services through grants for facilities of new and existing public telecommunications entities, and preopertational expenses associated with such facilities. In choosing among applicants for grants, the Secretary shall compare the advantages of alternate technologies on the basis of costs and benefits.]

[(d)] *(c)* Of the sums appropriated pursuant to section 391 for any fiscal year, a substantial amount shall be available for the expansion and development of noncommercial radio broadcast station facilities.

SECTION 396 OF THAT ACT

SEC. 396. (a)-(j) * * *

FINANCING; OPEN MEETINGS AND FINANCIAL RECORDS

(k)(1)(A)-(B) * * *

(C) There is authorized to be appropriated to the Fund, for each of the fiscal years 1981, 1982, 1983, 1984, 1985, [and 1986,] *1986, 1987, 1988, 1989, and 1990* an amount equal to 50 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed $180,00,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, $220,000,000 for fiscal year 1983, $145,000,000 for fiscal year 1984, $153,000,000 for fiscal year 1985, [and] $162,000,000 for fiscal year 1986, *$200,000,000 for fiscal year 1987, $214,000,000 for fiscal year 1988, $238,000,000 for fiscal year 1989, and $254,000,000 for fiscal year 1990.*

(2) * * *

(3)(A)(i) The Corporation shall establish an annual budget for use in allocating amounts from the Fund. Of the amounts appropriated into the Fund available for allocation for any fiscal year—

(I) not more than 5 percent of such amounts shall be available for the administrative expenses of the Corporation.

(II) not less than 5 percent of such amounts shall be available for other expenses incurred by the Corporation, including [research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness,] capital costs relating to telecommunications satellites, the payment of programming royalties and other fees, and the costs of interconnection facilities and operations (as provided in clause (iv)(I)), except that the total amount available for obligation for any fiscal year under this subclause and subclause (I) shall not exceed 10 percent of the amounts appropriated into the Fund available for allocation for such fiscal year;

(III) 75 percent of the remainder (after allocations are under subclause (I) and subclause (II)) shall be allocated in accordance with clause (ii)(I); and

(IV) 25 percent of such remainder shall be allocated in accordance with clause (iii).

(ii)-(v) * * *

(B)-(D) * * *

(4)-(7) * * *

[(8) Any public telecommunications entity which—

[(A) receives any funds pursuant to this subpart for any fiscal year; and

[(B) during such fiscal year has filed or was required to file a return with the Internal Revenue Service declaring unrelated business income related to station operations under sections 501, 511, and 512 of the Internal Revenue Code of 1954; shall refund to the Corporation an amount equal to the amount of unrelated business income tax paid as stated in such filed return.]

[(9)] *(8)*(A) Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are reasonably representative of the diverse needs and interests of the communities served by such station.

(B), (C) [Unchanged]

(D) In the case of any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) in existence on the effective date of this paragraph, such station shall comply with the requirements of this paragraph with respect to the establishment of a community advisory board not later than 180 days after such effective date.

(E) The provision of subparagraph (A) prohibiting the distribution of funds to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board shall be the exclusive remedy for the enforcement of the provisions of this paragraph.

[(10)] *(9)* Funds may not be distributed pursuant to this subsection to the Public Broadcasting Service or National Public Radio (or any successor organization) unless assurances are provided to the Corporation that no officer or employee of the Public Broadcasting Service or National Public Radio (or any successor organization), as the case may be, will be compensated at an annual rate of pay which exceeds the rate of basic pay in effect from time to time for level I of the Executive Schedule under section 5312 of title 5, United States Code, and unless further assurances are provided to the Corporation that no officer or employee of such an entity will be loaned money by that entity on an interest-free basis.

(l) * * *

TITLE 28, UNITED STATES CODE

Section 2342 of that title

§ 2342. Jurisdiction of court of appeals

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

(1)–(2) * * *

[(3) such final orders of the Federal Maritime Commission or the Maritime Administration entered under chapters 23 and 23A of title 46 as are subject to judicial review under section 830 of title 46;]

(3) all final orders of the Federal Maritime Commission entered under title 46, United States Code;

(4)–(5) * * *

* * * * * * *

THE INTERNATIONAL TRAVEL ACT OF 1961

SECTION 304 OF THAT ACT

SEC. 304. For the purpose of carrying out this Act there is authorized to be appropriated an amount not to exceed $8,600,000 for the fiscal year ending September 30, 1982, *not to exceed $12 million for the fiscal year ending September 30, 1986, not to exceed $13 million for the fiscal year ending September 30, 1987, and not to exceed $14 million for the fiscal year ending September 30, 1988.* Funds appropriated under this section shall be available without regard to the provisions of section 501 and 3702 of title 44 of the United States Code. Funds appropriated under this section for printing of travel promotion materials are authorized to be made available for two fiscal years.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Title V

JAMES A. McCLURE, IDAHO, CHAIRMAN

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LOWELL P. WEICKER, JR., CONNECTICUT
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GARY G. ELLSWORTH, CHIEF COUNSEL
D. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the reconciliation instruction contained in the First Concurrent Resolution on the Budget -- Fiscal Year 1986 (S. Con. Res. 32, H.Rept. 99-249), enclosed is the legislative and report language of the Committee on Energy and Natural Resources. The recommendations of the Committee include changes in existing laws within its jurisdiction which achieve savings in spending authority which exceed those set forth in the budget resolution for fiscal year 1986, and for the aggregate 3-year period of fiscal years 1986 through 1988.

On behalf of the Committee, we look forward to working with your Committee to achieve early Senate approval of the Omnibus Budget Reconciliation Act of 1986.

Sincerely,

J. Bennett Johnston
Ranking Minority Member

James A. McClure
Chairman

COMMITTEE ON ENERGY AND NATURAL RESOURCES

RECONCILIATION RECOMMENDATIONS
PURSUANT TO S. CON. RES. 32

September 27, 1985

Mr. McClure, reported by the Committee
on September 26, 1985, and
transmitted to the Senate Budget Committee pursuant to
S. Con. Res. 32

SHORT EXPLANATION

In accordance with the reconciliation instruction contained in the First Concurrent Resolution on the Budget -- Fiscal Year 1986 (S. Con. Res. 32, H.Rept. 99-249), the Committee on Energy and Natural Resources recommends, as discussed herein, changes in laws within its jurisdiction which provide spending authority so as to achieve the savings in budget authority and outlays set forth in its reconciliation instruction for Fiscal Year 1986, and for the aggregate 3-year period of Fiscal Years 1986 through 1988.

The instruction to the Committee on Energy and Natural Resources (subsection 2(f)) required the Committee to report changes in laws within its jurisdiction which provide spending authority so as to achieve the following: savings of $5.485 billion in budget authority and $5.403 billion in outlays in fiscal year 1986; increases of $291 million in budget authority and $147 million in outlays in fiscal year 1987; and savings of $377 million in budget authority and $314 million in outlays in fiscal year 1988 (See Table 5.1).

In summary, the recommendations of the Committee result in estimated savings in budget authority and outlays compared to the Senate Budget Committee (SBC) Baseline and the instruction in S. Con. Res. 32, as follows:

-- For Fiscal Year 1986, the recommendations of the Committee would achieve savings of $6.060 billion in budget authority and $5.919 billion in outlays compared to the SBC Baseline; the Committee recommendations therefore exceed its reconciliation instruction by $575 million in budget authority and $516 million in outlays for fiscal year 1986. (See Table 5.2)

-- For the three-year period fiscal years 1986 through 1988, the recommendations of the Committee would achieve aggregate savings of $6.075 billion in budget authority and $6.032 billion in outlays; the Committee recommendations therefore exceed its aggregate 3-year reconciliation instruction by $544 million in budget authority and $462 million in outlays. (See Table 5.2)

Consistent with the assumptions in the reconciliation instruction to the Committee, the recommendations of the Committee include: (1) with regard to the Strategic Petroleum Reserve, that there will be (a) a continuation of construction of 750 million barrels of storage capacity, as authorized by existing law, and (b) a minimum average annual fill-rate of 35,000 barrels per day which will achieve storage of approximately 500 million barrels by the end of fiscal year 1986.

Table 5.1

RECONCILIATION INSTRUCTION ASSUMPTIONS
IN S. CON. RES. 32 FOR
COMMITTEE ON ENERGY AND NATURAL RESOURCES

Program		Assumed Savings (In Millions of Dollars)			
		FY86	FY87	FY88	Total
Strategic Petroleum Reserve (270)	BA	-1,471	-1,185	-1,335	-3,991
	O	-1,389	-1,129	-1,312	-4,030
FERC Fees (270)	BA	-14	-28	-31	-73
	O	-14	-28	-31	-73
OCS Leasing Changes (950)	BA	-4,000	1,504	1,029	-1,467
	O	-4,000	1,504	1,029	-1,467
TOTAL	BA	-5,485	291	-337	-5,531
	O	-5,403	147	-314	-5,570

Table 5.2

COMMITTEE ACTION

Program		Savings (In Millions of Dollars)			
		FY86	FY87	FY88	Total
Reconciliation Instruction	BA	-5,485	291	-337	-5,531
	O	-5,403	147	-314	-5,570
DEPARTMENT OF ENERGY					
Strategic Petroleum Reserve	BA	-1,471	-1,185	-1,335	-3,991
	O	-1,359	-1,331	-1,313	-4,002
Uranium Enrichment	BA	-80	-98	-136	-314
	O	-51	-84	-120	-255
Shared Energy Savings	BA	0	-2	-4	-6
	O	0	-2	-4	-6
DEPARTMENT OF THE INTERIOR					
OCS Leasing					
Bonuses and rents	BA	-4,000	1,504	1,029	-1,467
	O	-4,000	1,504	1,029	-1,467
Additional savings from inclusion of royalties	BA	-509	211	-3	-301
	O	-509	211	-3	-301
Subtotal	BA	-4,509	1,715	1,026	-1,768
	O	-4,509	1,715	1,026	-1,768
TOTAL	BA	-6,060	428	-449	-6,075
	O	-5,919	298	-411	-6,032
Exceed instruction	BA	-575	138	-112	-560
	O	-516	151	-97	-462

The recommendations of the Committee include legislation to settle the legal dispute between the Federal Government and several States regarding the disposition of OCS bonuses and rents held in escrow as of March 31, 1985, with the States receiving 27 percent of such bonuses and rents as well as interest accrued thereon; however, the recommendation of the Committee also includes the disposition of other revenues in dispute (i.e., royalties) both retrospectively and prospectively, as discussed herein.

In addition, the recommendations of the Committee achieve savings in three areas not assumed in its reconciliation instruction: (1) the DOE uranium enrichment program; (2) DOE Energy Conservation programs; and (3) the Federal Energy Regulatory Commission. The recommendations of the Committee, however, do not include a legislative proposal regarding Federal Energy Regulatory Commission (FERC) fees and annual charges, which was assumed in the reconciliation instruction. The Committee achieved the savings in its reconciliation instruction without need for such legislation.

SUMMARY OF MAJOR PROVISIONS

The recommendations of the Committee on Energy and Natural Resources encompass programs and activities of the following Departments and agencies within the jurisdiction of the Committee:

-- Department of Energy; and

-- Department of the Interior.

These recommendations encompass only two of the broad functional areas utilized by the Congressional budget process, namely: function 270: Energy; and function 950: Undistributed Offsetting Receipts.

STRATEGIC PETROLEUM RESERVE

The Strategic Petroleum Reserve was authorized in 1976 by Part B of Title I of the Energy Policy and Conservation Act (P.L. 94-163). Current storage capacity is approximately 500 million barrels. By the end of Fiscal Year 1985 approximately 489 million barrels of crude oil will have been placed in storage.

Under the Continuing Resolution for Fiscal Year 1985 (P.L. 98-473) the minimum average annual fill-rate is 159,000 barrels per day. This policy was used to establish the SBC Baseline for SPR petroleum acquisition, which does not reflect the proposed deferral of approximately $800 million for SPR oil acquisition. By comparison, the recommendation of the Committee, as does the Fiscal Year 1986 Budget Resolution Conference Agreement (H.Rept. 99-249), provides for a Strategic Petroleum Reserve (SPR) fill-rate of approximately 35,000 barrels per day for the Fiscal Year 1986 to 1988 period. The reduced fill-rate assumed in the Budget Resolution results in a $1.3 billion reduction in estimated outlays for petroleum acquisition in Fiscal Year 1986. The aggregate three-year savings (Fiscal Years 1986 through 1988) from the reduced fill-rate are estimated by CBO at $3.991 billion in budget authority and $4.030 billion in outlays. (See

Table 5.3) These savings are achieved by the establishment of appropriations authorizations of $357,548,000 for Fiscal Year 1986; $333,695,000, Fiscal Year 1987; and $357,454,000, Fiscal Year 1988.

Similarly, for SPR facility construction, the recommendation of the Committee, as do both the Budget Resolution Conference Agreement and the SBC baseline, provides for continued expansion of SPR capacity at all oil fill sites, including the facilities at Big Hill, Texas. The Committee recommendation, as does the Budget Resolution, assumes that outlays for SPR construction will be approximately the same as in the SBC Baseline: $852 million over the Fiscal Year 1986-1988 period. However, the budget resolution assumes a change in the pace of SPR construction, relative to the SBC Baseline, by shifting approximately $160 million in budget authority from Fiscal Year 1986 to 1987. As a result of this shift, estimated construction outlays under the Budget Resolution are lower than the SBC Baseline for Fiscal Year 1986, approximately the same as the baseline in 1987, and higher than the baseline in 1988.

With regard to the effect of this revised construction funding on the schedule for available fill capacity, just over 489 million barrels of oil will be stored in the Strategic Petroleum Reserve at the end of Fiscal Year 1985. The available capacity is expected to increase to nearly 550 million barrels in Fiscal Year 1986 under the Committee recommendation, as do both the Budget Resolution and the SBC Baseline funding assumptions. Additional capacity will be added in Fiscal Year 1987 and 1988, but at a somewhat slower rate than under the SBC Baseline. However, the expected fill-rate of 35,000 barrels per day, or 12.8 million barrels per year, would keep the cumulative oil fill below 550 million barrels through Fiscal Year 1988. Hence, any slowdown in the addition of capacity beyond Fiscal Year 1986 would not constrain oil fill.

Table 5.3

STRATEGIC PETROLEUM RESERVE

		1986	1987	1988
		(In millions of dollars)		
SPR Oil Aquisition				
SBC Baseline	BA	1,670	1,670	1,688
	O	1,694	1,675	1,732
Budget Resolution	BA	358	334	357
	O	382	353	345
SPR Construction/Operation				
SBC Baseline	BA	295	208	161
	O	365	292	204
Budget Resolution	BA	136	359	157
	O	288	285	279
SPR Total				
SBC Baseline	BA	1,965	1,878	1,849
	O	2,059	1,967	1,936
Budget Resolution	BA	494	693	514
	O	670	638	624
Savings Under Committee Recommendation. (Budget Resolution Assumption).				
Total	BA	-1,471	-1,185	-1,335
	O	-1,389	-1,327	-1,312

URANIUM ENRICHMENT

Authorization of appropriations.

The recommendations of the Committee include establishment of an authorization for the Department of Energy Uranium Enrichment program for fiscal years 1986, 1987, and 1988 at amounts equal to annual revenues. The effect of this authorization is to require the program to operate at no additional cost to the Treasury. At the same time it provides flexibility to the program to adjust to its current circumstances, while imposing a degree of restraint on expenditures.

However, the recommendation of the Committee also directs the Secretary of Energy to deposit any excess revenues over the three-year period from fiscal year 1986 through 1988, in the general fund of the Treasury of the United States. This requirement is consistent with the requirements of section 161v of the Atomic Energy Act, which directs the Department of Energy to operate its uranium enrichment program so as to fully recover the Federal government's costs over a reasonable period of time.

Yet, over the years the actual expenditures have exceeded revenues for enrichment services provided to users.

The recommendation of the Committee directs the Secretary to make an initial repayment from current revenues, if any, of excess expenditures accumulated over the past several years. To the extent that the DOE makes such repayments DOE will further achieve savings in budget outlays, but not budget authority, as such repayments are treated as non-expenditure transactions.

The Committee is concerned about the impact of the September 19, 1985, decision of the U. S. District Court for Colorado which, if upheld, could void all the new uranium enrichment service contracts between DOE and its customers. This possibility could have serious long-term implications for the program and its revenue flow. On September 25, 1985, the Secretary of Energy advised the Committee that he has found the domestic uranium industry non-viable pursuant to Section 170B of the Atomic Energy Act (42 U.S.C. 2210b).

Considering these uncertainties, the Committee believes that any provision that would mandate repayment of the DOE uranium enrichment debt in specified amounts is premature. While the Committee believes that a reasonable repayment requirement is desirable, the Committee also intends to provide flexibility for extraordinary circumstances. Such circumstances now exist.

Uranium enrichment program report.

The recommendation of the Committee also provides for a report from the Secretary within 60 days after the date of enactment of the effect of the September 19, 1985, U.S. District Court decision on the (1) operation of the DOE's uranium enrichment facilities; (2) on the revenues of the uranium enrichment program; and (3) how the Department's response may mitigate these effects.

DOE ENERGY CONSERVATION PROGRAMS.

The recommendation of the Committee would authorize Federal agencies to enter into contracts of up to 25 years under which the contractor is paid from money saved as a result of energy efficiency improvements implemented in Federal buildings. The legislation is needed to (1) authorize multi-year procurement authority for purchase of energy savings - authority that is not available under existing law and (2) insure in the event appropriations are no longer provided for a shared savings contract that termination costs will be paid.

The Federal government as owner of 500,000 buildings is the nation's largest consumer of energy in buildings. Last year the Federal government spent $4.2 billion for energy in its buildings. The CBO estimates that adoption of shared savings authority will save the Federal government $7 million over the next three years. The potential for long-term savings is clearly much larger -- $350 million over 10 years according to some Federal agency estimates.

FEDERAL ENERGY REGULATORY COMMISSION.

Section 525 would impose a temporary limit upon the authority of the Federal Energy Regulatory Commission (FERC) to implement a final rule in a pending rulemaking proceeding entitled "Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol," Docket No. RM85-1-000. In that proceeding, the FERC has proposed changes to its regulations in four specific areas, which are described in four parts: Part A, Transportation; Part B, Take-or-Pay; Part C, Optional Expedited Certificates; and Part D, Billing Procedures for Purchased Gas.

The United States Court of Appeals for the District of Columbia Circuit recently invalidated two of the FERC's existing natural gas transportation programs. Maryland People's Counsel v. FERC, Nos. 84-1019 and 84-1090 (D.C. Cir. May 10, 1985), and No. 85-1029 (D.C. Cir. Aug. 6, 1985). At the request of the Commission, the Court allowed the transportation programs to remain in effect until October 31, 1985, in order to provide sufficient time for the Commission to implement a nondiscriminatory transportation program as required by the Court's decision. To prevent a serious disruption of natural gas transportation services throughout the United States, and to satisfy the requirements imposed by the Court, the FERC must issue by October 31, 1985, new regulations relating to pipeline transportation programs. Accordingly, section 525 is intended to permit the FERC, within the context of the rulemaking, to issue only those regulations that are necessary for that purpose. As a result, the remaining parts of the proposed rule could not be issued as a final rule during the six-month period following the date of enactment of this Act.

It is not the Committee's intent that the Commission issue Part A of the rule as proposed. Further, it is not the Committee's intent to allow the Commission to issue a rule providing contract demand reduction authority as proposed in Docket No. RM85-1-000. However, the limitation on the Commission's authority to issue a transportation program "only insofar as such rule is necessary to provide nondiscriminatory transportation" is intended to give the Commission maximum flexibility to meet the requirements of the Court of Appeals in the Maryland People's Counsel cases to provide for a nondiscriminatory transportation program in compliance with the Natural Gas Act and the Natural Gas Policy Act of 1978.

The Committee believes that this unusual intrusion into the FERC's regulatory process is justified for two primary reasons: first, testimony received by the Committee shows overwhelming and unprecedented opposition to the proposed rule at all levels of the natural gas industry -- producers, pipelines and local distribution companies. Of particular concern were the billing procedures and the provisions relating to the reduction of contract demand. Second, the proposed rule, if implemented, would overrule the congressionally sanctioned policy of permitting pipelines to engage in rolled-in pricing of natural gas, that is, the averaging of higher-priced new gas with lower-priced old gas to develop a weighted average price for sale to pipeline customers. If such a fundamental and far-reaching change is to be made in natural gas regulation, it should be made by the Congress, rather than a regulatory agency that operates pursuant to limited, delegated authority. The Committee believes that section 525 is necessary to prevent a "rush to judgment" on the many critical issues raised in the proposed rule.

OUTER CONTINENTAL SHELF LEASING

The recommendation of the Committee, as does the Budget Resolution (S.Con.Res.32), provides for enactment of legislation to settle the legal dispute between the Federal Government and several States regarding the disposition of Outer Continental Shelf (OCS) bonuses and rents as well as the interest accrued thereon. In addition, the recommendation of the Committee includes certain OCS royalties, as discussed herein.

Background: The Outer Continental Shelf Lands Act Amendments of 1978 included a provision (section 8(g)) which addressed the situation where the Federal Government offers OCS leases near (within three nautical miles) of State lands. (In 1953 the Congress granted the States three nautical miles of submerged lands (3 leagues for Texas and Florida), and the Federal Government retained the rest of the Outer Continental Shelf.)

Among other matters, section 8(g) provides for the escrow of Federal revenues attributable to oil and gas pools underlying both the Federal and State lands and in the absence of a settlement a Federal District Court would determine a "fair and equitable disposition" of such revenues between the Federal and State government.

Since 1978, Federal-State negotiations have failed to reach agreement on the disposition of such revenues. Meanwhile the monies held in escrow (including interest thereon) continued to grow, reaching a total of $6.787 billion (including $5.570 billion in bonuses and rents) as of March 31, 1985.

During this period the dispute has been winding its way through the courts. The Federal District Court in Texas (Judge Parker) on February 15, 1984, held that a "fair and equitable" disposition would include 50 percent of the bonus-enhancement of nine Federal leases. This amounts to 27 percent of bonuses on blocks leased wholly or partially in the 8(g) zone. The Department of the Interior (DOI) has appealed.

Later the Federal District Court in Eastern Louisiana (Judge Mentz) ruled on motions holding that "drainage" is not the sole criterion for fair and equitable disposition of 8(g) revenues, and taxes are another potential criterion.

Subsequently, then Interior Secretary Clark, on August 8, 1984, offered to five States (but not Louisiana and Texas, as they were in litigation with DOI) to settle this dispute by offering them 16-2/3 percent of the OCS bonuses and rents in escrow, but applying prorationing by surface acreage. He also offered the sharing of royalties under unitization or royalty sharing agreements where drainage occurs. The affected States (except California) countered on April 16, 1985, with an offer to share 37-1/2 percent of the larger amount, which also includes certain royalties and other imputed items, and with no prorationing by surface acreage.

In order to expedite resolution of this dispute and thus provide for distribution of these escrowed funds to the Federal Government and the States, the conference agreement on S. Con. Res. 32 adopted the House approved assumption that legislation would be enacted "to settle the legal dispute between the Federal Government and several States regarding the disposition of OCS receipts now held in escrow subject to section 8(g) of the OCS Lands Act." The recommendation assumes that the legislation will settle the dispute and give the States a 27 percent share of the bonuses and rents in escrow, as well as the interest that has accrued on them. (H.Rept. 99-133, Part 1).

The Budget Conference agreement on section 8(g) relied on an estimated aggregate amount of escrowed funds ($6.787 billion) as of March 31, 1985, which consisted of initial deposits of $4.501 billion (including $4.305 billion in bonuses, $13 million in rents, and $182 million in royalties), plus interest thereon. Of the total estimated amount in escrow as of March 31, 1985, only the bonuses and rents and interest thereon were released under the Budget Resolution assumption as of October 1, 1985, on the basis of 73 percent to the Federal Government and 27 percent to the States. The Alaskan section 7 monies were not included in the distribution. The resultant estimated distribution of these bonuses and rents and interest thereon to the affected States as of October 31, 1985, are also shown in Table 5.4.

Table 5.4

OCS ASSUMPTION IN BUDGET RESOLUTION
(In millions of dollars)

	Total Amounts in Escrow (3/31/85)	Escrow Amounts Excluding Royalties and Alaska Sec. 7 (3/31/85)	Estimate of Escrow Release (10/1/85)	Estimated State Share (10/1/85)
Louisiana	2,603	2,455	2,561	691
Texas	1,387	1,306	1,362	368
California	1,333	1,333	1,390	375
Alabama	259	259	270	73
Alaska	1,149 1/	163	170	46
Florida	0.1	0.1	0.1	0.03
TOTAL	6,787	5,570	5,810	1,568

Footnote:

1. Includes Alaska section 7 revenues.

Table 5.5

COMMITTEE ACTION

OUTER CONTINENTAL SHELF LEASING

Program		Savings (In Millions of Dollars)			
		FY86	FY87	FY88	Total
DEPARTMENT OF THE INTERIOR					
OCS Leasing Changes					
SBC Baseline	BA	-875	-1,812	-1,540	-4,227
	O	-875	-1,812	-1,540	-4,227
Assumed Savings (Bonuses and Rents)	BA	-4,000	1,504	1,029	-1,467
	O	-4,000	1,504	1,029	-1,467
Additional savings from inclusion of royalties	BA	-509	211	-3	-301
	O	-509	211	-3	-301
Total Savings	BA	-4,509	1,715	1,026	-1,768
	O	-4,509	1,715	1,026	-1,768

In the absence of any legislation, the SBC Baseline for these escrowed Section 8(g) funds assumes a 50-50 split between the Federal government and the affected seven States. The SBC Baseline further assumes that these funds will be released on a schedule based on the expected timing of the various court decisions. For example, the SBC Baseline assumes that (1) the Alaska Section 7 monies will be released in Fiscal Year 1986; (2) one-half of the Texas monies will be released in Fiscal Year 1986 and the other half in Fiscal Year 1987; (3) all of the Louisiana amounts will be released in Fiscal Year 1987; (4) all other States will be released in Fiscal Year 1988. The SBC Baseline also assumes that new escrow deposits of $100 million per year in bonuses and rents and $100 million per year in royalties will be similarly split 50-50.

By comparison, the recommendation of the Committee assumes that the escrowed section 8(g) bonuses and rents will be distributed on the basis of 73 percent to the Federal Government and 27 percent to the States. Upon release of these monies the Federal share thus will be increased by 23 percent compared to the assumptions in the SBC Baseline, and consequently are scored as "budget savings" for the purpose of compliance with the reconciliation instruction to the Committee. Further, because the legislation requires that all the escrowed bonuses and rents will be released during Fiscal Year 1986, the budget savings that otherwise would occur over a three year period are condensed into Fiscal Year 1986. The distribution of the bonuses, rents, and interest to the States as delineated in section 533(b)(1) differs from the last column of Table 5.4 in that the Committee's recommendation reduces the amount due to Louisiana by $56 million and increases the amount due Texas by $56 million. This transfer is intended to divide equally the State's shares of these revenues for the tracts (Sabine Pass) which lie wholly or partially within three miles of the seaward boundary of two or more States. The 8(g) account had assigned all these revenues to one state (Louisiana).

Similarly, the recommendation of the Committee provides that any escrowed royalties will be distributed on the basis of 73 percent to the Federal Government and 27 percent to the States, with similar accompanying budget savings. In addition the Committee's recommendation would distribute future bonuses, rents, and royalties on the basis of 73 percent to the Federal Government and 27 percent to the States. The Committee's recommendation deletes the references to "other revenues" related to 8(g) tracts so as to ensure that no Federal taxes (including Federal windfall profits taxes or corporate or income taxes) will be considered to be 8(g) funds subject to distribution under these provisions. While excluding Federal taxes, the Committee expects that the Department will not alter the way bonuses, rents, royalties (including profit sharing) are labeled so as to avoid the application of the provisions herein.

In addition, the recommendation of the Committee provides for resolution of a similar Federal-State dispute over funds totaling approximately two billion dollars that were not escrowed in the section 8(g) account but, in the judgement of the Committee, should have been. However, because these monies were not escrowed, the recommendation of the Committeee is that restitution to the affected States be made from a surcharge of 10 percent on future bonuses, rents, and royalties. This surcharge under the assumptions in the SBC baseline would apply to an estimated $100 million each for bonuses and royalties per year.

The budget savings are $4.511 billion in fiscal year 1986, and $302 million greater over the three year period fiscal year 1986 through 1988 than would have occurred under the assumptions in the Budget Resolution. (See Table 5.5)

In the judgment of the Committee, these collective recommendations will resolve all pending disputes regarding the disposition of OCS bonuses, rents, and royalties under section 8(g), while achieving significant Federal budget savings from the release of now escrowed funds. Moreover, it will, in a timely manner, distribute the disputed funds to the affected States, and thus avoid further extensive litigation.

During Committee deliberations on its OCS Leasing recommendation several members of the Committee expressed great concern with the recent action of the House Interior and Insular Affairs Committee on its recommendation under the Budget Resolution regarding a controversial amendment to section 19 of the Outer Continental Shelf Lands Act which would alter the present consultation process between the States and the Secretary of the Interior.

The action of the House Committee reverses the decision made in 1978, when the amendments to the Outer Continental Shelf Lands Act were enacted, that the coastal States should be consulted but should not be given a veto over the leasing program. The amendment to section 19 recently reported out of the House Committee is as harmful to the energy security goals of this nation as are the annual OCS moratoria imposed under the appropriations process. Consequently, Chairman McClure very strongly considered offering an amendment to the Committee's reconciliation package which would have prohibited 8(g) funds from being distributed to States which have OCS moratoria imposed via Federal law or State laws or regulations.

While Chairman McClure was persuaded not to introduce that amendment at this time, he felt compelled to make it absolutely clear that he and other members remain totally opposed to any type of moratoria, whether in the guise of State veto, administrative inaction, or riders on legislation not considered by the proper authorizing committee.

LEGISLATIVE HISTORY

On Monday, February 4, 1985, President Reagan transmitted to the Congress his budget for fiscal year 1986. Beginning on February 27, the Committee on Energy and Natural Resources commenced 3-days of hearings on the Administration's proposed budget. Subsequently the Committee transmitted its report on its anticipated legislative program to the Budget Committee on April 4.

Subsequently on August 1, 1985, this process concluded, and reconciliation began, with Congressional approval of S. Con. Res. 32, the First Concurrent Resolution on the Budget -- Fiscal Year 1986. As approved, the resolution contains reconciliation instructions to 11 authorization committees to effect savings in spending authority by changes in (a) existing statutory authorizations and (b) direct spending accounts, within their respective jurisdictions. These committees also were required to report such changes by September 27, 1985.

The instruction to the Committee on Energy and Natural Resources (subsection 2(f)) required the Committee to report changes in laws within its jurisdiction which provide spending authority so as to achieve the following: savings of $5.485 billion in budget authority and $5.403 billion in outlays in fiscal year 1986; increases of $291 million in budget authority and $147 million in outlays in fiscal year 1987; and savings of $377 million in budget authority and $314 million in outlays in fiscal year 1988.

Although not binding on the Committee, specific assumptions were made in deriving these reconciliation instructions. The instruction to the Energy and Natural Resources Committee was based on three assumptions: First, with regard to the Strategic Petroleum Reserve (SPR), the Budget Resolution assumes (a) continuation of construction of 750 million barrels of storage capacity and (b) a fill-rate of approximately 35,000 barrels per day, which will achieve storage of 500 million barrels by the end of fiscal year 1986 (as in the FY85 Supplemental Appropriations Act). Second, the Budget Resolution assumes adoption of the President's proposal to increase FERC fees. Finally, the Budget Resolution assumes enactment of legislation to settle the legal dispute between the Federal Government and several States regarding the disposition of certain bonuses and rents held in escrow as of March 31, with the States receiving 27 percent of such bonuses and rents as well as the interest that has accrued on them. (The savings included in the Budget Resolution's reconciliation instruction for each of these assumptions are shown in Table 5.2.)

In the formulation of its recommendations to the Budget Committee, the Committee held a 1-day hearing (on September 27) on distribution of Outer Continental Shelf Section 8(g) revenues in response to the instruction in the Budget Resolution. In addition, the Committee held three business meetings on September 20, 24, and 27 to consider its recommendations to the Budget Committee. (The Committee was informed on August 20 that its legislative recommendations would comprise Title V of an "omnibus reconciliation" bill.)

COMMITTEE ACTION.

The Committee on Energy and Natural Resources met in open business session on September 20, 24, and 26, 1985 to consider its recommendations to the Budget Committee in compliance with its reconciliation instruction in S. Con. Res. 32. On September 26, the Committee, in open business session by majority vote of a quorum present approved the legislative provisions described herein, in compliance with its reconciliation instruction.

The rollcall vote on reporting its recommendations was 15 yeas and 2 nays, as follows:

YEAS	NAYS
McClure	Metzenbaum
Hatfield*	Bradley
Domenici*	
Wallop*	
Warner	
Murkowski	
Nickles	
Hecht*	
Evans	
Johnston	
Bumpers	
Ford	
Melcher	
Bingaman*	
Rockefeller	

* Indicates vote by proxy.

SECTION-BY-SECTION ANALYSIS

TITLE V - COMMITTEE ON ENERGY AND NATURAL RESOURCES

Subtitle A - Department of Energy Programs

STRATEGIC PETROLEUM RESERVE (Part 1).

Sec. 501. Authorization of appropriations.

Strategic Petroleum Reserve construction. Section 501 authorizes annual appropriations for the Department of Energy's Strategic Petroleum Reserve (SPR) program at the levels assumed in the Budget Resolution and the reconciliation instructions to the Committee. For SPR activities other than petroleum acquisition, section 501 authorizes appropriations of $135,912,000 for fiscal year 1986; $358,996,000 for fiscal year 1987; and $156,692,000 for fiscal year 1988. These authorizations assure that available SPR storage capacity is sufficient to sustain the fill-rate authorized herein.

SPR Petroleum Acquisition. For SPR petroleum acquisition, section 501 authorizes appropriations to support an average annual fill-rate of approximately 35,000 barrels per day. The authorized appropriations are $357,548,000 for fiscal year 1986; $333,695,000 for fiscal year 1987; and $357,45,000 for fiscal year 1988.

Sec. 502. Conforming amendments.

Minimum SPR fill-rate. Section 502(a) amends section 160(c) of the Energy Policy and Conservation Act (EPCA) by adding a new paragraph (3) which requires the President, during each of fiscal years 1986 through 1988, to assure a minimum average annual fill-rate of 35,000 barrels per day. After fiscal year 1988, the current minimum average annual fill-rate of 300,000 barrels per day resumes until at least 750 million barrels of petroleum are stored.

Elk Hills Prohibition. Section 502(b) amends section 160(d)(1) of EPCA by adding a new paragraph (D) that, during fiscal years 1986 through 1988, prohibits the Federal sale of Elk Hills crude if the average annual SPR fill-rate falls below 35,000 barrels per day.

URANIUM ENRICHMENT PROGRAMS (Part 2).

Sec. 521. Authorization of appropriations.

Section 521(a) authorizes appropriations for the DOE Uranium Enrichment program at an amount equal to the revenues estimated to be received during fiscal years 1986 through 1988 as estimated in the applicable budget submitted by the President to the Congress for such fiscal year. The amendment thus codifies current DOE policies of operating its Uranium Enrichment program within available revenues.

Section 521(b) regarding repayments to the Treasury is self explanatory; see previous discussion.

Sec. 522. Uranium Enrichment Report.

Section 522 requires the Secretary of Energy, within 60 days of enactment, to submit a report to the Congress regarding the effects of the September 19, 1985, decision of the U.S. District Court for the District of Colorado holding that the Department's Utility Services Uranium Enrichment Contracts are null and void. (Western Nuclear Inc. v. F. Clark Huffmann, Civil No. 84-C-2315). To the extent that it would not compromise the appeals process or DOE's competitive position in uranium enrichment, the report shall identify what the effects, if any, of the decision will be (1) on the operation of the Department's uranium enrichment facilities, (2) on the revenues of the uranium enrichment program, and (3) how the Department's response may mitigate these effects.

DOE ENERGY CONSERVATION PROGRAMS(Part 3).

Part 3 is self explanatory; see previous discussion.

FEDERAL ENERGY REGULATORY COMMISSION.

See previous discussion.

Subtitle B Department of the Interior Programs.

Sec. 531. Short title.

Section 531 provides that Subtitle B-Department of the Interior programs may be referred to as the Outer Continental Shelf Lands Act Amendments of 1985.

Sec. 532. Revision of section 8(g).

Section 532 deletes paragraphs 8(g)(2) through (4) of the Outer Continental Shelf Lands Act and inserts new paragraphs (2) through (7), as follows:

The new paragraph 8(g)(2) requires the Secretary to deposit in a separate Treasury "8(g) Account" all bonuses, rents and royalties from any 8(g) tract. Within 30 days of the close of any business month 27 percent of such revenues must be distributed to the affected coastal State. The remaining 73 percent balance must be simultaneously deposited as miscellaneous receipts in the Treasury.

The new paragraph 8(g)(3) authorizes the Secretary of the Interior and any Governor to enter into "unitization" or other royalty sharing agreements to divide revenues from common potentially hydrocarbon producing areas which may underlie the Federal and State boundary. Any Federal revenues pursuant to such agreements are subject to paragraph (2) which requires that 27 percent of such Federal revenues must be distributed to the affected State. Failure to reach such an agreement would not preclude the Secretary from leasing such a tract or tracts. The absence of such an agreement does not constitute grounds for any court order enjoining such leasing.

The new paragraph 8(g)(4) requires that any deposits in the "8(g) Account" must be invested by the Secretary in Federal securities yielding the highest reasonably available interest rates, as determined by the Secretary, but having maturities suitable to the needs of the "8(g) Account".

The new paragraph 8(g)(5) clarifies the treatment of Federal revenues when there is a boundary dispute between the Federal Government and a State under section 7 of the OCS Lands Act. Such a dispute currently exists between Alaska and the Federal Government over the State boundary. In such instance the Secretary must credit to the "8(g) Account" all revenues from the subject lease sales not otherwise deposited in the "Section 7 Account". Upon resolution of such dispute the affected proceeds shall be distributed as follows: First, under clause (i), if a State is wholly successful in its claim under section 7, such claim shall be satisfied from the "Section 7 Account". and any remaining balances transferred to the "8(g) Account", and distributed in accordance with section 533.

Second, under clause (ii), if the United States is wholly successful in its claim under section 7, then the associated escrowed revenues shall be paid to the Treasury, except for any amounts necessary to satisfy the State under section 533.

Third, under clause (iii), if the United States or the affected State are only partially successful in its claim under section 7, after any distribution under the claim result, (1) the State share shall be distributed from those funds to which it is entitled under section 553 from both the Section 7 Account and the 8(g) Account. Any remaining revenues shall be paid to the United States.

Fourth, in the event that there are insufficient funds in the Section 7 Account or the Section 8(g) Account to cover disbursements to which a State is entitled, then the recoupment provisions of section 535 shall be applicable.

The new paragraph 8(g)(6) provides that October 1, 1985 will be the date for determining both amounts to be deposited in the account and the State share.

The new paragraph 8(g)(7) resolves the problem of overlapping 8(g) zone boundaries between the States of Louisiana and Texas.

Sec. 533. Distribution of 8(g) Account.

This section provides for a specific distribution of the present 8(g) escrow funds and that acceptance of payment by a State shall satisfy any claim by such State against the United States arising under the former section 8(g).

Sec. 534. Immobilization of boundaries.

This section provides that wherever the Supreme Court has fixed a State boundary by decree, the co-ordinates set forth in the decree shall be permanent.

Sec. 535. Recoupment.

This section provides that in the future, States would receive each year an additional 10 percent of future bonuses, rents and royalties from 8(g) tracts until they have recouped those amounts of their share of 8(g) revenues which should have been put in or kept in the current 8(g) account if no prorationing by surface acreage and no common pool determination had been applied in escrowing the 8(g) revenues in the past.

CBO COST ESTIMATE

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the costs of the measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 27, 1985

Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
United States Senate
358 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for the Omnibus Reconciliation Act of 1985, Title V - Committee on Energy and Natural Resources.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy. Penner

Rudolph G. Penner

cc: Honorable J. Bennett Johnston, Jr.
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 27, 1985

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE:

Title V of Omnibus Reconciliation Act of 1985 - Senate Committee on Energy and Natural Resources

3. BILL STATUS:

Committee print as adopted by the Senate Committee on Energy and Natural Resources, September 26, 1985.

4. BILL PURPOSE:

The purpose of this bill is to reduce federal spending by amending current policies regarding certain energy-related activities.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

The following two tables show the budget impact of this bill estimated relative to current law, and relative to the budget resolution baseline, respectively. The two are identical for all of the programs except for the Strategic Petroleum Reserve (SPR). Whereas there is no authorization for SPR acquisition or construction in fiscal years 1986 through 1988 under current law, the baseline assumes reauthorization of these activities.

FEDERAL COSTS RELATIVE TO CURRENT LAW

(by fiscal years, in millions of dollars)

		1986	1987	1988	1989	1990
Strategic Petroleum Reserve	BA	494	693	514	---	---
	O	365	565	620	339	23
Uranium Enrichment	BA	-80	-98	-136	---	---
	O	-51	-84	-120	-47	-13
Shared-Energy Savings	BA	*	-2	-4	-10	-20
	O	*	-2	-4	-10	-20
Outer Continental Shelf	BA	-4,511	1,685	1,413	-27	-27
	O	-4,511	1,685	1,413	-27	-27
TOTAL	BA	-4,097	2,278	1,787	-37	-47
	O	-4,197	2,164	1,909	255	-37

* Less than $500,000.

FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE:

(by fiscal years, in millions of dollars)

		1986	1987	1988
Strategic Petroleum Reserve	BA	-1,471	-1,185	-1,335
	O	-1,359	-1,331	-1,313
Uranium Enrichment	BA	-80	-98	-136
	O	-51	-84	-120
Shared-Energy Savings	BA	*	-2	-4
	O	*	-2	-4
Outer Continental Shelf	BA	-4,511	1,685	1,413
	O	-4,511	1,685	1,413
TOTAL	BA	-6,062	400	-62
	O	-5,921	268	-24

* Less than $500,000.

The budget impact of this bill falls predominantly within functions 270 and 953. Most of the estimated shared-energy savings would fall within function 050, because the Department of Defense is expected to be the principal user of shared-energy savings contracts.

Basis of Estimate:

Strategic Petroleum Reserve. Section 501 of the bill contains recommended budget authority levels for three fiscal years (1986 through 1988). The authorization for SPR construction and operation represents a one-year slow-down, relative to the baseline, by shifting approximately $160 million in budget authority from fiscal year 1986 to fiscal year 1987. This shift in budget authority results in outlay savings relative to the baseline over the next two years; and an increase in outlays, again relative to the baseline, for fiscal years 1988 and 1989. The net effect over the 1986-1988 period is an outlay savings of $29 million.

The bill provides authorization levels and a minimum average annual fill rate for SPR oil acquisition and fill. The total authorization for fiscal years 1986 through 1988 is $1,049 million and the annual fill rate is 35,000 barrels per day. CBO estimates that approximately $1,072 million is required to achieve the desired fill rate. The difference in required authority can be met by using unobligated balances, currently estimated at over $800 million.

The baseline assumes an SPR fill rate of 159,000 barrels per day. Reducing the fill rate to 35,000 barrels per day will result in outlay savings of approximately $4.0 billion over the 1986-1988 period.

Uranium Enrichment. Section 521 amends current policy regarding the financing of the DOE's uranium enrichment program. Under existing law, this program is funded by appropriations, which are offset by revenues collected from the sale of enriched uranium. This provision limits the amounts authorized to be appropriated in fiscal years 1986 through 1988 to the estimated revenues. The baseline projections assume that, without such a cap, the Congress would appropriate funds sufficient to continue enrichment activities at the 1985 level, as adopted for inflation. Because the baseline revenue projections for fiscal years 1986 through 1988 are $316 million below the projected appropriations, limiting spending to estimated revenues would reduce DOE's obligations by that amount. This provision also changes current policy regarding repayment of federal appropriations to this program. Although DOE must set enrichment prices sufficient to cover the government's costs, it is not currently required to repay the Treasury for those costs. This provision changes the policy by requiring DOE to use any revenues that exceed expenditures to repay the appropriations. Such an intragovernmental transfer would have no net budget impact. No significant costs are expected for a provision that requires DOE to report on litigation affecting the enrichment program.

Shared-Energy Savings. The bill includes a provision to authorize the heads of federal agencies to enter into multiyear contracts for the purpose of achieving energy savings. Each contract may last for a period of up to 25 years and shall provide that the contractor incur the initial cost of implementing energy savings measures in exchange for a share of any savings resulting from such implementation.

The average shared energy savings contract is expected to yield approximately $0.5 million in annual cost savings. The federal share of such savings may vary by contract, but is expected to average 20 percent for the first year, 30 percent for the second year, 40 percent for the third year, and 50 percent for the fourth and all subsequent years of a contract. Based on information provided by the Department of Energy and the Department of Defense, it has been estimated that the federal government will enter into approximately 6 shared energy savings contracts in fiscal year 1986, about 15 such contracts in fiscal year 1987, and approximately 30 contracts in fiscal year 1988.

The savings estimates assume a six-month lag between the start of the program at the beginning of fiscal year 1986 and implementation of the first six contracts half-way through the fiscal year.

FERC Rulemaking. The bill also contains a provision regarding the Federal Energy Regulatory Commission's rulemaking on natural gas issues. No significant costs are expected to result from this provision.

Outer Continental Shelf. The bill provides a formula for dividing the existing 8(g) Outer Continental Shelf escrow account among the federal government and seven states. It also specifies the revenues that should be divided in the future and establishes procedures for distributing these revenues.

Section 532 of the bill requires that bonus, rent, and royalty revenues derived after October 1, 1985, from the leasing of federal tracts wholly or partially within three nautical miles of the state seaward boundaries, be deposited in an interest-earning account in the United States Treasury. The states are to receive 27 percent of the funds in this account, with the remainder assigned to the miscellaneous receipts account of the U.S. Treasury. Section 532 provides for the same 73 percent/27 percent split of funds for new 8(g) zones that are created after the resolution of section 7 boundary disputes. The resulting 8(g) state claims can be paid from the existing section 7 escrow account or from surplus funds in the new section 8(g) account. If the funds in either account are insufficient, the recoupment provisions described in section 535 will be applied.

Section 533 of the bill divides funds in the section 8(g) escrow account as of September 30, 1985, among the states and the federal government. The states would receive $1.568 billion in bonuses, rents, and accrued interest as well as 27 percent of existing royalties with accrued interest. All other revenues would go to the federal government. Revenues placed in escrow after September 30, but before the release date are divided according to the formula in section 532. All funds in the existing 8(g) escrow account must be distributed prior to January 1, 1986.

Section 535 compensates states out of future revenues for the difference between the existing escrow account and the level of escrow account payments that would have occurred if the new definitions contained in section 532 had been applied prior to October 1, 1985. These recoupment payments are equal to 10 percent of new revenues each year, until the time when states are fully compensated. This payment is in addition to the 27 percent of new revenues that states would receive under section 532. Recoupment payments would begin on October 1, 1986.

Funds in the existing escrow account are assumed to be released on December 31, 1985, with 73 percent going to the federal government and 27 percent going to the states, based on the amounts specified in the bill. Deposits in the new Treasury account for section 8(g) are assumed to be released 45 days after deposit. In fiscal year 1986 the federal and state shares of new revenues would remain 73 percent and 27 percent respectively.

Based on information from the Department of the Interior, it is estimated that under the new definitions included in section 532, the current section 8(g) escrow account would have been $7.9 billion instead of $6.1 billion. The level of the current escrow account is based on actual deposits through March 31, 1985, with additional principal deposits assumed to be $50 million each quarter. Interest on the escrow account was estimated using budget resolution interest rate assumptions.

In the absence of legislation, CBO assumed new section 8(g) deposits of $50 million per quarter through 1990. Because this bill broadens the definition of section 8(g) tracts over that applied by the Department of the Interior in the past, it is likely that new royalties from previously leased tracts would increase if this legislation is enacted. This increase in royalties, however, is likely to be offset by a reduction in bonuses and royalties from new tracts. The Department of the Interior is expected to split future tracts along the three-mile boundary to avoid the need to put additional revenue in the Treasury account.

It is estimated that the recoupment provision of this bill entitles states to an additional payment of $0.5 billion. If new revenues from section 8(g) tracts were to remain constant at $200 million each year, the recoupment provision would give states $20 million each year for 25 years. It will take less time to complete recoupment if new revenues are greater than $200 million each year. The recoupment provision causes the state share of future revenues to increase from 27 percent in fiscal year 1986 to 37 percent in fiscal year 1987.

The estimated budget impact of this bill includes $123 million in receipts in 1986 that result from giving the federal government 73 percent of revenues from the new 8(g) zone created once the Beaufort Sea boundary dispute is settled. It was assumed that in the absence of legislation the federal share would be 50 percent. The actual amount of federal revenues from Beaufort Sea tracts will depend on the eventual location of the boundary as determined by the courts.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

Under the Committee's recommendation, the seven coastal states would receive $2.0 billion over five years from the section 8(g) escrow account, with most of the payment in 1986. Under CBO's baseline estimate, assuming an even split of the escrow account between the states and the federal government, states would receive $3.9 billion over five years, with most of these payments in 1987 and 1988.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

CBO has prepared cost estimates for a number of related legislative proposals. On September 23, 1985, CBO transmitted a cost estimate for the Committee print "Strategic Petroleum Reserve" as adopted by the House Committee on Energy and Commerce, September 18, 1985. The cost estimate for the Committee print "Uranium Enrichment and Power Sales," as adopted by the House Committee on Energy and Commerce, September 18, 1985, was transmitted on September 24, 1985. The cost estimate for the Committee print "Federal Energy Savings," as adopted by the House Committee on Energy and Commerce, September 18, 1985, was transmitted on September 23, 1985. The differences between these estimates and the estimate of this proposed legislation reflect differences in the provisions in the bills.

9. ESTIMATE PREPARED BY: Kathy Gramp, Pete Fontaine (226-2860); Charles Richardson (226-2880)

10. ESTIMATE APPROVED BY:

C.G. Nuckols
James L. Blum
Assistant Director
for Budget Analysis

EXECUTIVE COMMUNICATIONS

In addition to testimony received by the Committee on Energy and Natural Resources from the Administration and others, the Committee received the following Executive Communications:

THE SECRETARY OF THE INTERIOR
WASHINGTON

September 20, 1985

Honorable James A. McClure
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Today the Senate Energy and Natural Resources Committee will determine how much Federal OCS leasing revenue will be distributed to a few coastal States and how much will be retained by the Treasury for the fiscal needs of all Americans. This legislation, concerning the proper distribution of billions of dollars of OCS revenue under section 8(g) of the OCS Lands Act, has major budgetary implications. It is therefore of major concern to this Administration.

The Budget Resolution provides that 27% of bonuses, rents and accrued interest from all oil and gas leasing in the 8(g) zone (the first three miles of the Federal OCS) is to be distributed to affected coastal States. This arrangement, representing payment to seven States of $1.4 billion immediately and hundreds of millions of dollars in the future, is reluctantly supported by the Administration, even though it goes far beyond the original meaning of section 8(g). That section, added in 1978, was intended to protect States from drainage of oil and gas underlying State waters by Federal lessees drilling in neighboring Federal waters. To put it into perspective, we believe this "drainage only" intent of section 8(g) would result in little or no immediate payment to coastal States and approximately $100 million over the life of the Federal leases.

As you may know, on Wednesday the House Interior Committee reported legislation that would pay coastal States 27 percent of Federal royalties as well as bonuses and rents and would share revenues from portions of tracts that lie outside the 8(g) zone. Failure to prorate revenues from tracts overlapping the 8(g) zone will cost the Treasury another $600 million, while sharing 27% of royalties will drain $4 - $5 billion from the Federal Treasury over the next 30 years. The arguments supporting this legislation were misleading.

On the question of tracts overlapping the 8(g) zone, coastal States argued that they should by paid for portions of tracts outside the three-mile zone as a matter of fairness. To the contrary, section 8(g) speaks of sharing revenues from "areas", not "tracts", within three miles of coastal States. The significance of this distinction was explained by Judge Parker in the Texas OCS decision:

> "Some tracts are not entirely within the 8(g) zone. To the extent these tracts extend beyond the 8(g) zone they are beyond this Court's jurisdiction in the sense that this Court cannot distribute Federal revenue attributable to non-8(g) lands." State of Texas v. Secretary of the Interior, 580 F. Supp. 1197, 1204 fn. 41 (E.D. TX 1984).

In addition, this fairness claim by coastal States was fully recognized when these States were granted three miles (or leagues) of offshore territory by the Submerged Lands Act of 1953. They have since received the benefits of hundreds of millions of dollars from leasing in those waters. Section 8(g) was enacted in 1978 to help protect those resources - - those in State waters - - not as a giveaway of Federal resources. There is no basis for sharing revenues from outside the 8(g) zone.

A second argument that arose during the House Interior markup on Wednesday was a comparison of the 8(g) issue with the sharing of revenues from onshore mineral leasing activities. This overlooks several critical distinctions. First and foremost, unlike production on the OCS, onshore leasing activities actually occur within State boundaries. Therefore, there is a greater potential for federal onshore leasing activities to affect certain State prerogatives, such as the right to free use of the surface estate, where the Federal Government only holds rights to the minerals.

Moreover, the Mineral Leasing Act of 1920 was always intended as a general revenue sharing measure. It was meant to provide funds to States because of their inability to tax Federal lands within their borders. Since the 8(g) areas are outside State borders, no similar loss of tax revenue occurs. Section 8(g) was never designed as a general revenue sharing provision, but was included in the OCS Lands Act Amendments of 1978 to address the particular problem of drainage. In summary, the analogy of onshore revenue sharing simply does not fit. This is Federal leasing of Federal resources totally outside any State territory.

It was also argued that since the affected States claim as much as 50 percent of the revenues in question, the proposal adopted by the House Interior Committee saves money. It is ridiculous to characterize the proposal reported by the House Interior Committee as a "money-saver," particularly in light of the fact that it will cost the Federal Treasury hundreds of millions of dollars more than the settlement recommended by the Budget Resolution, the Chairman of the House Interior Committee, and the Administration. No court has ever held that the States are entitled to any flat percentage of all revenues from the 8(g) zone. In fact, two courts have flatly rejected the idea that the States are entitled to 50% of all revenues. The most favorable decision for any State has been in the eastern district of Texas where a Federal district court held that the State was entitled to 50 percent of bonus <u>enhancement</u> for nine tracts involved in the litigation, no percentage of bonus money on the other 32 tracts involved, and no percentage of the rents received on any of the 41 tracts involved. The United States is appealing this decision with respect to the bonus enhancement award.

Finally, I am strongly opposed to using this legislation as a vehicle for any other amendments to the OCS Lands Act. The OCS Lands Act, as amended by the OCS Lands Act Amendments of 1978, was the product of much consideration by the Congress. To amend that Act now without even the benefit of hearings on how those amendments will affect a program that raises more revenue for the Federal Government than any other program short of the Federal income tax is extremely unwise.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

THE SECRETARY OF THE INTERIOR
WASHINGTON

September 20, 1985

Honorable James A. McClure,
Chairman Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As the Committee marks up the Section 8(g) provisions for the Budget Resolution, I want to express our unequivocal opposition to an amendment approved by the House Interior Committee on Wednesday, September 18. Without any opportunity for hearings or consideration of its consequences, the so-called "Miller Amendment" amends Section 19 of the Outer Continental Shelf (OCS) Lands Act ("Act") and destroys the delicate balance between state and federal interests in OCS leasing. This amendment could create in effect a state veto of a national program and effectively enable states to bring the OCS program to a halt.

The "Miller Amendment" is unnecessary because the states already are active participants in the leasing process under the Act. The OCS pre-lease and post-lease consultation record, described in my testimony before this Committee earlier this week, testifies to the extensive and successful efforts undertaken by the Department to resolve OCS issues by means of serious-minded consultation with both state and local governments. State concerns are given full consideration, and we have modified the Federal program in numerous instances to accommodate these concerns.

The Department intends to continue its extensive consultation efforts in the future.

The proposed amendment changes the standard by which the Secretary is to judge the recommendations of the Governors of affected states on lease sales and development and production plans. Under current law, the Secretary is to accept a Governor's recommendation if they "provide for a reasonable balance between the national interest and the well-being of the citizens of the affected state." Under the amendment, the Secretary would have to accept the Governor's recommendations unless the Secretary could establish that those recommendations would "significantly impair the national interest."

As you know, Congress found in 1978 that orderly, but expedited exploration and development of the OCS was in the national interest. This amendment, however, would permit a Governor to stop a sale or halt a plan unless the Secretary could establish that the Nation would be significantly worse off without it. By both eliminating the concept of "reasonable balance" between federal and state interests and shifting the burden of any argument from the state to the federal government, the amendment runs wholly contrary to the basic principles of the Act.

We are just as troubled by the potential havoc this amendment could play with the standard of judicial review. Currently, if the Secretary finds that the Governor's recommendations do not provide a reasonable balance between federal and state interests, a court may reverse the Secretary if his decision is "found to be arbitrary or capricious." The amendment repeals this standard by requiring instead that the Secretary's decision be based on "substantial evidence." The "substantial evidence" standard traditionally has been used by courts to review findings of fact. At the lease sale stage, however, the Secretary's decisions, including the balancing of state and national interests, necessarily are based to a large degree on judgments in regard to what courts call "predictive information," for example, whether an oilspill is likely, whether oil and gas prices or available supplies are likely to rise or fall, and how well our economy can withstand a severe disruption in its supply of imported oil.

Judicial review of an agency's decision when it is based on predictive information and/or reflects policy judgments traditionally has been done under the "arbitrary or capricious" standard. See California v. Watt, 712 F.2d 584, 590 (D.C. Cir. 1983). Our concerns are that opponents of the OCS program might use the proposed standard of judicial review to impose a requirement of proof which inherently is difficult or even impossible to meet when dealing with issues at the frontiers of knowledge, much less those calling for exercise of judgment. In these circumstances, the effect of this amendment could be to undermine the Secretary's ability to rely on predictive information when reviewing the Governor's recommendations, or to have any real ability to defend policy judgments.

The proponents of the "Miller Amendment" have not made, and cannot make, a case for changing the Act. Surely, if the Congress now is going to consider tampering with the careful balance it achieved in 1978 between federal and state interests, there at least should be full and open hearings and debate concerning the real purposes and consequences of this proposal. Why the rush to tack on to the Budget Resolution a provision which so drastically changes the substantive law governing this federal program which is so important to the Nation's energy security?

When enacting Section 19(c) in 1978, it was the purpose of both Houses of Congress to assure that the Secretary of the Interior "give thorough consideration to the voices of responsible regional and local state officials in planning OCS leasing and development," if their views were "not inconsistent with the balanced approach to OCS leasing set out in this act." Nevertheless, the Senate made clear that it "did not believe that any State should have a veto power over OCS oil and gas activities." S. Rep. No. 95-284, 95th Cong., 1st Sess. 78 (1977).

This amendment rejects the balanced approach of the Act and appears to go far toward granting the states the veto denied them in 1978. Doing so, in my opinion, would mean the end of any chance to achieve a viable OCS program in the national interest.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

MINORITY VIEWS TO ACCOMPANY REPORT OF SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON BUDGET RECONCILIATION

We oppose the portion of the committee's report allocating federal revenue from Outer Continental Shelf oil and gas leasing activities to seven states -- Louisiana, Texas, Florida, Alaska, California, Alabama and Mississippi. According to the Department of Interior, the committee's action could cost the United States Treasury more than $4 billion over the next thirty years. This raid on the American taxpayer is particularly disturbing since it comes as part of a bill and process designed to reduce the federal deficit.

The committee language goes far beyond the reconciliation instructions contained in S. Con. Res. 32. The only hearing ever held on the provision was a hastily-arranged two hour affair convened just three hours before the actual reconciliation mark-up.

In 1953, Congress granted the states full rights and ownership of waters within three miles of their shoreline. The Federal Government retained jurisdiction and ownership over all water beyond the three mile territorial boundary.

In 1978, Congress enacted the Outer Continental Shelf Lands Act amendments. Section 8(g) of the act established certain leasing policies regarding the first three miles of federal OCS water. This provision was designed to protect states against drainage of valuable resources from within their coastal waters that could result from drilling activity in the federal zone.

Specifically, Section 8(g) provided for a "fair and equitable" sharing of revenues produced from federal leases in the three mile zone from oil and gas pools common to both federal and state lands and contemplated an agreement between the affected states and the federal government as to what would constitute a "fair and equitable" distribution. Failing an agreement, the section required that 8(g) revenues be deposited in an interest-bearing escrow account until the matter is settled. More than $5.8 billion is now in the account.

The budget resolution assumed enactment of legislation to settle the 8(g) dispute by giving states a 27 percent share of the bonuses and rents that have been generated in the 8(g) area. Such an amendment would bring $4.3 billion into the United States Treasury by freeing up 73 percent of the escrowed 8(g) funds. The balance -- $1.5 billion -- would be distributed to the affected states.

Unfortunately, the committee went far beyond these instructions.

First, it calls for the distribution of past and future royalties to the states, in addition to bonuses and rents. The Department of Interior estimates that the inclusion of royalties in the 8(g) pool will cost the U.S. over $4 billion over the next thrity years. California alone stands to reap a $1 billion windfall if this provision is enacted.

We have no objection to compensating states for drainage of oil and gas from their land caused directly by federal drilling activity within the 8(g) zone. But to create a claim for all royalties -- even those resulting entirely from pools in federal waters -- is a breathtaking overreach.

It is also worth noting that there is a fundamental distinction between rents and bonuses on the one hand and royalties on the other. Royalties are not received until the well is produced. Thus, geological data is available at that time to determine if a common pool exists with the states. Where such a pool exists, royalty revenues should be shared. But absent a common pool, the states have no basis for claiming royalty revenue.

Sponsors argue that the 1978 law requires that royalties be included in the 8(g) account and that a Texas district court has upheld the view that Congress intended that all royalty revenue-- not just that related to drainage-- be included in the account. Again, this is misleading and a misinterpretation of the court's order.

First, it must be noted, the district court ruling is on appeal and is not a final judgment. Second, the statute is clear that the only revenue to be shared is that which is "attributable to oil and gas pools underlying both the outer Continetal Shelf and submerged lands subject to the jurisdiction of any coastal state."

In other words, only where there is a common pool between the federal lands and the state lands is the federal government required to share 8(g) revenue. Clearly, revenue from tracts that lie mostly beyond the 8(g) zone and which do not have a common pool with state water are not covered by the statute. Seen in this light, the department's willingness to share bonuses and rents even where there is no common pool is extremely generous and itself goes beyond what is required. For states to demand royalties as well is simple greed.

A second major departure from the budget resolution instructions is the committee's decision to give states claims on revenues that come from tracts that lie partly beyond the 8(g) zone.

For example, one 5,760 acre tract leased offshore Florida contains 477 acres within the 8(g) zone -- eight percent of the total. Offshore Texas, there is a tract with only 17 out of 5,760 acres, or .2 percent, within the 8(g) zone. Under the committee proposal, the federal government would be required to consider 100 percent of the bonus, rent and royalty revenue from these tracts eligible for the sharing arrangement, no matter how small the percentage of the tract is within the zone. As Secretary Hodel testified, "This is equivalent to an assumption that 100 percent of the tract's resources are within that portion of the Section 8(g) zone."

We have no objection to permitting states to share revenues from tracts straddling the 8(g) zone to the extent that production from these tracts drains resources from state waters. But where there is no effect on state resources, there is absolutely no basis for sharing revenue with the states.

Sponsors of the committee language contend that the previously mentioned district court decision supports their position on tracts that straddle the zone. Again, this mischaracterizes the court's ruling. It is true that the court ordered the department to deposit all revenues from overlapping tracts into the 8(g) account. But it only did so because it wanted the funds available in the event that the court would find that the value of the entire tract was derived from a common pool underlying both the state land and the federal land. Indeed, of the nine tracts for which the judge awarded money to the State of Texas, only one had acreage which extended beyond the 8(g) zone.

In sum, Secretary Hodel correctly characterized the committee bill as "an unjustifiable diversion of revenues belonging to all taxpayers to the benefit of a select few."

We intend to offer an amendment on the floor of the Senate which will meet the requirements of the budget resolution without giving an added $4 billion windfall to the states.

Howard M. Metzenbaum

Daniel Evans

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Title VI

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Lawton Chiles
Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

This letter and its attachments are in response to the reconciliation instructions for the Committee on Environment and Public Works contained in S. Con. Res. 32, the First Budget Resolution for fiscal year 1986.

Those instructions assigned our Committee reductions of $2.1 billion in outlays over the three year period and assumed that the reductions would be achieved by establishing a lower limitation on obligations for the highway program than is contained in current law.

We are very pleased to report that the Committee not only met its reconciliation target, but voted to reduce outlays by an additional $900 million for a three-year savings of $3 billion. As a result of the legislative language transmitted by this letter, outlays for the highway program will be reduced by $250 million in fiscal year 1986; by $1.2 billion in fiscal year 1987; and by $1.55 billion in fiscal year 1988. All of these reductions come in the highway program and the language we are including has no extraneous matter affecting other activities within the jurisdiction of the Committee.

The Honorable Pete V. Domenici
The Honorable Lawton Chiles
September 27, 1985
Page Two

Although not included as an amendment to this reconciliation package, the Committee would like to note that it has reported and the Senate has passed S. 895, authorizations for the Nuclear Regulatory Commission for fiscal years 1986 and 1987. It is our understanding that if the Committee had chosen to include this legislation in our reconciliation package, we would have been credited with additional savings. These savings would have been $31.0 million in budget authority and $24.0 million in outlays for fiscal year 1986 and $49.0 million in budget authority and $42.0 million in outlays for fiscal year 1987.

Again, we are very pleased to report that the Committee on Environment and Public Works has been able to do more to produce real savings than was required by S. Con. Res. 32 and we look forward to working with you to further reduce the huge deficits which have been experienced in recent years.

Sincerely,

Lloyd Bentsen
Ranking Minority Member

Robert T. Stafford
Chairman

TITLE VI. COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HIGHWAY OBLIGATIONS

The Surface Transportation Assistance Act of 1982 (STAA of 1982) provided authorizations for the Interstate construction program through fiscal year 1990 and the other Federal-aid highway categories through fiscal year 1986. Multi-year authorizations are provided for the Federal-aid highway program because of the necessity for long-term planning, design and construction periods required for these major projects.

The Federal-aid highway program is funded entirely through highway user fees which are collected into the Highway Trust Fund and which must be expended on highway projects. When authorizations, or contract authority, is created for this program out of the Highway Trust Fund, the funds are apportioned or allocated to the States. The States can then immediately obligate these funds without any further appropriations process.

The argument has been put forward that the highway program is a dedicated user fee program financed from a trust fund that has a $10 billion balance and should, therefore, be immune from any efforts to control Federal spending. The Highway Trust Fund is, however, part of the unified budget and the level of highway spending does have an impact on the Federal budget. Currently highway spending exceeds revenues coming into the Highway Trust Fund on a yearly basis. The Committee came to the conclusion that if the effort to reduce the Federal deficit was to be successful, every Federal spending program must be reviewed and bear its share of the reductions necessary to assure a healthy economy.

Most Federal programs are subject to an annual review by the appropriations process. Because of the long period of time required to plan and construct highway projects, multi-year authorizations are provided. In order to make the highway program responsive to fluctuating fiscal situations and prevailing economic policy, an obligation limitation has been imposed that prescribes the amount of funds that can be obligated collectively by the States each fiscal year. The limitation does not reduce the total authorization of funds nor specify which projects receive funds. Those decisions are left to the States. The limitation has the effect of controlling the outlays in a specific year and, therefore, controlling the cash outflow from the Highway Trust Fund.

The STAA of 1982 established an obligation limitation of $14.45 billion for the Federal-aid highway program for fiscal year 1986. The Committee believes there is a strong need to reduce the Federal deficit and recommends an obligation ceiling of $12.75 billion for fiscal year 1986. In addition, the Committee recommends an obligation limitation of $13.25 billion for fiscal year 1987 and $13.8 billion for fiscal year 1988. The outlay savings realized with these levels would be $250 million in fiscal year 1986; $1.2 billion in fiscal year 1987; $1.55 billion in fiscal year 1988 for a total of $3.0 billion over a three year period.

The Committee would note that there are no authorizations for the Federal-aid highway program beyond fiscal year 1986. While the Committee recommends the above levels for the highway program in fiscal years 1987 and 1988, the Committee will review these levels during consideration next year of the authorization of the highway program.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 27, 1985

Honorable Robert T. Stafford
Chairman
Committee on Environment and
Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for the Committee print entitled "Reduce Federal-aid Highway Obligations."

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Lloyd Bentsen
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

September 27, 1985

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE: Reduce federal-aid highway obligations.

3. BILL STATUS:

Committee print as adopted by the Senate Committee on Environment and Public Works, September 24, 1985.

4. BILL PURPOSE:

The bill establishes obligation ceilings for the federal-aid highway program of \$12.75 billion, \$13.25 billion, and \$13.8 billion for fiscal years 1986 through 1988, respectively. The Surface Transportation Assistance Act of 1982 authorized, for fiscal year 1986, a total of \$15.3 billion for this program and established an obligation ceiling of \$14.45 billion. There are no authorizations or obligation ceilings in law for any years beyond 1986.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

Relative to current law, this bill would reduce the 1986 obligation ceiling from \$14.45 billion to \$12.75 billion. This change would result in an outlay reduction of about \$250 million in 1986, \$900 million in 1987, \$250 million in 1988, \$100 million in 1989, and \$50 million in 1990.

The budget resolution baseline for 1987 projects budget authority of \$15.8 billion and an obligation ceiling of \$15.1 billion; the 1988 baseline amount for budget authority is \$16.3 billion, with an obligation ceiling of \$15.7 billion. The budget impact relative to the budget resolution baseline is shown in the following table.

FEDERAL COSTS RELATIVE TO THE BUDGET RESOLUTION BASELINE

(by fiscal years, in millions of dollars)

	1986	1987	1988
Budget Authority	---	---	---
Estimated Outlays	-250	-1,200	-1,550

The budget impact of this bill falls within function 400.

Basis of Estimate:

The obligation ceiling for the federal highway program limits the outlays for the program, but has no impact on the budget authority. The bill would not change obligations for those programs that are exempt from the obligation ceiling (approximately \$700 million annually). Outlay estimates are based on historical spending rates.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

   Most federal-aid highway funds are apportioned to states on a formula basis, with the federal share ranging from 75 percent to 90 percent. Under the lower obligation ceilings in this bill, states will have fewer funds apportioned to them than they would under the baseline assumptions.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: Kathleen Kelly (226-2860)

10. ESTIMATE APPROVED BY:

James Blum

James L. Blum
Assistant Director
for Budget Analysis

[COMMITTEE PRINT]

FINANCE COMMITTEE PORTION OF RECONCILIATION REPORT

COMMITTEE ON FINANCE

Title VII

BOB PACKWOOD, OREGON, CHAIRMAN

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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete:

We hereby submit the statutory language implementing the recommendations of the Committee on Finance to meet its reconciliation instructions under S. Con. Res. 32, the first concurrent resolution on the budget for fiscal year 1986. Also enclosed are materials which explain these provisions.

These statutory provisions will reduce outlays for programs within the jurisdiction of the Committee on Finance by $22.2 billion over fiscal years 1986-1988. In addition, the revenue provisions will increase Federal receipts by $15.7 billion over the same period. This level of additional revenues provides the amount of revenues required under the conference report on S. Con. Res. 32.

Sincerely,

Russell

RUSSELL B. LONG
Ranking Minority Member

Bob

BOB PACKWOOD
Chairman

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A. MEDICARE

1. Payments for Inpatient Hospital Services

Current law.—Since October 1, 1983, Medicare has paid for most inpatient hospital services under the prospective payment system (PPS). Payment rates for the Federal portion of the PPS are updated each October 1. The hospital-specific portion is updated at the beginning of each hospital's reporting period.

For fiscal year 1986 and later fiscal years, the Secretary of Health and Human Services is responsible for setting payment rates at levels which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, taking into account the recommendations of the Prospective Payment Assessment Commission. However, for fiscal year 1986, the increase in payment levels may not exceed the percentage increase in the hospital market basket, plus one-quarter of one percentage point.

Certain hospitals and hospital units are exempt from the prospective payment system and are paid on the basis of their reasonable costs up to a limit. The limit for each such hospital or unit is based on its costs in a base year which are annually adjusted.

Explanation of provision.—The provision would require the Secretary of Health and Human Services to provide a 0.5 percent rate of increase to the PPS rates for fiscal year 1986 and a rate of increase of no more than the hospital market basket in fiscal years 1987 and 1988. Additionally, the payment limits for PPS-exempt hospitals and units would be increased by 0.5 percent for fiscal year 1986 and by a rate of increase of no more than the hospital market basket in fiscal years 1987 and 1988.

The Secretary of Health and Human Services (HHS) has been directed to study a number of aspects of the PPS, including its provisions for compensating hospitals for the additional costs of outlier cases, the establishment of severity of illness indices, and other possible payment modifications to avoid disadvantaging hospitals that treat unusually expensive patients. It has come to the Committee's attention that burn center hospitals may be among these hospitals that will require special treatment because of the extensive treatment needs of their patients. For these hospitals, up to one-half of the burn patients may be outliers—far in excess of the percentage contemplated by the PPS. The Secretary is requested to review the adequacy of the payments being made to burn center hospitals under PPS and any problems of access that the present payment method may be creating for medicare patients and to present her findings either as part of the report that is described above or as a supplement to that report.

Effective dates.—Hospital cost reporting periods beginning on or after October 1, 1985, for the hospital-specific portion of the PPS rates, and discharges occurring on or after October 1, 1985, for the Federal portion of the PPS rates. Hospital cost reporting periods beginning on or after October 1, 1985, for PPS-exempt hospitals.

2. Prohibit Retroactive Application of Hospital Wage Index

Current law.—Medicare payments to hospitals under the prospective payment system (PPS) must be adjusted to reflect the hospital wage level in a hospital's geographic area relative to the national average hospital wage level. The Secretary has used a Bureau of Labor Statistics index to make the required adjustment. However, because the index does not distinguish between full-time and part-time employment, the Deficit Reduction Act of 1984 (DEFRA) required the Secretary to conduct a study to develop a new index. DEFRA required that if a new index were implemented, it must be applied retroactively to payments made since October 1, 1983.

On September 3, 1985, the Secretary issued final PPS regulations which provide for a new wage index, immediately effective for cost reporting periods beginning on or after October 1, 1985. The new index, known as the "gross wage index", is derived from gross hospital wages which include salaries and wages for contracted labor, interns and residents, non-hospital cost center personnel, and hospital-based physicians. Effective January 1, 1986, the index will be applied retroactively to payments made between October 1, 1983, and September 30, 1985.

Explanation of provision.—The provision would require the Secretary to use the "gross" index to adjust PPS payments made only for discharges occurring after September 30, 1985.

Effective date.—For discharges occurring on or after October 1, 1985.

3. Reduce the Indirect Medical Education Cost Adjustment

Current law.—Additional payments are made to hospitals under Medicare's prospective payment system (PPS) for their indirect costs of approved medical education programs. These costs may be due to such factors as additional tests ordered by interns and residents as part of their training and, presumably, to the relatively more severe medical condition of patients in teaching hospitals.

Prior to implementation of PPS, an estimate was developed of how a hospital's costs increased as the ratio of the hospital's number of interns and residents to beds increased. This adjustment factor was used in setting the reimbursement limits applied under Medicare's reimbursement method in effect before PPS. For PPS, Congress doubled the adjustment factor. This doubled factor is equal to 11.59 percent for each 0.1 increase in the ratio of a hospital's full-time equivalent interns and residents to its number of beds. The Federal DRG portion of a hospital's PPS payments and any outlier payments are increased by this factor.

Explanation of provision.—The provision would reduce the indirect medical education factor from 11.59 percent to 8.7 percent on a variable, or curvilinear, basis. For fiscal years 1986 and 1987, the factor would be reduced further from 8.7 percent to 7.7 percent to take into account a new provision for a disproportionate share hospital adjustment.

Effective date.—Effective for discharges occurring on or after October 1, 1985.

4. Indirect Teaching Cost Adjustment Related to Outpatient Activities

Current law.—In addition to the DRG payments, teaching hospitals are paid amounts designed to compensate them for certain costs that are indirectly attributable to their teaching activities. The amount of this indirect teaching adjustment is based on the ratio of the hospital's residents and interns to the number of its beds. On September 3, 1985, the Secretary issued final regulations that would eliminate interns and residents who serve in the hospital's outpatient department from his ratio.

Explanation of provision.—The provision would clarify that residents and interns who serve a hospital's outpatients should be included in the ratio since the regression analysis on which the indirect teaching adjustment is based includes all of the residents and interns serving the hospital's patients.

Effective date.—Enactment.

5. Create a Disproportionate Share Hospital Adjustment

Current law.—Under the Social Security Amendments of 1983, the Secretary of HHS was required to make such adjustments to the prospective payment system (PPS) rates as the Secretary deems appropriate for hospitals that serve a disproportionate number of low-income or Medicare Part A patients. The Deficit Reduction Act of 1984 required the Secretary, prior to December 1, 1984, to develop and publish a definition of dispropriationate share hospitals, to identify such hospitals, and to make the list available to the committees with legislative jurisdiction over Part A of Medicare. The Secretary has not yet done so.

Explanation of provision.—The provision would require the Secretary to make additional payments to all PPS hospitals serving a disproportionate share of low-income Medicare patients. The proxy measure for low-income Medicare patients would be the percentage of a hospital's total Medicare patient days attributable to Medicare patients who are also enrolled in the federal Supplemental Security Income (SSI) program. For hospitals with 100 beds or more, if the proxy measure is above a minimum threshold of 15 percent, the Federal portion of the PPS payment would be increased by 2 percent. An additional 2.5 percent would be paid for each 10 percentage points (or portion thereof) that the proxy measure is above the 15 percent minimum threshold, with a maximum adjustment of no greater than 12 percent. PPS rates for hospitals with less than 100 beds would be increased by 12 percent if their proxy measure is 55 percent or more.

In fiscal year 1986, the Secretary would be required to pay hospitals interim rates based on historical data with final settlement based on actual data. Upon request, the Secretary would be allowed to adjust the interim rate if a hospital provides adequate data to show that the interim rate was too high or low. The Secretary would be required to develop accurate data on Medicare patients who are also enrolled in SSI by October 1, 1986. The proposal also requires the Secretary to pay hospitals where historical data is not available on the basis of similar hospitals in the region in which the hospital is located. The provision would expire in two years.

Effective date.—For discharges occurring on or after October 1, 1985, and before October 1, 1987.

6. Modify Direct Medical Education Cost Payments

Current law.—The direct costs of approved graduate medical and other health professional education programs (such as classroom costs and the salaries of interns and residents) are excluded from the prospective payment system (PPS) and are paid on a reasonable cost pass-through basis.

Explanation of provision.—The provision would limit payments to hospitals for their direct costs of approved medical education activities for the first cost reporting period beginning on or after July 1, 1985. The limit would be the provider's approved medical education costs during the cost reporting period ending prior to October 1, 1985, updated to reflect general increases in the cost of approved educational activities which took place between the end of the prior accounting period and the beginning of the freeze accounting period.

Beginning with the first cost reporting period beginning on or after July 1, 1986, the direct costs of medical education activities associated with those residents who are either board eligible or have completed more than five years of training will no longer be allowable, with the exception of geriatric fellowships which meet criteria established by the Secretary. The exception for geriatric fellowships expires July 1, 1991.

Also beginning with the first of a hospital's cost reporting periods beginning on or after July 1, 1986, only 66 percent of the direct educational costs of graduates of medical schools not accredited by the Liaison Committee on Medical Education (LCME), or graduates of accredited schools at osteopathy, dentistry, or podiatry will be allowable costs. The allowable percent for these so-called "foreign medical graduates" would be reduced to 33 percent in the subsequent reporting period and to zero percent thereafter. However, hospitals whose unaccredited medical school graduates represent more than 50 percent of their students as of October 1, 1985, would receive the 66 percent funding for the first two reporting periods beginning on or after July 1, 1986, 33 percent funding for the three subsequent periods, and no funding thereafter. The provision also requires the Secretary and the General Accounting Office to study and report on various aspects of graduate medical education.

Effective date.—Effective for cost reporting periods beginning on or after July 1, 1985.

7. Continue Regional Hospital Payment Systems

Current law.—The 1983 legislation (P.L. 98-21) authorizing the prospective payment system (PPS), directed the Secretary to continue certain hospital payment systems that had previously been established as demonstrations if they meet certain requirements. One requirement is that the system apply to substantially all acute care hospitals in the State. In addition, it must review at least 75 percent of all inpatient hospital revenues or expenses in the State. Currently, statewide hospital payment systems are in effect for New Jersey, Maryland, and Massachusetts. In New York, three separate systems are in effect, covering: (a) the Rochester area, (b) the Finger Lakes area, and (c) the remainder of the State.

When New York's waiver ends December 31, 1985, neither the Rochester project nor the Finger Lakes project will be allowed to continue since they cannot meet the requirement described above.

Explanation of provision.—The provision would provide that the Rochester and Finger Lakes demonstration projects could continue under waivers of Medicare's hospital payment system if, in addition to other requirements currently in law, they meet a requirement that their hospital payment systems apply to substantially all acute care hospitals in the geographic areas served by the systems on January 1, 1985, and they must renew at least 75 percent of inpatient hospital revenues in their geographic areas.

Effective date.—Enactment.

8. Continuation of Medicare Waiver for New Jersey

Current law.—The Secretary must approve the request of a State for a waiver of Medicare's reimbursement rules for a statewide hospital reimbursement control system under Section 1886(c) of the Social Security Act if certain requirements are met. One requirement is that the State demonstrate to the Secretary's satisfaction that over 36-month periods, the amount of payments made under the waiver will not exceed the amounts that otherwise would have been paid by Medicare if the State were not under a statewide reimbursement waiver.

Explanation of provision.—The provision would prohibit the Secretary from dicontinuing a State's waiver so long as the State takes appropriate steps by July 1, 1986, to assure the Secretary that it's system will continue to meet the cost-effectiveness test. The provision would apply only to States which had made a request for a waiver under 1886(c) prior to December 31, 1984.

Effective date.—Enactment.

9. Transfer of Assets

Current law.—Where a State donates a hospital to a non-profit corporation, the basis for Medicare capital-related costs to the new owner is the lesser of the sales price or the prior owner's historical cost (net of depreciation).

Explanation of provision.—The provision would provide that State owned hospitals being transferred to non-profit corporations at little or no cost would retain their current Medicare book value (historical cost less depreciation) for purposes of calculating their Medicare allowance for interest and depreciation.

Effective date.—Enactment.

10. Indirect Teaching Adjustment Related to Independent Clinic Activities

Current law.—For the first three years of the prospective payment system (PPS), a special exception is applied to hospitals which had traditionally allowed direct billing under Part B so extensively that it would have been disruptive to immediately require them to bill for all such services under Part A. These hospitals were, in effect, allowed to have part of their PPS payments paid through Part B billings and the remainder paid to the hospital under Part A. The Health Care Financing Administration has ruled that in such split payment cases, the indirect teaching adjustment would apply only to the portion of the Medicare payment that is paid through Part A.

Explanation of provision.—The provision would clarify that the split payment provisions was only intended to provide a temporary billing accommodation for certain hospitals and that the indirect teaching adjustment should be applied as if the entire PPS payment had been made under Part A.

Effective date.—Enactment.

11. Coverage of Psychologists' Services

Current law.—Section 1861(b) of the Social Security Act includes in the definition of the inpatient hospital services that are paid for by Medicare "such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements."

Explanation of provision.—The provision would clarify that inpatient hospital services for which payments may be made under Medicare Part A may include diagnostic or therapeutic services provided by a psychologist. The Committee recognizes that such services are already included in the existing definition of inpatient hospital services.

Effective date.—Enactment.

12. Extend Medicare Hospice Benefit

Current law.—(a) *Sunset of hospice benefit under Medicare.* Individuals who are entitled to Medicare Part A benefits and who are certified to be terminally ill may elect to receive Part A reimbursement for hospice care services, in lieu of certain other services. Current authority for the Medicare hospice benefit is scheduled to terminate on October 1, 1986. An evaluation of the program, to be conducted by the Secretary of Health and Human Services, is due to Congress prior to January 1, 1986. However, this report will not be completed until January 1, 1988.

(b) *Payment rates.* In implementing the hospice benefit, HHS established a prospective payment system and set daily rates for each of four levels of hospice care. P.L. 98-617 increased the routine home care payment rate from the $46.25 specified in final regulations to $53.17, and required the Secretary to review and adjust the hospice rates annually, beginning October 1, 1985, and to report to

Congress on October 1 of each year on the adequacy of the rates to ensure participation in Medicare by an adequate number of hospice programs.

Explanation of provision.—The provision would make permanent the hospice benefit under the Medicare program. In addition, it would utilize the resulting savings by increasing each of the four hospice payment rates by $10.00.

Effective date.—Enactment.

13. Moratorium on Medicare Laboratory Payment Demonstration

Current law.—Pursuant to demonstration authority of present law, the Secretary has proposed to experiment with competitive bidding as a method of purchasing clinical laboratory services under the Medicare program. At this time, the design of the experiments has not been developed. However, independent laboratories have expressed the concern that under the experiments unsuccessful bidders might not be eligible to participate in the Medicare program.

Explanation of provision.—The provision would postpone the demonstrations until after December 31, 1986 with the exception that the design of and site selection for such demonstrations can proceed. During this moratorium, representatives of the laboratory industry could conduct a study in collaboration with the Secretary and the U.S. General Accounting Office, to determine whether there is a less disruptive method of utilizing competitive market forces in setting Medicare payment levels—e.g., by giving Medicare access to laboratory fee schedules that have been established in competing for the business of other large purchasers. If the study is conducted, the Secretary and the GAO shall provide the study and their comments on it to the committees of jurisdiction.

Effective date.—Enactment.

14. Extend Home Health Waiver of Liability

Current law.—Current Medicare law allows Part A providers to collect payment from intermediaries after a claim has been denied because the items or services were found not to be medically reasonable and necessary or because services were determined to be custodial care. A finding must be made that neither the beneficiary nor the provider knew or could reasonably have been expected to know that the items or services were not covered. Under current administrative practice, providers can be presumed to meet this test if they meet certain criteria. The principle criterion for home health agencies is that its denial rate does not exceed 2.5 percent. The denial rate is determined by the percentage of days billed by the provider as covered that HCFA later determines to be noncovered when the bill is reviewed. Under this waiver of liability policy, home health agencies with a denial rate 2.5 percent or less are paid for these denied services.

In a proposed rule published February 12, 1985, HCFA would eliminate the criteria for a favorable presumption and determine payment on a case-by-case basis. Under the rule, home health agencies would be liable for payment for up to 2.5 percent of claims which were judged to be uncovered after HCFA review.

Explanation of provision.—The provision would require the Secretary to maintain 2.5 percent waiver of liability policy for home health agencies from the date of enactment until 12 months after the consolidation of claims processing for home health agencies, that is, when all ten Home Health Agency fiscal intermediaries begin operations.

Effective date.—Enactment.

15. Home Health Regulation Moratorium

Current law.—Prior to the recent publication of final regulations, reimbursement for home health services was limited to the 75th percentile of the average costs per visit incurred by all home health agencies. Separate limits were established for each type of service (e.g., skilled nursing, home health, and physical therapy); however, they were applied in the aggregate to each home health agency based on its mix of services.

The Administration has revised, in regulations published July 5, 1985, the home health cost limit methodology. For cost reporting periods beginning on or after July 1, 1985, the limits are set at 120 percent of the mean and would be applied separately to each type of service. For cost reporting periods beginning on or after July 1, 1986, the limits are to be reduced to 115 percent of the mean. For cost reporting periods beginning on or after July 1, 1987, the limits are to be set at 112 percent of the mean.

Explanation of provision.—The provision would delay implementation of the July 5 regulations until July 1, 1986.

Effective date.—July 1, 1985.

16. Study of Home Health Agency Supervision

Current law.—The Medicare law requires that a physician or registered nurse supervise patient care services provided by a home health agency.

Explanation of provision.—The Secretary is required to examine the question of whether other health care professionals, (e.g., physical therapists, occupational therapists, and speech-language pathologists) may be qualified to supervise patient care services provided by a home health agency. Further, the Secretary would be required to specify criteria and conditions for which they could fulfill the supervisory role. The report would be due April 1, 1986.

Effective date.—Enactment.

17. Study of Physical Therapists' Office Requirements

Current law.—Under current law, Part B of Medicare covers the services of a qualified physical therapist in independent practice when furnished by him or under his direct supervision in his office or in the patient's home. These services must be prescribed by a physician and furnished pursuant to a written plan of treatment established by a physician or a qualified physical therapist.

The Secretary is required, under present law, to establish conditions that an independently practicing physical therapist must meet in order to receive Medicare reimbursement. The Secretary, by regulation, requires that a physical therapist in independent practice maintain an office space with the necessary equipment to provide an adequate program of physical therapy. This requirement is applied even to those therapists who operate exclusively in the beneficiary's home.

Explanation of provision.—The Secretary is required to study the requirement that independently practicing physical therapists who operate exclusively in beneficiaries' homes maintain fully-equipped offices. The report would be due April 1, 1986.

Effective date.—Enactment.

18. Extend Secondary Payer Coverage for Working Aged Over Age 69

Current law.—The Tax Equity and Fiscal Responsibility Act of 1982 required employers of 20 or more workers to offer employees aged 65 through 69, and their spouses aged 65 through 69, the same group health plans offered to employees under age 65. Where the beneficiary elects such coverage, Medicare becomes the secondary payer. The Deficit Reduction Act of 1984 extended the working aged provision to beneficiaries covered under a working spouse's employer health plan when that working spouse is under age 65.

Explanation of provision.—The provision would extend the working aged provision to beneficiaries over age 69 if they or their spouses work and elect the employer-based health insurance plan.

Effective date.—January 1, 1986.

19. End Stage Renal Disease (ESRD) Networks

Current law.—As required, the Secretary has established networks to assure the effective and efficient administration of the end-stage renal disease (ESRD) program under Medicare. The networks help assure that ESRD patients use treatment settings most compatible with successful rehabilitation; and receive quality care.

Explanation of provision.—The provision would prohibit the Secretary from dismantling ESRD networks.

Effective date.—Enactment.

20. Extension of Certain Medicare HMO Demonstration Projects

Current law.—Certain Medicare requirements may be waived when the Health Care Financing Administration enters into demonstrations under its general demonstration authority.

Explanation of provision.—The provision would require the Secretary to extend for three additional years, the four municipal health services demonstration projects (Milwaukee, Baltimore, San Jose and Cincinnati) currently authorized under Medicare demonstration authority.

Effective date.—Enactment.

21. Coverage of Respiratory Care Services for Ventilator-Dependent Individuals

Current law.—Medicare and Medicaid provide limited outpatient and home services to ventilator dependent individuals.

(a) Medicare: To qualify for home health services, a Medicare beneficiary must be confined to his or her home and under the care

of a physician. In addition, the person must be in need of part-time or intermittent skilled nursing care or physical or speech therapy. Once an individual qualifies for Medicare's home health benefit, the beneficiary becomes entitled to a range of home health services.

In order to qualify for Medicare's skilled nursing facility benefit, individuals must first be hospitalized for at least three consecutive days. They must also need skilled nursing or other skilled rehabilitation services on a daily basis for treatment related to the condition for which the beneficiary was hospitalized. Medicare law specifies the range of services which are covered in the skilled nursing facility.

(b) Medicaid: Under Medicaid, States are required to cover home health services for Medicaid recipients over 21 years of age who are categorically needy or medically needy, if such services are offered. In addition, a State must provide home health services to categorically needy recipients under 21 if such individuals are eligible to receive skilled nursing facility services under a State's Medicaid plan. States may provide such services to other program recipients.

Explanation of provision.—The provision would amend Medicare law to allow qualified respiratory care patients to qualify for Medicare's home health and skilled nursing facility benefits and would include among covered services respiratory care for such individuals. The provision defines "qualified respiratory care patient" as an individual who has been hospitalized for at least 30 consecutive days, dependent on a respirator for life support at least 6 hours per day during that time, and is willing and medically able to be cared for in a less intensive setting.

The provision would also amend Medicaid to require States to cover respiratory services in the home for individuals who meet the definition of "qualified respiratory care patients".

Effective dates.—(a) Medicare: Services performed on or after October 1, 1988. *(b) Medicaid*: Applies to services performed on or after October 1, 1988.

22. Increase Audit Effort and Medical Claim Review

Current law.—Under current law, the Secretary contracts with intermediaries and carriers to perform the day-to-day administrative and operational tasks for the Medicare program, including the review of claims and the conduct of audits.

Explanation of provision.—The provision would require that Medicare contractor budgets for fiscal years 1986, 1987, and 1988 be supplemented by $105 million in each year to be spent specifically for provider cost audits and medical review activities. Adequate funding of medical review, and audit and related activities is intended to achieve cost-effective program management. The increased funding will enable the program to avoid excessive benefit payments because of a failure to identify improper billings or billings for uncovered services or costs.

Effective date.—October 1, 1985.

23. Improve Access to Skilled Nursing Facilities

Current law.—Medicare provides skilled nursing facility (SNF) services under the Hospital Insurance (Part A) program.

(a) Payment rates.—SNF's are reimbursed on the basis of reasonable costs actually incurred, subject to limits. Medicare's final payment to a SNF is determined retrospectively only after a SNF has itemized its costs for a full year on a Medicare cost report. Separate reimbursement limits are applied to freestanding SNFs and hospital-based SNFs. For freestanding facilities, limits are established at 112 percent of the mean operating cost of urban and rural freestanding facilities respectively. Limits for urban hospital-based facilities are equal to the urban freestanding facility limits plus 50 percent of the difference between the freestanding limit and 112 percent of mean operating costs for hospital-based facilities. A similar calculation, based on costs of rural facilities, is made for rural hospital-based facilities. Cost differences between hospital-based and freestanding facilities attributable to excess overhead allocations resulting from Medicare reimbursement principles are recognized as an add-on to the limit for hospital-based facilities.

(b) Waiver of liability.—Current Medicare law allows Part A providers to collect payment from intermediaries after a claim has been denied because the items or services were found not to be medically reasonable and necessary or because services were determined to be custodial care. A finding must be made that neither the beneficiary nor the provider knew or could reasonably have been expected to know that the items or services were not covered. However, providers can earn a presumption, or waiver, that allows them not to be held liable for uncovered services they provided if the provider meets five procedural criteria. By meeting the criteria, providers are essentially presumed not to have known that the service would not be covered and their liability for paying for that service therefore can be waived. This is often referred to as the "waiver of liability." Under current administrative practice, a SNF is judged to meet these criteria and to have its liability for certain uncovered claims waived if its denial rate does not exceed 5 percent. The denial rate is determined by the percentage of days billed by the provider as covered that HCFA later determines to be non-covered when the bill is reviewed. Under the waiver policy, SNFs with a denial rate of 5 percent or less are paid for these denied services.

In a proposed rule published February 12, 1985, HCFA would eliminate the criteria for a favorable presumption and determine payment on a case-by-case basis. Under the rule, SNFs would be liable for payment for up to 5 percent of claims which were judged to be uncovered after HCFA review.

Explanation of provision.—The provision would provide that SNF's that provide less than 1,500 days of care per year to Medicare patients in the preceding year would have the option of being paid a prospective rate set at 105 percent of the regional mean for all SNF's in the region. The rate would be separately calculated for urban and rural areas and include all non-ancillary costs, including capital and return on investment. Those accepting the prospective rate would be required to file a minimal cost report. With respect to ancillary services, the Secretary would be allowed to pay for those services on the basis of reasonable costs or reasonable charges. Also, to improve the evenness of administration of the benefit, the Secretary would be required to reduce the number of intermediaries to ten within 18 months of enactment and strengthen monitoring of the administration of the SNF benefit. The Secretary would be required to maintain the five percent favorable presumption waiver of liability until 30 months after enactment of this legislation.

Effective date.—Enactment.

24. Clarify Impact of Physician Fee Freeze on HMO's

Current law.—Physicians who agree to become participating physicians, that is, accept assignment for all Medicare patients, must accept Medicare's reasonable charge determination as payment in full (subject to applicable cost-sharing) for services rendered to beneficiaries. When a participating physician provides an emergency service to a Medicare beneficiary who is enrolled in a Health Maintenance Organization (HMO), the physician may bill the HMO. In this case, a participating physician does not have to accept assignment. Further, a non-participating physician is not limited as to the amount he or she can charge the HMO (as he or she would otherwise be under the physician fee freeze provisions).

Explanation of provision.—The provision would provide that participating and nonparticipating physicians can not charge HMO's more for emergency services rendered to a Medicare beneficiary than they could charge the beneficiary.

Effective date.—For items and services provided on or after October 1, 1985, and before October 1, 1986.

25. Require Timely Publication of HMO Rates

Current law.—Section 1876 of the Social Security Act provides for Medicare payments to Health Maintenance Organizations (HMO's) and Competitive Medical Plans (CMP's) enrolling Medicare beneficiaries. In general, HMO/CMPs contracting on a risk-sharing basis are financially responsible for the cost of all benefits their enrollees would otherwise be eligible for under Medicare while enrolled in these plans. Risk-contracting HMO/CMPs are paid a prospectively determined monthly capitation amount based on cost estimates known as the AAPCC, the average annual per capita cost. The Secretary is required to calculate and publish the AAPCC rates annually, but there is no time deadline by which HMO/CMPs must be notified as to the rates that will be in effect for the next calendar year. Section 1886 of the Social Security Act requires that the Secretary annually publish by September 1 the hospital payment rates to be used during the following federal fiscal year under Medicare's prospective payment system.

Explanation of provision.—The provision would require the Secretary to publish the rates for reimbursing risk-contracting HMO/CMP's for the next calendar year no later than 10 days after publication of the hospital prospective payment rates.

Effective date.—January 1, 1986.

26. Extension of Physician Fee Freeze

Current law.—Payment for physicians' services is based on Medicare's "reasonable" (i.e., allowable) charges. The reasonable charge for a service is the lowest of the actual charge, the physician's customary charge for the service, or the prevailing charge for the service in the area. If the physician accepts assignment on a claim, he or she agrees to accept Medicare's reasonable charge as payment in full (except for applicable cost sharing); in return, Medicare pays the physician directly. If the physician does not accept assignment, Medicare payments are made to the beneficiary who in turn pays the physician. In either case, the beneficiary is liable for the required deductible and coinsurance. In the case of non-assigned claims, the beneficiary is also responsible for any difference between Medicare's reasonable charge and the physician's actual charge.

The Deficit Reduction Act of 1984 (DEFRA) froze Medicare customary and prevailing charges for physicians' services for a 15-month period—July 1, 1984 through September 30, 1985. Future updates of customary and prevailing charge screens are to be made on October 1 of each year based on data recorded for the 12-month period ending the previous March 31.

DEFRA also established the concept of a "participating physician." A participating physician is one who voluntarily agrees to accept assignment on all claims for the forthcoming year. The law includes incentives for physicians to participate. Chief among these is the ability to raise actual charges during the freeze period in order to have such charges reflected in the calculation of customary charges in fiscal year 1986. Nonparticipating physicians cannot raise their actual charges during the freeze period. Nonparticipating physicians who do not comply with the freeze could be subject to civil monetary penalties or assessments, exclusion for up to five years from the Medicare program, or both.

Explanation of provision.—The provision would extend the current freeze on customary and prevailing charges for an additional year, i.e., fiscal year 1986, for physicians who are nonparticipating physicians during both fiscal years 1985 and 1986. Prevailing charges for services furnished after the freeze would not include an allowance for the lack of an increase during the freeze. The provision would also extend the freeze on actual charges of these nonparticipating physicians. This freeze on actual charges is tied to the April-June 1984 levels.

A physician who converts from a participating physician in fiscal year 1985 to a nonparticipating physician in fiscal year 1986 would have his or her actual charges made during the 12-month period ending March 31, 1985, reflected in the calculation of his or her customary charges for fiscal year 1986.

The monitoring of physicians' actual charges would be continued through fiscal year 1986, for these physicians as well as for those that were not participating physicians in either 1985 or 1986.

Any physician who signs a participation agreement for fiscal year 1986 would receive an increase in Medicare payments for that year based on the recognition of higher customary and prevailing charges. Both participating and nonparticipating physicians would receive an increase in Medicare payments in fiscal year 1987. However, unlike participating physicians, there would be a permanent one-year lag in the prevailing charge levels applicable to those who were nonparticipating physicians in fiscal year 1985.

When physicians exercised their option in September 1985, to become participating physicians for fiscal year 1986, they will have had no way of knowing what changes the Congress will make in their reasonable charge levels for fiscal year 1986. Therefore, the provision affords all physicians a second opportunity to exercise their option for fiscal year 1986, during a 30-day period following enactment.

The provision would extend for one year the current law provision transferring $15 million from the part B trust fund to the carriers (the contractors which administer part B) for continued administration and monitoring of the freeze and participating physician and supplier program. It would eliminate the requirement for publication of the Physician Assignment Rate List and would provide for improvements in directories of participating physicians. The provision would also require that information on the participating physician and supplier program be included in explanations of benefits (EOB's) sent to beneficiaries for unassigned claims.

The provision would provide that the freeze imposed on actual charges to beneficiaries would not apply in cases where a claim for payment is not filed because the patient chooses to pay the entire bill from private sources.

Effective date.—October 1, 1985, for payment provisions. Enactment for other provisions except that EOB changes apply to EOB's provided on or after a date specified by the Secretary but no later than April 1, 1986.

27. Hold Part B Premium at 25% of Program Costs

Current law.—Under the original Medicare law, beneficiary premiums paid for 50 percent of the cost of Part B with the remaining 50 percent financed by Federal general revenues. However, legislation enacted in 1972 provided that the percentage increase in the Part B premium could not exceed the percentage increase in social security cash benefits payments. As a result, beneficiary premiums financed less than 25 percent of program costs by 1982.

The Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Social Security Amendments of 1983, specified that enrollees' premiums in 1984 and 1985 would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. (Disabled enrollees pay the same premiums even though the per capita cost of services to these enrollees is higher.) The Deficit Reduction Act of 1984 extended this provision for two calendar years (i.e., 1986 and 1987).

Explanation of provision.—The provision would extend for one additional year (calendar year 1988) the temporary provision of law under which enrollee premiums are to produce premium income equal to 25 percent of program costs for elderly enrollees.

Effective date.—Enactment.

MONTHLY PART B PREMIUMS

[CBO estimates]

	Calendar year—				
	1986	1987	1988	1989	1990
Current law	$16.20	$18.60	$19.40	$20.20	$21.00
Provision	16.20	18.60	20.80	21.70	22.60

28. Correction of Charges for Certain Hospital-Based Physicians

Current law.—Combined billing arrangements (i.e., those under which the hospital was permitted to bill for all the services of certain hospital-based physicians and the hospital in turn paid the physician) were eliminated October 1, 1983. Carriers then established compensation-related customary charges (CRCC's) for those physicians for whom a customary charge profile was not available. The resulting payment levels were expected to be temporary. However, DEFRA froze the customary charges for all physicians for the 15-month period July 1, 1984–September 30, 1985. As described above, the Committee would continue the freeze for some of these physicians for an additional 12 months.

Explanation of provision.—The provision would provide for the recalculation of the CRCC's. For services rendered between October 1, 1985, and September 30, 1986, the customary charges of the physicians would be determined based on the physicians' actual charges made between April 1, 1984 and March 31, 1985. If such physicians had insufficient billings during that 12-month period, the calculation would be based on the first 3-month period beginning on or after February 1, 1985 for which sufficient billings are available. In either case, in order to put these physicians in the same position as other physicians, the actual charges will be deflated to September 1, 1984 levels in the case of physicians who were participating physicians during fiscal year 1985 or 1986; or to July 1982 in the case of physicians who did not participate in either year.

Effective date.—For services rendered on or after October 1, 1985, and before October 1, 1986.

29. Limit Payments for DME and Other Non-Physician Services

Current law.—Payments for durable medical equipment (DME), prosthetic devices, ambulance services, and certain other nonphysician services are generally made on the basis of reasonable charges. In the past, Medicare payment for DME was made for both rented and purchased items, depending on the beneficiary's decision to rent or purchase. Beginning February 1, 1985, the Secretary began implementing three methods for reimbursing DME under Medicare: lease purchase, lump sum purchase, and rental charges. In the case of inexpensive equipment (costing $120 or less), Medicare will not pay more than if the equipment had been bought. For equipment costing more than $120, the carrier must determine which method is cost-effective based on the beneficiary's expected need for the equipment (as indicated on the physician's prescription) and reimburse accordingly. For items costing more than $120, special provisions apply in the case of financial hardship.

Explanation of provision.—The provision would impose new reimbursement limits on nonphysician services paid on a reasonable charge basis under Part B other than DME that is lump-sum purchased or furnished under a lease-purchase agreement and independent clinical laboratory services. Purchased DME is exempted so that future customary and prevailing chrge levels can be based on more complete and reliable data, i.e., billings between April 1984 and March 1985. During fiscal year 1986, Medicare customary and prevailing charges for services subject to the limits would be allowed to increase by 1 percent over the level in effect for the 15-month period beginning July 1, 1984. Thereafter, Medicare prevailing charges for these services and for lump-sum purchased or lease-purchased DME could rise no faster than the increase in the consumer price index.

Effective date.—October 1, 1985.

30. Deny Payments for Assistants at Surgery During Routine Cataract Operations

Current law.—Currently, Medicare covers assistants at surgery during routine cataract operations. Their services are considered reasonable and necessary if it is the generally accepted practice among ophthalmologists in the local community to use an assistant at surgery. Some Medicare carriers restrict coverage of assistants at surgery to cases where medical necessity is established.

Explanation of provision.—The provision would deny Medicare payment for assistants at surgery for routine cataract operations. The Secretary would be required to establish procedures by which the primary surgeon could request prior approval from the Peer Review Organization for the use of an assistant in cases where complicating medical conditions exist.

The assistant at surgery (or someone on his or her behalf) would be prohibited from billing the beneficiary for excluded services. In addition, the primary surgeon (or someone on his or her behalf) would be prohibited from including charges for the assistant in his or her bill for services. The bill would give the Secretary the authority to impose civil monetary penalties or assessments, or exclusion for up to 5 years from the Medicare program, or both, for violations of this provision.

The Secretary would be required, after consultation with the Prospective Payment Assessment Commission, to develop and report to Congress by April 1, 1986, recommendations and guidelines regarding other surgical procedures for which an assistant at surgery generally is not medically necessary and circumstances under which prior approval of an appropriate entity would be appropriate.

Effective date.—October 1, 1985.

31. Limit Reimbursement for Prosthetic Lenses

Current law.—Medicare Part B pays for prosthetic lenses (i.e., cataract contact lenses and eyeglasses) if determined to be medically necessary by the physician for aphakic patients. Generally, Part B carriers are authorized to pay for replacement of prosthetic lenses without a physician's order in cases of loss or irreparable damage and when supported by a physician's order in cases of a change in the patient's condition. Currently, there are no uniform limits on the number of replacements for which Medicare will provide reimbursement.

Physicians can bill Medicare for services related to cataract surgery in two ways: (1) a comprehensive service code covering the lenses, their fitting and evaluation, and short-term follow-up to assure their suitability; or (2) separate codes for the lenses and for the physician's services.

Explanation of provision.—The provision would limit Medicare reimbursement for lost or damaged prosthetic lenses as follows: (1) for cataract eyeglasses, one replacement each year; and (2) for cataract contact lenses, one original and two replacements per eye the first year after surgery and two replacements per eye each subsequent year. There would be no limit on replacements necessitated by changes in the patient's medical condition. The Secretary would be required to apply an "inherent reasonableness" test in determining reimbursement amounts for lenses and to determine separately the reasonable charge for the related professional service.

Effective date.—October 1, 1985. In applying the replacement schedule, there shall not be taken into account any cataract eyeglasses or contact lenses replaced before October 1, 1985.

32. Preventive Health Services Demonstrations

Current law.—Medicare, whose focus is primarily on covering health care costs associated with acute conditions, does not generally provide coverage for preventive health services.

Explanation of provision.—The provision would require the Secretary of HHS to fund at least five demonstrations of 4 years duration, under the auspices of schools of public health or preventive medicine departments of accredited medical schools, to determine whether and how it would be cost-effective to include preventive services as a Medicare benefit.

Services to be made available to beneficiaries would include health screenings, health risk appraisals, immunizations, counseling and instruction on such matters as diet and nutrition, reduction of stress, exercise, sleep regulation, prevention of alcohol and drug abuse and mental health disorders, self-care, and smoking cessation and reduction.

Within 3 years, the Secretary would be required to submit a report to Congress describing the demonstrations in progress. Within 5 years, the Secretary would be required to submit a final report that would evaluate the costs and benefits of providing such services and recommend whether specific preventive services should be included as a Medicare benefit.

Effective date.—Enactment.

33. Extend Prospective Payments for Ambulatory Surgery

Current law.—Medicare may pay for ambulatory (i.e., outpatient) surgical procedures performed in three different settings.

(a) Ambulatory Surgical Center (ASC).—The "Omnibus Reconciliation Act of 1980" authorized payments for surgical procedures, to be specified by the Secretary, performed in an ASC to be made on the basis of prospectively set rates. On August 5, 1982, the Department issued final regulations and an accompanying notice identifying four groups of surgical procedures and the payment amount for each group. The payment amounts and the list of procedures has not been updated.

The prospective payment rates do not include payments for physicians' services, prosthetic devices, or laboratory services.

Under the 1980 legislation, the costs related to the use of an ASC were covered in full. The Congress waived the 20 percent copayment usually required of patients for such Part B services in order to foster greater use of ambulatory surgical centers as opposed to higher cost hospitals.

(b) Hospital outpatient departments.—Medicare payments for ambulatory surgery performed in a hospital outpatient department are made on the basis of reasonable costs. As a Part B service, a 20-percent copayment is required of the patient in connection with the costs related to the use of the facility.

(c) Physician's office.—The "Omnibus Reconciliation Act of 1980" also authorized payments to be made to physicians for the use of their office facilities when covered ambulatory surgical procedures were performed there. However, the legislation has not been implemented because adequate utilization and quality control peer review, which is required by law, is not available for office-based surgery.

When surgery is performed in any of these three settings, Medicare reimburses 100 percent of the physician's reasonable charge, provided the physician agrees to accept assignment, otherwise the 20-percent copayment is imposed on the beneficiary.

Explanation of provision.—The provision would extend the ASC prospective payment approach to hospital outpatient surgery for all procedures which the Secretary approves for the ASC; 150 are currently approved. The rates for ambulatory surgery in all settings would be increased to include the costs associated with a given procedure, including prosthetic devices and lab work. Professional fees would not be included. The provision specifies that the pass-through for direct graduate medical education and capital costs associated with the surgery that is now paid to hospitals would be continued. Further, separately calculated payment would be provided to take into account the costs of services provided by a Certified Registered Nurse Anesthetist (CRNA).

The Secretary would be required to update the present ASC prospective rates to reflect current costs. No rate could exceed the DRG payment rate for comparable inpatient surgery. The rates would be updated annually.

The provision would require the Secretary to have PRO's review outpatient surgical procedures.

Finally, the provision would eliminate the current law provisions which waive copayments in connection with both the use of the facility and the physician's charge.

Effective date.—The provisions relating to the updating of payments and lists of procedures are effective January 1, 1986. Payment amounts for ambulatory procedures that are furnished in ASC's and physician's offices will be updated prior to January 1, 1986. Other provisions are effective October 1, 1985.

34. Extension of On Lok Waiver

Current law.—Section 222 of the Social Security Amendments of 1972, Section 402(a) of the Social Security Amendments of 1967, and Section 1115 of the Social Security Act provide the Secretary of HHS general authority to conduct experiments and demonstrations on Medicare and Medicaid alternative payment systems and benefits and to waive compliance with various program requirements in conducting these demonstrations. Under this authority, the Secretary approved waivers for the On Lok Community Care Organization for Dependent Adults, a demonstration project conducted from February 1979 to October 1983. P.L. 98–21 required the Secretary to approve waivers for a new 3-year, risk-sharing, capitated payment demonstration to be conducted by On Lok from November 1983 to November 1986.

Explanation of provision.—The provision would require the Secretary to extend Medicare waivers for the risk-sharing On Lok demonstration upon their expiration, and if the State of California applies for an extension of related Medicaid waivers, to approve the State's application. It also requires that waivers be extended on the same terms and conditions as applied to the original approval mandated under P.L. 98–21 (except that requirements for collection and evaluation of information for demonstration purposes should not apply) and that approval of waivers remain in effect until the Secretary finds that the applicant no longer complies with these terms and conditions.

Effective date.—Enactment.

35. Expand PROPAC Membership

Current law.—The Social Security Amendments of 1983 (P.L. 98–21), provided for the establishment of the Prospective Payment Assessment Commission (PROPAC) consisting of 15 members appointed by the Director of the Office of Technology Assessment, generally to serve for 3-year terms.

Explanation of provision.—The provision would expand PROPAC membership from 15 to 17 members.

Effective date.—Enactment.

36. Remove Restriction on Actuarial Opinion

Current law.—Annual reports required of the Board of Trustees on the financial status of the Social Security trust funds (including the Medicare trust funds) must include an actuarial opinion certifying that the assumptions and cost estimates used in the report are reasonable. According to provisions in the Social Security

Amendments of 1983 (P.L. 98-21), that certification may not refer to the economic assumptions underlying the trustees report.

Explanation of provision.—The provision would allow the actuaries to comment on the economic assumptions underlying the trustee's report.

Effective date.—Enactment.

37. Extend GAO Reporting Date

Current law.—The Deficit Reduction Act of 1984 (DEFRA) required the General Accounting Office to study the following aspects of Medicare contracting for claims processing:

The ability of HCFA to manage competitive bidding and the relative costs of competitive arrangements compared with cost-based reimbursement;

The appropriateness of removing the provider nomination requirements in the statute;

Any disparities in costs and quality of claims processing among various intermediaries and carriers;

Whether the Secretary's standards for evaluating contractor costs are adequate and properly applied; and

Whether the Secretary's authority is sufficient to deal with inefficient intermediaries and carriers either through the contract negotiation and budget review process or through the process of termination or nonrenewal of contracts.

DEFRA required submission of the report to Congress within 12 months of enactment, i.e., by July 18, 1985.

Explanation of provision.—The provision would extend the reporting date to 18 months after the enactment of DEFRA (i.e. January 18, 1986) to allow the GAO to expand the scope of the study as requested by the committees of jurisdiction (i.e. Senate Committee on Finance, House Committee on Ways and Means, and House Committee on Energy and Commerce).

Effective date.—As if originally included in the Deficit Reduction Act of 1984.

38. Allow Greater HMO Membership on PRO Boards

Current law.—The Secretary must enter into contracts with organizations to provide utilization and quality control peer review of the health care services paid for under Medicare. The contractors are referred to as Peer Review Organizations (PRO's). An applicant whose governing body has more than one member who is affiliated with a health maintenance organization (HMO) is given secondary preference to physician-sponsored or physician-assisted entities when PRO contracts are awarded.

Explanation of provision.—The provision would allow PRO's with more than one HMO board member to qualify as a PRO on the same basis as other organizations.

Effective date.—Enactment.

39. Peer Review Organization Reimbursement

Current law.—Section 1866(a)(1)(F)(iii) of the Social Security Act specifies that Peer Review Organization reimbursement is to be set at a level which reflects peer review rates established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation). Section 1866(a)(1)(F)(iv) specifies that the aggregate reimbursement for a fiscal year may not be less than the aggregate amount expended in fiscal year 1982 (adjusted for inflation).

Explanation of provision.—The provision deletes section 1866(a)(1)(F)(iii) and substitutes fiscal year 1985 for fiscal year 1982 in clause (iv). Reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month. The Committee is concerned that the current law provisions could be used to restrict PRO reimbursement and expects this change to remedy that concern.

Effective date.—Enactment.

40. Require PRO Review of Health Maintenance Organization Services

Current law.—Current law requires the Secretary of Health and Human Services to contract with Peer Review Organizations (PRO's) for the review of the medical necessity, quality, and appropriateness of services provided to Medicare beneficiaries. The PRO's are required to review some or all of the professional services provided under Medicare. Each PRO, in consultation with the Secretary, determines the types and kinds of cases over which it will exercise its review authority in order to most effectively meet its responsibilities.

On January 10, 1985, the Secretary published final regulations to implement the 1982 TEFRA health maintenance organizations (HMO's) and competitive medical plans (CMP's) contract provisions with Medicare. The final regulation includes a provision that requires HMO's and CMP's with contracts under Section 1876 to comply with the requirement for PRO review of services furnished to Medicare enrollees. The Committee understands that the Health Care Financing Administration and representatives of peer review organizations and of HMO's and CMP's have developed a system to undertake review activities.

Explanation of provision.—The provision would, among other things, require the Secretary to implement HMO/CMP peer review of Part A and Part B services under all TEFRA contracts and the Committee expects the Secretary to allocate sufficient funds to support this review program.

Effective date.—Enactment.

41. Substitute for PRO Review

Current law.—A Peer Review Organization (PRO) which has entered a contract with the Health Care Financing Administration (HCFA) has exclusive authority to review utilization and quality of services as specified under Title XI of the Social Security Act. The Secretary may terminate a PRO contract for nonperformance provided certain procedures are followed. These procedures require the Secretary to "provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract." The data is to be reviewed by a panel appointed by the Secretary and the findings submitted to the Secretary and made available to the organization. The Secretary may accept or not accept the panels' findings. The Secretary may, with the concurrence of the organization, modify the scope of the contract. The Secretary may terminate the contract upon 90 days after the panel has submitted a report or earlier if the organization so agrees. The law does not make provision for assigning review (or backlogged review) to another entity during termination proceedings. Thus, terminations can create a period of several months where no utilization and quality review is conducted.

Explanation of provision.—The provision would authorize the Secretary to assign review authority to another entity after the PRO has been notified of an intent to terminate its contract because the PRO is not performing effectively and prior to the time when a new PRO contract is awarded.

Effective date.—Enactment.

42. Authorize Peer Review Organizations To Deny Payment for Substandard Care

Current law.—Peer Review Organizations (PRO's) may review, subject to the provisions of their contracts, the professional activities of physicians, other practitioners and institutional and noninstitutional providers in rendering services to Medicare beneficiaries. The review is to focus on: (a) the medical necessity and reasonableness of care; (b) the quality of care; and (c) the appropriateness of the setting. The law specifies that the determinations of the PRO with respect to medical necessity reviews and reviews of the appropriateness of the setting are generally binding for purposes of determining whether benefits should be paid. Despite the fact that PRO's are required to conduct quality reviews, they are not authorized to deny payment for care of substandard quality.

Explanation of provision.—The provision would authorize PRO's to deny payment for care of substandard quality that is identified through criteria developed according to a plan approved by HCFA.

Effective date.—Enactment.

B. MEDICAID

1. Allow Comprehensive Benefits for Pregnant Women

Current law.—All States cover the "categorically needy" under their Medicaid programs. In general, these are persons receiving cash assistance under the Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) programs. Beginning October 1, 1984, States are required to extend categorically needy protection to the following groups of persons meeting AFDC income and resources requirements: (a) first time pregnant women from medical verification of pregnancy (where such women would be eligible if the child were born); and (b) pregnant women in two-parent families where the principal breadwinner is unemployed.

The law provides that benefits furnished to a categorically needy person shall not "be less in amount, duration or scope than the medical assistance available to any other (categorically needy) individual." Current law specifies a few exceptions to this requirement.

Explanation of provision.—The provision would allow States the option to waive the "comparability" requirement under Medicaid with respect to services provided to pregnant women. Under this authority, States would be permitted to provide more extensive prenatal care to pregnant women than is provided to other categorically needy individuals.

Effective date.—First calendar quarter following enactment.

2. Task Force on Technology-Dependent Children

Current law.—No provision.

Explanation of provision.—The provision would require the Secretary to establish within 6 months after enactment a task force concerning alternatives to institutional care for technology-dependent children. In addition, the provision would require the task force to submit, not later than two years after enactment of this Act, a final report to the Secretary and Congress on (1) barriers that prevent the provision of appropriate care in a home or community setting to technology-dependent children, and (2) recommended changes in the provision and financing of health care in private and public health care programs so as to provide home and community-based alternatives for these children.

Effective date.—Enactment.

3. Permit Hospice Care as an Optional Medicaid Service

Current law.—Current law does not authorize comprehensive hospice care as a covered service under Medicaid.

Explanation of provision.—The provision would allow States to cover hospice care as an optional Medicaid benefit. It defines this benefit by reference to Medicare's hospice benefit: Hospice care would include the services included under Medicare. Hospice programs would be required to meet Medicare's requirements for organization and operation and be public or nonprofit. The amount, duration, or scope of hospice services could not be less than benefits under Medicare. Hospice services could be provided to terminally ill individuals who have voluntarily elected to receive hospice care instead of certain other benefits. Voluntary election could be for a period or periods as the State may establish and need not to be the same election periods as specified in Medicare's benefit. Beneficiaries could revoke election of hospice. States could apply the same eligibility standards for patients receiving hospice care outside of institutions as they apply to institutionalized patients. Medicaid cost sharing rules would apply to hospice patients.

Effective date.—Enactment.

4. Extension of Texas Long-Term Care Waiver

Current law.—Section 1115 of the Social Security Act provides the Secretary of HHS general authority to conduct experiments and demonstrations under Medicaid and to waive program requirements in conducting these demonstrations. Under this authority, the Secretary has approved a waiver for the demonstration project, Modifications of the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged, for the period January 1980 throughout December 1985.

Explanation of provision.—The provision would require the Secretary to extend through December 31, 1988, approval of the waiver for the demonstration project, Modifications of the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged and to continue the approval on the same terms and conditions as applied to the project as of the date of enactment of this Act.

Effective date.—October 1, 1985.

5. Enhance Third-Party Liability Collections

Current law.—Medicaid is intended to be the payer of last resort, that is, other available resources must be used before Medicaid pays for the care of an individual enrolled in the Medicaid program.

Explanation of provision.—The provision would require the Secretary to issue regulations so that the States:

a. collect sufficient information to identify third party liabilities,

b. computer match information about the beneficiary with other data bases, as specified by the Secretary, and

c. use that information to pursue collections according to a plan approved by the Secretary of Health and Human Services.

The regulations would also provide that the States be financially penalized for not collecting the required information or not following through with the agreed-on collection plan. The provision would also make disclosure of third party liability a condition of eligibility for Medicaid. The provision clarifies the responsibility of Medicaid recipients for copayments and deductibles when third parties are liable for payments on their behalf. The provision would also clarify that Medicaid is the payer of last resort with respect to self-insured plans.

Effective date.—October 1, 1985.

6. Optional Targeted Case Management Services

Current law.—"Case management" is commonly understood to be a system under which responsibility for locating, coordinating, and monitoring a group of services rests with a designated person or organization. Under current Medicaid law, case management is not included among the list of medical services which may be covered under a State's Medicaid plan. However, States may include case management services under freedom-of-choice and home and community-based services waivers authorized under section 1915(b) and 1915(c) respectively. In addition, States may receive administrative funds under their Medicaid plans for certain case management activities (for example, preadmission screening) when offered to all Medicaid recipients in all areas of the State.

Explanation of provision.—The provision would modify current law to include case management among the list of medical services which may be covered under a State's Medicaid plan and would allow States to target case management services to specific groups and/or specific areas within the State without obtaining a home and community based services waiver. The intent is to allow case management to be provided as an additional service. It is not the Committee's intent that the States use case management solely to reduce program costs. It is the committee's intent that the States may target any Medicaid group, including the nonelderly, under this provision.

Effective date.—October 1, 1985.

7. Modify Revaluation of Assets Provision

Current law.—Under section 2314 of the Deficit Reduction Act of 1984, the so-called "revaluation of assets" provision, Medicare payments to nursing homes may not be increased to reflect higher capital costs that result solely from the sale of such facilities. Capital costs recognized for reimbursement include depreciation, interest expense, and in the case of proprietary providers, return on equity. Capital-related costs to the new owner are to be based on the lesser of historical cost (the cost to the original owner), or the purchase price of the asset. Medicaid payments are subject to a similar limit, but applied on an aggregate statewide basis, rather than an individual facility basis.

Explanation of provision.—The provision would modify the Medicaid revaluation of assets provision to allow a State's aggregate capital cost payments to nursing homes to reflect increases in their valuation due to changes in ownership. The revaluations, however, would be limited to the acquisition costs of the previous owner increased by 50 percent of the nursing home cost index published in the Dodge Construction Index or 50 percent of the CPI, whichever is lower and reduced by the previously allowed depreciation. The U.S. General Accounting Office would be required to study the effect of this provision on the frequency of sales of nursing homes and, if the volume of sales changes, the effect of the change on reimbursement and quality of care.

Effective date.—October 1, 1985.

8. Modify Coverage Beginning Date

Current law.—Current law authorizes Medicaid coverage, at State option, for individuals who are in medical institutions but who have too much income to qualify for cash payments under the Supplemental Security Income Program. The income standard which a State applies to this optional coverage group cannot exceed 300 percent of the SSI benefit amount payable to an aged, blind or disabled, individual in his own home who has no other income or resources. A hospital or nursing home stay qualifies an individual for Medicaid eligibility under the special income rule. Implementing regulations (42 C.F.R. 722) specify that the State Medicaid agency shall apply the special income standard beginning with the first full calendar month of institutionalization. Thus, persons who might otherwise qualify for Federal matching payments for a portion of the month in which they are institutionalized are prevented from doing so based on the full calendar month test.

Explanation of provision.—The provision would substitute for the calendar month test a requirement that payment begin at the beginning of any 30 consecutive-day period of institutionalization.

Effective date.—October 1, 1985.

9. Extend Optional Coverage of Children

Current law.—Under current law, States are able to cover all, or reasonable categories of, poor children under age 18 or 19 or 20 or 21. These are known as "Ribicoff children." The Deficit Reduction Act required States, beginning October 1, 1984, to cover all children born on or after October 1, 1983, up to age 5, who meet AFDC income and resources requirements. The law required that coverage for this population group be phased in over a 5-year period starting with the youngest children. Federal matching is not available for children under age 5 born prior to October 1, 1983, unless the State extends coverage to all Ribicoff children.

Explanation of provision.—The provision would allow States to cover, and receive Federal matching funds for, all Ribicoff children under age 5 immediately if they so desire.

Effective date.—January 1, 1986.

10. Modify Overpayment Recovery Rules

Current law.—State Medicaid agencies are allowed to pay nursing homes and hospitals at interim rates until final rates are established. If the final rate is less than the interim rate, the institution was overpaid and the State is responsible for the collection of the "overpayment". The State must refund the Federal share of the overpayment to the Federal Government. Under current program administrative instructions the State must refund the Federal share immediately upon discovering the overpayment. Further, refunds must be made for all overpayments even where they are not collectable because the providers have gone into bankruptcy or have gone out of business. These administrative instructions have been upheld by the courts.

Explanation of provision.—The provision would allow States up to sixty days (from the date of discovery) to recover overpayments from providers and refund the Federal share. The provision would provide that a State is not liable for the Federal share of overpayments which cannot be collected from bankrupt or out-of-business providers.

Effective date.—October 1, 1985.

11. Home and Community Based Services Waiver Extensions

Current law.—Section 1915(c) of the Social Security Act authorizes the Secretary of HHS to waive certain Medicaid requirements to allow States to provide a variety of home and community-based services to individuals who would otherwise require the level of care provided in a SNF or ICF whose cost could be reimbursed under the State's Medicaid plan. A home and community-based waiver is granted for an initial term of 3 years, and, upon the request of a State, can be renewed for additional three-year periods, unless the Secretary determines that certain assurances have not been met.

Explanation of provision.—The provision would require the Secretary to extend, for a period of one year at a minimum or five years at a maximum, any waiver that expires during the 12-month period beginning September 30, 1985, if the State requests an extension.

Effective date.—Enactment.

12. Home and Community Based Services Waiver Renewals

Current law.—A Medicaid home and community based services waiver is granted for a initial term of three years, and, upon the request of a State, can be renewed for additional three-year periods unless the Secretary determines that certain assurances have not been met.

Explanation of provision.—The provision would require the Secretary to renew home- and community-based services waivers for additional five-year periods.

Effective date.—September 30, 1986.

13. Coordinated Services Between MCH Block Grant Program and Home and Community-Based Services Waivers

Current law.—Section 1915(c) of the Medicaid law authorizes the Secretary of HHS to waive certain Medicaid requirements to allow States to provide a variety of home and community-based services to individuals who would otherwise require the level of care provided in a SNF or ICF the cost of which could be reimbursed under the State's Medicaid plan.

States are using this authority to provide home and community-based services to a number of groups of individuals, including children.

Title V of the Social Security Act authorizes grants to the States for a variety of maternal and child health services. This program is referred to as the Maternal and Child Health (MCH) Block Grant.

Explanation of provision.—The provision would require the State Medicaid agency, whenever appropriate, to enter into cooperative arrangements with the State agency administering the MCH Block Grant allotment received under Title V of the Social Security Act. These cooperative arrangements must provide that individuals under 18 who are eligible for home and community-based services; will be referred to the State agency administering the MCH Block Grant.

In addition, the State MCH agency would be required to assure: (1) the establishment of an individual service plan for the child; (2) the designation of a case manager to assist the family in carrying out the plan; and (3) the monitoring of the utilization, quality, and costs of services provided for appropriateness and reasonableness.

Effective date.—Enactment.

14. Moratorium on Penalties for Excessive Errors Under the Quality Control System

Current law.—The Medicaid quality control (QC) system was designed to reduce erroneous medical assistance payments by monitoring and improving the quality of eligibility determinations, third party liability activities, and claims processing. The Medicaid QC system is the basis for the imposition of fiscal sanctions against the States for erroneous payments in excess of error tolerance levels set in Federal law.

Explanation of provision.—The provision would provide for a two-year moratorium on the withholding of Federal funds under the AFDC quality control system and for a study of ways to improve that system. These provisions apply to the Medicaid QC system.

Effective date.—Enactment.

15. Broaden Range of Services Under Waiver Authority

Current law.—Section 1903(m) of the Social Security Act stipulates that States cannot contract on an at-risk basis with an entity which provides a certain number and type of services unless certain conditions are met. If any entity provides; (a) inpatient hospital services and any other mandatory medicaid service (except rural health clinic services) or (b) any three mandatory services, that entity must meet the specified standards before a State can enter into a risk contract with it for the provision of Medicaid services. The "Omnibus Budget Reconciliation Act of 1981" (OBRA) authorized the Secretary to waive, under the newly established freedom-of-choice waiver authority, the requirements of Section 1903(m) of the Social Security Act. The "Tax Equity and Fiscal Responsibility Act of 1983" (TEFRA) rescinded the authority of the Secretary to waive the requirements of section 1903(m) of the Social Security Act.

Explanation of provision.—The provision would increase to five the number of mandatory services an entity may provide, if it does not provide inpatient hospital services, before it would be considered a health maintenance organization under Section 1903(m) of the Social Security Act. Entities providing fewer mandatory services could provide services under the freedom-of-choice waiver authority without being subject to the 1903(m) requirements. The States would continue to be required to obtain a waiver from the Secretary for such contracts.

Effective date.—Enactment.

16. Life Safety Code Recognition

Current law.—The Secretary of Health and Human Services may establish "standards of safety and sanitation" applicable to intermediate care facilities for the mentally retarded. Section 1861(j)(13) of the Social Security Act specifies that skilled nursing facilities must meet the safety and sanitation provisions of such edition (as specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association until she prescribes a later edition.

Explanation of provision.—The provision would direct the Secretary to recognize in regulations the 1985 Life Safety Code of the National Fire Protection Association until a later edition is issued.

Effective date.—Enactment.

17. Publication of ICF/MR Regulations

Current law.—Section 1905(c) of the Social Security Act authorizes optional Medicaid coverage for services to persons in intermediate care facilities (ICF's). These facilities provide health-related care for individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide but do require care and services which can be made available only through institutional facilities. Section 1905(d) provides that the term "ICF services" may include services in an institution for individuals who are mentally retarded. These ICF/MR's must meet such standards as may be required by the Secretary. These standards were originally published in 1974 (42 CFR 442 Subpart G).

Explanation of provision.—The provision would require the Secretary to publish, within 60 days of enactment, proposed revisions to the standards for intermediate care facilities for the mentally retarded (ICF/MR).

Effective date.—Enactment.

18. Eligibility of Community Health Centers

Current law.—States can contract with organizations to provide health care services to Medicaid beneficiaries on a prepaid capitated basis. Organizations eligible to enter into such contracts are, in general, limited to Health Maintenance Organizations (HMO's) that are federally qualified under the provisions of Title XIII of the Public Health Service Act. Community Health Centers, primarily funded by the Public Health Service, and certain rural health care centers known as Appalachian Health Centers, funded under the Appalachian Regional Development Act, that had existed prior to June 30, 1976, are eligible to enter into contracts with States to provide health care services to Medicaid beneficiaries on a prepaid, capitated basis as if they were federally qualified HMO's.

Explanation of provision.—The provision would allow certain Community Health Centers and Appalachian Health Centers established after June 30, 1976 to participate in Medicaid as if they were federally qualified HMO's. To be eligible, these centers must have received at least $100,000 under the appropriate acts during each of the two years prior to the Medicaid contract period.

Effective date.—Enactment.

19. Annual Calculation of Medicaid FMAP

Current law.—Under the formula in current law, the Federal share of State medical vendor payments is inversely related to the per capita income of the State. The Federal matching rate, known as the Federal Medical Assistance Percentage (FMAP) is designed to provide a higher percentage of Federal matching to States with lower per capita incomes and a lower percentage of matching for States with higher per capita incomes. Under the formula, if a State's per capita income is equal to the national average, the Federal share would be 55 percent. The law establishes a minimum FMAP of 50 percent and a maximum of 83 percent (though the highest rate currently in effect is 78%).

The Secretary of HHS is required to promulgate the FMAP between October 1 and November 30 of each even-numbered year which will be in effect for the 2-year period beginning the following October. The percentages are based on the average per capita income of each State and the United States for the 3 most recent calendar years for which satisfactory data are available from the Department of Commerce.

The FMAP for the fiscal year 1986 and 1987 period is based on State per capita income for 1981–1983.

Explanation of provision.—The provision would provide that the FMAP would be recalculated annually rather than biannually beginning in fiscal year 1988.

Effective date.—Enactment.

20. Allow Sampling for Nursing Home Medical Review

Current law.—Current law requires that the care of 100 percent of the patients in a nursing home must be reviewed annually to evaluate the appropriateness and quality of care the nursing home provides.

Explanation of provision.—The provision would allow nursing home reviews to be based on a sample, but would require the Secretary to prescribe guidelines for drawing a statistically significant sample for the reviews.

Effective date.—Enactment.

21. Wisconsin Health Maintenance Organization Waiver

Current law.—Current law precludes Health Maintenance Organizations (HMO's) that have chosen not to become federally qualified under the provisions of Title XIII of the Public Health Service Act from participating in the lock-in provision of the Medicaid program. The Secretary of Health and Human Services was granted the authority to waive the requirement for federal qualification in the Omnibus Reconciliation Act of 1981. This authority was subsequently limited by the Deficit Reduction Act of 1984 to organizations that are receiving, and had received in each of two years prior to contracting with Medicaid, grants of at least $100,000 under the Migrant Health Center, Community Health Center, or Appalachian Regional Commission programs, and that had greater than 25 percent of their membership accounted for by non-Medicare/Medicaid enrollees.

Explanation of provision.—The provision would allow the Secretary to grant Wisconsin two years renewable waivers of the federal qualification requirement upon application by the State of Wisconsin.

Effective date.—Enactment.

22. Clarification of Medicaid Moratorium Under DEFRA

Current law.—Under the "Omnibus Budget Reconciliation Act of 1981" States were given certain flexibility in structuring their medically needy programs. They were allowed to limit coverage to certain categories of persons and to vary the scope of services offered. Changes were not made in the financial eligibility requirements. However, implementing regulations made changes in the pre-OBRA financial eligibility rules and allowed the States to impose more restrictive standards and methodologies. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) amended the Medicaid statute to clarify that Congress did not intend to change the policies governing income and resource standards and methodologies for determining eligibility of the medically needy from those in effect prior to OBRA. The TEFRA provision specified that the methodology to be used in determining income and resource eligibility for the medically needy must be the same methodology used under the relevant cash assistance program. However, a strict interpretation of this provision by the Department led to unintended and in certain cases, undesirable consequences. The "Deficit Reduction Act of 1984" (DEFRA) established a moratorium period during which the Secretary is directed not to take any compliance, disallowance penalty or other regulatory action against a State because a State in determining eligibility for noncash Medicaid recipients is using an income or resource standard or methodology that is less restrictive than the applicable cash assistance standard or methodology. The Secretary was directed to report to Congress within 12 months of enactment on the impact on States and recipients of applying income and resource standards and methodologies under the cash assistance programs to noncash eligibles. The moratorium is to run from the date of enactment until 18 months after submission of the required report. DEFRA further specified that no provision of law could repeal or suspend the moratorium unless such provision specifically amended or repealed that provision.

In January, 1985, the Health Care Financing Administration issued a Medicaid Action Transmittal (85-1) to all State Medicaid agencies setting forth HCFA's interpretation of the moratorium provision of the Deficit Reduction Act. The Transmittal concludes that the moratorium applies only where the "existing approved State plan" is or would be in violation of the requirement, as interpreted by HCFA, that the States apply the same methodology or standards to their non-cash assistance Medicaid beneficiaries as they apply to their cash assistance recipients. The Transmittal concludes, "Since the moratorium applies only where the existing approved State plan is or would be in violation of the provisions of section 1902(a)(10)(C)(i)(III) and since Medicaid eligibility quality control (MEQC) reviews are conducted against the approved State plan, the moratorium will have no effect on MEQC reviews or error rates for past or future periods."

This interpretation is inconsistent with the intent of Congress.

More recently, a related problem has come to the Committee's attention. When a Medicaid applicant or recipient who owns his own home is admitted to a hospital or nursing home, the value of the residence is disregarded in determining whether he is eligible for Medicaid provided he intends to return home. However, when it is established that the individual could never return home, the value of his residence becomes a resource that can increase his resources beyond the permitted level. In the past, Federal Medicaid policy gave such an individual time to dispose of the property if he was making a bona fide effort to do so. Proceeds from the eventual sale of the house can be used to finance the patient's institutional costs until he has reduced his resources to the allowable level and can again be eligible to receive Medicaid payments.

This policy has provided a reasonable period to determine whether it is realistic to expect a return home. It avoids requiring patients to give up their homes while there is still a chance that their stay will be temporary. Once it is determined that a return to home is no longer feasible, recipients are given enough time to sell their property at its reasonable market value rather than being forced to dispose of it quickly at what may be below-market value.

Recent interpretations of these policies would tend to force premature sale of the homes of institutionalized Medicaid applicants and recipients. For example, one interpretation would require the value of an unsold house to be counted as an available resource even though the applicant or recipient is making a bona fide effort to dispose of it. Another new policy would force premature sale of homes by some patients who still have reasonable expectations of returning home.

Explanation of provision.—The provision would clarify that the moratorium on the Secretary's sanction activities applies to State Medicaid plans, whether or not approved, as well as the operation or administration of a Medicaid program by a State agency pursuant to that State plan. It also applies to any amendments to, or other changes in, a State plan, regardless of when the amendment or other change came to the Secretary's attention, and regardless of whether the Secretary has approved, disapproved, acted upon, or not acted upon the amendment or change. It applies to all States, including those States operating plans pursuant to section 1902(f) of the Social Security Act (relating to special eligibility rules for aged, blind, and disabled individuals receiving Supplemental Security Income). It applies to Medicaid eligibility and quality control reviews and error rates for past and future periods.

The provision would also restore for the duration of the moratorium the previous Medicaid policy governing the period when homeownership by an institutionalized individual is permitted and the period of time given for the sale of a home. The homeownership moratorium would apply for purposes of determining the eligibility of recipients and applicants who seek to qualify for Medicaid under the medically needy provisions, the special income standard (300 percent of the SSI payment standard) for individuals in medical care institutions, and other institutionalized individuals who could be covered as optional categorically needy persons.

Effective date.—Effective as if included in the original DEFRA provision.

23. Home and Community-Based Services Demonstrations

Current law.—Section 1915(c) of Medicaid law authorizes the Secretary of HHS to waive certain Medicaid requirements to allow States to provide a variety of home and community-based services to individuals who could otherwise require the level of care provided in a SNF or ICF the cost of which could be reimbursed under the State's Medicaid law.

In order to receive approval for a waiver, States must provide a number of assurances to the Secretary, including one requiring that the estimated average per capita expenditure for medical assistance under the program in any fiscal year not exceed the average per capita expenditure that the State reasonably estimates would have been incurred in that year if the waiver had not been granted.

Explanation of provision.—The provision would require the Secretary to conduct demonstrations in four States to determine whether and to what extent State controlled home and community-based services programs for elderly, disabled and developmentally disabled Medicaid recipients reduce expenditures for the: (a) society as a whole, (b) Federal government, and/or (c) States.

Within certain spending limits, the four States would be allowed to provide habilitative services not currently reimbursable under Medicaid or on care provided in small facilities not normally certifiable under Medicaid. All current quality of care standards and requirements would have to be met in the demonstrations. Demonstrations would be three years in duration. The Secretary would be required to select programmatically and demographically disparate States. The Secretary would also be required to evaluate the four State demonstrations. A preliminary report from this evaluation would be due during the third year of the demonstrations.

Effective date.—Enactment.

24. Participants Under Home and Community-Based Services Waivers

Current law.—Section 1915(c) of Medicaid law, authorizes the Secretary of HHS to waive certain Medicaid requirements to allow States to provide a variety of home and community-based services to individuals who would otherwise require the level of care provided in a SNF or ICF the cost of which could be reimbursed under the State's Medicaid plan.

Regulations require States in their applications to provide home and community-based services to describe the group or groups of individuals to whom services will be offered and to estimate the *unduplicated* number of recipients who will receive services in a given year. Program administrators have determined that individuals who receive services in a given year and who during that year die, enter a nursing home, or otherwise drop out of the home and community-based care program can not be replaced in that year with other individuals who would be eligible to receive such services. In the second year, however, these slots could be filled.

Explanation of provision.—The provision would amend the home and community-based waiver authority to specify that for waivers which contain a limit on the number of individuals who will receive home and community-based services, the State may substitute additional individuals to receive services to replace any individuals who die or become ineligible for services. The Committee wishes to emphasize that the intent of the home and community based waiver provision is not to reduce federal expenditures. The Committee believes that the waiver provisions should not be used as a vehicle to reduce federal expenditures.

Effective date.—Enactment.

25. Extension of Home Health Aide Demonstration in New Jersey

Current law.—The "Omnibus Reconciliation Act of 1980" authorized the Secretary to enter into agreements for the purpose of conducting demonstration projects to formally train AFDC recipients as homemaker-home health aides. These individuals could then be employed by public and nonprofit private agencies to provide supportive services to people, primarily the aged and disabled, who would reasonably be expected to require institutional care in the absence of these services. The bill authorized 90% Federal matching under the States' Medicaid programs for the reasonable costs (less any related fees collected) of conducting the projects. The projects would be limited to a maximum of 4 years plus an additional period of up to 6 months for planning and development and a similiar period for final evaluation and reporting.

Explanation of provision.—The provision would extend for one additional year at 50% Federal matching, the demonstration project in the State of New Jersey.

Effective date.—Enactment.

26. Correction Plans for Intermediate Care Facilities for the Mentally Retarded (ICF/MR)

Current law.—The Secretary has authority to conduct validation, or "look behind", surveys to determine the validity of Medicaid certification actions taken by the designated State survey agency. Where the Secretary finds that a facility substantially fails to meet the requirements of participation in the Medicaid program, she is empowered to cancel the facility's provider agreement.

As a result of these surveys, the Secretary has cancelled the provider agreements of several facilities—generally on the grounds that the health and safety of residents were in immediate jeopardy—and accepted plans of corrections from many other facilities. Current law allows the State 30 days in which to file a plan of correction for the affected facility; once the plan has been accepted by the Secretary, the facility has 180 days in which to correct all deficiencies identified by the Federal survey team.

Explanation of provision.—The provision includes language which specifies the conditions under which a State may submit a plan of correction for a facility found to have non-life-threatening deficiencies. The language spells out the basic contents of the plan, including the conditions under which a State may include, as part of its correction plan, a phased reduction in the facility's population. The Secretary may allow a State up to 36 months to complete such a planned reduction in the number of facility residents, but only on the condition that the State agrees to achieve interim objectives, established at six-month intervals. The Secretary may allow the use of temporary staff during the phase-down period. Whether or not a State intends to reduce a facility's population as a part of its correction plan, the Committee expects that the Secretary will carefully monitor the State's progress in fulfilling its obligation under such a plan. If at any time during the period in which the deficiency correction plan is in effect, the Secretary finds that the State has substantially failed to meet its obligations under the plan, the Committee expects that prompt action will be taken to terminate the facility's provider agreement.

The Secretary should not approve a 36-month plan of correction involving a phased reduction in a facility's population unless there is evidence that adequate steps will be taken to improve the availability and quality of services to all residents, including those residents expected to remain in the facility during and subsequent to the phase-down period. Furthermore, to be approved, a plan of correction should demonstrate, to the satisfaction of the Secretary, that the facility will be in full compliance with all Federal standards no later than the end of the correction period.

In recognition of the fact that despite good faith efforts to execute its reduction plan, a State may fall behind in meeting its interim goals as set forth in the approved plan of correction, the Secretary shall withhold an amount of Federal financial participation equal to five (5) percent of the allowable Medicaid costs for all eligible facility residents for each month the State fails to meet its interim goals. The Committee believes that the proposed penalty will serve as a positive incentive for States to meet deadlines spelled out in their approved plans of correction and provide quality care.

Effective date.—Enactment.

C. MATERNAL AND CHILD HEALTH

1. Maternal and Child Health (MCH) Expenditures

Current law.—Under the MCH Block Grant, States must obligate a fiscal year's allotment within a two-year time frame. In other words, these funds must be expended by the States prior to the close of that second year.

Explanation of provision.—The provision would repeal the current law provision that requires States to obligate their MCH Block allotments within a two-year time frame. States would then have greater flexibility to spend their allotments as their specific needs determine.

Effective date.—Enactment.

2. MCH Terminology Change: "Children with Special Health Care Needs"

Current law.—The Maternal and Child Health Services Block Grant provides services and care for children who are crippled or who are suffering from conditions leading to crippling.

Explanation of provision.—This provision would change the term "crippled children" to "children with special health care needs" wherever the term "crippled children" appears in Title V, the Maternal and Child Health Block Grant.

Effective date.—Date of enactment.

D. SOCIAL SECURITY

1. Coverage of Senior Status Federal Judges

Current law.—

Federal judges are appointed for life. Once a judge qualifies for retirement, he continues to receive his annual pay, regardless of whether he chooses to continue on active duty in the judiciary. Prior to enactment of P.L. 98-21, Federal judges, like all Federal employees, were excluded from Social Security coverage so the question of Social Security taxes did not arise. Additionally, the amounts received by judges who had achieved senior (retired) status had been determined not to be wages for purposes of the earnings test.

The 1983 Social Security Amendments (Public Law 98-21) provided that the wages of all active Federal judges would be subject to Social Security taxes beginning January 1, 1984. This provision applied to both current and future judges. P.L. 98-21 also specifically provided that amounts received by judges who achieve senior (retired) status but who continue on active duty would be subject to Social Security taxes on so much of their pay as was attributable to periods when they were performing judicial services. Those earnings would also cause reductions in the judges' benefits under the social security retirement test. (Subsequently, P.L. 98-118 delayed the effective date of this provision until January 1, 1986.)

Explanation of provision.—For purposes of the Social Security Act, the provision would exclude the amounts received by Federal judges who meet the criteria for retirement on salary (e.g. age 65 with 15 years of service or age 70 with 10 years of service), retire, and perform active duty, from the definition of wages. The effect of this exclusion would be to exempt their pay from Social Security taxes and to preclude it from being counted for Social Security earnings test purposes.

Effective date.—Effective for services performed after December 31, 1983.

2. Social Security "Notch" Study

Current law.—Some workers who reach age 62 in 1979 (or later) and have their Social Security benefits determined under the computation provisions included in the 1977 Social Security amendments can get significantly lower monthly benefits than similar workers who reach age 62 in 1978 (or earlier), have similar earnings histories, retire at the same age and have their benefits computed under the old system. This difference in benefit amounts is commonly referred to as the "notch."

Because benefits are generally lower under the new system, a transitional provision was included in the 1977 amendments to smooth the differences between benefits computed under the two systems in the early years. A worker who reaches age 62 in 1979–1983 gets a benefit figured under the transitional provision if the benefit is higher than the one figured under the new system. While the transitional provision lessens the extent of the benefit differential described above, it does not eliminate the differential.

Explanation of provision.—The Secretary of Health and Human Services would be directed to appoint a panel to study the Social Security "notch". The panel is to study the extent of the benefit differential known as the "notch", as well as the nature and desirability of actions for addressing this benefit differential. The report is to include estimates of the short- and long-range costs of such proposals. The panel's report will be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives by December 15, 1986.

Effective date.—On enactment.

3. Recovery of Overpayments

Current law.—Under the Social Security Act, entitlement to Social Security benefits ends with the month before the month of death and eligibility for supplemental security income (SSI) benefits ends with the month of death. Under current reclamation procedures, benefits erroneously paid to a deceased individual by means of direct deposit are recovered by the Department of the Treasury from the financial organization which accepted the amounts for deposit in the deceased beneficiary's account. In most cases, the financial organization debits the individual account to which the amounts were finally credited. When an individual account is debited, the financial organization is required to provide concurrent notice to any individuals shown as owners of the account.

Explanation of provision.—The amendment provides that when (1) a payment is made to a deceased individual by means of direct deposit; (2) such payment is credited by a financial organization to an account jointly owned by the deceased individual and another person; and (3) such other person is (a) entitled to a Social Security benefit based on the same wages and self-employment income as the deceased person for the month immediately preceding the month in which the deceased person died; or (b) such other person is the surviving spouse of the deceased person and was eligible for an SSI payment (or federally administered State supplement) as an eligible spouse (including either member of an eligible couple) in the month in which the deceased individual died; such payment shall be treated as an overpayment to the surviving individual.

Subjecting such payments to the overpayment recovery process, rather than the reclamation process, would extend certain due process rights, the right to request waiver of recovery of the overpayment and gradual recovery procedures to the surviving joint account owner who was receiving Social Security benefits based on the same earnings record as the deceased or who was the individual's spouse and was receiving SSI benefits. Thus, their treatment would be analogous to the treatment of similarly situated beneficiaries who are overpaid for some other reason. This treatment would minimize the confusion and financial hardship which the current reclamation procedures cause in these cases.

Effective date.—With respect to deaths of which the Secretary of Health and Human Services is first notified on or after the date of enactment.

4. Minor and Technical Changes

Current law.—The Committee approved a number of provisions to make minor improvements and necessary technical changes to title II of the Social Security Act.

Explanation of provisions.—Some of the provisions approved by the Committee result in minor extensions of benefit protection. Others correct unintended results of recent amendments to the Social Security Act, primarily the 1980 Disability Amendments and the Social Security Amendments of 1983.

1. *Demonstration Projects Involving the Disability Insurance Program.*—The Social Security Disability Amendments of 1980 directed the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects to test the advantages and disadvantages of various ways to facilitate and encourage the return to employment of individuals who would otherwise remain dependent on Social Security Act disability benefits. The 1980 law specifically directed that these demonstration projects address such areas as alternative methods of treating the work activity of recipients, alterations in the trial work period and the medicare waiting period, earlier referral for rehabilitation, and greater use of employers and others to develop new forms of rehabilitation. A key element in conducting these demonstration projects is the authority for the Secretary to waive requirements of the Social Security Act related to the subject matter of the projects. A provision of the 1980 amendments calling for a final report within 5 years of the enactment of that statute has been interpreted as terminating the Secretary's authority to make such waivers. Without this authority, the Secretary would be unable to carry out the demonstration projects which were mandated by the 1980 amendments but have not yet been implemented. The requirements of the 1980 amendments as to the types of projects to be carried out remains unchanged. The provision extends the waiver authority for 5 years, and requires a final report to Congress by June 9, 1990.

2. *Disability Advisory Council.*—The Social Security Act requires an Advisory Council on Social Security to be appointed every 4 years, at the beginning of each Presidential term, and to report by January 1 of the second year after appointment. The provision establishes a special ad hoc Disability Advisory Council in lieu of the general council scheduled to be appointed in 1985. The ad hoc Council shall report to Congress by January 1, 1987.

3. *Taxation of Social Security Benefits Received by Citizens of U.S. Possessions.*—Under present law, citizens of American Samoa are treated as non-resident aliens and are subject to withholding of taxes from their social security benefits at a 15 percent rate. Citizens of other U.S. territories are exempt from the withholding requirement. The provision eliminates U.S. tax withholding on social

security payments to citizens of American Samoa, to make it consistent with the tax treatment of citizens of other U.S. possessions. This provision would apply to benefits received after December 31, 1983, in taxable years ending after such date.

4. *Dependency Test for Adopted Great-Grandchildren.*—Under present law, a grandchild (under age 18) of a social security beneficiary may be entitled to benefits if the child is adopted by and lives with the grandparent for at least 1 year before applying for benefits and received half his support from the beneficiary. The amendment would extend the provision to great-grandchildren of the beneficiary and would apply with respect to benefits for which application is filed after the date of enactment of this Act.

5. *Cease Publication of Annual Revisions in the Pre-1979 Benefit Tables.*—Under present law, the Secretary is required to publish the pre-1977 Amendments table of benefit amounts as revised by each general benefit increase. (This table applies only to those eligible for benefits before 1978 and the enactment of the Average Indexed Monthly Earnings provision.) The provision would eliminate the requirement to publish the revised tables, but would not affect the revisions themselves.

6. *Notification Formula Clarification.*—Under the 1983 Amendments, the Board of Trustees is required to notify Congress whenever it determines that the balance in any of the trust funds at the beginning of any calendar year may become less than 20 percent of expenditures. The provision clarifies the Congressional intent that the determination should utilize a measure of reserves which includes the taxes credited to the trust funds on the first day of each month.

7. *Extension of 15-Month Reentitlement Period for Childhood Disability Beneficiaries Subsequently Entitled.*—Under present law, disabled individuals who complete a 9-month trial work period and still have a disabling impairment, may be automatically reinstated to active benefit status during the next 15 months for any month in which their earnings fall below substantial gainful activity (SGA) level, currently $300 per month. However, a person entitled to benefits as a disabled adult child who has used this provision once cannot subsequently be covered by it again. The provision extends the subsequent 15-month reentitlement periods to reentitled childhood disability beneficiaries. The provision would be effective December 1, 1980.

8. *Charging of Work Deductions Against Auxiliary Benefits in Disability Cases.*—Under present law, when a person receiving auxiliary benefits on the record of a disabled worker has earnings which exceed the exempt amount allowed under the earnings test, work deductions are imposed against the auxiliary worker's benefits which could be payable after any reduction for the family maximum limit. However, the amount withheld from the working individual is redistributed to others in the family so that the family continues to receive benefits up to the family maximum. A technical error in the 1980 provision uses the regular (retired) family maximum formula for computing the amount to be withheld from the working family member instead of the disability family maximum formula which is used to determine the amount actually payable to the entire family. The provision requires that the disability

family maximum limit would be used for computing the individual's deductions as well as for computing the total family entitlement. The provision would be effective with respect to benefits payable for months after December 1985.

9. *Perfecting Amendments to Disability Offset Provision.*—The 1981 Omnibus Budget Reconciliation Act expanded the social security disability offset (reduction in social security disability benefits due to receipt of other types of benefits) to include most governmental disability benefits paid to individuals. Previously, the offset was applicable only to workers' compensation payments. However, unclear wording led to confusion with regard to the continued application of the offset to certain workers' compensation benefits. Present law also treats State and local disability payments differently than similar Federal payments. The bill amends the present law to clarify that all disability benefits paid under a Federal or State workers' compensation law or plan would continue to be subject to the disability offset. Moreover, the provision clarifies that both Federal and State or local workers must have had substantially all their service covered by social security to be excluded from the disability offset.

10. *State Coverage Agreements.*—Under present law, coverage of State and local employees under social security is, in most cases, effective on the date that an agreement is mailed by the State to the Secretary of Health and Human Services. However, for workers paid on a fee basis and for those whose coverage is retroactive, the agreement becomes effective on the date it is signed by both parties, which may result in complications and loss of coverage for some employees. The provision would make all agreements and modifications of agreements effective on the date the agreement is mailed or delivered by other means to the Secretary.

11. *Effect of Early Delivery of Benefits.*—Under present law, when the normal delivery date for social security benefits (the third day of the month) falls on a Saturday, Sunday or legal holiday, checks must be delivered on the nearest preceding banking day. This may result in checks being delivered in the previous month. If this situation arises at the end of a year, it could cause distortion of year-end trust fund balances, possibly making them low enough to trigger the stabilizer provision, which could affect the amount of cost-of-living increases. This could also result in exaggerated beneficiary tax liability. The provision would eliminate these problems by providing that, for purposes of asset-expenditure ratio calculations and taxation of benefits, Social Security benefits delivered prior to their scheduled delivery date would be deemed to have been paid on the regular delivery date.

12. *Preservation of Benefit Status for Disabled Widows and Widowers.*—The Social Security Amendments of 1983 raised the amount of benefits for disabled widows and widowers aged 50 to 59, effective January 1984. As a result of the increase, some beneficiaries lost eligibility for Supplemental Security Income (SSI) and, consequently, Medicaid. The provision requires that those low-income widows and widowers who lost SSI eligibility because of the January 1984 disability benefit increase may file an application for protection with the State within 15 months after enactment and be deemed to be receiving SSI benefits for the purpose of medicaid eli-

gibility. The provision further directs the Secretary to inform the States of the identities of affected individuals, and States to notify such individuals, solicit their applications for medicaid coverage and process their applications promptly. Effective for months starting at least 2 months afte enactment.

Effective date.—On enactment, unless otherwise noted.

E. SUPPLEMENTAL SECURITY INCOME

Modification of Pass-through Requirement

Current law.—The Supplemental Security Income (SSI) program provides for needy aged, blind, and disabled people a Federal income assurance level of $325 per month for an individual and $488 for a couple. Under a 1974 provision, these amounts are increased annually to offset inflation.

States, at their option, may provide supplemental assistance above these Federal levels, and the State payments may be made separately or included in the Federal SSI check. To prevent a situation where the Federal cost-of-living increase would simply be offset by a reduction in State benefits with no increase to the recipient, a pass-through requirement was adopted in 1976.

Under the 1976 law, States could comply with the pass-through requirement either by assuring that total State expenditures for SSI recipients did not decrease from one year to the next or by keeping the State benefit levels (the amount over and above the Federal level) at least as high as they were in December 1976.

In 1983, a one-time $20 increase in the Federal levels ($30 for couples) was enacted. The 1983 law required only a portion of this one-time increase to be passed through by the States, but also required that States use March 1983 rather than December 1976 as the base for determining whether their benefits had declined. The Senate had proposed the partial $20 pass-through with a March 1983 base as an *additional* method of compliance, but the House version—which was enacted—eliminated the option of maintaining full December 1976 levels. As a result, States which had increased benefit levels after 1976 (but before March 1983) lost the right to reduce them back to a level at or above the December 1976 level. Due to this change, a State could be out of compliance because of a recent reduction in supplemental benefits even though, on an aggregate basis, the State had more than passed through the overall increase which has taken place in Federal benefits since 1976.

Explanation of provision.—The provision would follow the approach of the Senate bill in 1983 which would have retained as an alternative allowing States to meet the pass-through requirement by showing that their current benefit levels are at least as high as they were in December 1976. This means that, in the aggregate, they have passed through the total of all Federal benefit increases since 1976 including the full $20 increase in 1983. The effect of the amendment is to permit the States to meet the pass-through requirements by using any method of doing so that was permissible under the statute prior to the 1983 amendments (in addition to the new method added by the 1983 amendments).

Effective date.—For months beginning after March 1983.

F. AID TO FAMILIES WITH DEPENDENT CHILDREN

1. Moratorium on Disallowances for Excessive AFDC and Medicaid Errors/Authorization of QC Study

Current law.—The Quality Control (QC) system was established to improve administration of the Aid to Families with Dependent Children (AFDC) program and the medicaid program by identifying errors and developing corrective actions to eliminate the errors. The QC system is the basis for the imposition of disallowances of Federal matching for erroneous payments by the States in excess of error tolerance levels set in Federal law.

Explanation of provision.—

1. No State AFDC or medicaid funds would be withheld prior to a date 2 years from the date of enactment.
2. Effective upon enactment, the Secretary and the National Academy of Sciences would conduct concurrent, independent studies of how best to operate a quality control system with a view towards obtaining information which will allow program managers to improve the quality of administration and which will provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.
3. It is expected that the independent studies will be exhaustive and may include such issues as the proper sampling procedures, error tolerance levels, the nature of the errors on which to base penalties, statistical estimating procedures, and the methods of reducing error. Additionally, the studies should review the findings of a report to be issued on this subject by the General Accounting Office. The study was requested by the Senate Committee on Governmental Affairs and will be released in November of 1985.

The studies would be due 1 year from the date of enactment. The quality control case review process would continue and data would be collected to generate error rates. Payment error rates would be computed but funds would not be withheld on that basis. The Committee intends that the Secretary have the authority to alter the quality control systems during the moratorium. Not later than 18 months after the date of enactment, the Secretary would be directed to publish regulations which would:

1. restructure the quality control system to the extent necessary and appropriate in the light of the studies (as determined by the Secretary);
2. provide, in the light of the studies, for criteria for adusting the amount of disallowances which would be applicable for prior years so as to eliminate any which apparently would not have been required under the new quality control system.

In addition to issuing regulations, the Secretary could also propose legislative changes which might be necessary in order to implement modifications in the QC system which the Secretary finds appropriate in light of the studies.

No disallowances shall be imposed during the two-year moratorium. Not later than the start of the calendar quarter beginning 2 years from enactment, the Secretary would be required to begin operating the revised quality control system and to begin withholding under that system, including any withholding applicable for years prior to the institution of that system (subject to the adjustments described above).

The proposal would thus allow 1 year for the study, 6 months for publishing the regulations to implement the study, and at least 6 months for Congress to review those regulations and, if required, enact legislation directing any modifications in those regulations which Congress might find appropriate.

Effective date.—On enactment.

2. Counting Certain Payments to Indians as Income

Current law.—A 1973 law, as amended in 1982, generally provides that certain per capita distributions to Indian tribal members from Indian trust funds will be exempt from taxation and will not serve to prevent eligibility or reduce benefits under Federally funded programs. As an exception to this general rule, per capita payments in excess of $2000 can be counted as income for Federally assisted programs. This $2000 limit on the exclusion does not, however, apply to programs under the Social Security Act and it applies on the basis of the amount of each payment without regard to how many payments are made in a year or how many members of the same household receive payments.

Explanation of provision.—The Committee bill would change the $2000 limit so that it would apply to Social Security Act programs as well as to other programs. In addition, under the Committee bill, the $2000 limit on exclusions would apply to the aggregate of all per capita payments received in a year by all members of a family unit.

Effective date.—The amendment would be effective as of January 1, 1986.

3. Recovery of Excess Funding for Incomplete Automated Systems

Current law.—Under the Aid to Families with Dependent Children program, a highly favorable Federal matching rate of 90 percent is available for the development and installation of automated claims processing and information retrieval systems. To qualify these systems must be designed and developed in accordance with a planning document approved by the Secretary of Health and Human Services. Present law does not address the case where States receive Federal funding under this authority and then fail to implement the automated system according to the schedule provided for in the approved planning document.

Explanation of provision.—The Committee bill requires the Secretary to recover 40 percent of the amounts expended on automated systems from any State which fails to implement those systems by the implementation date called for in the approved planning document. The net effect of such a recovery would be to lower the Federal participation in such systems to the ordinary 50 percent matching rate which is available for all State administrative costs in operating the AFDC program. If the failure to meet the deadline occurs for reasons which the State cannot control, the Committee bill authorizes the Secretary to extend the deadline. Only funds received by the State for expenditures after the date of enactment of this bill would be subject to recovery under the provision.

Effective date.—The amendment would be effective on enactment.

G. FOSTER CARE AND ADOPTION ASSISTANCE

(Title IV-E)

Foster Care

1. Extension of Provisions Relating to Ceilings on Foster Care Expenditures

Current law.—Under the Aid to Families with Dependent Children (AFDC) foster care program, States are entitled to Federal matching funds based on the Medicaid matching rate for foster care maintenance payments for AFDC-eligible children.

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96–272) established a mandatory ceiling on Federal foster care maintenance payments for each of fiscal years 1981 through 1984 if appropriations for the child welfare services program reached a specified level. These provisions were subsequently extended through FY 1985 (P.L. 98–617). For each of fiscal years 1983–1985, this level was set at $266 million. Each State's ceiling is based on previous years' funding levels and/or the State's under-18 population.

When operating under the mandatory ceiling States may transfer, under certain conditions, unused foster care funds to be used for child welfare services. In addition, if appropriations do not reach the specified trigger amount necessary for the mandatory ceiling, States may through FY 1985 choose to operate under a voluntary ceiling and transfer a certain portion of "unused" foster care funds (funds not expended for foster care under the foster care ceiling amount calculated) to their child welfare services program.

Explanation of provision.—The provision requiring a mandatory ceiling on foster care expenditures, when child welfare services appropriations made in advance reach the specified trigger level, would be extended through FY 1987. The formulas for calculating each State's allotment would also be extended. The trigger level would be continued at $266 million for each of FY 1986 and 1987. The proposal would also extend through FY 1987 the methods of calculating each State's allotment and the provisions allowing States to opt to operate under a ceiling on foster care expenditures.

Effective date.—October 1, 1985.

2. Extension of Voluntary Placement Provisions

Current law.—The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96–272) authorized Federal matching payments to be made under the AFDC foster care program for a limited period (originally through FY 1983) for children removed from the home under a voluntary placement agreement, when States meet specified protections and procedures. The provision was extended through FY 1985 (P.L. 98–118 and P.L. 98–617).

Explanation of provision.—The provision allowing for payments for children placed under a voluntary placement agreement would be extended through fiscal year 1987.

Effective date.—October 1, 1985.

3. Program to Prepare Older Foster Care Children for Independent Living

Current law.—Federal matching funds are provided under Title IV–E of the Social Security Act for assistance payments on behalf of children in foster care who, had they not been removed from their own homes, would be eligible to receive Aid to Families with Dependent Children (AFDC) Program benefits. In general, these payments end when the child reaches age 18. The title IV–E program covers only maintenance assistance (e.g. food and shelter costs). If States provide services to help older foster children prepare for independent living after they reach age 18, those services are not eligible for Federal matching under the foster care program. Such services must be funded either at State expense or by using funds from other programs such as the title XX block grant or the Child Welfare Services program.

Explanation of provision.—The Committee bill would establish a new grant program under which funds would be allocated to the States for the purpose of assisting older children in Federally funded foster care (i.e., those who had reached age 16) to prepare for independent living. Under the proposal, a total of $1 million would be made available in each of fiscal years 1986 and 1987. These funds are authorized on an entitlement basis and would be allocated among the States according to the ratio which each State's foster care caseload bore to the national caseload in fiscal year 1984. (This determination would be made on the basis of the average number of children in Federally funded foster care.) No non-Federal matching would be required, but States would not be allowed to use funds to replace other funds which are available for the same purposes. If a State does not apply for its share of the funds, the unused amounts would be reallocated to States needing additional funds as determined by the Secretary of Health and Human Services.

The Committee bill authorizes the funds granted under the program to be used for any of a variety of services, including:

—Services aimed at enabling participants to complete high school or take part in vocational training;

—Training in daily living skills (budgeting, career planning, etc.);

—Counselling;

—Coordination of other services;

—Outreach activities; and

—The development of individualized plans for the transition to independent living.

The Committee bill also modifies the title IV–E foster care statute to add a requirement that the case plan for each child in foster care must, where appropriate, include a description of the programs and services which will help prepare the child for the transition from foster care to independent living.

The objective of the Committee provision is to assist States in establishing or strengthening programs which will help the estimated 20,000 older children now in Federally funded foster care to successfully make the transition from public assistance to a life of independence. Such evidence as exists indicates that such children too often fail to achieve independence with the result that they end up in shelters for the homeless, on public assistance, or in correctional facilities.

The program proposed by the Committee would expire on September 30, 1987. By March 1, 1987 each State would be required to submit a report on its use of the funds and the extent to which they succeeded in accomplishing the purposes of the program. By July 1, 1987 the Secretary of Health and Human Services would be required, using these State reports, to present Congress with a description and evaluation of the program along with her recommendations as to the necessity for providing further payments in subsequent years.

Effective date.—Except as noted, the provision would be effective upon enactment.

4. Adoption Assistance

Current law.—Federal matching (at the Medicaid matching rate) is available under title IV–E of the Social Security Act for State adoption assistance payments on behalf of children who, prior to their adoption, had been members of AFDC-eligible families or who were SSI recipients. In order to qualify for Federal funding, the adoption assistance payments must be based on a finding that the child has special needs and that because of those special needs it is reasonable to conclude that the child could not be placed with the adoptive parents unless the adoption assistance is provided. (Special needs include such factors as the child's ethnic background, membership in a minority group, age, physical, mental, or emotional handicap or other medical condition, or the need to place the child with other members of the sibling group.)

Children for whom Federally funded adoption assistance payments are being made are also eligible for Medicaid. In cases where the major barrier to adoption is the need for medical assistance, some States now make token payments (e.g. $1 per month) of cash adoption assistance in order to qualify the child for Medicaid.

In cases where a child qualifies for Medicaid on the basis that he is a recipient of Federally funded adoption assistance, the State which entered into the adoption assistance agreement is responsible for providing the Medicaid coverage. This is true even if the child and adoptive parents reside in a different State.

Federal matching for adoption assistance payments and eligibility for Medicaid based on adoption assistance is available only from the point at which the adoption takes place (or at which there is at least an interlocutory decree issued). Children placed with adoptive parents prior to the issuance of a final or interlocutory decree of adoption retain eligibility for Medicaid if IV–E foster care payments continue to be made on behalf of the child to the adopting parents, but if such payments were not made there could be a gap in Medicaid eligibility until the adoption decree is issued.

Explanation of provision.—The Committee bill proposes three modifications in the adoption assistance program in order to make Medicaid more readily available to qualified children.

Under the Committee provision, States would no longer be required to make token cash payments in order to provide Medicaid coverage. Any child who meets the eligibility requirements of title IV-E will be eligible for Medicaid provided that an adoption assistance agreement is in effect even if no cash assistance payments are provided for or being paid under that agreement. This change is designed to eliminate the unnecessary burden of making the token cash payment. It does not otherwise change the eligibility requirements of current law nor is it intended to imply that adoption assistance in the form of Medicaid should be routinely granted in all cases. States retain the responsibility of current law for determining that the child has a special need on the basis of which it can reasonably be assumed that the adoption could not take place without adoption assistance. Where the adoption assistance takes the form of Medicaid only, this would typically involve a significant handicap or other medical condition. As under present law, there would have to be an adoption assistance agreement, and that agreement can provide for readjustments in adoption assistance in the light of changing circumstances.

The Committee provision also permits Medicaid eligibility to be established as soon as the child is placed with the adoptive parents provided that an adoption assistance agreement meeting the requirements of the Adoption Assistance Program has been entered into. Thus, Medicaid eligibility would be available prior to the issuance of a final or interlocutory adoption decree.

The third change made by the Committee provision would make the State of the child's residence responsible for providing Medicaid coverage even if the adoption assistance agreement was entered into with a different State. This change is necessary because providers of medical services may be unfamiliar with and, therefore, reluctant to honor medicaid coverage from other States.

Effective date.—October 1, 1985.

H. UNEMPLOYMENT COMPENSATION

1. Recovery of Overpayments

Current law.—When a State finds that it has made an overpayment of unemployment benefits, it may (after observing appropriate procedural safeguards) collect that overpayment by withholding a subsequent unemployment benefit due to the same individual.

This procedure, however, only is permitted when both the incorrect payment and the withheld payment are funded from the State's own unemployment trust fund. In some circumstances, unemployed workers receive benefits which are paid by the same State agency and appear to the worker as though they were the same type of unemployment benefit but are funded from different sources. This can occur, for example, when a worker moves from one State to another and receives some benefits from the State he moved from. It also happens when a worker's entitlement is extended by reason of trade adjustment assistance or other Federally financed unemployment programs.

Explanation of provision.—Under the Committee provision, a reciprocal withholding of overpaid unemployment benefits regardless of the funding source would be allowed. The same procedural safeguards would be required, but an overpayment of State benefits could be recovered by withholding from subsequent Federally-funded benefits if the State also agreed that it would recover incorrect Federal benefits by withholding from subsequent State benefits. Similarly, States would be allowed to withhold benefits payable under their program to recover payments of benefits incorrectly made to the same individual by other States. The implementation of this provision would be at the option of each State.

Effective date.—October 1, 1985.

I. TRADE

1. Impose Customs User Fees

Current Law.—The U.S. Customs Service does not currently have the general legal authority to collect fees for the processing of persons, aircraft, vehicles, vessels, and merchandise arriving in or departing from the United States. The Service does, however, have authority to charge fees under certain limited circumstances, such as when they are providing pre-clearance of passengers and private aircraft, which are of special benefit to a particular person. It also has authority to assess fees on operators of bonded warehouses and foreign trade zones and on the entry of vessels into ports. Finally, the Customs Service is authorized to receive reimbursement from carriers for overtime services provided during non-business hours and reimbursement from local authorities for services provided to certain small airports.

Explanation of provision.—The Senate Budget Resolution contained a proposal to authorize the U.S. Customs Service to assess a fee for processing common carriers, passengers, and commercial import arrivals in the United States. The Administration supported this aspect of the resolution and, indeed, proposed that the Congress authorize the Secretary of the Treasury to prescribe and collect fees for the processing of passengers, aircraft, vehicles (including cars, trucks, and railroad trains), vessels (including yachts and pleasure boats), and merchandise arriving in or departing from the United States to be paid by the recipient of the service. The Senate Budget Resolution, which, like the House, is based on the Administration's proposed comprehensive fee schedule which would apply to virtually all import transactions, estimates that such a fee schedule would result in increased revenues of $473 million in fiscal year 1986, $493 million in FY 1987, and $513 million in FY 1988.

At hearings in the Committee on Finance, numerous witnesses objected to assessment of new user fees, arguing that businesses do not use Customs services but are instead subject to such "services." However, there was agreement that a fee is appropriate where Customs performs a service for the benefit of a particular person rather than the general public. While the Committee was concerned that the Administration proposal was overbroad, it approved a modified schedule of fees which, in its judgment, are justified by the particularized benefit provided by the service.

The following arrivals would be subject to fees in the following amounts:

Passengers (air and vessel) other than from contiguous countries, "adjacent islands" or a U.S. territory or possession	$5.00
Commercial vessels under 100 net tons	25.00
Commercial vessels of 100 net tons or over	397.00

Commercial trucks	5.00
Trains (per car)	5.00
Private yachts and boats	25.00
General aviation	25.00
Informal entries and dutiable mail (for which documents are prepared by Customs)	500
In-bond	10.00

In addition, the following annual fee would be charged for the issuance of a broker's permit:

Brokers permit	125.00

A fee of $5 would be assessed on each passenger arriving in the United States by aircraft or vessel from other than U.S. territories or possessions, Mexico, Canada, or any island that is an adjacent island within the meaning of section (101)(b)(5) of the Immigration and Nationality Act.

Passengers transiting U.S. territories or possessions, Canada, Mexico or adjacent islands from other countries would be subject to the fee, within the limits of administrative convenience in identifying the actual country of origin and destination of the passengers. Commercial carriers are directed to collect the fee from the passenger, separately identifying the fee charged as a Federal inspection fee on the ticket or document issued, and to remit to the Secretary of the Treasury the fees collected under the provision either on arrival or at the end of the calendar quarter. Fees not collected at the time a ticket is purchased in a foreign country shall be collected at the time of that passenger's departure from the United States.

With regard to the processing of passengers on scheduled airline flights arriving in the United States, no additional charges, such as overtime for customs officers, may be assessed against the airlines or the passengers other than the fees established by this Act. All other overtime charges would continue to be collected as under current law. Baggage accompanying passengers shall not be subject to the fee imposed on informal entries.

Assessment of a $25 fee on vessels under 100 net tons and $397 on vessels of 100 net tons or above for the first arrival in the U.S. are in addition to any existing charges paid by commercial vessels. Such existing charges include tonnage taxes, entry and clearance fees, and fees for permits to proceed and the certification of documents. The new fee does not apply to ferries transporting passengers and vehicles.

The $5 fee per train car entering the United States should not be assessed on a car which is part of a train which originates and terminates outside the United States but passes through the United States in route. Similarly, cars which are part of a train originating and terminating in the United States which merely passes through a foreign country should not be subject to a fee.

The Committee also authorized the Customs Service to collect a fee of $10.00 upon the in-bond transportation of merchandise from the port of arrival to another U.S. port of entry. As specified in Customs Service regulations, "in-bond transportation" refers to the movement of merchandise from one port to another. The $10.00 fee is to be collected when merchandise is transported in-bond from port to port before entering a Customs bonded warehouse, foreign trade zone or other bonded facility. The fee may not be collected on any merchandise which moved in-bond as part of a shipment for which the $10.00 fee was collected, nor would the fee apply to cartage movements within a port of entry where merchandise is moved from a vessel or aircraft to a bonded warehouse facility. Where merchandise enters a bonded warehouse in the port of entry without paying the $10 fee, the fee would be assessed on the first movement of that merchandise in-bond from the bonded warehouse to another port of entry, but would not be assessed on subsequent in-bond transportation of that merchandise.

In collecting these fees, particularly the fees on in-bond transportation, dutiable mail and informal entries, Customs should work to ensure that the fee is paid by those benefiting from the service or creating the need for the service. For example, airlines and freight forwarders are normally acting on behalf of shippers and consignees. The Committee expects the Customs Service to develop procedures for the collection of fees which ensures that those creating the need for the service, such as the shipper or consignee of merchandise, bear the responsibility for paying the fee.

Receipts for reimbursable charges, including those collected under this provision, and expenses paid for out of any appropriation for collecting customs revenues that are covered into the Treasury as miscellaneous receipts shall be credited as receipts to a proprietary account in the General Fund of the Treasury. In this way, it is expected that the relationship between the user fee and the services provided by Customs will be clearly reflected in the narrative of the President's budget. User fee collections will not be credited directly to the appropriation as is currently the case for reimburseable charges under section 424 of the Tariff Act of 1930 (19 U.S.C. 1564), but rather deposited into a receipt account with a unique identification code to permit the ready comparison of the amounts collected for commercial services with the amount sought through appropriations to fund those activities.

The Committee believes the Administration should use the increased funds resulting from these fees to strengthen the Custom Service's commercial operations, provide better service to the importing community, and more effectively carry out its responsibilities of collecting import duties and protecting U.S. citizens from fraudulent and illegal importations.

In this regard, the Customs Service is urged to make best efforts to process incoming airline passengers subject to this fee structure in an expeditious manner. The Committee believes that a reasonable standard to strive for in processing all passengers on arriving flights is an average of 45 minutes.

Effective Date.—The Committee provided for a delayed effective date of 90 days from the date of enactment to give the Customs Service time to implement the new fee schedule.

2. Extend and Reform Trade Adjustment Assistance

The Trade Act of 1974, as amended, provides a program of trade adjustment assistance (TAA) for workers and firms adversely affected by import competition. Authorization for the program expires on September 30, 1985. This bill would extend the program for six years in modified form, with the most substantial modifications taking effect after the initiation of a uniform fee on all imports, which would be established to fund the reformed program.

(a) Eligibility of Workers and Firms

Current law.—Under current law as applied to workers, a petitioning group of three or more workers in a particular firm is eligible for relief if (a) a significant number of workers in the firm have been or are threatened to be partially or totally laid off; (b) sales or production of the firm have decreased absolutely; and (c) increased imports of directly competitive articles have "contributed importantly" to the first two events. When the Secretary of Labor has determined that a petitioning group of workers is eligible for relief, then individual workers qualify for benefits if they have first exhausted available unemployment benefits and meet certain other criteria.

A firm becomes eligible for benefits if (a) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to be totally or partially separated; (b) sales or production of such a firm have decreased absolutely; and (c) increases of imports of articles like or directly competitive with articles produced by the firm contributed importantly to such total or partial separation or the threat thereof, and to the decline in sales or production. An eligible firm may receive trade adjustment assistance benefits if the Secretary of Commerce approves its adjustment proposal, which he may do only if he determines that the firm has no reasonable access to financing through the private capital market; that the firm's adjustment proposal is reasonably calculated materially to contribute to the economic adjustment of the firm; the proposal gives adequate consideration to interests of the workers of the firm; and the proposal demonstrates the firm will make all reasonable efforts to use its own resources for economic development.

Explanation of provision.—Under current law, only those firms and their workers that produce articles directly competitive with the increased imports are eligible for assistance. This provision would expand eligibility to encompass not only those directly affected firms and workers, but also those firms and their workers that provide essential parts or services to directly affected firms.

The provision would also provide explicitly what the Committee understands to be the effect of current law, that workers in agricultural firms or subdivisions of agricultural firms are eligible for trade adjustment assistance.

(b) Cash Assistance for Workers

Current law.—Under current law, after a group of workers has been certified as eligible for assistance, individual workers qualify for cash benefits (called Trade Readjustment Allowances) if they have first exhausted available regular and extended unemployment benefits and meet certain other criteria. The basic benefit under TAA to an eligible and qualified worker is a continuation of the worker's most recent unemployment insurance benefit for the balance of 52 weeks of unemployment. A worker may receive an additional 26 weeks of benefits if he participates in approved training.

Explanation of provision.—The provision would add a new requirement for workers to qualify for cash benefits. The new requirement is that a worker be enrolled in a training program approved by the Secretary or have completed such a program after separation or partial separation from the adversely affected employment. If the Secretary determines that a worker qualified by virtue of enrollment in an approved program has failed to begin participation in or has dropped out of the program without justifiable cause, then no allowance is to be paid until the worker begins or resumes participation in an approved program. The new requirement of enrollment in retraining reflects the Committee's determination that retraining must be the central focus of any effective adjustment program.

A worker may also qualify for cash benefits if certified by the Secretary of Labor as one for whom the Secretary is unable to approve a training program. The purpose of this exception to the general rule requiring enrollment in retraining is to continue benefits to the worker for whom, through no fault of his own, there is no suitable or reasonably available training program. In making this certification determination, the Committee considered that the Secretary should take into account factors such as age and mobility of the worker, and location of retraining programs or work for which the worker could be retrained. A worker certified under this provision would be eligible for extended unemployment benefits up to a combined total of 52 weeks (as under current law), as opposed to a full 78 weeks for a worker who has enrolled in approved training.

If an administering state agency concludes that it is unable to approve a training program for a worker under the requirements of this provision, then the agency must submit to the Secretary a statement certifying that determination. The statement is to provide reasons for the state's determination and should at a minimum detail specific actions taken to locate an appropriate training program. The ultimate certification, however, must be made by the Secretary. Further, the Secretary is to submit to the Senate Finance Committee and the House Ways and Means Committee annual reports on the number of certifications granted to workers for whom appropriate training is unavailable, so that the committees can assure that the program is administered in accordance with the intent of Congress.

The Committee also adopted a change to provide that weeks a worker does not work because of a disability, compensable under a workman's compensation law or a state or federal plan, may be treated as a week of employment at wages of $30 or more for purposes of meeting the basic eligibility requirement that the worker had been employed in at least 26 weeks of the previous 52 weeks to be certified for TAA. The Committee determined that since disability is beyond the worker's control, it made no sense to disqualify a willing worker from benefits because of disability.

(c) Job Training for Workers

Current law.—Under current law, if the Secretary of Labor determines that (a) there is no suitable employment available for an eligible worker; (b) the worker would benefit from appropriate training; (c) there is a reasonable expectation of employment after such training; (d) training is available; and (e) the worker is qualified to undertake and complete such training, then the Secretary may (but is not required to) approve training for the worker. On approval, the worker is entitled to have the costs of training paid by the program.

Explanation of provision.—The provision would make approval of training mandatory where the criteria for approval are met. The Committee's expectation was that suitable and reasonably available training could be located or generated for most workers. For them, approval and payment of costs for training would become mandatory. The provision lists several types of training that may be approved under the program, including on-the-job-training; training provided by a state pursuant to the Job Training Partnership Act; training approved by a private industry council under that Act; and any other training approved by the Secretary. The Committee considered that other approved training might include programs provided by community colleges, universities, business firms, and unions, and basic education programs such as English instruction and training that enables workers to complete a high school education.

The provision would also establish a new mechanism for delivering the training benefit, in authorizing the Secretary to pay for training either directly or through a voucher. The maximum voucher or direct payment amount is set at $4,000, that having been considered the approximate cost of a 26-week training program. The Secretary may issue more than one voucher to a qualified worker with respect to any particlar separation, but the aggregate amount cannot exceed the $4,000 limitation.

On-the-job training, which is appropriate for qualifying a worker for cash benefits, may be paid for by the Secretary only if the employer certifies to the Secretary that the worker's training will not displace currently employed workers, is not training for the occupation from which the worker was separated, and that the employer will continue to employ the worker for at least 26 weeks after he completes the on-the-job training. The provision creates a civil penalty for an employer who abrogates these undertakings. While the Committee believes that on-the-job training is among the best methods of helping displaced workers make positive adjustments, it does not intend that such adjustments be made at the expense of currently employed workers.

(e) Job Search Allowances

Current law.—Under current law, the Secretary may provide reimbursement for 90 percent of the costs of necessary job search by a certified worker, up to $600. To be eligible, a worker must have been totally separated from employment and have been determined by the Secretary to be one who cannot reasonably be expected to secure suitable employment in the commuting area in which he resides.

Explanation of provision.—This provision would add a benefit of reimbursement for expenses of a job search program. The benefit would be available to any certified worker, regardless of whether the worker has enrolled in an approved training program or whether he meets the eligibility criteria for other forms of job search allowances. A reimbursable job search program includes either a job search workshop or a job finding club. A job search workshop is a short seminar designed to provide participants with knowledge that will enable them to find jobs, including labor market information, resume writing, interviewing techniques, and techniques for finding job openings. A job finding club is the same except that it includes a one- to two-week period of supervised activity in which participants attempt to obtain jobs. The Committee included this provision in the belief that, for many workers, training in marketing skills can be a crucial element in adjustment.

(f) Adjustment Assistance for Firms

Current law.—Under current law, a certified firm is eligible to receive either technical assistance, financial assistance, or both. Technical assistance consists of assistance in developing or implementing a proposal for economic adjustment. The assistance is furnished through existing government agencies or through private entities, in which latter case the United States may bear no more than 75 percent of the cost.

Financial assistance under the current program consists of loans and loan guarantees, to be used for capital investment or as working capital to enable the firm to implement its adjustment proposal. If the Secretary determines that the required funds are not available from the firm's own resources and that there is a reasonable assurance of repayment, he may provide direct loans up to $1 million per firm or loan guarantees up to $3 million per firm.

Explanation of provision.—Based on the high default rate and the poor record of cost-effectiveness of the financial assistance portion of the program, the Committee determined that financial assistance to firms should be eliminated entirely. Effective immediately upon enactment of the provision, no new loans or loan guarantees are to be made. Because no new financial assistance is to be provided, the provision also eliminates as a criterion for approval of an application that the firm has no reasonable access to financing through the private capital market. The technical assistance portion of the current program is to remain intact.

(g) Termination of Trade Adjustment Assistance

Current law.—Authorization for the current program expires September 30, 1985.

Explanation of provision.—This provision would set a termination date for the program that is six years from the date of enactment.

(h) Funding of Trade Adjustment Assistance Through an Import Fee

Current law.—The current program is funded through regularly authorized and appropriated funds. Authorization expires September 30, 1985.

Explanation of provision.—This provision would impose a small duty on all imports into the United States. The duty is to be set at a uniform ad valorem rate sufficient to provide the necessary funding for the TAA program, but no greater than one percent. The duty is to be assessed regardless of any duty-free treatment that may be accorded articles by other provisions of law.

Although the import fee is an additional duty that may be considered contrary to United States obligations under the General Agreement on Tariffs and Trade (GATT), the Committee believes that members of the GATT may be receptive to the concept. The President is therefore directed to undertake negotiations to achieve any necessary changes in the GATT to allow the imposition of such a uniform duty on all imports for the purpose of funding adjustment assistance programs.

This provision would also establish, within the Treasury of the United States, a Trade Adjustment Assistance Trust Fund. The Secretary of the Treasury is to transfer to the Trust Fund, from the general fund of the Treasury, amounts equivalent to those received from the import fee. Transfers are to be made at least quarterly and are to be adjusted for any shortfall or overage in previous transfers. The provision would also require an annual report to the Congress on the operations of the Trust Fund and sets out rules governing the investment of such portion of the Fund as is not required to meet curent withdrawals.

The Secretary of the Treasury is authorized and directed to pay out of the Trust Fund all expenses incurred by the Secretaries of Labor and Commerce in carrying out the TAA program. Amounts in the Trust Fund may be used only for the revised TAA program.

(i) Taxation of Trade Readjustment Assistance

Current law.—Section 85 of the Internal Revenue Code includes in gross income, under certain circumstances, amounts received by a taxpayer that are in the nature of unemployment compensation.

Explanation of provision.—This provision would ensure that payments of training costs or vouchers are to be excluded entirely from gross income for purposes of income taxation.

(j) Effective Dates

Current law.—Authorization for the current program expires September 30, 1985.

Explanation of provisions.—These provisions would specify, first, that the elimination of loans and loan guarantees from the firm assistance program is to take effect immediately upon enactment. Also to take effect immediately are the provisions relating to the President's negotiation of any necessary change in the GATT.

The import fee is to be imposed and its related Trust Fund is to be established after the earlier of: (a) two years after enactment; or (b) 30 days after the President submits a statement to the Congress certifying that the GATT allows the sort of duty established in this bill.

The various substantive changes from current law in the worker program and in the definition of firms eligible to receive technical assistance would not take effect until one year after the import fee is imposed and the Trust Fund is established. On this same date that the substantive changes in the TAA program are to take effect, the Secretary of the Treasury is authorized and directed to begin paying the expenses of the program out of the Trust Fund.

Until that time, funding of the program is to come, as under current law, from regularly authorized and appropriated amounts; to that end, the provision extends authorization of appropriations for both the worker and firm programs through fiscal year 1989. However, as noted above, beginning one year after the imposition of the import fee and establishment of the Trust Fund, expenses of the program are to be paid solely from the Trust Fund. The purpose of the one-year lag between establishment of the Trust Fund and payment of expenses out of that Fund is to provide time for the fund to collect sufficient amounts to support the program.

J. GENERAL REVENUE SHARING

1. Terminate General Revenue Sharing

Current law.—The general revenue sharing program provides unrestricted grants totalling $4.6 billion annually to all local governments—counties, municipalities, townships, and Indian tribes. Revenue sharing funds are divided among local governments according to formulas based on population, income and tax factors. The formulas are designed to target assistance toward governments with low per capita incomes or high tax efforts. The program has generally accounted for less than 2% of local government revenues, although for some rural and suburban governments the percentage has been higher. States participated in the program until 1981, when their shares were eliminated.

Explanation of provision.—The general revenue sharing program would terminate upon the expiration of its current authorization on October 1, 1986.

Effective date.—The provision would be effective upon enactment.

K. PENSION BENEFIT GUARANTY CORPORATION

1. Increase Pension Benefit Guaranty Corporation Premiums

Current law.—The Employee Retirement Income Security Act of 1974 (ERISA) established a program of insurance for employee benefits under most tax-qualified, private, domestic, defined benefit pension plans.[1] The insurance program is administered by the Pension Benefit Guaranty Corporation (PBGC), a Federal corporation within the Department of Labor. The Board of Directors of the PBGC consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. The Secretary of Labor is the Chairman of the Board. Receipts and disbursements of the PBGC are included in the budget of the United States.

Under present law, a defined benefit plan that is subject to the insurance program is required to pay annual premiums to the Pension Benefit Guaranty Corporation (PBGC). The PBGC is required by ERISA to maintain four separate premium rate and base schedules under the program. Under the Act, the PBGC maintains separate schedules for basic and nonbasic benefits under single-employer plans and corresponding schedules for multiemployer plans.[2] Insurance of basic benefits under a plan is mandatory.

Basic benefits under a single-employer plan (generally consisting of nonforfeitable retirement benefits) are insured by the PBGC up to the lessor of $750 per month, adjusted for inflation since 1974 ($1,687.50 for 1985) or a participant's average monthly compensation for the period of five years for which that compensation is the highest. The insurance of benefits is generally phased in over a five-year period.

ERISA provides that the annual per-participant premium for insurance of basic benefits under a single-employer plan is $2.60.[3] The annual per-participant premium for insurance of basic benefits under a multiemployer plan is $1.80 for plan years beginning in 1985 or 1986, $2.20 for plan years beginning in 1987 or 1988, and

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[1] A defined benefit pension plan specifies a participant's benefits independently of an account for contributions, etc. (e.g., an annual benefit of two percent of average pay for each year of employee service.) A church pension plan is generally exempt from the insurance program unless the plan has elected to be subject to ERISA standards. Exclusions are also provided for plans of small professional service employers and certain other employers.

[2] Under ERISA, a plan is a multiemployer plan if (1) more than one employer is required to make plan contributions, (2) the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (3) the plan meets such other requirements as the Secretary of Labor may prescribe by regulations. In determining whether a plan is a multiemployer plan, employers under common control are treated as one employer. Special rules are provided for terminated plans and for transition cases (Code sec. 414(f) and ERISA sec. 4001(a)(3)). A single-employer plan is a pension plan that is not a multiemployer plan.

[3] The annual, per-participant premium for single-employer plans was initially set by ERISA at $1.00. That premium was increased by Public Law 95-214 to $2.60, effective for plan years beginning after December 31, 1977. Public Law 96-364 increased premiums for multiemployer plans from $.50 to the levels presently provided.

$2.60 for plan years beginning thereafter. Special rules are provided for cases in which an employee participates in more than one single-employer plan maintained by the same employer. Similar rules apply to employees with multiple coverage under multiemployer plans. Generally, the level of benefits guaranteed by the PBGC is lower under a multiemployer plan than under a single-employer plan.

The PBGC is authorized by ERISA to revise the premium rate and base schedules for basic benefits under single-employer plans and multiemployer plans whenever it determines that revision is necessary. Approval by the Congress is required, however, for per-participant annual premiums in excess of $2.60. A proposed change in a schedule is to be submitted to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate. ERISA requires that premium rates prescribed by the PBGC must be uniform for all single-employer plans with respect to basic benefits. The PBGC is authorized by ERISA to provide a risk-related premium (within limits) for single-employer and multiemployer plans but this authority has not been exercised.

The PBGC maintains a trust fund and a revolving fund for insurance of benefits under terminated plans. Separate funds are maintained for single-employer plans and multiemployer plans. The funds maintained by the PBGC to provide benefits under terminated single-employer plans are the sole Federal source of guaranteed benefits for single-employer plans. The funds maintained by the PBGC to provide guaranteed benefits under multiemployer plans are the sole Federal source of guaranteed benefits for those plans. The PBGC is authorized to borrow up to $100 million from the Treasury of the United States.

Reasons for change.—The Budget Message of the President for 1986 indicated that under current law, the deficit of the Pension Benefit Guaranty Corporation is expected to increase. According to the Message, the budget reflects the Administration's request that the Congress approve an increase in the single-employer premium to a level sufficient to cover projected claims, and amortize the current deficit over a reasonable period of time. The Message indicates that the Administration also supports "legislation to revise the insurance program for single-employer plans in order to close loopholes in the Employee Retirement Income Security Act of 1974 that allow unwarranted assignment to the Corporation of liabilities for unfunded benefits".

The PBGC presently estimates that its deficit will be $679 million at the end of the 1986 fiscal year.[4] The PBGC estimates that the deficit in its single-employer program will be $721 million at that time.

The Board of Directors of the PBGC has requested that the annual, per-participant premium for single-employer plans be increased to $7.50 from $2.60, effective for plan years beginning on or

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[4] The Budget Message of the President estimated that the deficit of the PBGC would be $853 million at the end of the 1986 fiscal year. This projection has been revised in light of more complete information with respect to the 1984 fiscal year.

after January 1, 1985. In a letter of April 9, 1985, the Acting Executive Director of the PBGC stated on behalf of the Board of Directors that:

> Our current request for a $7.50 premium reflects the need to fund properly existing liabilities of approximately $1.6 billion and future losses, expected to average $185 million per year, over the next 15 years. The immediate need for the increase is now even more apparent than it was in the last session of the Congress. Sometime early in FY 1985, PBGC's cash flow, as reflected in the Federal Budget accounts, turned negative, and PBGC for the first time began adding to the size of the Federal deficit. Such a trend would accelerate alarmingly in succeeding years should an increase not be adopted.

The PBGC has indicated that an annual per-participant premium of $8.10, effective for plan years beginning after December 31, 1985, is equivalent to a premium of $7.50 effective for plan years beginning after December 31, 1984.

After considering the request of the Administration, the committee determined that the premium for single-employer plans should be increased to $8.10 for plan years beginning after December 31, 1985. The premium increase was made prospective because of the administrative burdens that would be imposed on plans if a retroactive increase were adopted and because the PBGC has indicated that this brief deferral will not jeopardize benefits under the program.

Because of concerns over premium levels under the guarantee program for single-employer plans, the committee has directed the Secretary of Labor to make recommendations to the Committee on Finance and to the House Committee on Ways and Means with respect to appropriate premiums for single-employer plans by July 1, 1987. The recommendations of the Secretary are to be provided to the American Academy of Actuaries so that the Academy may attach its comments to the recommendations before they are submitted to the Committee on Finance and to the House Committee on Ways and Means.

The committee expects that the report of the Secretary will include (1) an explanation of the methods used by the PBGC in determining liability under the single-employer termination insurance program; (2) an evaluation of alternative methods of determining that liability; (3) an explanation of the methods used by the PBGC to determine the premium needed to adequately fund its liability under the single-employer termination insurance program, together with an estimate of the required premium under each of the alternative methods; (4) the recommended premium needed to adequately fund the liabilities of the PBGC; and (5) an evaluation of the feasibility of establishing a risk-related premium.

Explanation of provision.—Under the bill, the annual per-participant premium for single-employer plans is increased to $8.10 effective for plan years beginning after December 31, 1985. The bill does not modify the premiums for multiemployer plans.

L. REVENUES

1. Full-time Students Not Eligible for Income Averaging

Present law.—An individual whose income fluctuates sharply from year to year, or whose income increases rapidly over a short period, may have a greater aggregate income tax liability over a period of years than another individual earning the same total amount, who has relatively constant earnings on an annual basis. This result derives from two aspects of the income tax—the annual accounting period and the progressive rate schedule.

The rules for income averaging address this disparity by permitting individuals with fluctuating annual incomes partially to avoid the effects of rate progressivity in high-income years. Under these rules, eligible individuals may reduce their tax liabilities during a year for which their income is at least 40 percent greater than the average income for the immediately preceding three years (the "base years"). In such a case, the income averaging provision reduces tax liability by applying a lower marginal rate than would be used under the regular tax system to a portion of the current year's income.

In order to be eligible to use income averaging, an individual (1) must meet one of several alternative standards generally intended to restrict the availability of income averaging to individuals who were self-supporting during the base years, and (2) must have been a United States citizen or resident during the taxable year and the three base years. Under these rules, an individual may be eligible for income averaging, even if he or she has not been self-supporting during one or more of the base years, if he or she has attained the age of 25 and was not a full-time student during at least four years after attaining the age of 21.

In effect, the liability of an individual eligible to use income averaging for a year is calculated in three steps:

First, the taxpayer determines tax liability as if the current year's taxable income equaled a lower amount, i.e., 140 percent of the average income during the base years; this portion of income for the current year is taxed at the rates that would have applied if it had constituted all of the taxpayer's income for the year.

Second, the individual computes the increase in tax liability over the amount determined according to the first step which would result if 25 percent of the remaining income (i.e., total income less 140 percent of average base period income) were added to the portion of income described in the first step.

Third, this increase is multiplied by four and added to the tax liability calculated in the first step in order to determine the individual's tax liability for the current year.[1]

Each of these tax liability computations is performed using the current year's rate schedules.

Reasons for change.—The committee believes that income averaging is intended primarily to benefit taxpayers with widely fluctuating incomes. Under current law, however, taxpayers with sharp but sustained increases in income, typically young persons entering the job market for the first time, may qualify for income averaging and benefit substantially from it.

The committee also believes that the availability of income averaging to individuals who were full-time students during the base period is a source of complexity. Determining whether a taxpayer was self-supporting when he or she was a full-time student is difficult and has been a frequent source of contention between taxpayers and the Internal Revenue Service. The case-by-case determinations that are required represent an administrative burden and impede fair and consistent application of the eligibility rules for income averaging.

Explanation of the provision.—Under the bill, a taxpayer who was a full-time student in any base year is not eligible for income averaging. This rule, however, does not apply if an individual files a joint return and 25 percent or less of the adjusted gross income reportable on the joint return is attributable to that individual. Thus, the benefits of income averaging would be available in situations where one spouse was a full-time student during one or more of the base years but had a relatively insubstantial amount of income during the current year.

Consistent with these changes, the exception to the requirement that an eligible individual must be self-supporting during each of the base years, applying to individuals who are 25 years of age or older and were not full-time students during at least four years after they reached 21 years of age, is repealed.

Effective date.—The provision relating to income averaging is effective for taxable years beginning after December 31, 1985.

2. Employers Required to Provide Certain Employees and Family Members With Continued Health Insurance Coverage at Group Rates

Present law.—Present tax law includes several incentives designed to encourage employers to provide health benefits to their employees. Employer contributions to a plan providing accident or health coverage, and certain benefits actually paid under such plans, are not subject to income tax, social security tax, or unemployment tax. At the same time, employer contributions to fund such excludable medical benefits are deductible, within limits.

A deduction is allowed to an employer for compensation paid to employees in the form of contributions to or benefits paid under a

[1] For example, if 140 percent of the average income in the base years equals $40,000, and the taxable income for the current year equals $80,000, then the portion of the income between $40,000 and $80,000 is all taxed at the marginal rate applying under the regular rate schedules between $40,000 and $50,000.

health plan, provided such costs constitute ordinary and necessary business expenses (sec. 162).

Effective for taxable years beginning after 1981, no deduction is permitted for expenses paid or incurred by an employer for a group health plan if the plan differentiates in the benefits it provides between individuals having end stage renal (kidney) disease and other individuals (sec. 162(i)(1)). Thus, no deductions are permitted for contributions to a group health plan that differentiates directly or indirectly on the basis of the existence of end stage renal disease or the need for renal dialysis.

There are no Federal requirements that employer-based group health insurance plans provide continuation options for any individuals who lose coverage in the health plan under any circumstances.

Under present law, an employer's contributions to a plan providing accident or health benefits, whether insured or self insured, are excludable from the employee's income (sec. 106). Reimbursements to employees under an employer's health plan for costs incurred for medical expenses (within the meaning of sec. 213), and payments unrelated to absence from work, are excluded from the employee's gross income (sec. 105(b)). Similar exclusions apply for employment tax purposes.

Other benefits actually paid under accident and health plans, such as certain disability benefits, generally are includible in the employee's gross income to the extent attributable to employer contributions (sec. 105(a)). In the case of a self-insured medical reimbursement plan (sec. 105(h)), no exclusion is provided for benefits paid to any employee who is among the five highest-paid officers, a 10-percent shareholder, or among the 25-percent highest-paid employees if the program discriminates in favor of this group as to either eligibility to participate or the medical benefits actually provided under the plan.

Reasons for change.—The committee was concerned that certain spouses and dependent children may be deprived of health benefits due to an unexpected change in family status. To provide an opportunity for these individuals to secure health benefits, the committee believes it is appropriate to require that employer group health plans offer qualified beneficiaries an election to continue coverage for a limited period of time.

Explanation of provision.—Under the bill, generally effective for plan years beginning after June 30, 1986, no deduction is permitted for employer contributions to any group health plan if that plan or any other plan of the employer fails to provide qualified beneficiaries a continuation coverage election. The election must be provided for previously covered family members of deceased, divorced, or Medicare-eligible workers, employees who have separated from service (and their dependents), and certain children who would otherwise lose coverage under the terms of the plan upon attainment of majority.

In addition, no income exclusion is permitted under the bill for any highly compensated individual if the plan in which the individual participates or any other group health plan maintained by the employer fails to provide continuation coverage.

As under present law, a group health plan is any employer-provided plan to provide medical care to employees, former employees, or the families of such employees or former employees directly or through insurance reimbursement or otherwise.

Under the bill, no employer will be permitted to deduct contributions to any insured or self insured group health plan (sec. 106) if that plan or any other group health plan maintained by the employer fails to provide qualified beneficiaries a continuation coverage election.

The bill generally requires that continuation coverage be provided under any employer-provided group health plan. However, no continuation coverage would be required in a plan established and maintained by (1) an employer that normally employed 25 or fewer employees during the preceding calendar year, (2) the Government of the United States, the government of any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing entities, or (3) a church or convention or association of churches, or a tax-exempt organization that is operated, supervised, or controlled by any of the foregoing.

Under the bill, any highly compensated individual covered by any insured or self-insured group health plan would be denied the income exclusion for employer contributions to the plan (sec. 106) if that plan, or any other group health plan maintained by the employer, fails to provide qualified beneficiaries a continuation coverage election.

The bill defines a highly compensated individual as any employee who is among the five highest-paid officers, a 10-percent shareholder, or among the 25-percent highest-paid employees.

Under the bill, all qualified beneficiaries who would otherwise lose coverage as a result of a qualifying event must have the right to elect, within the 60-day period beginning on the date of the qualifying event, to continue coverage. Qualifying events include (1) the death of the covered employee; (2) the separation from service of the covered employee (whether voluntary or involuntary); (3) the divorce or legal separation of the covered employee from the employee's spouse; (4) the covered employee's commencement of Medicare coverage; or (5) the cessation of dependent child coverage under the terms of the plan (e.g., upon attainment of majority).

Under the bill, an employer is required to provide notice of the election to continue coverage at such time and in such manner as the Secretary of the Treasury shall prescribe. The committee intends that the employer should be required to provide notice of the election to all covered employees no later than the date on which the employee becomes entitled to coverage under the plan.

In addition, a qualified beneficiary must, under the bill, elect continuation coverage no later than 60 days after the date of the qualifying event. Provided the qualified beneficiary elects to continue coverage within the 60-day period, the continuation coverage must be effective as of the date of the qualifying event.

In general, the continuation coverage for which a qualified beneficiary must be offered an election is coverage identical to the coverage provided immediately before the qualifying event. For example, if, under the plan, the covered employee had the right to select among several levels of coverage, the qualified beneficiary generally would be entitled to continue whatever level of coverage the employee had selected for the beneficiary prior to the qualifying event.

That coverage could be modified by the employer if such coverage is modified for all similarly situated beneficiaries for whom a qualifying event has not occurred. In addition, if the plan otherwise permits employees and beneficiaries to modify coverage, the qualified beneficiary must be entitled to modify coverage at the same time and in the same manner as other similarly situated beneficiaries.

The applicable level of continuation coverage generally must be provided for a period not less than (1) 18 months immediately following the qualifying event, or (2) such shorter period elected by the qualified beneficiary. However, if the qualified beneficiary initially elects to continue coverage for less than 18 months, the beneficiary need not be granted a subsequent election to extend the coverage for the remainder of the 18-month period. This 18-month period includes, and is not in addition to, any continuation period presently permitted by the plan or required under local law. Thus, for example, if the plan presently provides that dependent coverage ceases one month after the date of an employee's death, the bill would required that beneficiaries be entitled to elect continuation coverage for up to 18 months following the date of death, not the 18-month period beginning with the actual cessation of coverage one month after the employee's death.

Similarly, if there are multiple "qualifying events," the 18-month period begins on the date of the earliest event. For example, if a covered employee terminates employment and is subsequently divorced one month later, the 18-month continuation period applicable to the divorced spouse commences on the date of termination rather than the divorce.

However, coverage need not be provided beyond the date on which the employer ceases to provide any group health plan to employees. If the employer maintains more than one plan, continuation must be provided so long as any plan is offered by the employer.

The bill authorizes the Secretary of the Treasury to prescribe rules defining the appropriate continuation coverage for qualified beneficiaries under a plan terminated in connection with a plant closing. The committee intends that continuation coverage be required notwithstanding the plant closing if the employer continues to maintain any other health plan. The required continuation coverage generally would be that coverage in effect immediately prior to the closing. However, the regulations are to include rules precluding an employer from reducing or eliminating coverage in anticipation of the plant closing.

Under the bill, some or all of the cost of continuation coverage (including reasonable administrative costs of processing the election) could be charged to the qualified beneficiary. The entire premium could be charged to the qualified beneficiary whether or not the employer otherwise subsidizes some or all of the premiums for covered employees. However, in no event may the cost charged to the qualified beneficiary exceed 102 percent of the applicable premium. The applicable premium is defined as the cost to the plan for the period of coverage for a similarly situated beneficiary with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

In the case of a self-insured plan, the bill defines the applicable premium for any year as the cost for a similarly situated beneficiary for the preceding calendar year, adjusted to reflect cost-of-living increases as measured by the GNP deflator. If there has been a significant change affecting a self-insured plan (e.g., a modification of covered benefits, a significant change in the number or composition of the covered workforce, etc.), the employer must determine the cost under regulations to be prescribed by the Secretary of the Treasury, on the basis of a reasonable actuarial estimate.

If the qualified beneficiary elects to continue coverage within 60 days of the qualifying event, the coverage is effective as of the date of the qualifying event. A qualifying beneficiary who elects coverage may be charged for the cost of coverage during the 60-day period.

In addition, the employer may require the qualified beneficiary to pay the applicable premium either directly to the insurer, if any, or to the employer. However, at the election of the qualified beneficiary, premiums may be payable in monthly installments. Of course, a qualified beneficiary who fails to make required premium payments could be denied continuation coverage.

The bill also provides that continuation coverage may not be conditioned directly or indirectly upon insurability of the designated beneficiary.

The bill generally defines qualified beneficiaries to include the spouse and dependent children of an employee entitled to coverage under the terms of the group health plan. In addition, the covered employee is a qualified beneficiary entitled to elect continuation coverage upon termination of employment.

However, the provision intends to extend prior coverage rather than create new classes of covered employees. Thus, no employee, spouse, or child will be considered a qualified beneficiary unless, on the date before the qualifying event, that individual was a beneficiary under the plan. Thus, for example, no employee who had opted not to be covered by a contributory group health plan could elect continuation coverage upon termination of employment. Similarly, if a covered employee had elected not to receive dependent coverage, no spouse or child subsequently is entitled to elect continuation coverage upon the occurrence of a qualifying event.

If there are multiple "qualifying events," the status of an individual as a qualified beneficiary is determined on the day before the occurrence of the earliest qualifying event. For example, if a covered participant terminates employment without electing continuation coverage, no beneficiary could subsequently elect continuation coverage, e.g., upon the participant's death.

If there are multiple "qualified beneficiaries," only one election generally is required. Where the covered employee terminates employment, for example, no spouse or child would receive continuation coverage unless the employee elects to continue coverage. Similarly, upon the employee's death, divorce, or becoming eligible for Medicare, continuation coverage is to be provided only if the spouse so elects. In that instance, the spouse effectively decides whether coverage will be continued for the children.

The only exceptions to this rule occur where the child is the only qualified beneficiary (e.g., where the spouse is not entitled to coverage under the plan, or with respect to children attaining majority).

Effective date.—The bill generally applies for plan years beginning after June 30, 1986. In the case of a group health plan maintained pursuant to one or more collective bargaining agreements, the bill does not apply to plan years beginning before the earlier of (1) the date the last of the collective bargaining agreements terminate, or (2) January 1, 1987.

3. Application of Fringe Benefit Rules to Airlines and Their Affiliates

Present law.—The Code defines gross income for purposes of the income tax and the tax on self-employment income as including "all income from whatever source derived" and specifies that it includes "compensation for services" (sec. 61). Similarly, the social security and unemployment insurance payroll taxes (FICA and FUTA) and income tax withholding generally apply to all remuneration for employment, including noncash remuneration. Any fringe benefit that does not qualify for exclusion under a specific statutory provision is includible in gross income, and subject to employment taxes, at the excess of its fair market value over any amount paid by the employee for the benefit.

Under the Deficit Reduction Act of 1984 (P.L. 98-369), certain miscellaneous fringe benefits provided by an employer on a nondiscriminatory basis are excluded from the recipient employee's gross income for Federal income tax purposes and from the wage and benefit bases for purposes of social security and other employment taxes, effective January 1, 1985. The fringe benefits excluded under Code section 132 include "no-additional-cost" services and qualified employee discounts provided by an employer to an employee for the use of the employee [2] or for the use of the employee's spouse or dependent children (as defined in sec. 132(f)(2)(B)).

To be excluded as a no-additional-cost benefit, a service must be the same type of service which is sold to the public in the ordinary course of the line of business of the employer in which the employee is performing services. For this purpose, all employees of all corporations in a controlled group of corporations, or all employees of certain commonly controlled businesses, are treated as employed by a single employer.

Under this limitation, for example, an employer which provides both airline services and hotel services to the general public is considered to consist of two separate lines of business. As a conse-

[2] Sec. 132(f)(1) provides that, for purposes of the exclusions for no-additional-cost services and qualified employee discounts, with respect to a line of business of an employer, the term employee means, in addition to an individual who is currently employed by the employer in that line of business, (1) an individual who was formerly employed by the employer in that line of business and who separated from service with the employer in that line of business by reason of retirement or disability; (2) a widow or widower of an individual who died while employed by the employer in that line of business; and (3) a widow or widower of a former employee of that line of business who had separated from service with the employer in that line of business by reason of retirement or disability.

quence, the employees of the airline business of the employer may not exclude, as no-additional-cost services, the fair market value of free or discounted hotel rooms provided to them by their employer (or by any other employer under a reciprocal agreement with their employer); likewise, the employees of the hotel business of the employer may not exclude the fair market value of free or discounted airline tickets provided to them by their employer (or by any other employer under a reciprocal agreement with their employer).

A similar line-of-business limitation applies under the statutory exclusion for qualified employee discounts.

Under an elective grandfather rule, the line-of-business limitation generally does not apply to no-additional-cost services or qualified employee discounts which were provided by an employer to all its employees in all its lines of businesses on and after January 1, 1984. Accordingly, in the example above, free standby flights to the hotel employees would be tax-free if the company provided such services to all its employees since January 1, 1984.

An employer electing this grandfather coverage is subject to a 30-percent excise tax on the excess for the year of (1) the aggregate fair market value of all excludable no-additional-cost service benefits and qualified employee discount benefits provided to all its employees over (2) one percent of the total taxable compensation paid to all its employees (sec. 4977).

Reasons for change.—The committee believes that the parents of an employee who performs services in the business of providing commercial air transportation should receive the same tax treatment, for purposes of the section 132 exclusions, as the spouse and dependent children of that employee. Also, the committee concluded that statutory rules for applying the line-of-business limitation under section 132 should be provided in the case of (1) certain employees of Pan American World Services who were employed by that company on September 12, 1984 and (2) employees of certain airline affiliates who are directly engaged in providing airline-related services.

Explanation of provisions.—The bill amends section 132(f) to provide that any use of commercial air transportation by a parent of an employee is treated as use by the employee, effective January 1, 1985. For purposes of this rule, the term employee does not include an individual who is an employee solely by reason of section 132(f)(1)(B).

The bill provides a special rule applicable if (1) a corporation that is predominantly engaged in airline-related services is a member of an affiliated group (within the meaning of sec. 1504(a)) another member of which operates an airline and (2) employees of the first corporation who are directly engaged in providing airline-related services are entitled to no-additional-cost services with respect to air transportation provided by such other member. If this rule applies, the first corporation is treated as engaged in the air transportation line of business of the affiliate which operates the airline, for purposes of determining whether the employees who are directly engaged in providing airline-related services are eligible for the no-additional-cost service exclusion in section 132(a)(1). This provision is effective January 1, 1985.

The term "airline-related services" means any of the following services provided in connection with commercial air transportation: (i) catering; (ii) baggage handling; (iii) ticketing and reservations; (iv) flight planning and weather analysis; (v) restaurants located at an airport and gift shops located at an airport; and (vi) such other similar services provided to airlines as may be prescribed by Treasury regulations. (Flight planning and weather analysis generally means activities such as the provision of computerized and specialized flight plans, the provision of weather information to airlines and notams (notices to airmen), and the provision of computer packages related to those services.) The Treasury may include in category (vi) as similar services only services that directly benefit airlines, and cannot include in category (vi) services (whether or not furnished at airports) that are for the convenience of airline passengers, such as hotels, car rentals, and magazine publishing.

The bill also provides a transitional rule for persons employed, as of September 12, 1984, by an airline affiliate under certain circumstances. The transitional rule applies to an individual if, as of September 12, 1984, all of the following conditions are met:

(1) The individual was an employee (within the meaning of sec. 132, including sec. 132(f)) of one member of an affiliated group (as defined in sec. 1504), referred to as the "first corporation," and was eligible for no-additional-cost services in the form of air transportation provided by another member of the affiliated group, referred to as the "second corporation";

(2) at least 50 percent of the individuals performing service for the first corporation were or had been employees of, or had previously performed services for, the second corporation; and

(3) the primary business of the affiliated group was commercial air transportation of passengers.

If all three conditions are met, the first corporation is treated as engaged in the same air transportation line of business as the second corporation for purposes of applying paragraphs (1) and (2) of Code section 132(a), with respect to no-additional-cost services and qualified employee discounts provided for such individuals by the second corporation, and an individual of the second corporation who is performing services for the first corporation is also treated as an employee of the first corporation.

This provision applies to certain benefits provided after December 31, 1984. The intended beneficiaries of the provision are employees of Pan American World Services, Inc. who meet the requirements of the provision.

4. Tax Treatment of Qualified Campus Lodging

Present law.—Section 119 excludes from an employee's gross income the value of lodging provided by the employer if (1) the lodging is furnished for the convenience of the employer, (2) the lodging is on the business premises of the employer, and (3) the employee is required to accept the lodging as a condition of employment.

Several court decisions have held that on-campus housing furnished to faculty or other employees by an educational institution does not qualify for the section 119 exclusion. Therefore, the fair rental value of the housing (less any amounts paid for the housing by the employee) was includible in the employee's gross income and constituted wages for income tax withholding and employment tax purposes in those cases.[3]

Deficit Reduction Act of 1984.—Section 531(g) of the Deficit Reduction Act of 1984 (P.L. 98-369) prohibits the Treasury Department from issuing, prior to January 1, 1986, any income tax regulations that would provide for inclusion in gross income of the excess of the fair market value of qualified campus lodging over the greater of (1) the operating costs paid in furnishing the lodging or (2) the rent received. This moratorium on regulations applies only with respect to qualified campus lodging furnished after December 31, 1983 and before January 1, 1986.

Qualified campus lodging means lodging furnished by a school, college, or university to any of its employees, including nonfaculty employees, or to the employee's spouse or dependents. The moratorium applies only with respect to employer-furnished lodging that is located on a campus of, or in close proximity to a campus of, the educational institution. Under the Act, the moratorium does not apply with respect to any amount of the value of lodging if such amount was treated as wages or included in income when furnished.

The purpose of providing for the moratorium in the 1984 Act was to allow further time for consideration of arguments by schools and universities that special tax rules governing treatment of housing furnished to their employees should be provided by statue.

Reasons for change.—The committee believes that valuation rules should be provided to resolve continuing disagreements between educational institutions and the Internal Revenue Service as to the treatment of qualified campus lodging.

Explanation of provision.—The bill provides that for Federal tax purposes, the fair market value of use (on an annualized basis) of qualified campus lodging furnished by, or on behalf of, an educational institution (within the meaning of sec. 170(b)(1)(A)(ii))[4] shall not be treated as greater than five percent of the appraised value for the year of the lodging provided that an independent appraisal is obtained by a qualified appraiser. (Thus, the appraiser must be qualified to make appraisals of housing, and the appraisal cannot be made by the employer institution or any officer, trustee, or employee thereof.) The committee does not intend that a new appraisal must be obtained each year. However, the committee intends that the appraisal be reviewed annually, in a manner prescribed by

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[3] *Bob Jones Univ.* v. *U.S.*, 670 F.2d 167 (Ct. Cl. 1982); *Goldsboro Christian Schools, Inc.* v. *U.S.*, 79-1 CCH USTC para. 9266, E.D.N.C. 1978 (value of lodging furnished to faculty constitutes wages subject to income tax, FICA, and FUTA withholding, in light of "long and consistent history of regulations and rulings, expressly and explicitly applying withholding taxes to lodging not furnished for the employer's convenience***"), *aff'g* order entered in *Goldsboro Christian Schools, Inc.* v. *U.S.*, 436 F.Supp. 1314 (E.D.N.C. 1977), *aff'd* per curiam in unpublished opinion (4th Cir. 1981), aff'd 103 S.Ct. 2017 (1983); *Winchell* v. *U.S.*, 564 F.Supp. 131 (D.Neb. 1983) (value of campus home taxed to college president); and *Coulbourn H. Tyler*, 44 CCH Tax Ct. Mem. 1221 (1982).

[4] An educational organization is described in sec. 170(b)(1)(A)(ii) "if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities," and includes both public and private schools (Treas. Reg. sec. 1.170A-9(b)(1)).

Treasury regulations, but that such review should not impose undue cost on the educational institution. Accordingly, under this safe-harbor valuation rule, if the rent paid for qualified campus lodging is equal to or exceeds on an annualized basis five percent of the value determined by such an appraisal, no amount is included, on account of such housing, in the employee's gross income for income tax purposes or in the wage or benefit base for social security and other employment tax purposes.

The provision applies to lodging furnished to any employee of the educational institution (or to the employee's spouse or dependents), including nonfaculty employees, for use as a residence, if the employer-furnished lodging is located on a campus of, or in the proximity of, the educational institution.

If no appraisal is obtained that meets the requirements of the provision, then the fair rental value for tax purposes is to be determined in the manner as would be done absent a special rule, taking into account all the relevant facts and circumstances. This does not preclude a taxpayer whose appraisal is found defective from subsequently obtaining a qualified appraisal and using the safe-harbor rule. For purposes of applying the first sentence of this paragraph to determine the fair rental value of campus lodging, the average of the rentals paid by individuals (other than employees or students of the educational institution) during such year for lodging provided by the educational institution that is comparable to the campus lodging provided to the employee is to be considered the fair rental value.

The new provision relating to qualified campus lodging does not affect the applicability of section 119(a) to lodging that qualifies for the exclusion in section 119(a).

Effective date.—The provisions of the bill apply for taxable years or periods beginning after December 31, 1985.

For prior taxable years, it is intended (1) that the IRS is to follow the safe-harbor valuation rule of the bill as if in effect for those years (except with respect to any amount of value of campus lodging that was treated by the taxpayer as wages or included in income when furnished), and (2) that the value of the property as assessed by State or local tax authorities for State or local property tax purposes is to be treated as if it were the value determined by a qualified appraisal.

5. Certain Insolvent Taxpayers Allowed to Reduce Capital Gains Preference Item for Individual Minimum Tax Purposes

Present law.—Individuals are subject to a minimum tax, applying at a 20 percent rate to a base determined by adding certain preferences to the taxpayer's regular taxable income (in addition to certain other adjustments). Minimum tax liability is payable only to the extent that it exceeds the taxpayer's regular tax liability. Among the minimum tax preference items is the portion of net capital gain excluded for regular tax purposes under section 1202.

Reasons for change.—The committee believes that under the present-law minimum tax rules, significant hardships have arisen in certain circumstances where an insolvent individual sells appreciated business realty in satisfaction of indebtedness. Such an individual may be subject to the minimum tax with respect to the portion of capital gain excluded for regular tax purposes, particularly if he or she uses other tax preferences. For example, this problem has arisen in the case of certain farmers who have been compelled to transfer appreciated farm land in satisfaction of indebtedness arising as a consequence of farming losses, and who are subject to minimum tax in part because of the use of investment tax credits.

Explanation of provision.—Under the bill, an insolvent taxpayer who transferred real property used in the active conduct of a trade or business of the taxpayer to a creditor in cancellation of indebtedness, or to any third party under threat of foreclosure, would not be required to treat certain capital gain, excluded from income for regular tax purposes under section 1202, as a minimum tax preference. For this purpose, real property would be determined under State law.

The bill would apply only to transfers by individuals. The bill would not apply to a transfer of property being held for investment purposes, or to a transfer of property not used by the individual in the active conduct of a business, as when the individual did not materially participate in management or provide substantial personal services with regard to the trade or business being conducted on the property. Thus, for example, a transfer of farm property by a farming syndicate (as defined in sec. 464(c)) is not within the scope of the bill. For a transfer to which the bill applied, the amount of the reduction in the taxpayer's minimum tax preference for capital gains could not exceed the amount of the taxpayer's insolvency immediately prior to the transfer.

The question of whether, and in what amount, a taxpayer was insolvent would be determined under a standard similar to that set forth in section 108(d)(3), which provides that "the term 'insolvent' means the excess of liabilities over the fair market value of assets." However, the Treasury would have the authority, through regulations or rulings, to determine whether, and to what extent, nonrecourse debt would be treated under the bill in the same manner as under section 108(d)(3).

In the case of a taxpayer who made one or more transfers to which the bill applied, the calculation of the taxpayer's tax preference under section 57(a)(9)(A) (defining the minimum tax capital gain preference for individuals) would be made in several stages. First, the taxpayer would determine the amount of his or her section 1202 net capital gain deduction (as determined for regular tax purposes without making any adjustment for transfers made while insolvent). Second, the taxpayer would determine the amount of his or her net capital gain, if any, with respect to each transfer to which the bill applied. For each such transfer, this amount would be multiplied by the percentage applied in determining the section 1202 deduction (60 percent under present law). The amount derived from this calculation, to the extent not in excess of the amount of the taxpayer's insolvency immediately before the transfer, would then be subtracted from the amount of the taxpayer's regular tax deduction under section 1202. However, "double-counting" would not be allowed with respect to the amount of insolvency. Thus, for example, if a taxpayer made two transfers qualifying under the bill during the same taxable year, the amount of the taxpayer's insolvency for purposes of the second transfer would be reduced by the amount subtracted (for purposes of section 57(a)(9)) from the taxpayer's regular tax deduction under section 1202 as a result of the first transfer.

In the case of a taxpayer who, during the same taxable year, realized gain on some transfers to which the provision applied, and loss on other such transfers, the bill would apply only to the extent that such gain exceeded such losses. (In any event, the adjustment made under the bill to the amount of a taxpayer's capital gain preference would still be limited to the relevant amounts of insolvency). It is expected that Treasury regulations would set forth the mechanics of the bill's application in this and all other respects.

The bill would have no effect on the application of other rules of tax law, including the rules for measurement of debt discharge income and for the reduction of tax attributes (such as credit carryovers and net operating losses) pursuant to section 108.

Effective date.—The provision is effective for dispositions made after December 31, 1981.

6. Treatment of Certain Pollution Control Bonds

Present law.—Interest on State and local government obligations generally is exempt from Federal income tax. However, since 1968, tax exemption has not been permitted for interest on industrial development bonds (IDBs). A State or local government bond is an IDB if (1) all or a major portion of the proceeds of the issue are to be used in any trade or business of a person other than a State or local government or tax-exempt organization (described in sec. 501(c)(3)), and if (2) payment of principal or interest is secured by an interest in, or derived from payments with respect to, property or borrowed money used in a trade or business. Exceptions to this general rule on IDBs are provided for certain activities, including the financing of air or water pollution control facilities.

The use of tax-exempt IDBs to acquire facilities generally is prohibited if a substantial user of the facilities before the acquisition will be a substantial user after the acquisition. Additionally, use of IDBs to finance the acquisition of existing property is prohibited unless an amount equal to at least 15 percent of the bond proceeds is spent for rehabilitation of the property.

The aggregate volume of most IDBs and all student loan bonds issued by a State (and local issuers therein) may not exceed the greater of $150 per resident of the State or $200 million.

In 1982, the Congress enacted a limited provision permitting the Gulf Coast Waste Disposal Authority to acquire certain existing air or water pollution control facilities to be owned and operated by the Authority in order to maintain or improve the control of pollutants.

Reasons for change.—The committee believes that modifications to certain of the restrictions contained in the 1982 legislation permitting the Gulf Coast Authority to issue bonds for acquisition of existing pollution control facilities are needed to permit implementation of that 1982 provision. The committee determined, however, that bonds issued pursuant to that provision should be subject to the State volume limitations applicable to most IDBs as well as most other present Code restrictions on such bonds. Additionally, the intent of this provision makes it appropriate to limit its application to facilities the acquisition of which was contemplated at the time of the 1982 legislation.

Explanation of provision.—The bill permits tax-exempt IDBs to be issued, under certain conditions, for use by the Gulf Coast Waste Disposal Authority to acquire existing air or water pollution control facilities which the authority itself will operate. These conditions are (1) that the bonds will be subject to the applicable State volume limitation for private activity bonds and all other restrictions currently applicable to similar IDBs (other than the restriction on acquisition of existing property); (2) that the purchase price of the facilities will not exceed their fair market value; (3) that the fees imposed on any seller for use of any facilities after the sale will not be less than the amounts charged for comparable use of such facilities to persons other than the seller; (4) that no person other than the Authority be considered the owner of the facilities for Federal income tax purposes; and (5) that the total volume of bonds issued for this purpose not exceed $200 million (no part of which will be issued before 1986, and no more than $100 million of which will be issued before 1987).

In addition, the committee determined that only those facilities the acquisition of which was contemplated at the time of the 1982 legislation should qualify for tax-exempt financing. Therefore, bonds issued under this provision may be used only for acquisition of facilities the original use of which commenced before September 3, 1982. The committee understands that the only qualifying facilities are the following:

Armco Steel 13609 Industrial Road Houston, Texas	Diamond Shamrock Tidal Road Deer Park, Texas 77536
Dow Chemical Company Battleground Road La Porte, Texas 77571	E.I. du Pont 11701 Strang Road La Port, Texas 77571
Ethyl 1000 North South Street Pasadena, Texas 77503	Exxon 2800 Decker Drive Baytown, Texas 77520
GAF Highway 146 at Industrial Road Texas City, Texas 77590	Goodyear 2000 Goodyear Drive Houston, Texas 77017
Lubrizol Corp 41 Tidal Road Deer Park, Texas 77536	Lyondell Petrochemical Co. 12000 Lawndale Houston, Texas 77252-2451
Marathon Petroleum Corp Foot of Sixth Street Texas City, Texas 77590	Pasadena Chemicals Hwy 225 Pasadena, Texas

Phillips Chemical Co.
1400 Jefferson Street
Pasadena, Texas 77501

Rohm & Haas
Private Road off Hwy. 225
Deer Park, Texas 77536

Shell Oil
Shell Chemical
Hwy. 225 at Center Street
Deer Park, Texas 77536

Stauffer Chemical
1000 Jefferson
Houston, Texas

St. Regis Paper
11611 Fifth Street
Sheldon, Texas 77044

Texas Alkyls
730 Battleground Road
Deer Park, Texas 77536

Texas City Refining
Loop 197 South at 14th St
Texas City, Texas 77017

Texas Petrochemicals
8600 Parkplace Blvd.
Houston, Texas 77017

U.S. Industrial Chemicals
1515 Miller Cutoff Road
Deer Park, Texas 77536

USS Chemicals
9822 La Porte Freeway
Houston, Texas 77017

U.S. Steel
FM 1405
Baytown, Texas 77520

Effective date.—The provision is effective on the date of enactment.

7. Netting for Cooperatives

Present law.—In general, present law permits any corporation operating on a cooperative basis, including a so-called tax-exempt farmers' cooperative, to exclude from taxable income amounts paid as patronage dividends or certain other amounts paid or allocated to members, to the extent of net income generated from transactions with members (sec. 1382). In addition, tax-exempt farmers' cooperatives generally may exclude such amounts to the extent of all net income, and also may exclude to a limited extent dividends paid on common stock (sec. 521).

Patronage dividends are amounts paid or allocated by the cooperative to a patron (a) based on the quantity or value of business done with or for such patron, (b) under a pre-existing obligation of the cooperative to distribute such amounts, and (c) which are determined by reference to the net earnings of the organization from business done with or for its patrons (sec. 1388(a)).

In general, a tax-exempt farmers' cooperative is specifically defined in section 521(b) as a farmers', fruit growers', or like association organized and operated on a cooperative basis either for the purpose of marketing the products of its members or others, or for the purpose of purchasing supplies and equipment for members or other persons. In the case of a tax-exempt farmers' cooperative that markets products, the proceeds of sale by the cooperative less necessary expenses of sale are turned over to the members or other producers on the basis of the quantity or value of the products furnished; in the case of a tax-exempt farmers' cooperative that purchases supplies and equipment, the purchased goods are to be made available at the cooperative's cost, plus necessary expenses.

The Internal Revenue Service has asserted that netting gains and losses from purchasing and marketing operations or from operations in different products or geographic areas may be inconsistent with the statutory definition of a tax-exempt farmers' cooperative, particularly if management has broad discretion over decisions regarding such netting, and members of the cooperative are not informed of the practice. The IRS also has asserted that such netting may be improper for purposes of computing a cooperative's net income, and also may be inconsistent with the statutory requirement that the payment of patronage dividends must be pursuant to a pre-existing obligation.

The Tax Court has addressed some of these issues in three different factual settings. In *Associated Milk Producers*, 68 T.C. 729 (1977), the IRS asserted that a cooperative was not entitled to carry over a net operating loss deduction where doing so would offset patronage income in a taxable year with losses from a prior year. However, the court held that the carryover was allowed in circumstances that the court considered reasonable for management to offset the income and loss. In *Ford-Iroquois FS, Inc.*, 74 T.C. 1213 (1980), the IRS asserted that a non-exempt cooperative was not entitled to carry over a net operating loss deduction to the extent that losses from prior years' marketing and storage operations would offset patronage income from farm supply operations. However, the court allowed the carryover, noting that there was substantial overlap of the patrons of the two operations and the allocations otherwise were fair. In *Lamesa Cooperative Gin*, 78 T.C. 894 (1982), the IRS asserted that an exempt cooperative was required to account separately for its purchasing and marketing operations, and included in the cooperative's income certain patronage dividends to the extent income from the cooperative's purchasing operation offset losses from its marketing operation. The court nevertheless held that the cooperative could net the income and loss where the purchasing operation was so small that it would have been unreasonable to account for it separately.

Reasons for change.—The committee believes that netting of earnings and losses is an appropriate practice for both tax-exempt farmers' cooperatives and other cooperatives. In addition, the committee believes that, in the future, cooperatives that net earnings and losses should be required to notify their members of the practice.

Explanation of provision.—The bill provides that a cooperative is not ineligible for treatment as a tax-exempt farmers' cooperative if it offsets certain earnings and losses in determining any amount available for distribution to patrons. For this purpose, the losses that are attributable to one or more allocation units (including a loss that is carried over from another year), may be offset against earnings of one or more other allocation units, but only to the extent such earnings and losses are derived from business done with or for patrons. Such earnings and losses, also called patronage earnings and losses, may be offset without regard to whether the allocation units whose earnings or losses are offset are functional, divisional, departmental, geographic, or otherwise.

The bill also provides that the offsetting of earnings and losses, as described above, may at the option of the cooperative be used for determining the net earnings of the cooperative for the purpose of paying patronage dividends. Moreover, the option of a cooperative to offset earnings and losses is not taken into account for the purpose of determining whether amounts distributed to a patron are distributed pursuant to a pre-existing obligation.

The committee intends that these provisions do not affect a cooperative's ability to use net operating loss deductions available under present law. Moreover, the committee intends no inference regarding the treatment under present law of the offsetting of patronage earnings and losses other than patronage losses. Nevertheless, the committee approves of the result in *Farm Service Cooperative* v. *Comm'r,* 619 F.2d 718 (8th Cir. 1980), which held that a nonexempt cooperative could not offset patronage losses against nonpatronage earnings.

The bill provides that a cooperative that offsets earnings and losses must notify members who may have been affected by such offsetting. The committee intends that the notice must be sent to all such patrons regardless of whether any patronage dividends were in fact distributed, so long as the offsetting may have affected any amount which the patron may otherwise have received in the current or future year, whether in the form of patronage dividend, per-unit retain allocation, notice of allocation, or any other amount distributed or allocated to the member. The notice must be sent to such members by no later than the 15th day of the 9th month following the close of the cooperative's taxable year.

The notice must state that the cooperative has offset earnings and losses of one or more of its allocation units and that such offset has affected the amount that is being distributed to the patron. The notice must state generally the identity of the offsetting allocation units. The notice also must state briefly what rights, if any, that such patron may have to additional financial information of such organization under the terms of its charter, articles of incorporation, bylaws, and any provision of law. Although the notice must specify the identity of the offsetting allocation units (but not which unit's earnings were offset with which unit's losses), the cooperative is not required to disclose in the notice any detailed or specific data that it considers to be commercially sensitive. The committee intends that the cooperative's determination of what information is considered commercially sensitive for this purpose must be reasonable. The committee also intends that the notice requirement should not place a great burden on a cooperative, and that ordinarily an adequate notice need not exceed one page in length.

Failure to comply with this notice requirement, upon notification of such failure by the Secretary, will require a cooperative to provide a notice that meets the statutory requirements to all patrons who previously received the inadequate notice, but will have no other tax consequences for the cooperative. A cooperative that does not offset gains and losses of any allocation units will not be subject to the notice requirement. The committee intends that a cooperative that merely "pools" within a single allocation unit will not be subject to the notice requirement.

Effective date.—The provisions of the bill relating to cooperatives generally are effective for taxable years beginning after December 31, 1962. However, the provision relating to the notification of cooperative members is effective for taxable years beginning after the date of enactment.

8. Allocation Under Section 861

Present law.—All income has either a U.S. source or a foreign source. The foreign tax credit can offset tax on foreign-source taxable income, but not U.S.-source taxable income. (This is known as the foreign tax credit limitation.) A shift in the source of income from foreign to U.S. may increase U.S. tax by reducing the amount of foreign tax that a taxpayer may credit.

In determining foreign-source taxable income for purposes of computing the foreign tax credit limitation, and for other tax purposes, Code sections 861–863 require taxpayers to allocate or apportion expenses between foreign-source income and U.S.-source income. A shift in the allocation of expenses from U.S.- to foreign-source gross income decreases foreign-source taxable income. This decrease may increase U.S. tax by reducing the amount of foreign tax that a taxpayer may credit.

Treasury regulation sec. 1.861–8 (published in 1977) sets forth detailed rules for allocating and apportioning several categories of expenses, including deductible research and experimental expenditures ("research expenses"). The regulation provides that research expenses are ordinarily considered definitely related to all gross income reasonably connected with one or more of 32 product categories based on two-digit classifications of the Standard Industrial Classification ("SIC") system. Research expenses are not traced solely to the income generated by the particular product which benefited from the research activity. Instead these expenses are associated with all the income within the SIC product group in which the product is classified.

Research expenses identified with an SIC product group are generally apportioned to foreign-source income based on the ratio of total foreign-source sales receipts (or, at the taxpayer's option and subject to certain conditions, total foreign-source gross income) within the SIC product group to the taxpayer's total worldwide sales receipts (or gross income) within the SIC product group. However, research expenses incurred to meet legal requirements imposed with respect to improvement or marketing of specific products or processes are allocable entirely to one geographic source if the research and development cannot reasonably be expected to generate income (beyond de minimis amounts) outside that geographic source. In addition, the regulation provides that 30 percent of research expense is apportioned to income from the geographic source where over half of the taxpayer's research and development is performed. A taxpayer can choose to apportion to the geographic source where research and development is performed a percentage of research expense significantly greater than 30 percent if he establishes that the higher percentage is warranted because the research and development is reasonably expected to have a very limited or long-delayed application outside that geographic source. Treas. Reg. sec. 1.861-8 generally requires a smaller allocation of research expense to foreign-source income than a predecessor regulation proposed in 1973 would have required.[5]

The Economic Recovery Tax Act of 1981 (ERTA) provided that, for a taxpayer's first two taxable years beginning after the date of its enactment (August 13, 1981), all research and experimental expenditures (within the meaning of Code sec. 174) which were paid or incurred in those taxable years for research activities conducted in the United States were to be allocated or apportioned to income from sources within the United States (sec. 223 of ERTA). This two-year moratorium on the application of the research and experimental expense allocation rules of Treas. Reg. sec. 1.861-8 was effectively extended for two additional years by the Tax Reform Act of 1984. Under the 1984 Act (sec. 126), for taxable years beginning generally after August 13, 1983, and before August 1, 1985, all of a taxpayer's research and experimental expenditures (within the meaning of Code sec. 174) attributable to research activities conducted in the United States are to be allocated to sources within the United States for purposes of computing taxable income from U.S. sources and from sources partly within and partly without the United States.

One reason Congress cited for enacting the original two-year moratorium was that some foreign countries do not allow deductions under their tax laws for expenses of research activities conducted in the United States. Taxpayers argued that this disallowance resulted in unduly high foreign taxes and that, absent changes in the foreign tax credit limitation, U.S. taxpayers would lose foreign tax credits. Because those taxpayers could take their deductions if the research occurred in the foreign country, taxpayers argued that there was incentive to shift their research expenditures to those foreign countries whose laws disallow tax deductions for research activities conducted in the United States but allow tax deductions for research expenditures incurred locally.

Accordingly, Congress concluded that the Treasury Department should study the impact of the allocation of research expenses under Treas. Reg. sec. 1.861-8 on U.S.-based research activities and on the availability of the foreign tax credit. While that study was being conducted by the Treasury and considered by Congress, Congress concluded that expenses should be charged to the cost of generating U.S.-source income, whether or not such research was a direct or indirect cost of producing foreign-source income.

In June 1983 the Department of the Treasury submitted its report on the mandated study to the Senate Committee on Finance and the House Committee on Ways and Means.[6] In summary, the Treasury report concluded that:

> Had Treas. Reg. sec. 1.861-8 fully been in effect in 1982, the Treasury Department estimated that the $37 billion in privately financed domestic research and development spending in

[5] See 38 Fed. Reg. 15,840 (1973).

[6] See Department of the Treasury, The Impact of the Section 861-8 Regulation on U.S. Research and Development (June 1983).

1982 would have been reduced by approximately $40 million to $260 million as a result of the increased U.S. tax costs just described. Most of the reduction would have represented a net reduction in overall research and development undertaken by U.S. corporations and their foreign affiliates, rather than a transfer of research and development abroad.

The moratorium reduced U.S. tax liabilities. If the research and development rules of Treas. Reg. sec. 1.861–8 had been in effect in 1982, the Treasury Department estimated that U.S. tax liabilities of U.S. firms would have been $100 million to $240 million higher.

The moratorium reduced the tax liabilities only of firms with excess foreign tax credits. Whether or not a firm had excess foreign tax credits did not seem to be closely related to the level of its research and development efforts.

The moratorium had its most significant effect on large, mature multinationals as opposed to small, relatively young high-technology companies. Of the $100 million to $240 million estimated increase in U.S. tax liabilities for calendar 1982 that would have occurred had Treas. Reg. sec. 1.861–8 been fully in effect, about 85 percent was estimated to be accounted for by 24 U.S. firms on the list of the 100 largest U.S. industrial corporations compiled by *Fortune Magazine*.

An allocation of research and development expense to foreign income could increase a taxpayer's worldwide tax liability if the foreign government did not allow the apportioned expense as a deduction. Some allocation to foreign income, however, was appropriate on tax policy grounds when domestic research and development was exploited in a foreign market and generated foreign income. If an allocation were not made, foreign-source taxable income would be too high and the higher limitation could allow the credit for foreign tax to reduce U.S. tax on domestic-source income.

The research and development rules of Treas. Reg. sec. 1.861–8 reflected significant modifications of the 1973 proposed version of the regulation in response to taxpayer comments. Compared to the 1973 version of the regulations, these modifications allowed less research and development expense to be allocated to foreign income and recognized that research and development conducted in the United States might be most valuable in the domestic market.

On the ground that a reduction in research and development might adversely affect the competitive position of the United States, the 1983 Treasury report recommended the two-year extension of the moratorium that was ultimately enacted by Congress last year. The extension was intended to allow Congress to consider further the results of the Treasury study on the Treasury research expense allocation rules.

Reasons for change.—The committee believes that a further extension of the present temporary moratorium is warranted to allow Congress to examine further the issues involved.

Explanation of provision.—The bill extends for one year the moratorium on the application of the research and experimental expense allocation rules of Treas. Reg. sec. 1.861–8. Under the bill, for taxable years beginning on or before August 1, 1986, all of a taxpayer's research and experimental expenditures (within the meaning of Code sec. 174) attributable to research activities conducted in the United States will be allocated to sources within the United States for purposes of computing taxable income from U.S. sources and from sources partly within and partly without the United States.

This special allocation rule applies only to the allocation of research and experimental expenditures for the purposes of geographic sourcing of income. It does not apply for other purposes, such as the computation of combined taxable income of a DISC (or FSC) and its related supplier.

The extension of the moratorium does not apply to any expenditure for the acquisition or improvement of land, or for the acquisition or improvement of depreciable or depletable property to be used in connection with research or experimentation.

The committee requests the Treasury to consider this allocation issue in connection with its ongoing review of the tax laws and proposals for reform.

Effective date.—The extension of the moratorium on the application of the Treasury's research and experimental expense allocation regulation will apply to a taxpayer's taxable years beginning on or before August 1, 1986 only.

9. Superfund Revenue Act of 1985

Present law.—Under present law, excise taxes are imposed on crude oil and certain chemical feedstocks, and amounts equivalent to these taxes are deposited (together with appropriated funds) into the Hazardous Substance Response Trust Fund ("Superfund"). These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances and pollutants or contaminants into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

An excise tax of 0.79 cents per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax is imposed on the sale or use of 42 specified organic and inorganic substances ("chemical feedstocks") if they are produced in or imported into the United States. The taxable chemical feedstocks generally are intrinsically hazardous or create hazardous products or wastes when used. The rates vary from 22 cents to $4.87 per ton.

The taxes generally are scheduled to terminate after September 30, 1985.

Effective after September 30, 1983, an excise tax of $2.13 per dry weight ton is imposed on hazardous waste which is received at a qualified hazardous waste disposal facility and which will remain at the facility after its closure. These tax receipts are deposited into the Post-closure Liability Trust Fund. This Trust Fund is to assume completely the liability, under any law, of owners and operators of closed hazardous waste disposal facilities that meet certain conditions. No liabilities have yet been assumed by the Trust Fund. These provisions were enacted in CERCLA.

Explanation of provisions.—The bill redesignates the "Hazardous Substance Reponse Trust Fund" as the "Hazardous Substance Superfund," and continues and expands the Superfund by allocating to the fund the balance of the existing Superfund and Post-closure Liability Trust Fund (subject to certain limitations) in addition to amounts equivalent to the Superfund Excise Tax on manufacturers, together with the present law taxes on petroleum and chemical feedstocks (modified as described below). No general revenues are authorized to be appropriated to the Superfund after fiscal year 1985.

The Superfund expenditure purposes and administrative provisions are generally the same as under present law; however, the bill relocates these provisions from CERCLA to the trust fund code (Chapter 98) of the Internal Revenue Code.

The amended trust fund provisions are effective on October 1, 1985.

The petroleum and chemical feedstocks taxes (Code secs. 4611 and 4661) are extended for five years, through September 30, 1990, at their present law rates. Exemptions from the chemical feedstocks tax are provided for exports of taxable chemicals; substances used to produce animal feed; and certain domestically recycled nickel, chromium, or cobalt (in addition to the present law exemptions).

These taxes would be suspended or terminated earlier than September 30, 1990, under certain conditions when the unobligated balance in the Superfund exceed specified threshold amounts. Additionally, the taxes would expire at any point at which the Secretary determines that cumulative Superfund receipts during the reauthorization period (including interest but not including recoveries, fines, or other non-tax amounts) equal or exceed $7.5 billion.

Under the bill, a new Superfund Excise Tax is imposed on the sale or lease of tangible personal property, in connection with a trade or business, by the manufacturer of the property. The tax rate is equal to 0.08 percent of the sales price of, or gross lease payments for, the property (i.e., $8 of tax per $10,000 of taxable amount). In the case of imports, the tax is imposed on the importer of tangible personal property based on the customs value (or, if no customs value is available, the fair market value) of the imported property plus customs duties. The tax is fully deductible against Federal income taxes.

A credit is allowed against the tax for purchases of tangible personal property, which is allocable to the cost of manufactured goods, using the manufacturer's inventory accounting method for income tax purposes. No tax is imposed on any manufacturer having $5 million or less of sales or lease receipts in any year. (In the case of imports, no tax is imposed on any shipment with a customs value, including duties, of less than $10,000.) Credits in excess of a manufacturer's tax liability may be carried over against later years' tax liabilities; however, excess credits may not be refunded.

For purposes of the credit, expenses for items which are depreciable for income tax purposes are fully included in the year of purchase.

In addition to the exemption for small manufacturers, items sold or leased by governmental units and by tax-exempt organizations (other than by unrelated trades or business), are exempt from the tax. Additionally, exported items are exempt from tax. Special rules are provided for purposes of implementing the export exemption, as well as for establishing constructive sales prices for manufactured goods in appropriate cases.

For purposes of the tax, "manufacturing" is generally defined as it is for purposes of the Standard Industrial Classification ("SIC") Manual published by the Office of Management and Budget. Manufacturing also includes mining and the production of raw materials generally. However, manufacturing subject to the tax does not include the storage or transportation of property (or services incidental thereto); the preparation of food in a restaurant or other retail establishments; or the incidental preparation of property.

"Tangible personal property" includes natural gas and other gaseous products and materials, but does not include electricity, unprocessed agricultural products (including timber), or unprocessed food products.

The Superfund Excise Tax is to be effective from January 1, 1986 through December 31, 1990, with provisions for earlier termination or suspension under the same conditions as the petroleum and chemical feedstocks taxes (discussed above). Returns for the tax are to be filed on an annual basis, using the taxpayer's taxable year for income tax purposes.

The bill repeals the Post-closure Liability Trust Fund and the related hazardous waste disposal tax (Code sec. 4681), effective October 1, 1985.

The bill directs the General Accounting Office ("GAO") to report to the Finance Committee by January 1, 1988, regarding alternative mechanisms for financing the Superfund. This report is to include a study of the effect of a tax on hazardous waste on the generation and disposal of such waste.

The bill allows State and local governments to issue tax-exempt industrial development bonds (IDBs) to finance facilities for the treatment of hazardous waste, as these terms are defined under section 1004 of the Solid Waste Disposal Act. This exemption is limited to facilities which are subject to permitting requirements under the Resource Conservation and Recovery Act (RCRA). This provision is effective on the date of enactment.

10. Increase in Tax on Cigarettes Made Permanent; Tax on Smokeless Tobacco

Present law.—An excise tax is imposed on cigarettes manufactured in or imported into the United States (Code sec. 5701). The present tax rate on small cigarettes is $8 per thousand (i.e., 16 cents per pack of 20 cigarettes). The tax rate on large cigarettes generally is $16.80 per thousand; proportionately higher rates apply to large cigarettes that exceed 6.5 inches in length. Small cigarettes are cigarettes weighing no more than 3 pounds per thousand. Most taxable cigarettes are small cigarettes.

The present cigarette excise tax rates are scheduled to decrease by one-half on October 1, 1985 (e.g., to 8 cents per pack of 20 for small cigarettes). These lower rates would be equivalent to the rates which prevailed before the temporary increase in the tax rate under the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248).

Revenues raised by the cigarette excise tax are deposited in the general fund of the Treasury.

Smokeless tobacco products (e.g., chewing tobacco and snuff) have not been subject to tax since 1966. A previous excise tax on these products, imposed at a rate of 10 cents per pound, was repealed by the Excise Tax Reduction Act of 1965 (P.L. 89-44).

Reasons for change.—The committee believes that the present cigarette excise tax rates should be extended on a permanent basis, and that an excise tax should be reinstated on certain smokeless tobacco products, in light of the present budgetary situation. The committee believes that, to the extent possible, continuation of existing tax rates is preferable to adoption of additional, new revenue measures to meet budgetary requirements.

The committee also took into consideration that when the Congress increased the cigarette excise tax rates to their present levels in 1982, that increase was the first such action since 1951. Because the cigarette tax is imposed at flat, set amounts for each of the two types of taxable cigarettes, effective tax rates have declined with inflation; after the 1982 increases, the effective rate of tax imposed on cigarettes remains lower today than the effective rates in 1951.

Explanation of provision.—The bill makes permanent the present cigarette excise tax rates. Thus, small cigarettes will continue to be taxed at the rate of 16 cents per pack of 20 cigarettes, and large cigarettes at their respective present-law rates.

The bill imposes an excise tax of 8 cents per pound on chewing tobacco manufactured in or imported into the United States. Chewing tobacco is defined as any leaf tobacco that is not intended to be smoked.

The bill imposes an excise tax of 24 cents per pound on snuff manufactured in or imported into the United States. Snuff is defined as any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Effective date.—The provision applies to taxable tobacco products removed after September 30, 1985.

11. Tobacco Program Improvements

Present law.—The two techniques—supply control through marketing quotas and price support through nonrecourse loans—constitute the basic elements of the Federal price support program for tobacco. Marketing quotas are mandatory on growers of each class or kind of tobacco, but only after having been approved in a referendum vote by a two-thirds majority of the producers.

The exact level of the national marketing quota for each kind of tobacco is determined administratively, prior to each growing season. The national quota is a projection of the production needed to meet domestic and export demand (at or above the price support level) and to provide for reasonable carryover stocks. This national quota is a tool for supply control; it effectively functions as a price-raising mechanism.

The marketing quota is translated into a national allotment. Each tobacco farm, based on its historical production, is given a pro rata share of the national allotment. This farm allotment then becomes the upper limit on the amount of tobacco each farm is allowed to produce and market. For flue-cured tobacco, an acreage-poundage program was initiated in 1965. Burley producers are under a poundage program that was authorized in 1971. The historical basis for allotments and their attachment to the land restricts the entry of new tobacco producers. To produce tobacco, a farmer must (1) own land with an allotment, (2) rent land with an allotment, (3) lease-and-transfer an allotment within the same county, or (4) for flue-cured only, he may purchase the allotment from another landowner and have it assigned to his own land within the same county.

If tobacco producers vote to adopt marketing quotas, then the Government is required to provide price support. Conversely, if marketing quotas are not approved, then price support is not provided. The national level of price support is calculated according to a formula specified in the law. Each grade of tobacco is assigned a support price that, averaged together, achieve the national support level. Each year the support level is adjusted to reflect recent changes in prices paid by farmers for production and living expenses. The Secretary of Agriculture has discretionary authority to limit a support price increase to 65 percent of the formula adjustment if surpluses exist. This authority was exercised in 1982 for flue-cured, burley, and several other tobaccos. Subsequent legislation has kept the 1983 and 1984 support prices frozen at the 1982 levels. The support price freeze remained in effect during 1985 on flue-cured, but it expired for burley. The burley support price increased 2 percent from last year.

The method of price support is nonrecourse loans from the Commodity Credit Corporation (CCC), with the tobacco held as collateral. There are no direct CCC payments to growers. Rather, CCC loans are made available through producers associations (cooperatives) that are under contract with CCC to handle all operations connected with making loan advances to producers, arranging for receiving, redrying, packing, storing, and eventually selling the tobacco under loan.

When tobacco is sold at auction, producers deliver it to an auction warehouse, where it is weighed and displayed on the auction floor. A Government inspector grades the tobacco. Each lot is auctioned to the highest bidder, except that if the high bid does not exceed the support rate (and the tobacco complies with marketing quota requirements), it is consigned to the price stabilization cooperative. Producers are paid by the cooperative with money borrowed from the CCC, at the loan rate for tobacco consigned to it. The cooperative, in turn, has all the consigned tobacco redried and packaged for storage. Over time, the cooperative sells the tobacco placed under loan at prices approved by CCC.

After the tobacco is sold by the producer association, proceeds are used to reimburse CCC, with interest, for its loan advances. Prior to 1982, all excess receipts were distributed to the producers and any losses were charged to CCC. For 1982 and subsequent crops, any net gains from the sale of tobacco under loan are retained by the CCC to apply against future losses. In addition, producers pay an assessment into a capital fund (called a "no-net-cost account") from which CCC losses on loans will be repaid.

Flue-cured growers paid 3 cents per pound in 1982, 7 cents in 1983 and 1984, into the no-net-cost account. The flue-cured assessment is set at 25 cents for 1985. Burley growers were assessed 1 cent in 1982, 5 cents in 1983, and 9 cents in 1984. The burley assessment is set at 30 cents for 1985. There is a range of assessment levels for other kinds of tobacco. The three years of no-net-cost assessment has generated $280 million. However, $172 million has been applied against the 1982 flue-cured loans, so there remains $108 million to cover future losses.

Tobacco quality and market conditions determine the annual quantity of tobacco placed under Government loan. Use of the loan program varies greatly from one year to another. The annual quantity of flue-cured placed under loan over the past ten years has ranged from 2 percent of annual marketings (in 1974) to 26 percent (in 1982). Burley loan placements have ranged from zero (in 1980) to 49 percent of annual marketings in 1983. Since 1933, CCC has loaned over $7.6 billion through producer associations. At the end of fiscal year 1984, outstanding loans totaled $2.084 billion on 1.137 billion pounds of tobacco.

The cumulative net loss of tobacco loan principal from 1933 through fiscal year 1984 amounts to $65,965,000. This loss is about 0.9 percent of the total tobacco loan volume. For purposes of comparison, the cumulative financial loss on the tobacco loan program represents 0.2 percent of CCC's total cumulative loss of $27.1 billion on all commodity and loan inventory operations.

The supply control feature of the tobacco program helps maintain prices above the support level, thus minimizing loan charge-offs and losses for CCC. In several recent years, service charges actually exceeded loan charge-offs, so the cumulative loss figure decreased between 1972 and 1978. During fiscal year 1979, CCC suffered a large loan loss of $5.4 million, due almost entirely to a fire that destroyed a warehouse in Kentucky. Another warehouse in South Carolina was destroyed by fire during fiscal year 1983 and caused a loss of $7.5 million worth of tobacco under loan. CCC self-insures the tobacco it holds as collateral, so such fire losses are charged off against the loan program. In addition to losses of loan principal, the CCC has also accrued losses of an estimated $39 million in unpaid interest.

Though tobacco loan losses have been modest up to this time, there is currently concern about the future of the program. The CCC loan inventory, as of May 1, 1985, consists of 234 million pounds of pre-1982 crop tobacco. The outstanding loan principal amounts to $360 million and the interest that is due amounts to $312 million, for a total CCC investment of $672 million. Any losses that arise out of the disposal of this tobacco will fall completely on the CCC. There is an additional 940 million pounds of tobacco under loan from the 1982 through 1984 crops. CCC's investment in this tobacco consists of $2,113 million in loan principal and $303 million in interest. If the disposal of this tobacco results in any losses, they are supposed to be covered by funds from the no-net-cost account (which currently amount to $108 million).

Negotiations have been going on for several months between growers, buyers, and the Government to reduce the size of the CCC inventory without creating an unmanageable burden on the no-net-cost account. Conditions are such that it is anticipated the pre-1982 tobacco will recover only about 10 percent of the loan principal, resulting in a loss to CCC of at least $636 million. In addition, there is the expectation that the poor quality 1983 burley tobacco will be sold at a discount of 90 percent or more, with the loss falling upon CCC rather than the no-net-cost account. This could mean an additional loss to CCC of at least $530 million.

The disposition of CCC's loan inventory tobacco is uncertain at this time. However, considering the growing interest expense, it is generally expected that there will be losses in excess of $1 billion over the next five years.

Explanation of Provisions.—First, with respect to price supports, the provisions in the bill: (1) lower the price support level for the 1985 crop of burley tobacco to $1.45 per pound. (The effective price support level for the 1985 crop of flue-cured tobacco will be lowered to $1.40 per pound administratively provided that certain levels of tobacco are purchased by the trade); (2) set the price support level for the 1985 crop of any kind of tobacco (other than flue-cured and burley tobacco) using the same formula as in current law for the 1986 crops of such tobacco, with authority for the Secretary of Agriculture to reduce the support level if requested by the producer association; (3) set the price support level for the 1986 and subsequent crops of flue-cured and burley tobacco at the level for the preceding year, plus or minus an adjustment of 65 to 100 percent of the total of—

(a) two thirds of the amount by which the average market price for the 5 preceding years (excluding the highest and lowest years) is greater or less than the average market price for the 5 years (excluding the highest and lowest years) preceding the year prior to the year for which the determination is made; and

(b) one-third of the change in the index of prices paid by tobacco farmers during the previous calendar year.

(4) Repeal the so-called Nunn amendment giving the Secretary of Agriculture authority to lower the price support on certain low quality grades of flue-cured tobacco.

Second, regarding the determination of marketing quotas, the provisions contained herein: (1) require cigarette manufacturers to submit to the Secretary of Agriculture each year on a confidential basis their projections of the amount of flue-cured and burley tobacco they intend to purchase at auction or from producers during the next marketing year. The Secretary may determine the amount of intended purchases if not submitted by a manufacturer; (2) require the Secretary to set the national marketing quota for flue-cured and burley tobacco at plus or minus 3 percent of the total of—

(a) the aggregate of the projections of intended purchases submitted by cigarette manufacturers,

(b) average annual exports for the 3 preceding years, and

(c) the amount of tobacco the Secretary determines is needed to increase or decrease the inventories of the producer associations to establish or maintain such inventories at the reserve stock level;

(3) establishes reserve stock levels at the greater of (1) 100 million pounds for flue-cured and 50 million pounds for burley tobacco, or (2) 15 percent of the effective national marketing quota for the respective kind of tobacco; and (4) reduce the amount of flue-cured and burley tobacco that may be marketed without penalty from 110 to 103 percent of the farm marketing quota.

Third, with respect to purchase requirements, the provisions in the bill: (1) require cigarette manufacturers to submit to the Secretary of Agriculture on a condidential basis at the end of each marketing year the amount of their purchases of flue-cured and burley tobacco during the marketing year; (2) subject to a penalty and manufacturer that fails to purchase at auction, from producers, or from association inventories (not including inventories subject to the buy-out provisions) at least 90 percent of the amount of flue-cured and burley tobacco the manufacturer stated it intended to purchase for purposes of the quota determination. The penalty would be twice the per pound assessment times the amount by which purchases are less than 90 percent of the intended purchases; (3) provide that the purchase requirement for each manufacturer would be reduced proportionally if total marketings are less than the effective national marketing quota; and (4) require penalties collected to be transmitted to the appropriate association for deposit in the No Net Cost Fund or Account.

Fourth, regarding assessments, the provisions of the bill: (1) require each purchaser of flue-cured and burley tobacco to pay to the appropriate association or the Commodity Credit Corporation assessments on all purchases of such tobacco marketed by a producer from a farm (including purchases from the association inventories). The amount of the assessments would be determined so that producers and purchasers share equally in maintaining the associations' No Net Cost Fund or Account; (2) require collection of assessments from the person acquiring the tobacco, from the warehouseman or agent if the tobacco is marketed through such person, or from the producer on sales by the producer to a person outside the United States. In all cases, the person responsible for collecting the assessment may deduct from the price paid to the producer and add to the price paid by the purchaser the amount of any assessment to be paid by the other person; (3) subject any person who fails to collect and remit any contribution or assessment to a marketing penalty equal to 75 percent of the average market price of the tobacco involved on the quantity of tobacco as to which the failure occurs. The penalty would be assessed by the Secretary after notice and opportunity for a hearing, and review by the appropriate United States district court would be provided; and (4) provide that future assessments on burley tobacco would be determined without regard to any losses of the Corporation with respect to the 1983 crop of burley tobacco.

Fifth, with respect to the purchase of inventory stock, the provisions in the bill: (1) require the flue-cured association to offer to sell its stocks from the 1976 through 1984 crops at the base prices in effect on the date of the offer, reduced by 90 percent for tobacco from the 1976 through 1981 crops and 10 percent for tobacco from the 1982 through 1984 crops; (2) require the burley associations to offer to sell their stocks from the 1982 and 1984 crops at the base price in effect on July 1, 1985, for the 1982 crop and at the associations' costs on the date of enactment of the bill for the 1984 crop; (3) require the Commodity Credit Corporation to take title to the 1983 crop burley tobacco held by the associations by calling the loans on such tobacco. Such tobacco would then be offered for sale on such terms and conditions as the Corporation deems appropriate. Any stocks not sold within two years after the loans are called may be offered for sale at the associations' costs on the date the loans are called, reduced by 90 percent; (4) authorize cigarette manufacturers to purchase the inventories as specified above over an eight-year period in the case of flue-cured tobacco and a five-year period in the case of burley tobacco. Each manufacturer would purchase a percentage of the stocks at least equal to the respective manufacturer's percentage of the total net cigarettes manufactured for use during a previous 12-month period as determined by the Secretary of Agriculture based on monthly reports submitted by manufacturers to the Department of the Treasury; and (5) require approval of each purchase agreement by the Secretary of Agriculture.

In addition, the provisions in the bill require the Secretary of Agriculture to conduct a study of the tobacco grading system and of the feasibility of establishing grades that would designate disaster crops, with authority for the Secretary to adjust the price support level for such grades. Further, they require a report to the House and Senate agriculture committees on the study within 120 days after enactment of the bill and administrative action to implement, before the opening of the 1986 flue-cured marketing season, the study recommendations that can be implemented by the Secretary.

Lastly, this bill authorizes the investment of fees and charges collected under the Tobacco Inspection Act. Any income realized from such investment would be used to pay the expenses of the Secretary of Agriculture in providing services under that Act.

Effective date.—The provisions would be effective upon enactment.

12. Medicare Coverage of State and Local Governmental Employment

Present law.—Under the Old Age, Survivors, and Disability Insurance program (commonly referred to as social security) and the Hospital Insurance program (commonly referred to as Medicare), coverage for State and local government employees is optional. An election for coverage under the Social Security Act includes both programs. A State controls the option for itself and its subdivisions; however, most often State governments allow their political subdivisions to make their own choices.

When elected, coverage is provided on a group basis through agreements between the State and the Secretary of Health and Human Services. Coverage can be provided even when the State or local government already has a retirement system in place. When there is no retirement system in place, the State or local government entity, not the employees, has the option to choose social security. However, if there is a system already in place, then the Governor or a designee must conduct a referendum of the employees involved.

Until April 1983, the law permitted the termination of coverage for employees covered under an agreement, if the State or local entity (through the State) had given two-years' advance notice. This provision, however, was repealed in the Social Security Amendments of 1983.

Reasons for change.—Individuals who have worked in State and local government employment that is excluded from social security coverage often acquire insured status and thus still may qualify for social security and Medicare benefits. They qualify as a result of work performed in other employment covered under the program or through the entitlement of a spouse. By and large, individuals who qualify after having worked in excluded State and local government employment have contributed significantly less in social security FICA taxes than others and who become entitled to benefits who have had comparable lifetime earnings. They therefore represent a financial drain on the system, and especially on the Medicare hospital insurance program.

Unlike monthly social security benefits, where minimal covered earnings and tax contributions result in minimal benefit amounts, entitlement to Medicare is entitlement for the full range of benefits. The benefits are the same regardless of whether the insured worker has made significant tax contributions over his or her working lifetime or whether the individual has qualified with the minimum number of quarters of coverage. The committee believes that this anomaly should be corrected.

Explanation of provision.—The provision extends Hospital Insurance (Medicare) coverage to current and new employees of State and local governments. The employers and their employees will become liable for the hospital insurance portion of the FICA tax, which is to be collected as in the case of a private employer, and the employees will earn credit toward Medicare eligibility based on their covered earnings. Mandatory coverage is extended only for Medicare and only for employment not otherwise covered under voluntary State coverage agreements.

Under the provision, State and local government employees who perform service during and before October 1986, would be given credit toward Medicare eligibility for past State and local government employment.

The provision also permits individuals who have worked for State and local governments to obtain Medicare benefits if they file and meet the insured status and other disability eligibility requirements of the social security disability cash benefits program, even though no such cash benefits would otherwise be payable. The Medicare application would be treated as an application for disability benefits (for purposes of determining eligibility to Medicare).

Effective date.—The provision is effective with respect to service performed after September 30, 1986, by employees of a State or local government who would not otherwise be covered under social security and Medicare on the basis of voluntary agreements.

13. Railroad Unemployment Repayment Tax

Present law.—Present law provides a railroad unemployment compensation program that is separate from and different than the regular Federal-State unemployment compensation system. Most workers in other industries are covered under the Federal-State unemployment compensation system.

The Railroad Unemployment Insurance (RRUI) program is administered by the Railroad Retirement Board (RRB), which collects the unemployment taxes directly from rail employers. Legislation enacted in 1959 provided the Railroad Unemployment Insurance Account with the authority to borrow from the Railroad Retirement Account when funds in the RRUI Account are not sufficient to meet benefit payments. This borrowing authority expires September 30, 1985. On that date, the outstanding debt to the retirement account is estimated to be $783 million, of which $526 million is principal and $257 million is accumulated interest.

There is no automatic mechanism in the law to repay loans from the retirement account as they occur. Loans are repaid out of basic contributions to the unemployment account when the Railroad Retirement Board determines that there are sufficient funds in the unemployment account to make a repayment.

The Railroad Retirement Solvency Act of 1983 established a repayment tax scheduled to begin on July 1, 1986 and to expire on September 30, 1990. The tax rate will begin at 2.0 percent and increase by 0.3 percentage points a year up to a maximum of 3.2 percent in 1990. The tax is scheduled to expire on September 30, 1990. The tax is paid on the first $7,000 in wages paid annually to a rail employee.

Reasons for change.—The loan repayment tax contained in the 1983 Railroad Retirement Solvency Act is not sufficient to repay the loans made to the Railroad Unemployment Insurance Account and to meet current and projected unemployment insurance benefit payments. The committee believes that an increase in the repayment tax, combined with a surcharge on new borrowing and a temporary one percent diversion of railroad retirement taxes to the Railroad Unemployment Account, will help avert an impending cash-flow crisis and strengthen the system's financial condition in the long run.

Explanation of provision.—The loan repayment tax, scheduled to begin on July 1, 1986 at a 2 percent rate with increases of 0.3% a year, is increased under the bill as follows:

[Tax rate (%)]

	Calendar year				
	1986	1987	1988	1989	1990
Current law	2.0	2.3	2.6	2.9	3.2
Proposed rate	4.3	4.7	6.0	2.9	3.2

The bill also extends the RRUI Account's authority to borrow from the Railroad Retirement Account, effective October 1, 1985. Under the bill, an automatic surcharge of 3.5 percent on an annual wage base of $7,000 will be levied if the RRUI Account has to borrow from the retirement account. The surcharge will be used to repay such loans.

Also, effective January 1, 1986, a portion of the tier 2 railroad retirement tax on employees equal to one percent of the payroll subject to that tax is directed under the bill from the railroad retirement account to the railroad unemployment insurance account. These revenues would then be returned to the railroad retirement account to help repay the loans (plus accumulated interest) which the railroad retirement account made to the unemployment account in the past. The diversion will end on April 1, 1990.

Effective date.—These provisions are effective October 1, 1985, except as otherwise noted above.

14. Termination of Repayable Advances to Black Lung Disability Trust Fund

Present law.—A manufacturers excise tax is imposed on domestically mined coal (other than lignite) that is sold or used by the producer of the coal. The rate of tax is $1 per ton for coal from underground mines and 50 cents per ton for coal from surface mines, but the tax cannot exceed four percent of the price for which the coal is sold.[7]

Status of Black Lung Disability Trust Fund.—The following table shows the receipts and expenses (in millions of dollars) of the Black Lung Disability Trust Fund for fiscal years 1978–1984.

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[7] On the earlier of January 1, 1996, or any January 1 after 1981 on which there is no balance of repayable advances to the Trust Fund and no unpaid interest on such advances, the tax rates are scheduled to return to the pre-1982 rates, which were one-half the current rates (i.e., 50 cents/ton for underground mines and 25 cents/ton for surface mines, limited to two percent of the price for which the coal was sold).

Fiscal year	Receipts: Coal excise tax	Receipts: Interest	Receipts: Advances from general fund (deficit)	Expenses: Benefit payments	Expenses: Administrative expenses	Expenses: Interest on advances
1978	92.1	1.2	18.9	76.8	35.3	....
1979	221.6	.1	400.8	582.0	32.1	7.7
1980	272.3	....	535.8	721.7	34.2	52.5
1981	236.6	....	554.8	644.3	35.6	109.5
1982	490.7	.3	283.0	578.2	35.8	160.6
1983	493.7	.3	357.8	623.1	34.8	193.3
1984	518.5	.4	346.1	594.2	36.6	234.5
Total	2,325.5	2.3	2,497.2	3,820.5	244.6	748.1

Source: Fourth Annual Report on the Financial Condition and Results of Operations of the Black Lung Disability Trust Fund (Department of Treasury, Sept. 30, 1981) and Budget of the U.S. Government Appendixes for fiscal years 1984, 1985, and 1986.

At the end of the fiscal year 1984, the Trust Fund had a cumulative deficit of approximately $2.5 billion; this amount represents advances from the general revenues which are repayable with interest. The Department of Labor estimates that, under present law, this deficit could reach $30 billion by 2010.[8]

Reasons for change.—The committee is concerned with the growing total of general revenue advances to the Black Lung Disability Trust Fund, which aggregated $2.5 billion at the end of fiscal 1984.

The committee, in its version of the Black Lung Benefits Revenue Act of 1981 (S. 1957, 97th Cong.), had included a provision to terminate the borrowing authority of the Trust Fund after fiscal year 1985, in light of the doubling of the coal excise tax which the committee had approved as part of that bill. The Department of Labor had projected that the "temporary" doubling of the excise tax in 1981, together with changes recommended by DOL in the program's eligibility standards, would eliminate the need for advances from the Treasury after fiscal 1985. Instead, the current deficit is estimated by the Department of Labor to reach $30 billion by 2010.

The committee concluded that the Trust Fund is operating in a manner not anticipated or intended by the Congress, in that the level of expenditures continues to necessitate advances from general revenues with no reasonable prospect (according to DOL projections) of repaying principal and interest. Accordingly, the committee agreed to terminate the borrowing authority of the Trust Fund as of September 30, 1986. This delayed effective date will enable the Congress to examine the black lung benefit program and its financing.

[8] Testimony of Susan Meisinger, Deputy Undersecretary for Employment Standards, Department of Labor, before the House Committee on Ways and Means, June 19, 1985.

Explanation of provision.—The bill terminates, as of September 30, 1986, the authorization under Code section 9501(c) of appropriations to the Black Lung Disability Trust Fund, as repayable advances, of such sums as from time to time are necessary to make the expenditures described in section 9501(d). Thus, no advance out of general revenues is to be made to the Trust Fund after September 30, 1986. Under the provision, the Trust Fund may not borrow prior to October 1, 1986 amounts to be used to make expenditures after September 30, 1986 or during post-1986 years.

The provision does not affect the automatic appropriation to the Trust Fund of amounts equal to the revenues collected from the coal excise tax and from certain excise taxes applicable with respect to black lung benefit trusts, either before or after October 1, 1986.

Effective date.—The provision is effective on the date of enactment. The section 9501(c) authorization would terminate as of September 30, 1986.

15. Certain Permanent Exemptions From the Federal Unemployment Tax Act

a. *Remuneration paid to certain fishing boat crew members*

Present law.—For purposes of social security taxes and income tax withholding, members of the crew on a boat in a fishing operation engaged in catching fish or other forms of aquatic animal life are considered to be self-employed if (1) their remuneration is a share of the boat's catch (or cash proceeds from the sale of a share of the catch and no other cash remuneration is provided), (2) their share depends on the amount of the boat's catch, and (3) the crew of the boat normally is made up of fewer than ten individuals. If these requirements are met, remuneration paid to these crew members is exempt from the Federal Insurance Contributions Act (FICA) tax and income tax withholding, and is subject to the Self-Employment Contributions Act (SECA) tax (Code secs. 3121(b)(20), 3401(a)(17), and 1402(c)(2)(F)).

Prior to the Economic Recovery Tax Act of 1981 (ERTA), remuneration paid to fishing boat crew members generally was exempt from tax under the Federal Unemployment Tax Act (FUTA), except that the exemption did not apply with respect to the services performed in connection with catching halibut or salmon for commercial purposes or services performed on a vessel of more than ten net tons (sec. 3306(c)(17)).

Section 822 of ERTA amended the definition of employment for purposes of FUTA taxes to exempt from FUTA taxes remuneration paid during 1981 to fishing boat crew members who were treated as self-employed for social security tax purposes and thus exempt from FICA (sec. 3306(c)(18)). Section 203 of the Miscellaneous Revenue Act of 1982 (P.L. 97-362) amended ERTA to provide that the exemption from FUTA taxes also was effective for remuneration paid in 1982.

Section 1074 of the Deficit Reduction Act of 1984 (P.L. 98-369) extended the exemption from FUTA for remuneration paid to fishing boat crew members who are exempt from FICA to remuneration paid in 1983 and 1984.

Reasons for change.—For reasons of simplicity and administrative convenience, the committee believes that fishing boat crew members who are treated as self-employed for purposes of the social security and income tax withholding should also be treated as self-employed for purposes of the unemployment tax. The committee believes that experience with this FUTA exemption since 1981 supports making the exemption permanent.

Explanation of provision.—The FUTA exemption relating to remuneration paid to certain fishing boat crew members, first enacted in section 822(b) of ERTA, is made permanent. Therefore, fishing boat crew members who are treated as self-employed for social security tax and income tax purposes are also to be treated as self-employed for purposes of the Federal Unemployment Tax Act. The bill also provides that spouses or children employed by such a fishing boat crew member (who is their spouse or parent) are not subject to the SECA tax.

Effective date.—The amendments made by the provision apply to remuneration paid after December 31, 1980.

b. *Remuneration paid to certain camp counselors*

Prior law.—In section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248), the Congress enacted a one-year FUTA exemption for remuneration paid to full-time students for employment by certain summer camps.

Reasons for change.—The committee believes that work performed by a full-time student in a summer camp does not involve the kind of employment relationship that should be covered by the unemployment insurance system. Therefore, the committee believes that wages paid for such employment should not be taxable under the Federal unemployment compensation law.

Explanation of provision.—The exemption from FUTA set forth in section 276(b) of P.L. 97-248 is reinstated on a permanent basis.

Effective date.—The provision applies to remuneration paid after September 19, 1985.

c. *Remuneration for services of certain nonresident farmworkers*

Present law.—FUTA generally applies to remuneration paid by farm operators who employ 10 or more agricultural workers in 20 weeks, or have a quarterly payroll for agricultural services of at least $20,000. However, an exemption applies for wages paid for agricultural labor performed by aliens admitted to the United States pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act (Code sec. 3306(c)(1)(B)). This exemption from FUTA is scheduled to expire on December 31, 1985.

Reasons for change.—Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act pertain to residents of foreign countries who do not intend to abandon such residency and who are admitted to the United States to work for a temporary period of time during peak agricultural crop seasons. They are admitted only after the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that there are not sufficient workers in the United States who are available to do the specific work the nonresident workers are admitted to perform. These farmworkers return to their countries and, therefore, are not able to collect unemployment compensation to which they might be entitled as a result of their employment in the United States. Accordingly, the committee believes that remuneration paid to such workers should not be subject to unemployment taxes.

Explanation of provision.—The bill makes permanent the FUTA exemption in Code section 3306(c)(1)(B) for remuneration paid to certain alien farm workers.

Effective date.—The provision is effective on enactment.

16. Internal Revenue Service Budget

Present law.—The Internal Revenue Service (IRS) is responsible for administering and enforcing the Federal tax laws. More than 95 percent of total Federal budget receipts are derived from the tax laws as administered by the IRS.

For fiscal year 1986, the Administration proposed 86,489 staff positions for the IRS and a total budget of $3.5 billion. This was a decrease of 1,254 staff positions and $30.4 million from the fiscal year 1985 appropriation (including requested amounts).

Reasons for change.—The committee is concerned that the Administration's budget proposal would not provide sufficient resources for the IRS to accomplish this vital role in raising Federal revenues. The committee believes that it is appropriate to increase budget receipts by collecting taxes that are properly due under present law, rather than raising taxes.

Explanation of provision.—The bill authorizes appropriations of $46.5 million for the IRS for fiscal years 1986, 1987 and 1988, in addition to any other amounts authorized to be appropriated to the IRS for those fiscal years. This would permit the IRS to hire an additional 1,550 agents and examination employees, so as to provide sufficient improved enforcement to increase revenues by $2 billion over fiscal years 1986–1988.

17. Limitation on Issuance of U.S. Bonds

Present law.—Obligations of the United States are defined as bonds if they have a maturity when issued that is longer than 10 years. The rate of interest that may be paid on a bond may not exceed 4-1/4 percent, except that up to $200 billion in outstanding bonds with rates of interest above 4-1/4 percent may be issued to the public. The $200 billion ceiling was enacted on May 25, 1984. The exception for a specified amount of bonds—initially $10 billion—was enacted in 1971, and it applied to all bonds with rates above the ceiling. An amendment in 1973 applied the limitation only to bonds held by the public, i.e., holdings of Federal agencies and the Federal Reserve Banks were not included.

Reasons for change.—The Treasury Department has used almost all its current authority to issue $200 billion in bonds with interest rates above 4¼ percent. The remaining authority is expected to be exhausted with bonds issued during the first quarter of 1986.

The Treasury Department has requested an additional $50 billion in authority at this time so that it may plan the amount and timing of bond issues for the next several quarters. In addition, participants in the bond market also would be able to do longer-run planning. The ability to plan sales and purchases of the bonds reasonably far into the future is believed to contribute to a more stable bond market and lower borrowing costs.

The Treasury Department also believes that it must continue to issue bonds to continue a presence in all maturity sectors of the bond market and to resist shortening the average maturity of the public debt. About 40 percent of the privately held marketable debt matures in one year, and the average maturity was 4 years and 10 months at the end of July 1985. Nevertheless, more than half of the outstanding marketable debt matures within two years.

In light of these considerations, the committee believes that it is appropriate to raise the interest-rate exception level to $250 billion.

Explanation of provision.—The bill increases the exception from the interest rate ceiling by $50 billion, thus raising the level of the exception to $250 billion. The Treasury Department is expected to be able to continue to operate in the long-term bond market through 1986 with its current scheduling for long-term bonds.

Effective date.—The provision is effective on enactment.

18. Limitations on Awarding of Court Costs and Certain Fees Modified

Present law.—Under present law, a taxpayer who prevails over the Federal Government in a civil tax action in the U.S. Tax Court, the U.S. Claims Court, or any other Federal court may be awarded reasonable litigation costs, including attorneys' fees, at the discretion of the court (Code sec. 7430). An award is available only if the taxpayer shows that the position of the Government in the case was unreasonable. The amount of the award may not exceed $25,000.

Section 7430 was enacted in the Tax Equity and Fiscal Responsibility Act of 1982, effective for proceedings commenced after February 28, 1983. Under present law, the provision will not apply to tax proceedings commenced after December 31, 1985.

Reasons for change.—The committee believes that the Code provision allowing awards of court costs and fees in certain circumstances should be continued, with modifications intended to carry out more effectively the objectives of the provision and to achieve greater conformity with statutory provisions governing awards of court costs and fees in Federal nontax cases.

Explanation of provision.—The bill makes permanent the authorization of court costs and fees under Code section 7430, and makes the following modifications to that provision:

(1) Where it is determined that the taxpayer prevailed in litigation, the burden of proof in an awards request rests on the Federal Government to show that its position was substantially justified or that special circumstances exist which make an award of litigation costs unjust;

(2) The "substantially justified" standard is applicable to the administrative action or inaction by the Federal Government upon which such proceeding is based;

(3) No award is allowed to a prevailing party who unreasonably protracted the proceedings; and

(4) The $25,000 cap is eliminated.

Also, the bill limits the amount recoverable as attorneys' fees to $75 per hour unless the court determines that a higher rate is justified on the basis of an increase in the cost of living, or special factors such as the limited availability of qualified attorneys for the particular proceeding.

As under present law, only reasonable litigation costs are recoverable by the taxpayer. The bill specifies that prevailing market rates are to be applied to determine reasonable attorneys' fees, reasonable expenses of expert witnesses, and reasonable costs of any study, analysis, or other project necessary for the preparation of the taxpayer's case. The bill also provides that amounts awarded for expert witness fees cannot exceed the highest rate of compensation for expert witnesses paid by the Federal Government.

Effective date.—The modifications to section 7430 apply to actions commencing after December 31, 1985.

19. Customs Service Compliance Measure

Current law.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires annual enactment of an authorization of appropriations to the U.S. Customs Service. The Customs Service's appropriation for fiscal year 1985 is $701,155,000.

Reasons for change.—The committee voted to add 800 new front-line Customs officers. The committee believes that this increase is necessary for Customs to cope with the ever-increasing workload of passengers and cargo and to enhance Customs' narcotics enforcement capabilities.

Explanation of provision.—The provision authorizes appropriations of $27.9 million for the Customs Service for fiscal years 1986, 1987 and 1988, in addition to any other amounts authorized to be appropriated to the Customs Service for that fiscal year. This will permit the addition of 800 new front-line Customs officers, with the new personnel to be allocated to those port facilities having the greatest import volume and complexities.

The committee supports the Customs management improvement through the consolidation of administrative functions. However, the committee believes that greater emphasis must be placed on improving Customs' commercial operations in each region and district. For example, there is a pressing need to standardize regulations imposed at various district offices, to ensure more consistent application of Customs' regulation and provide the maritime/trade community with better links to the Customs Service. Even as the Customs Service consolidates administrative functions, streamlined regional offices must provide coordination and standardization of enforcement policy among the districts.

The committee notes the urgent need for more inspectors and import specialists at West Coast ports. The rapid increase of imports and exports from these ports have not been matched by a concommitant increase in Customs' support. The committee expects the Commissioner to give priority attention to the critical shortage of line personnel at these facilities. Further, the committee is concerned at the apparent lack of enforcement resources being devoted to the inspection of cargo.

Effective date.—The provision is effective on enactment.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 30, 1985

Honorable Bob Packwood
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimates of the provisions in the Senate Committee on Finance's reconciliation package. These are shown in two separate attachments--one showing estimated outlay effects and one showing estimated revenue effects.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Russell B. Long
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

United States Senate--Committee on Finance
Reconciliation Proposal--Provisions Affecting Outlays

September 30, 1985

1. BILL NUMBER: None.

2. BILL TITLE: None.

3. BILL STATUS:

   As approved by the Senate Finance Committee on September 20, 1985.

4. BILL PURPOSE:

   To make changes in spending and revenue provisions for purposes of deficit reduction and program improvement consistent with the budget process.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   This estimate deals with the effects on outlays from the Senate bill. Effects on revenues are shown in a separate estimate.

   Two federal cost tables are displayed below. The first displays estimates relative to the Senate Budget Committee baseline because this bill is intended as a reconciliation act. The second table shows the costs or savings estimated relative to current law. The current law estimate is consistent with the standard cost estimate format used by the Congressional Budget Office. Current law differs from the baseline primarily in that it does not assume the reauthorization of certain expiring programs.

FEDERAL COSTS RELATIVE TO BASELINE

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Total Budget Authority/ Authorization Level	-532	-5,385	-5,594	-5,666	-5,426
Outlays	-3,017	-8,042	-11,348	-12,481	-13,561

FEDERAL COSTS RELATIVE TO CURRENT LAW

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Total Budget Authority/ Authorization Level	-383	-5,236	-5,206	-5,372	-5,124
Outlays	-2,874	-7,895	-11,227	-12,192	-13,266

Basis of Estimate:

The section-by-section cost analysis deals with only those sections of the bill that are anticipated to have a budget impact. The first table provides a section-by-section analysis of the estimated outlay changes relative to the baseline from the enactment of this legislation. The second table displays estimated changes that would result from current law where current law differs from baseline.

SENATE COMMITTEE ON FINANCE

CBO September 30, 1985

CHANGES FROM BASELINE:

(outlays, in millions of dollars, by fiscal year)

SECTION		1986	1987	1988	1989	1990	1986-88
	Subtitle A--Medicare						
701	Limit Hospital Increase	-1515	-2210	-2735	-3050	-3390	-6460
703	Indirect GME/ Disproportionate Share	-505	-870	-1300	-1670	-1880	-2675
705	Create Disproportionate Share Adjustment	150	250	----	----	----	400
706	GME Direct						
	Medicare benefits	-85	-158	-214	-260	-290	-457
	Medicaid	0	1	1	1	1	2
	Premiums	-2	-4	-5	-5	-6	-11
	Total	-87	-161	-218	-264	-295	-466
710	Indirect Clinic	1	1	1	1	1	3
712	Hospice Ext., Pay Incr.	*	*	*	*	*	*
717	Working Aged						
	Medicare benefits	-230	-360	-400	-460	-520	-990
	Medicaid	-1	-2	-3	-3	-4	-6
	Premiums	6	18	20	22	24	44
	Total	-225	-344	-383	-441	-500	-952
720	Ventilator Amendment						
	Medicare benefits	----	----	----	12	17	----
	Medicaid	----	----	----	-2	*	----
	Total	0	0	0	10	17	0
721	Audit and Medical Claims Review						
	Medicare benefits	-150	-150	-150	0	0	-450
	Medicaid	-1	-1	-1	0	0	-3
	Premiums	4	6	6	0	0	16
	Total	-147	-145	-145	0	0	-437
722	Access to SNF's	30	30	35	35	40	95
725	Physician Fee Freeze						
	Medicare benefits	-230	-265	-330	-340	-360	-825
	Medicaid	-6	-7	-9	-9	-10	-22
	Premiums	33	52	56	60	64	141
	Total	-203	-220	-283	-289	-306	-706

CBO September 30, 1985

(outlays, in millions of dollars, by fiscal year)

SECTION		1986	1987	1988	1989	1990	1986-88
726	Premiums 25% Program 1988						
	Medicare benefits	0	0	-395	-547	-582	-395
	Medicaid	0	0	18	25	28	18
	Total	0	0	-377	-522	-554	-377
728	DME, Increase at 1%						
	Medicare benefits	-35	-75	-120	-165	-220	-230
	Medicaid	-1	-2	-3	-4	-5	-6
	Premiums	7	16	18	20	21	41
	Total	-29	-61	-105	-149	-204	-195
729	Payments for Assistants at Surgery						
	Medicare benefits	-25	-30	-30	-35	-35	-85
	Medicaid	-1	-1	-1	-1	-1	-3
	Premiums	4	5	5	5	5	14
	Total	-22	-26	-26	-31	-31	-74
730	Prosthetic Lens for Cataract						
	Medicare benefits	-35	-40	-45	-50	-60	-120
	Medicaid	-1	-1	-1	-1	-2	-3
	Premiums	6	8	8	9	10	22
	Total	-30	-33	-38	-42	-52	-101
731	Preventative Care Demos	1	1	1	0	0	3
732	Prospective Payment for Ambulatory Sugery						
	Medicare benefits	-85	-155	-195	-240	-290	-435
	Medicaid	5	8	10	12	14	23
	Premiums	16	29	34	36	38	79
	Total	-64	-118	-151	-192	-238	-333
	Subtitle A-Subtotal	-2645	-3906	-5724	-6604	-7392	-12275

CBO September 30, 1985

SECTION		(outlays, in millions of dollars, by fiscal year) 1986	1987	1988	1989	1990	1986-88
	Subtitle B--Medicaid and Maternal and Child Health						
744	Optional Hospice Care	*	*	*	*	*	*
745	Extend Texas Long-Term Care Waiver	*	*	*	*	*	*
746	Third Party Liability	-80	-180	-190	-200	-220	-450
747	Case Management	*	*	*	*	*	*
748	Revaluation of Assets	15	25	30	35	40	70
749	Modify Coverage Beginning	5	5	5	5	5	15
750	Optional Coverage of Children	5	5	5	0	0	15
751	Overpayment Recovery Rule	12	5	5	5	5	22
752	Home and Community Based Care Demonstrations	1	0	0	0	0	1
759F	Renew NJ HHA Demos	2	0	0	0	0	2
	Subtitle B-Subtotal	-40	-140	-145	-155	-170	-325
	Subtitle C--Social Security						
760	Demonstration Projects	3	5	5	5	5	13
768	Disability Offset	*	-1	-1	-2	-2	-2
769B	Medicaid for Certain Widows and Widowers Medicaid	1	1	1	1	1	3
	Subtitle C-Subtotal	4	5	5	4	4	14

CBO September 30, 1985

SECTION	(outlays, in millions of dollars, by fiscal year) 1986	1987	1988	1989	1990	1986-88
Subtitle D--AFDC,SSI,Adoption Assistance,Foster Care and Unemployment Compensation						
Aid to Families with Dependent Children:						
770 Two Year Moratorium on Fiscal Sanctions						
AFDC	2	1	----	----	----	3
Medicaid	1	0	----	----	----	1
Total	3	1	0	0	0	4
772 Count Per Capita Payments to Indians as Income						
AFDC	-1	-1	-1	-1	-1	-3
Medicaid	-1	-1	-1	-1	-1	-3
Food Stamps	-2	-2	-2	-2	-2	-6
Total	-4	-4	-4	-4	-4	-12
Foster Care/ Adoption Assistance:						
774 Extend Medicaid Coverage						
Medicaid	2	2	3	3	3	7
775 Extend Voluntary Placement	0	0	----	----	----	0
775 Extend Ceiling on Foster Care Expenditures	0	0	----	----	----	0
776 Indep. Living Initiatives	1	----	----	----	----	1
Unemployment Compensation:						
776A Recovery of Overpayments	-1	-1	-1	-2	-2	-3
Subtitle D-Subtotal	1	-2	-2	-3	-3	-3
Subtitle E--Customs Fees						
777 Customs Processing Fees	-170	-245	-255	-265	-275	-670
Subtitle E-Subtotal	-170	-245	-255	-265	-275	-670

CBO September 30, 1985

SECTION		1986	1987	1988	1989	1990	1986-88
	(outlays, in millions of dollars, by fiscal year)						
	Subtitle F--Trade Adjustment Assistance						
778	Assistance	-5	-6	-7	158	162	-18
	Subtitle F-Subtotal	-5	-6	-7	158	162	-18
	Subtitle G--General Revenue Sharing						
779	Eliminate Program,10/1/86	0	-3526	-4956	-5200	-5459	-8482
	Subtitle G-Subtotal	0	-3526	-4956	-5200	-5459	-8482
	Subtitle H--Pension Benefit Guaranty Corporation						
779A	Increase Premium to $8.10	-163	-216	-243	-274	-309	-622
	Subtitle H-Subtotal	-163	-216	-243	-274	-309	-622
	Subtitle I--Revenue Provisions						
792	Tobacco Program Improvements	-68	-75	-92	-157	-131	-235
793	Medicare for S&L Employee	0	*	2	5	10	2
797	Add'l IRS Personnel	43	43	43	5	0	129
799	Modify Reimbursement for Attorney's Fees	1	1	1	2	2	3
799A	Add'l Customs Personnel	25	25	25	3	0	75
	Subtitle I-Subtotal	1	-6	-21	-142	-119	-26
	TOTAL--All Subtitles	-3017	-8042	-11348	-12481	-13561	-22407

* less that $500,000.

The following table shows changes from current law, where current law is not equal to baseline.

CBO September 30, 1985

SEC.	(outlays, in millions of dollars, by fiscal year)	1986	1987	1988	1989	1990	1986-88
	Foster Care/ Adoption Assistance:						
775	Extend Voluntary Placement	5	5	----	----	----	10
775	Extend Ceiling on Foster Care Expenditures	28	26	----	----	----	54
	Subtitle F--Trade Adjustment Assistance						
778	Assistance	110	116	121	289	295	347
	Total	143	147	121	289	295	411

Subtitle A--Medicare

Section 701. Rate of Increase in Payments for Inpatient Hospital Services. The increase in the DRG rates for PPS hospitals on October 1, 1985 is fixed at 0.5 percent. The increases on October 1, 1986 and October 1, 1987 are limited to the HCFA market basket. Although the Administration has issued regulations to freeze DRG rates during fiscal year 1986, the baseline assumes a 5.6 percent increase. We estimate this bill would cost an additional $165 million in fiscal year 1986 when compared with the proposed regulations.

Section 703. Payments to Hospitals for Indirect Costs of Medical Education. The method of payment to hospitals for the indirect costs of teaching programs is reduced under this section. The indirect teaching adjustment is reduced to 7.7 percent beginning October 1, 1985. After October 1, 1987, the adjustment would be 8.7 percent. Finally, residents excluded from the direct medical education payments would also be excluded from the intern and resident to bed ratio (IRR) used in the calculation of the indirect medical education adjustment.

Section 705. Payments for Hospitals Which Have a Disproportionate Share of Low-Income Patients. A total of $760 million would go to hospitals serving a disproportionate share of low-income elderly patients during 1986 and 1987. Of this cost, only $400 million is reflected in the total for Section 705. The remaining $360 million is attributed to a reduction in the indirect teaching adjustment from 8.7 percent to 7.7 percent during 1986 and 1987.

Section 706. Payments to Hospitals for Direct Costs of Medical Education. Under this proposal, Medicare's direct medical education payments would be frozen for one year and the direct costs associated with certain residents would be disallowed. The savings expected from this section were reduced by $56 million during 1986-88 to reflect Medicare Part B billings needed to replace patient care activities for 25 percent of subspeciality fellows. Other nonreimbursable residents are assumed to remain in their residency programs, and hence there would be no increase in Medicare Part B billings. This estimate also assumes that 25 percent of the residents who graduated from non-approved schools would fall under the provision for the slower payment denial transition. Finally, the estimate assumes that exempt geriatric fellowships would increase by 100 each year starting in fiscal year 1987.

Section 710. Indirect Teaching Adjustment Related to Independent Clinic Activities. This section clarifies the method for calculating indirect teaching adjustments for Mayo Clinic affiliated hospitals. As a result payments to those hospitals are increased by $3 million during 1986 through 1988.

Section 717. Extension of Working Aged Provisions. Under current law, workers aged 65-69 years must be offered the same health coverage as younger employees. Similarly, employee spouses aged 65-69, must be offered the same coverage as other spouses. For these workers and spouses, Medicare becomes a secondary payer, reimbursing only to the extent that Medicare is more generous than private insurance. Under current law, workers and spouses 70 and older have Medicare as their primary payer with employers providing secondary coverage through a "medigap" policy. Section 717 extends the working aged provisions of the Social Security Act to workers 70 years or older and their spouses. Three types of individuals are included in this provision: workers 70 or older, spouses over 65 of workers 70 or older, and spouses over 70 of workers under 65. By making Medicare a secondary payer for these workers and spouses, Medicare outlays would be reduced by an estimated $990 million during the period 1986 to 1988. The CBO estimate is based on an analysis of elderly workers from the Current Population Survey.

Section 720. Coverage of Respiratory Care Services for Ventilator-Dependent Individuals. The provision would become effective October 1, 1988. We anticipate small Medicaid savings and significant Medicare costs.

Section 721. Audit and Medical Claims Review. This section transfers $105 million from the HI and SMI trust funds for payments to Medicare carriers and intermediaries to be used for the purpose of carrying out provider cost audits and review of medical necessity.

Legislation was originally considered and authorized under TEFRA, in which $45 million mandatory audit and medical review monies was appropriated for fiscal years 1983, 1984, and 1985. The administration's fiscal year 1986 budget request for medical review and audit is $181.8 million, which reflects the appropriation from the authorizing committee of $45 million. Since the CBO baseline holds auditing/ medical review activities at current law, no savings would be reflected from an extension of the appropriation.

Designating an additional $60 million a year for audit/medical review activities would produce net savings of $150 million in each fiscal year 1986, 1987, and 1988 based on a savings ratio of 5 to 1 for the addition of the first increment of $30 million and a savings ratio of 2 to 1 for the second increment of $30 million.

Section 722. Access to Skilled Nursing Facilities. This section provides that skilled nursing facilities (SNFs) with less than 1,500 Medicare days of care have the option of receiving a flat rate equal to 105 percent of the regional SNF mean per diem cost. The CBO estimate is based on simulations by the Urban Institute using 1980 nursing home data. The estimate assumes the increases in Medicare bed days in low volume SNFs are offset by decreases in bed days at larger volume SNFs and by decreases in home health visits.

Section 725. Physician Fee Freeze. Under current law, the customary and prevailing charges for all physician services are frozen for a 15-month period which expires on October 1, 1985. During this period, nonparticipating physicians are prohibited from charging their Medicare beneficiaries more than they charged during a base period from April through June 1984.

This bill would extend the freeze for an additional 12-month period, expiring on October 1, 1986, for nonparticipating physicians only. The current prohibition on increases in actual charges of nonparticipating physicians would also be extended for 12 months, beginning October 1, 1985. On October 1, 1986, any physician who signs a participation agreement effective for the year beginning October 1, 1986 would receive an increase in Medicare payments. For physicians not signing a participation agreement, increases in the prevailing would be lagged one year behind those of participating physicians. Furthermore, physicians who were formally participating under DEFRA and who switch to nonparticipating beginning October 1, 1985, would receive an increase in customaries equal to the increase in customaries expected by all other participating physicians under DEFRA who remain participating under the new freeze.

The CBO assumes that with the additional 12-month freeze, 47 percent of the reasonable charges for physicians would be participating dollars. This represents a shift of approximately 22 percent of nonparticipating reasonable charges to participating, and a shift of approximately 9 percent of participating reasonable charges to nonparticipating, based on the assumption that the 15-month freeze resulted in 35 percent of the reasonable charges being participating, and 65 percent; nonparticipating.

While participating physicians would be receiving allowed charges equivalent to amounts that would have been received by 1987 in the absence of any freeze, nonparticipating physicians who refused to participate in 1986 would not catch up to prefreeze reimbursements until 1990.

The Secretary would also be required to transfer $15 million in Medicare Part B funds to the carriers for continued administration of the freeze and the participating physician program, and for the development of professional relations staffs dedicated exclusively to addressing the billing and other problems of participating physicians.

Section 726. Increasing Part B Premiums. Currently, premiums are set at 25 percent of SMI program costs for calendar years 1986 and 1987, and then based on COLA's for calendar years 1988, 1989, and 1990. Under this provision, premiums would be set at 25 percent of SMI program costs for calendar year 1988, increasing the estimated monthly premium amount from $19.40 to $20.80 for that year.

Section 728. Durable Medical Equipment (DME) Rental Freeze. A one percent cap would be placed on increases in the prevailing and customary charges for all rental durable medical equipment, prosthetic services, ambulance services, and all other nonphysician services currently paid on the basis of reasonable charges in fiscal year 1986. The prevailing charges for both rental and purchased DME, and all other medical supplies, would be increased thereafter to reflect changes in the Consumer Price Index.

Section 729. Assistants' Surgery Services for Routine Cataract Operations. This estimate was based on the Office of the Inspector General (OIG) Audit Report dated June 7, 1985. For the 29 states included in their review, there were about 576,000 cataract operations paid by Medicare for inpatient and outpatient operations during calendar year 1983, of which about 88,000 operations had additional payments for assistant surgeon charges at a cost of approximately $33 million.

Section 730. Prosthetic Lens for Cataracts. The CBO based its estimate on a General Accounting Office (GAO) study that gathered data from 7 carriers in 1982. The estimate has two components: the savings from a uniform screen limiting the number of replacement lenses that Medicare will pay for and the establishment of a reasonable charge allowance for prosthetic lenses and for the related professional service. The estimated savings are based on cost data contained in the GAO study. CBO has extrapolated the data from the seven carriers examined in the GAO study to a national estimate.

Section 731. Preventative Services Demonstrations. The demonstration program will fund no fewer than five demonstrations. Based on proposals submitted to DHHS, the five projects are expected to average $200,000 each for an annual total of $1,000,000.

Section 732. Prospective Payment for Ambulatory Surgery. Under current law, facility charges for services rendered in hospital outpatient departments are reimbursed by Medicare on a reasonable cost basis. Facility charges for services rendered in ambulatory surgicenters are reimbursed by a fee schedule. Under this provision, outpatient departments would be reimbursed under the same fee schedule as ambulatory surgicenters. However, hospital outpatient departments would receive additional payments to reflect capital costs and graduate medical education. In addition, this provision would broaden the coverage of facility fees to include all services, supplies, and prosthetics related to the surgery except for physician services. Finally, this bill would impose cost-sharing on beneficiaries for surgicenter facility fees and physician charges.

Subtitle B--Medicaid and Maternal and Child Health

Section 744. Optional Hospice Benefits. This section would permit states to cover hospice services under state Medicaid programs. Costs for this provision are estimated to be insignificant because much of the care would substitute for hospital or nursing home care with similar or higher costs.

Section 745. Extension of Waiver Project. This provision would extend for three years a Section 1115 waiver to the state of Texas. On January 1, 1986, when the current waiver ends, there will be an estimated 3,185 grandfathered ICF-II recipients and 2,150 home care recipients no longer covered under Medicaid. If the waiver were not extended, it is possible that many of those ICF-II recipients would receive more expensive ICF care resulting in higher federal expenditures. Some of the now relatively inexpensive home care recipients could also qualify for ICF care which would again lead to higher federal cost while those who did not qualify and would then no longer be receiving care would lead to federal savings. Due to the uncertainty surrounding the waiver recipients' eligibility for and access to ICF care in the absence of waiver renewal, it is difficult to estimate what costs would be for them. Based upon discussions with Texas officials, we understand that the extension of the waiver is unlikely to increase costs significantly.

Section 746. Third-Party Liability. State Medicaid programs would be required to increase collections from health benefit organizations which cover Medicaid recipients. In addition, this proposal would make Medicaid a payer of last resort to ERISA regulated plans. Currently, ERISA regulated plans can legally designate their plan as a secondary payer to Medicaid. The CBO estimate is based on data from the Current Population Survey and the National Medical Care Utilization and Expenditure Survey.

Section 747. Optional Targeted Case Management. States would be permitted to provide case management services to specific groups and/or specific areas without obtaining a home and community based services waiver. Based on data from states that offer case management under waivers, it is estimated that this proposal would result in savings of less than $500,000 each year.

Section 748. Revaluation of Assets. This section modifies the revaluation of assets provisions of the Deficit Reduction Act of 1984. Under those provisions Medicaid payments to nursing homes may not be increased to reflect higher capital costs that result when nursing homes are sold. This section allows revaluation after a sale, but limits the increase to 50 percent of the nursing home cost index (Dodge Construction Index) or 50 percent of the CPI, whichever is lower.

Section 749. Beginning Date of Optional Coverage for Individuals in Medical Institutions. This proposal would allow certain Medicaid eligibles to be covered from the start of their institutionalized stay should their length of stay be 30 or more days. This would apply to individuals who are in the medical institutions but who have too much income to qualify for cash assistance. Current law provides that this special income standard be applied beginning with the first full month of institutionalization such that full coverage can only be applied to those whose date of entry is the first of the month.

Section 750. Optional Coverage of Children. Under the Deficit Reduction Act of 1984, states are required to provide Medicaid coverage for certain poor children under five years of age. The law required that coverage be phased in over a five-year period starting with the youngest children. This section allows states to provide coverage immediately to all these children. The CBO estimate assumes that only two states would exercise this option.

Section 751. Overpayment Recovery Rules. This provision would allow states 60 days to recover overpayments from providers before refunding the federal share of the overpayment. In addition, states would no longer be liable for the federal share of overpayments which cannot be collected from bankrupt providers. Allowing states 60 days to pay would have a one-time cost of $7 million in 1986. Holding states harmless on the federal portion of overpayments to bankrupt providers is estimated to cost $5 million a year.

Section 752. Home and Community-Based Services Demonstrations. Three-year demonstrations would be developed in four states to determine whether state-operated home and community-based care services are cost effective.

Section 759F. New Jersey Demonstration Project Relating to Training of AFDC Recipients as Home Health Aides. This proposal would continue for one additional year the demonstration project conducted by New Jersey with 50 percent federal matching. Based on 1984 expenditures for the project, the federal match in 1986 is estimated to be $2 million.

Subtitle C--OASDI

Section 760. Demonstration Projects. This provision extends the deadlines for the reports that the Secretary of the Department of Health and Human Services (HHS) is required to submit to the Congress on the various experiments and demonstration projects authorized under the Social Security Disability Amendments of 1980. By specifying new reporting deadlines and by specifically extending waiver authority for the demonstrations, this section allows HHS to allocate funds to these projects over the next five fiscal years.

The costs of the demonstration projects are difficult to estimate as they would depend on the exact nature of the projects undertaken. The Social Security Administration (SSA) has indicated it anticipates the costs of the projects, when fully implemented, would total no more than $5 million in any given year. The costs would be lower in 1986 because it would take time to design the specific projects and to award any contracts for these projects.

Section 768. Disability Offset Provision. This section modifies the Disability Insurance (DI) benefit offset for workers' compensation benefits and for public disability payments based on employment not covered under Social Security. The section has an impact on benefit payments because of the change in the treatment of benefits from plans primarily directed toward federal workers. The existing language would be changed from "benefits ...based on service all or part of which" to "benefits ...based on service all or substantially all of which". This has the effect of including under the offset provision more disability benefit payments received by federal workers.

Based on information provided by the Office of the Actuary of the Social Security Administration, the estimated outlay savings resulting from this section are negligible in fiscal year 1986, and reach $2 million in 1989.

Section 769B. Deeming of Medicaid to Certain Disabled Widows and Widowers. Section 13 would deem Medicaid benefits to disabled widows and widowers who lost eligibility for SSI and Medicaid because of the 1983 increase in their Social Security benefits. Only such persons eligible for these benefits in December 1983 would be affected. The Social Security Administration estimates that up to 5,000 persons in 1983 were affected by the Social Security benefit change. Some would have died and others would already be receiving Medicaid under "medically needy" programs, leaving an estimated 3,000 persons who would now receive Medicaid. Because many would also receive Medicare, their average annual Medicaid costs are estimated to be only $400. The cost of this provision would be about $1 million annually for the 1986-1990 period.

Subtitle D—AFDC, SSI, Foster Care, Adoption Assistance, and Unemployment Compensation

Section 770. Moritorium on Fiscal Sanctions. In AFDC and in Medicaid, a two-year moratorium would be placed on the collection of any fiscal sanctions from states. Because the fiscal sanction process would not be otherwise affected, CBO shows no loss or delay of sanctions, which CBO estimates in its baseline would not be collected before 1988. The cost of $4 million in 1986 and 1987 would be for mandated studies.

Section 772. Payments to Indians. The treatment in means-tested programs of certain per capita payments to Indians would be altered. Currently, only single payments above $2,000 per person are counted as income. The bill would require counting payments above $2,000 per year per family. Little data exist on the extent and size of per capita payments, but based on conversations with analysts in the Bureau of Indian Affairs it appears that few Indians would be affected by this provision.

Sections 774-776. Foster Care and Adoption Assistance. The bill authorizes several expansions in Foster Care and Adoption Assistance. A new entitlement of $1 million in 1986 would authorize payments to states for programs which would provide services, training, and/or counseling to foster care children age 16 or over to prepare them for independent living. Also, Medicaid coverage would be extended marginally to beneficiaries of adoption assistance, primarily to those who were placed for adoption but whose adoption was not yet finalized. An estimated 7,000 children would be affected.

The two-year extension of two expiring provisions in Foster Care--payments for children removed from the home under voluntary placement agreements and the ceiling and trigger provisions--would not affect federal costs as measured from CBO's baseline, which assumes extension of expiring provisions. There would be costs, however, measured from current law.

Section 776A. Recovery of Unemployment Compensation Overpayments. Under current law, no jurisdiction paying any form of jobless benefits to a worker who has received an unemployment compensation overpayment in another jurisdiction may reduce that worker's benefit by the amount of the overpayment. This provision would permit both the federal government--using trade adjustment assistance or other federal supplemental jobless aid--or states--using a new claim of an individual previously overpaid and recently moved to that state--to make such adjustments. Based upon Department of Labor fiscal year 1984 overpayment data, it is estimated that approximately 10 percent of both trade adjustment claimants and interstate unemployment claimants who file new claims will be affected by this provision. Assuming that the average future overpayment will be similar to the average overpayment in recent past years--about $325--it is estimated that $7 million would be saved in the 1986 to 1990 period.

Subtitle E--Customs Fees

Section 777. Fees for Certain Customs Services. The bill would require the Secretary of the Treasury to charge and collect fees to offset the costs of processing arrivals into the customs territory of the United States. Such fees, which vary in amount, would be charged for arrivals of both small and large commercial vessels, commercial trucks, railroad cars, private vessels and aircraft. In addition, fees would be charged for customs-processing of dutiable mail, informal entries, shipment of merchandise in bond, and broker's permits. Assuming that the bill is enacted on October 1, 1985, the Customs Service would begin to collect the fees 90 days later. The estimate of the amount of fees collected is based on projections of future arrivals which were derived from historical data on the number of arrivals in each category. It also reflects the loss of about $25 million a year in overtime fees that the Customs Service would collect under current law, but would be prohibited from collecting by the bill. Based on information from the Customs Service, we expect that no significant additional costs would result from collecting the fees, because the necessary administrative structure already exists.

Subtitle F--Trade Adjustment Assistance

Section 778A. Eligibility of Workers and Firms for Trade Adjustment Assistance. Under current law, only those firms and their workers that produce articles directly competitive with increased imports are eligible for aid under trade adjustment assistance (TAA). This provision would expand eligibility to encompass not only those directly affected firms and workers, but also those that provide essential parts or services to directly-affected firms.

Although the bill language is somewhat ambiguous as to how many tiers of workers would be affected by such a change, CBO assumes that it applies to only the first round of suppliers. Based upon data on the past year's certifications by industry and information derived from a Bureau of Labor Statistics employment requirement input output table, it is estimated that this provision would increase the number of cash beneficiaries and trainees by approximately 40 percent, generating additional outlays of $91 million in cash assistance and $45 million in training costs over the 1989-1990 period.

By expanding eligibility for technical assistance to certain secondary firms adversely affected by imports, this provision is likely to increase the demand for technical assistance, although it is not possible at this time to estimate precisely the level of this additional demand. Furthermore, while appropriations could be increased to accommodate this demand, perhaps by several million dollars, this would not necessarily be the case. For example, if the Congress were not to provide additional funding to meet the increased demand, fewer firms could be served, the queue for assistance could lengthen, or the level of assistance could be reduced. Because of the uncertainty regarding the future level of appropriations for this program, the cost estimate assumes the technical assistance levels in the Senate baseline.

Section 778B-C. Cash Assistance and Job Training for Workers. These sections would modify the training and cash assistance parts of the TAA program starting in fiscal year 1989. First, they would require a worker to be enrolled in an approved training program in order to receive cash benefits, but permit him to collect up to 78 weeks of benefits rather than 52 as under current law. However, if the Secretary of Labor certifies that there is no suitable or reasonably available training program for the worker, that individual may still qualify for up to 52 weeks of benefits. Second, these provisions would make approval of training mandatory where certain criteria for approval are met and authorize the financing of training either directly or by voucher up to $4,000 per worker.

It is assumed that the requirement to be enrolled in a training program would reduce the cash beneficiary population 20 percent below the level it would otherwise be. Based upon Department of Labor information, it is assumed that the relaxed approval criteria for those potential beneficiaries for whom no training can be approved would add about 15 percent to the recipient population. Based upon information from a joint United Auto Worker-General Motors training center, the Amalgamated Clothing and Textile Workers, and several community colleges, it is assumed that average training costs would be about $2,300 per worker. It is estimated that the new cash assistance and training requirements and benefits would cost $198 million over baseline over the 1989-1990 period.

Section 778E. Adjustment Assistance for Firms. The proposed legislation would authorize the Department of Commerce (DOC) to continue providing technical assistance to firms adversely affected by imported products or goods. The bill would terminate the direct and guarantee loan programs. Repayments of principal and interest from outstanding loans would remain available to meet any contingent liabilities or loan defaults.

Section 778G. Funding of Trade Adjustment Assistance. The bill would reauthorize the worker cash benefit and training segments and an amended firm assistance part of the TAA program through fiscal year 1988. The estimated costs of reauthorizing all three sections of the program for this period are consistent with the assumptions underlying the First Concurrent Resolution on the Budget.

Subtitle G—General Revenue Sharing

The bill would eliminate General Revenue Sharing after October 1, 1986. Revenue sharing payments are distributed among approximately 39,000 local governments by a formula based on population, tax effort, and per capita income. The federal government would save $3.5 billion in 1987, rising to $5.5 billion in 1990.

Subtitle H--Pension Benefit Guaranty Corporation

Section 779A. Increase PBGC Premium. The bill would increase the Pension Benefit Guaranty Corporation's (PBGC) single-employer pension plan premium from $2.60 to $8.10 per participant for plan years beginning after December 31, 1985. Increasing the single-employer premium from $2.60 to $8.10 would result in an additional $5.50 per participant in premium income. The increased premium collections would be credited to the public enterprise fund and a reduction in outlays would result.

Subtitle I--Revenue Provisions

Section 792. Tobacco Program Improvements. The bill would reduce price supports for tobacco, change the method of determining marketing quotas, facilitate the sales of existing tobacco stocks, and provide for purchaser assessments so that purchasers and producers share equally in maintaining the producer association "no net cost" funds for the 1985 and later crops of flue-cured and burley tobacco. Outlay savings, based on estimates provided by the Administration, result primarily from reduced Commodity Credit Corporation net lending outlays stemming from lower loan rates specified in the bill and increased domestic use and exports caused by lower market prices.

Section 793. Medicare Coverage For All State and Local Government Employees. This provision allows state and local government employees who would become newly covered under the Hospital Insurance (HI) payroll tax on October 1, 1986, to use their tenure in their current employment for the purposes of determining HI quarters of coverage. This is the same treatment accorded federal workers when the HI payroll tax was extended to them in 1983.

This treatment of newly covered state and local government employees is estimated to result in costs rising from negligible levels in fiscal 1987 to about $10 million in 1990. Although little data are available on these currently noncovered workers, the evidence that does exist indicate that the outlay effects of this provision would be relatively small. About 30 percent of all state and local employees are currently noncovered, but many of these workers would already be expected to become eligible for HI. This would occur either as the result of being the spouse of a Social Security recipient, or as the result of the worker's own employment in Social Security covered employment before, during, or after any periods of noncovered work. Congressional Research Service estimates based on data from the March 1984 Current Population Survey (CPS) indicate that over three-quarters of non-covered state and local government employees eventually receive Medicare benefits. CBO's tabulations of the March 1985 CPS show about 360,000 fulltime state and local government employees--covered and noncovered--who were between the ages of 61 and 64. Adjusting these figures for the likely mortality and coverage patterns of these workers, as well as existing working-aged provisions, this provision could bring additional 8,000 to 9,000 persons into the Medicare program by 1990. The average annual cost of these new recipients is assumed to be similar to that of a relatively healthy Medicare beneficiary, or about $890 in 1987 and rising to about $1,140 in 1990.

Section 797. Additional Funds to Internal Revenue Service. This section authorizes the appropriation of an additional $46.5 million for each of the fiscal years 1986, 1987, and 1988 to fund 1,550 additional agents and examination employees. Estimated outlays are based on historical spending rates.

Section 799A. Additional Customs Personnel. This section authorizes the appropriation of an additional $27.9 million in each of the fiscal years 1986, 1987, and 1988 to fund 800 additional full-time equivalent positions for the Customs Service. Estimated outlays are based on historical spending rates.

Section 799. Limitations on Awarding of Court Costs and Modifications of Certain Fees. This section would affect awards of litigation costs in tax cases. This bill amends Section 7430 of the Internal Revenue Code by:

1. removing a $25,000 cap on lawyer's fees and replacing it with a cap of $75 per hour;

2. requiring a determination by the court that the position of the United States was not substantially justified or that no special circumstances exist which would make an award unjust, prior to issuance of a judgement for payment of court costs;

3. adding to the definition of the "position of the United States," the position taken in the civil proceeding and the administrative action or inaction by the United States upon which such proceeding is based; and,

4. removing the December 31, 1985 termination date.

Based on information from the Tax Litigation Department of the Internal Revenue Service and the history regarding awards under the Equal Access to Justice Act, CBO expects that the cost of this provision would be about $1 to $2 million per year over the next five fiscal years.

6. ESTIMATED COST TO THE STATE AND LOCAL GOVERNMENTS:

Several subtitles of this bill would have an effect on state and local government budgets. These estimated effects are shown in the following table.

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Subtitle A-Medicare	-5	-4	9	16	17
Subtitle B-Medicaid	-32	-113	-119	-125	-137
Subtitle C-OASDI	1	1	1	1	1
Subtitle D-AFDC	-8	-10	-7	-4	-4
Subtitle G-General Revenue Sharing	--	3,526	4,956	5,200	5,459
Total Estimated State and Local Effects	-44	3,400	4,840	5,088	5,336

Basis of Estimate:

Subtitle A, which reduces expenditures in the Medicare program, would change Medicaid outlays. Because states share in the financing of Medicaid--paying about 45 percent of outlays--their expenditures would change. Reductions in Medicare outlays reduce state and local copayments for those beneficiaries with dual Medicare/Medicaid coverage. The increased Medicare premiums are a cost to state Medicaid programs. Beginning in FY 1988, the additional premiums are larger than savings from federal Medicare cutbacks.

Subtitle B, which reduces Medicaid outlays, would lower state and local expenditures because the states finance somewhat less than one-half of outlays.

Subtitle C concerning OASDI contains a provision that would increase expenditures of state and local governments by $1 million a year for the additional Medicaid coverage provided to certain disabled widows and widowers.

Subtitle D, concerning AFDC and several other programs, would reduce state and local expenditures slightly. The changed treatment of Indian income would lower expenditures by $2 million a year while the extended Medicaid coverage under Adoption Assistance would raise expenditures by $2 million to $3 million a year. A provision affecting the Supplemental Security Income (SSI) program would reduce expenditures in Oklahoma by $5 million to $10 million a year, although it would have no effect on federal expenditures. The provision would modify the requirement under which states must "pass through" increases in federal SSI benefits.

Subtitle G, which eliminates General Revenue Sharing after October 1, 1986, would mean that local governments would lose projected annual payments of $3.5 billion in fiscal year 1987 increasing to $5.5 billion in 1990.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY:

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10. ESTIMATE APPROVED BY:

C. G. Nuckols

James L. Blum
Assistant Director
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CONGRESSIONAL BUDGET OFFICE

Cost Estimate

United States Senate—Committee on Finance
Reconciliation Proposal—Provisions Affecting Revenues

This cost estimate was done on the basis of some preliminary legislative language and information and advice from the staff of the Committee on Finance. If final language differs from the basis for this estimate, some items could require revision. Questions on the revenue effects should be directed to Kathleen O'Connell (6-2685) or Linda Radey (6-2693).

Subtitle I — Revenue Provisions

Section 781 — Income Averaging for Former Students

The proposal would disallow income averaging for an individual who had been a full-time student during any of the three years preceding the current year unless the former student were married, filed a joint tax return, and contributed 25 percent or less to (joint) adjusted gross income for the current year.

Section 782 — Temporary Extension of Employer-Provided Health Care Coverage

The proposal would deny the tax deduction for employer contributions to a group health plan if the health plan does not meet certain continuing coverage requirements. In addition, the tax deduction for the employer contribution to a health plan for highly compensated employees would be denied unless all health plans maintained by the employer meet the continuing coverage requirements. The continuing coverage requirements mandate that individuals who were previously covered under the health plan and lose their coverage be able to elect to extend their coverage for an additional 18 months at no more than 102 percent of the group rate.

Section 783 -- Application of Fringe Benefit Rules to Airlines and their Affiliates

Under current law, the value of free standby airline passes provided by an employer in the airline business to employees (and their spouses and dependents) in that business is excluded from income and employment taxation if certain requirements are met. The reconciliation proposal would extend that provision to apply to parents of the airline employee under the same conditions as those that apply to the employee's spouse or dependent children.

In the Deficit Reduction Act of 1984, Congress restricted the receipt of certain tax-free benefits to employees who perform services in the same line of the employer's business as the benefit provided by the employer. The committee's reconciliation language provides that this line-of-business test would be satisfied as of January 1, 1985, for certain air-related services and for employees of certain airline affiliate companies.

Section 784 — Faculty Housing

The proposal would continue to allow the exclusion from income of the value of campus housing provided by an educational institution to its employees if the employee pays rent equal to or greater than an amount based on 5 percent of appraised value of the housing or the average of rents paid for comparable housing by tenants not related to the employer.

Section 785 — Alternative Minimum Tax

The proposal would change the rules for computing the net capital gain preference item for purposes of the individual alternative minimum tax. Capital gain or loss from the transfer of real business property to a creditor in cancellation of debt or from the sale of such property under the threat of foreclosure would not be included in the computation of the preference item for the minimum tax if the taxpayer were insolvent immediately before the transfer or sale.

Section 786 — Gulf Coast Waste Disposal Authority to Issue IDBs

Current law would be changed to allow the Gulf Coast Waste Disposal Authority to issue a limited amount of industrial development bonds.

Section 787 — Netting of Gains and Losses by Cooperatives

Current law would be clarified with respect to the treatment of gains and losses in the computation of net earnings of cooperatives.

Section 788 — Research Expenditures Allocation Rules

The reconciliation language would extend for a limited time the moratorium on applying the allocation regulations for research and experimentation expenses.

Sections 789A-789F — Superfund

The committee proposes to extend at current rates through September 30, 1990 the excise taxes on crude oil, petroleum products, and chemical feedstocks, and to impose a new Superfund excise tax on the sale or lease of personal property, in connection with a trade or business, by manufacturers. The revenue effects shown on the attached table are additional net revenues above baseline levels.

Sections 790 and 791 — Tobacco Excise Taxes

The proposal would make permanent the 16 cents per pack excise tax on cigarettes enacted under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA temporarily increased the excise tax on cigarettes from 8 cents per pack to its present rate of 16 cents per pack over the period January 1, 1983 to September 30, 1985. Under current law the tax on cigarettes is scheduled to return to 8 cents per pack on October 1, 1985.

The proposal would also impose new taxes of 24 cents per pound on snuff and 8 cents per pound on chewing tobacco.

Section 793 — Medicare Coverage of State and Local Employees

The proposal would require coverage of all state and local government employees under Medicare (HI) effective October 1, 1986. The payments for newly covered workers would be paid on the schedule used for private employers, and payments would be remitted directly to the Internal Revenue Service.

Section 794 — Railroad Unemployment Insurance

The proposal would increase the Railroad Retirement Unemployment Insurance (RRUI) repayment tax rates. The Railroad Retirement Solvency Act of 1983 established a repayment tax on the first $7,000 in wages paid to a rail employee effective July 1, 1986 through September 30, 1990. Under current law the tax rate starts at 2.0 percent and will increase by 0.3 percent a year. The proposal would increase the initial tax rate by 2.3 percentage points in 1986, by 2.4 percentage points in 1987, and by 3.4 percentage points in 1988. That is, the proposal would change the tax rates from 2.0

percent to 4.3 percent in 1986, from 2.3 percent to 4.7 percent in 1987, from 2.6 percent to 6.0 percent in 1988, and would retain the current law rates of 2.9 percent in 1989 and 3.2 percent in 1990.

The proposal would also extend the RRUI Account's authority to borrow from the Railroad Retirement Account effective October 1, 1985. In addition, the bill would impose a 3.5 percent surcharge on an annual wage base of $7,000 if the RRUI Account has to borrow from the retirement account. Under current assumptions, the RRUI account will not need to borrow from the retirement account before 1991, therefore this provision has no revenue effect over the estimating period.

The proposal would also transfer some Railroad Retirement taxes from the Railroad Retirement account into the Railroad Unemployment Insurance account effective January 1, 1986 through March 31, 1990.

Section 796 — Exemptions from Federal Unemployment Insurance Taxes for Certain Employees

Wages paid to full-time students employed by certain summer camps were exempt from Federal Unemployment Tax Act (FUTA) taxes in 1984. The proposal restores this exemption effective September 19, 1985.

Under current law, wages paid to certain nonresident alien agricultural workers are exempt from FUTA taxes. This exemption is scheduled to expire on December 31, 1985. The proposal would make the exemption permanent.

Under current law, the exemption from FUTA taxes of wages paid to certain fishing crew members expired on January 1, 1985. The proposal makes this exemption permanent and retroactively restores it effective January 1, 1985.

Section 797 — Internal Revenue Service Staff Increases

The proposal authorizes funds for fiscal years 1986, 1987, and 1988 to the Internal Revenue Service to hire an additional 1,550 agents and examinations employees for the purpose of improving revenue enforcement. These new agents would generate additional tax collections.

Other Titles — Miscellaneous Provisions Affecting Revenues

Customs Service Staff Increases

The proposal authorizes funds to the Customs Service for fiscal years 1986, 1987, and 1988 for salaries and expenses of 800 additional inspectors, import specialists, patrol officers, and special agents to improve enforcement and compliance. These new agents would generate additional customs duties collections.

Imposition of Import Duty

The proposal would impose a new ad valorem duty on imports at a uniform but unspecified rate to fund the implementation of chapters 2 and 3 of Title II of the Trade Act of 1974. Since the duty rate is unspecified, CBO assumes for purposes of this estimate that the rate will be set at a level sufficient to generate additional duties equal to the costs of such implementation, and that the new import duty will apply beginning in 1988.

Income Tax Treatment of Social Security Benefits Received by Citizens of American Samoa

Under current law, Social Security benefits paid to non-resident aliens are subject to 30 percent withholding on 50 percent of the benefit amount. The proposal would treat benefits paid to individuals in certain possessions, principally American Samoa, as benefits received by U.S. residents are now treated. That is, the current law withholding would no longer apply.

ESTIMATED REVENUE EFFECTS OF
SENATE COMMITTEE ON FINANCE
REVENUE RECONCILIATION PROPOSAL
(By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Limit Income Averaging for Former Students	133	541	589	637	687
Changes in Requirements for Employer-Provided Health Insurance Contributions	a/	a/	a/	a/	a/
Exclude From Income the Value of Airline Passes for Parents of Airline Employees	b/	b/	b/	b/	b/
Airline Fringe Benefits Line-of-Business Test	c/	c/	c/	c/	c/
Exclusion of the Value of Faculty Housing from Income	c/	b/	b/	b/	b/
Alternative Minimum Tax	-20	-100	-139	-184	-240
Gulf Coast Waste Disposal Authority to Issue IDBs	-1	-2	-3	-3	-3
Netting by Cooperatives	b/	b/	b/	b/	b/
Extension of Moratorium on Application of Research and Experimental Expense Allocation Regulation	-191	-96	--	--	--
Superfund	243	684	730	784	842
Tobacco Excise Taxes	1,547	1,697	1,701	1,716	1,721
Mandatory coverage of all state and local government workers under Medicare (HI)	--	2,251	2,456	2,636	2,818

Continued

ESTIMATED REVENUE EFFECTS OF
SENATE COMMITTEE ON FINANCE
REVENUE RECONCILIATION PROPOSAL
(By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Railroad Retirement Unemployment Insurance tax	--	101	98	4	--
Unemployment Tax Exemptions	b/	b/	b/	b/	b/
Increase in IRS Examinations Staff in 1986, 1987, and 1988	365	744	928	150	--
Increase in Customs Service Staff in 1986, 1987, and 1988	150	450	615	100	--
Duty on Imports to Fund Certain Outlays Under the Trade Act of 1974	--	--	289	295	302
Tax treatment of Social Security benefits received by citizens of American Samoa	-1	-1	-1	-1	-1
TOTAL REVENUE EFFECTS	2,225	6,269	7,263	6,134	6,126

a. Negligible

b. Revenue loss of less than $5 million.

c. Revenue loss of less than $10 million.

Congressional Budget Office
Tax Analysis Division
September 30, 1985

COMMITTEE ON GOVERNMENTAL AFFAIRS

Title VIII

WILLIAM V. ROTH, Jr., DELAWARE, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with the reconciliation instructions in the First Concurrent Resolution on the Budget (S. Con. Res. 32) the recommendations of the Governmental Affairs Committee to effect the required budgetary savings are enclosed.

The Committee has adopted language to reduce the revenue foregone appropriation to the U.S. Postal Service. Also included is a freeze on all civilian pay for the coming year plus other changes in civil service matters, and the text of S. 678, the Civilian Agency Multiyear Contract Act.

Sincerely,

William V. Roth, Jr.
Chairman

Thomas F. Eagleton
Ranking Minority Member

WVR/mh

COMMITTEE ON GOVERNMENTAL AFFAIRS

BUDGET RECONCILIATION RECOMMENDATIONS

Pursuant to S. Con. Res. 32, the First Concurrent Resolution on the Budget, the Committee on Governmental Affairs has approved legislation which is projected to save $13.2 billion over the next three years. These savings are achieved through limiting the revenue foregone appropriation to the U.S. Postal Service, freezing civilian pay in FY 1986, transferring surplus reserves from the Federal Employees Health Benefits program to the federal government, making other administrative changes in the federal civil service, and authorizing the use of multiyear contracting for civilian agencies.

I. DISCUSSION OF RECOMMENDATIONS
REDUCTION OF THE REVENUE FOREGONE APPROPRIATION
FOR THE UNITED STATES POSTAL SERVICE

The Committee has approved legislation that lowers the revenue foregone appropriation made by the Congress to subsidize preferred rate mail.

In FY 1986, the reconciliation language would cap the appropriation at $749 million, the amount assumed in this year's budget resolution. In addition, the transitional appropriation for Workers Compensation, paid to the Labor Department by the Post Office to cover unfunded payments for injuries incurred to former employees before July 1, 1971 is deferred in FY 1986 until FY 1989.

The Post Office, in Resolution 85-7, recently decided to end the phasing rate schedule for reduced rate mailers starting October 1, 1985. Rates would increase from step 14 to 16 to cover the attributable portion of preferred mailers' costs. The Committee has approved legislation that would delay the start of step 16 until January 1, 1986 to help ease the transition for organizations that do fund raising over the Christmas holiday season and to allow preferred mailers to adjust their budgets. In addition, so that other mailers would not have to subsidize the loss in revenue due to the delay, the Post Office would be authorized to request supplemental funds next year.

In recent years, more commercial interests have been using publications that qualify for reduced third-class rates as a less expensive method for advertising for-profit products. Because subsidizing commercial interests is not the intent of the law, the Committee has approve legislation to set in motion a process for examining and curbing the abuses of reduced third-class bulk rates. Six months after enactment of the law, the Postal Rate Commission, after obtaining and considering the views of all interested and concerned parties shall report to Congress changes in eligibility needed to curb unwarranted activities. In order to achieve savings, starting in FY 1987, the legislation cuts in half the estimated authorization for nonprofit bulk third-class mailings.

The Committee is aware of large commercial mailers who use the in-county second-class reduce rates of postage. The intent of this preferred rate was to enable rural publications, not national publications, to serve the area. In order to prevent large commercial interests from using reduced rates, the Committee has approved legislation changing the eligibility for the in-county rates. Except for smaller publications which have less than 10,000 paid circulation, an issue of a publication would have to have at least 50 percent plus one copy of its total paid circulation distributed within the county of publication in order to qualify for the lower rates. In addition, no publication could receive the in-county rate for more than 20,000 copies of an issue.

The Committee has also approved language that moves to curb the growing use of in-county second-class rates by large newspapers which use it to supplement their regular issues with advertising oriented "plus issues" mailed to subscribers as well as nonsubscribers. Since some courtesy distribution of nonsubscriber copies is traditionally permitted, the legislation would deny the lower rate to nonsubscriber copies only when they exceed 10 percent of the number of subscriber copies mailed at the in-county rate.

The legislation approved applies certain restrictions which govern tax-exempt status under the Internal Revenue Code to limit eligibility as a "qualified nonprofit organization" for purposes of reduced postage rates. An organization excluded from tax-exempt status under the tax code by reason of activities to influence legislation or to participate in a political campaign would also be excluded from receiving taxpayer-supported reduced postage rates.

CIVILIAN PAY FREEZE

The Committee has approved legislation that freezes pay for civilian workers of the federal government for fiscal year 1986, and makes the effective date of any future pay raises the first applicable pay period after January 1st of each year. In addition, the Committee has approved legislation, previously done in the appropriations process, that provides Federal Wage System employees with the same pay increases as the General Schedule workers, and delays that increase for ninety days, similar to the ninety day delay in the General Schedule.

The Committee achieves out year savings in accordance with the conference report on the First Concurrent Budget Resolution for Fiscal Year 1986. The legislation does not mandate a pay raise for fiscal years 1987 and 1988, but rather retains the current process for determining annual increases through the Pay Comparability Act, Presidential alternative pay proposals and subsequent Congressional action. However, any pay proposal must save at least $746 million in FY 1987 and $1,264 million in FY 1988, which is consistent with the recently enacted budget resolution. The estimates are based on the Resolution's pay assumptions of 3.8 percent in 1987 and 4.7 percent in 1988.

TRANSFER OF SURPLUS RESERVES OF THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (FEHBP)

As health care costs have fallen, the carriers providing health care coverage for federal employees have built up financial reserves far in excess of what is needed to cover administration of their programs. These so called "special reserves" are held by the carriers and are composed of both employee premiums and the government contributions to the employee health program.

The Committee has approved a requirement that the Office of Personnel Management determine the minimum level of financial reserves necessary to be held by the FEHBP carriers for the future efficient management of health benefits. The legislation also requires that the excess reserves be transferred and credited to OPM's contingency reserves held in the federal government's accounts. The funds returned are only for the use of the FEHBP either through employee rebates, lower premiums or decreases in the government share of future contributions.

PERMANENT CHANGE OF HOURLY PAY RATES

The Omnibus Reconciliation Act of 1982 changed the method for calculating pay rates for the years 1984 and 1985. When converting annual pay rates to hourly rates, the annual rate is currently divided by 2,087 hours in accordance with the 1982 law. Previously, the calculation was made on the basis of 2,080 hours. The Committee legislation would make the 2,087 hours permanent in order to ensure the current, more accurate method of reflecting work patterns.

REAUTHORIZING FEDERAL EMPLOYEE HEALTH BENEFITS IN MEDICALLY UNDERSERVED AREAS

The legislation would permanently reauthorize a recently expired program which required federal health plans to provide benefits under the Federal Employees Health Benefits Program for services performed by any provider licensed under the state law to render the service if the patient received care in a state designated as a medically underserved area as determined by the Office of Personnel Management. Federal employees in such areas would then have access to services of non-physican health care providers such as physican assistants, nurse practitioners and nurse midwives.

ELIMINATION OF WINDFALL RETIREMENT BENEFITS FOR PART TIME WORKERS

Current, most employees covered by the Civil Service Retirement System receive full service credit for their part-time service, while having their salaries prorated in the computation of their annuities. Those who work part time for a whole career receive an appropriately small annuity. However, if at the end of a long part time career, an employee changes to a full time schedule for his last three years, the increase in the average salary produces an annuity equal to that receive by a employee who has worked full time for an entire career. This provision would correct a technical problem in the law that permits potential abuse and produces an unintended windfall. The annuity would be computed under the appropriate formula multiplied by a fraction which expressed the ratio between the actual service and a full-time tour of duty for the employee's career. The provisions of this section apply prospectively to any part time service after the date of enactment.

CIVILIAN AGENCY MULTIYEAR CONTRACTING

Each year, the Federal government spends more than half of its discretionary funds for the procurement of property and services from the private sector. The Department of Defense now has statutory authority to enter into multiyear contracts with annual appropriations, but civilian agencies are restricted from entering into contractual obligations in excess or in advance of appropriations. Total procurement by nondefense agencies was about $37.2 billion in fiscal year 1984.

The Committee has approved legislation which amends the Federal Property and Administrative Services Act of 1949 to extend multiyear contracting authority government-wide. Civilian procuring agencies would be able to contract on a multiyear basis, provided that the following criteria are met. Multiyear contracts would be for a period of not more than five years; such contracts must serve the Government's best interests by reducing costs, promoting economies, increasing quality, and encouraging competition; appropriations must be available for the first year of the contract; there must be a continuing need for the services; the specifications for the property or services must be stable; and use of the multiyear contract must not inhibit small business participation. These criteria are designed to ensure that multiyear contracting for civilian agencies will be used judiciously and to safeguard against any abuse.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 30, 1985

The Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for the reconciliation proposals ordered reported by the Senate Committee on Governmental Affairs on September 26, 1985. The estimates represent the budgetary effects of the Committee's legislative proposals relative to the baseline used by the Senate in considering the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32).

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: The Honorable Thomas F. Eagleton
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

September 27, 1985

1. BILL NUMBER: Not yet assigned.

2. BILL TITLE:

Title VIII. Postal Service Programs, Civil Service Programs, and Civilian Agency Government Contracts.

3. BILL STATUS:

As ordered reported by the Senate Committee on Governmental Affairs on September 26, 1985.

4. BILL PURPOSE:

The Committee's reconciliation proposals would achieve the following:

Part A--Postal Service Programs. Part A would affect the authorization of appropriations for the Postal Service. It would authorize a revenue forgone payment of $749 million in 1986 and would also delay the phase-out to Step-16 mail rates until January 1, 1986; it would postpone the payment of the 1986 transitional appropriations for unfunded liabilities until 1989; and would also restrict eligibility for certain nonprofit third-class advertising mail as well as second-class in-county mail.

Part B--Civil Service Programs. Section 811 would provide no pay comparability adjustment for federal civilian employees in fiscal year 1986 and would require a permanent 3-month delay in the effective date of all future pay comparability adjustments. It also calls for the President to provide pay adjustments for civilians in fiscal years 1987 and 1988 such that outlay savings—in addition to those achieved by the 1986 pay freeze and the permanent 3-month delay in the effective date--of at least $746 million in 1987 and $1,264 million in 1988 are assured when measured compared to the baseline used for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32.)

Section 812 would extend permanently the existing method of computing pay for certain federal civilian workers using 2,087 hours per workyear. Before fiscal year 1984, pay was calculated using 2,080 hours per workyear. The Omnibus Reconciliation Act of 1983, however, required the use of 2,087 hours during fiscal years 1984 and 1985. Under current law, the 2,080 hours method would be used again beginning October 1, 1985.

Section 813 would allow alternative medical providers to be reimbursed for medical services offered to Federal Employees Health Benefits (FEHB) program enrollees in medically underserved areas throughout the nation.

Section 814 would require the Office of Personnel Management (OPM) in fiscal years 1986 and 1987 to determine the minimum level of financial reserves to be held by insurance carriers under the FEHB program. Carriers would be required to refund to the FEHB fund any excess reserves, but not less than $800 million in 1986 nor less than $300 million in 1987.

Section 815 would require the government to express earnings and service as a percentage of a full workyear when calculating Civil Service Retirement benefits for part-time federal employees. This would apply to service performed after enactment of this proposal and would mainly affect U. S. Postal Service employees.

Part C—Civilian Agency Government Contracts. Section 821 would amend the Federal Property and Administrative Services Act of 1949 to authorize multi-year contracts in certain cases. With the exception of the Department of Defense, government agencies may not under current law enter into multi-year contracts with funds that are not appropriated on a no-year or multi-year basis. This section would allow civilian agencies in some instances to let multi-year contracts based upon one-year appropriations.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

Table 1 shows that the Committee's reconciliation proposals would reduce net federal outlays relative to the budget resolution baseline by $12.2 billion in 1986-1988 and by $22.6 billion in 1986-1990.

TABLE 1. TOTAL NET BUDGETARY EFFECTS OF COMMITTEE'S RECONCILIATION PROPOSALS RELATIVE TO RESOLUTION BASELINE (By fiscal year, in millions of dollars)

	1986	1987	1988	1989a/	1990a/
Total Net Budgetary Effect					
Estimated Authorization Level	-3242	-4063	-4582	-4924	-5209
Estimated Outlays	-3262	-4169	-4727	-5093	-5388

a. The estimates for 1989 and 1990 do not include the effect of the change in the revenue forgone subsidy to the Postal Service.

NOTE: These figures include both on- and off-budget effects.

Basis of Estimate:

Part A. As shown in Table 2, Part A of the Committee's proposal would achieve total net outlay savings of $191 million in 1986-1988.

TABLE 2. BUDGETARY EFFECTS OF COMMITTEE'S RECONCILIATION PROPOSALS RELATING TO THE POSTAL SERVICE (By fiscal year, in millions of dollars)

Program (Budget Function)	1986	1987	1988	1989	1990
On-Budget					
Limitations on Revenue Forgone (370)					
Estimated authorization level	-20	-82	-89	NA	NA
Estimated outlays	-20	-82	-89	NA	NA
Eliminate Authorization of 1986 Transitional Appropriations (370)					
Estimated authorization level	-39	--	--	39	--
Estimated outlays	-39	--	--	39	--
Total On-Budget Effect					
Estimated authorization level	-59	-82	-89	39	--
Estimated outlays	-59	-82	-89	39	--
Off-Budget					
Limit Authorization of Appropriations for Revenue Forgone (370)					
Estimated authorization level	39	--	--	-39	--
Estimated outlays	39	--	--	-39	--
Total On- and Off-Budget Effect					
Estimated authorization level	-20	-82	-89	--	--
Estimated outlays	-20	-82	-89	--	--

NA = Not available.

The savings from changing the revenue forgone provisions have four components:

(1) The Committee's proposal would eliminate the phasing portion of the revenue forgone subsidy beginning in January, 1986. To maintain the continuing subsidy consistent with Postal Service estimates, savings relative to the baseline—assuming phasing for the first quarter of 1986—would be $83 million in 1986, $38 million in 1987, and $42 million in 1988;

(2) In addition to the $749 million specifically authorized to be appropriated in 1986, about $70 million in 1986 would be required to reimburse the Postal Service for delaying the first-quarter 1986 phasing schedule;

(3) Beginning in 1987, the Postal Service would be required to limit the use of preferred rates for certain third-class commercial mail, and would require the Postal Rate Commission to report to the Congress with recommendations for legislative changes in this area. Savings from this restriction are estimated to be $35 million in 1987 and $38 million in 1988.

(4) The bill also would limit the use of in-county rates for certain kinds of mail, which is expected to save about $9 million in each of fiscal years 1986-1988.

This section also would postpone the 1986 authorization of appropriations to reimburse the Postal Service for workers' compensation claims paid by the Department of Labor (DOL). The 1986 estimate of this unfunded liability--$39 million--would be paid to the Postal Service in 1989. Assuming that the off-budget Postal Service would pay DOL in 1986 from Postal Service revenues, the net effect of this proposal would be to reduce on-budget appropriations in 1986 by $39 million, but to increase off-budget Postal Service outlays by the same amount. In 1989, the on-budget reimbursement of $39 million from appropriations would reduce Postal Service costs by $39 million.

Section 811. As shown in Table 3, this section would result in total net outlay savings of $9.6 billion in 1986-1988 and $18.9 billion in 1986-1990 by:

(1) Providing no pay comparability adjustment in fiscal year 1986 for all federal civilian employees;

(2) Requiring a permanent 3-month delay in the effective date of future pay adjustments, beginning in fiscal year 1987; and by

(3) Directing the President to assure outlays savings--relative to the budget resolution baseline and in addition to savings achieved by the 1986 pay freeze and permanent 3-month delay in the effective date--of at least $746 million in 1987 and $1,264 million in 1988.

TABLE 3. BUDGETARY EFFECTS OF COMMITTEE'S PROPOSALS RELATING TO PAY COMPARABILITY ADJUSTMENTS IN FISCAL YEARS 1986-1990
(By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Savings					
Civilian Agency Employees (920)					
Estimated authorization level	-1187	-1991	-2394	-2575	-2680
Estimated outlays	-1232	-2120	-2557	-2757	-2870
Dept. of Defense Employees (050)					
Estimated authorization level	-919	-1693	-2068	-2248	-2339
Estimated outlays	-904	-1680	-2061	-2245	-2338
Subtotal, Savings					
Estimated authorization level	-2106	-3684	-4462	-4823	-5019
Estimated outlays	-2136	-3800	-4618	-5002	-5208
Offsetting Receipts (950)					
Estimated authorization level	195	348	423	458	478
Estimated outlays	195	348	423	458	478
Net Budgetary Effect					
Estimated authorization level	-1910	-3336	-4039	-4365	-4541
Estimated outlays	-1940	-3452	-4194	-4544	-4730

The resolution baseline, against which the estimates are measured, assumes that all federal employees will receive a pay adjustment (without a catch-up raise to account for past pay caps) of 4.0 percent in 1986, 5.2 percent in 1987, 5.4 percent in 1988, 5.3 percent in 1989, and 5.0 percent in 1990. The Committee makes no explicit change in the pay rates in 1987-1990. The savings specified in the bill, however, are consistent with pay adjustments of 3.8 percent in 1987 and 4.7 percent in 1988, and these are assumed in this estimate. The estimate also assumes that the 1989 and 1990 pay adjustments are those in the budget resolution baseline.

Table 4 breaks down the budgetary effects of the three components of the Committee's pay comparability proposals: the pay freeze in 1986, the permanent 3-month delay in the effective date, and the additional savings to be achieved. The pay freeze in 1986 would reduce net outlays by $6.6 billion in 1986-1988 and by $11.8 billion in 1986-1990. The permanent 3-month delay in the effective date of future pay adjustments would reduce net outlays by $1.2 billion in 1986-1988 and by $2.7 billion in 1986-1990. The additional savings specified by the bill would reduce net outlays by $1.8 billion in 1986-1988 and by $4.4 billion in 1986-1990.

TABLE 4. NET BUDGETARY EFFECTS OF INDIVIDUAL COMPONENTS OF COMMITTEE'S PAY COMPARABILITY PROPOSALS (By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Freeze Pay in 1986					
Estimated authorization level	-1910	-2175	-2291	-2413	-2535
Estimated outlays	-1940	-2274	-2394	-2522	-2649
Permanent 3-Month Delay					
Estimated authorization level	--	-493	-638	-754	-750
Estimated outlays	--	-500	-651	-770	-768
Additional Savings					
Estimated authorization level	--	-668	-1109	-1197	-1257
Estimated outlays	--	-678	-1149	-1251	-1313
Total, Section 811					
Estimated authorization level	-1910	-3336	-4039	-4365	-4541
Estimated outlays	-1940	-3452	-4194	-4544	-4730

Section 812. As shown in Table 5, this section would produce net outlay savings of $445 million in 1986-1988 and $772 million in 1986-1990. Estimated savings result from permanently extending the method of calculating certain civilian pay rates using 2,087 hours per workyear. These estimates represent an aggregate payroll savings of about one-third of one percent (the quotient of 2,087 divided by 2,080).

TABLE 5. COMMITTEE PROPOSAL TO EXTEND PERMANENTLY METHOD OF CALCULATING CIVILIAN PAY USING 2,087 HOURS PER WORKYEAR (By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Savings					
Civilian Agency Employees (920)					
Estimated authorization level	-101	-101	-107	-111	-116
Estimated outlays	-101	-101	-107	-111	-116
Dept. of Defense Employees (050)					
Estimated authorization level	-59	-59	-63	-64	-69
Estimated outlays	-59	-59	-63	-64	-69
Subtotal, Savings					
Estimated authorization level	-160	-160	-170	-175	-185
Estimated outlays	-160	-160	-170	-175	-185
Offsetting Receipts (950)					
Estimated authorization level	15	15	16	16	17
Estimated outlays	15	15	16	16	17
Net Budgetary Effect					
Estimated authorization level	-145	-145	-154	-159	-168
Estimated outlays	-145	-145	-154	-159	-168

Sections 813 and 814. As shown in Table 6, these sections together would result in total net outlay savings of $1.4 billion in 1986-1988.

TABLE 6. BUDGETARY EFFECTS OF COMMITTEE'S PROPOSALS RELATING TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (By fiscal year, in millions of dollars)

Program (Budget Function)	1986	1987	1988	1989	1990
Refund Excess Reserves (550)					
Estimated authorization level	-1067	-300	--	--	--
Estimated outlays	-1067	-300	--	--	--
Provide Medical Service in Underserved Areas (550)					
Estimated authorization level	--	--	--	--	--
Estimated outlays	--	--	--	--	--
Net Budgetary Effect					
Estimated authorization level	-1067	-300	--	--	--
Estimated outlays	-1067	-300	--	--	--

Refund Excess Reserves. This proposal would require OPM to ensure that refunds from carriers' special reserves be not less than $800 million in fiscal year 1986 nor less than $300 million in fiscal year 1987. OPM, however, now officially estimates that refunds will amount to $1,067 million in fiscal year 1986, and $300 million in fiscal year 1987.. Excess reserves can be used to defray increases in future rates, to increase plan benefits, or to allow for rebates to eligible enrollees. If rebates are made to employees, savings would be lower than those shown above.

Provide Medical Service Under FEHB Program to Medically Underserved Areas. This provision would allow alternative medical providers to be reimbursed for services offered to enrollees in the FEHB program in medically underserved areas. CBO estimates that reimbursing such providers would not increase program costs.

Section 815. This section would require the government to express earnings and service as a percentage of a full workyear when calculating Civil Service Retirement benefits for future part-time federal employees. CBO estimates that this would have no net budgetary effects in any year through 1990.

Section 821. As shown in Table 7, this section would reduce net outlays by $570 million in 1986-1988 and by $1.5 billion in 1986-1990.

TABLE 7. BUDGETARY EFFECTS OF COMMITTEE'S PROPOSAL TO AUTHORIZE MULTI-YEAR CONTRACTS FOR CIVILIAN AGENCIES (By fiscal year, in millions of dollars)

Program (Budget Function)	1986	1987	1988	1989	1990
Net Budgetary Effect					
Estimated authorization level	-100	-200	-300	-400	-500
Estimated outlays	-90	-190	-290	-390	-490

NOTE: The budgetary effects of this section would fall in all budget functions except 050, 900, 920, and 950.

Significant savings from multi-year contracting appear to be more likely in certain categories of federal procurement than in others. These categories include supplies and ongoing services (such as protection, trash removal, cleaning, and maintenance), as well as the leasing of automated data processing and telecommunications equipment. Total procurement by nondefense agencies in fiscal year 1984 was about $34 billion.

CBO cannot currently estimate with great precision how much of total nondefense procurement is amenable to multi-year contracting. The General Services Administration has estimated possible savings of up to $200 million, or roughly 12 percent of its procurement costs, while the Office of Federal Procurement Policy estimates that civilian procurement costs can be reduced by 15 to 20 percent through the use of multi-year contracting.

The CBO estimates assume that about 10 percent of nondefense procurement would be subject to multi-year contracting and that cost savings would average 10-15 percent. Estimated savings assume that appropriations will be reduced accordingly.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS: None.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: David Bashore (226-2880)
Eugene Bryton (226-2840)
David Delquadro (226-2616)
Paul M. DiNardo (226-2860)
Mary Maginniss (226-2860)
Anne Manley (226-2820)

10. ESTIMATE APPROVED BY:

for C. G. Nuckols
James L. Blum
Assistant Director
for Budget Analysis

COMMITTEE ON LABOR AND HUMAN RESOURCES

Title IX

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United States Senate
COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, DC 20510

September 27, 1985

The Honorable Pete V. Domenici
Chairman, Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In compliance with the procedures you have set forth with regard to the reporting of a reconciliation bill by the Senate Budget Committee in response to the First Concurrent Budget Resolution for Fiscal Year 1986, I hereby submit a complete package of proposed legislative changes for inclusion in Title IX of that bill.

This package includes: (1) the legislative language to implement the reductions, (2) the accompanying report language, and (3) a CBO cost estimate for amendments to the Guaranteed Student Loan program, and the Walsh-Healey Act, and the Contract Work Hours and Safety Standards Act. The enclosed summary savings tables show that the Committee has reported out the following proposed reduction in budget authority and outlays:

AUTHORIZATION REDUCTIONS

Walsh-Healey Act and
Contract Work Hours and Safety Standards Act
(Amounts in millions of dollars)

	FY1986		FY1987		FY1988		FY1986-88	
	BA	OT	BA	OT	BA	OT	BA	OT
Required	-570	-70	-610	-285	-635	-510	-1,815	-865
Actual	-570	-70	-610	-285	-635	-510	-1,815	-865

The Honorable Pete V. Domenici
September 27, 1985
Page Two

ENTITLEMENT REDUCTIONS

Guaranteed Student Loan Program
(Amount in millions of dollars)

	FY1986		FY1987		FY1988		FY1986-88	
	BA	OT	BA	OT	BA	OT	BA	OT
Required	-100	-100	-250	-250	-450	-450	-800	-800
Actual	-315	-270	-225	-215	-325	-325	-865	-810
Difference (+/-)	+215	+170	-25	-35	-125	-125	+65	+10

Changes to the Guaranteed Student Loan Program, improving management and administration of the program, will achieve necessary deficit-reduction savings. The proposed amendments to the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act will establish flextime for federal contractor employees and reduce federal contractor costs by modifying the standard for computing overtime rate of pay. This proposed language retains the current law requiring overtime rate of pay for a workweek exceeding forty hours.

I would like to clarify an issue of Committe jurisdiction arising from reconciliation instructions. Since the Labor and Human Resources Committee has jurisdiction of the Pension Benefit Guaranty Corporation (PBGC), and reconciliation instructions to the Senate Finance Committee assumed revenue changes requiring amendments to the PBGC statute, this Committee acknowledges the Finance Committee's compliance to reconciliation instructions, but reiterates that jurisdiction of PBGC rests with the Labor and Human Resources Committee.

The Committee views these reductions as complying fully with reconciliation requirements and as a necessary step in

The Honorable Pete V. Domenici
September 27, 1985
Page Three

achieving greater efficiencies and a restructuring of programs to deliver requisite government services. In my judgment, these reductions do not adversely affect the truly needy or sacrifice essential services.

Sincerely,

Orrin Hatch

Orrin G. Hatch
Chairman

OGH:mm

enclosures

ORRIN G. HATCH, UTAH, CHAIRMAN
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United States Senate

COMMITTEE ON LABOR AND
HUMAN RESOURCES

WASHINGTON, DC 20510

REPORT LANGUAGE

GUARANTEED STUDENT LOAN PROGRAM

In compliance with reconciliation instructions of the First Concurrent Budget Resolution for Fiscal Year 1986, this Committee reports amendments to the Guaranteed Student Loan Program. The Committee exceeded the target of $800 million dollars by adjusting administrative functions in the program. The amendments included in the proposed language will not affect student participation in the program. The Committee members are pleased with their success at meeting the budget targets and with the bipartisan support the language received.

(page 2 of Report Language)

WALSH-HEALEY ACT and

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

In compliance with reconciliation instructions of the First Concurrent Budget Resolution for Fiscal Year 1986, this Committee submits to the Senate language amending the overtime provisions of the Walsh-Healey Act, and the Contract Work Hours and Safety Standards Act. This language will bring into conformity the overtime provisions of both Acts to the Fair Labor Standards Act (FLSA) by modifying the standard for computing the overtime rate of pay, and thus reduce federal contractor costs, and thereby reduce the cost passed on to the federal government.

The calculation of the overtime rate of pay would retain the current FLSA provision requiring overtime rate of pay for a workweek exceeding forty hours, but delete provisions of the Walsh-Healey Act and Contract Work Hours & Safety Standards Act requiring overtime rate of pay for work completed in excess of an 8 hour day.

The Labor and Human Resources Committee voted unanimously in July to report bill S.1105, entitled the "Federal Contractor Employees Flextime Act." This bill contains the same language regarding the overtime rate of pay provision as the legislative language now submitted.

Reconciliation instructions assumed savings of $1,815 million in budget authority and $865 million in outlays for fiscal years 1986-88 from amendments to the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. This Committee fully complied with a total three-year savings of $1,815 million in budget authority and $865 million in outlays.

(page 4 øf Report Language)

ERISA AMENDMENTS EXPLANATION

The ERISA Title IV amendments agreed to by the Committee on Labor and Human Resources are a modified version of the Administration's reform bill sent to the Hill earlier this year. Several of the changes sought by the Administration have been dropped -- principally due to jurisdictional questions raised by the Senate Finance Committee. The remaining reforms parallel closely the language that the Labor and Human Resources Committee ordered reported late last Congress (S. 1227).

The essential reform accomplished by this package is a narrowing of the "funnel" into the Pension Benefit Guaranty Corporation (PBGC). Under the terms of this bill, plan sponsors that demonstrate distress (a "distress" termination) will still be permitted to transfer their plan liabilities to the PBGC. Current law permits any plan sponsor to "dump" their liabilities (insufficient assets to pay legally guaranteed benefits) on the system regardless of the financial condition of the employer.

As an alternative to a "distress" termination, under the bill a plan sponsor may terminate a defined benefit plan with a minimum of PBGC involvement if he chooses to do so in a "standard" termination. First, however, the sponsor must bring the plan's asset values up to the level promised to participants at the time of the termination.

(page 5 of Report Language)

For those plan sponsors that, of necessity, undergo a "distress" termination, the provisions of this bill grant the PBGC an enhanced ability to recover the asset insufficiency that is "dumped" on the system. In addition to the 30 percent of net worth liability that current law allows against the plan sponsor, this bill enables the PBGC to recover up to 10 percent of pre-tax profits for 10 years, if necessary, to make up the plan asset insufficiency. Alternatively, the parties may agree to other mutually satisfactory arrangements. This provision is only applicable to plan sponsors that stay in business; those that are liquidated need only face current law penalties.

Taken in toto, these provisions will enable the PBGC to recover more than current law permits against those fewer plan sponsors that are permitted to dump on the insurance system. These reforms will save substantial federal expenditures from the PBGC's revolving account.

This bill does not contain a premium increase: recently the Finance Committee reported legislation increasing the premium from $2.60 per participant per year to $8.10. It is the intent of the Labor and Human Resources Committee that these reforms will minimize future premium increases.

HEALTH AMENDMENTS

Requirements for Certain Group Health Insurance Policies

This provision would permit certain individuals who might otherwise lose health insurance coverage to continue employment-based health insurance coverage at group rates if they are willing to pay both the normal employer and employee premium or premium equivalent for such coverage. While creating no additional costs for the Federal government or employers, this provision would be of great potential benefit to people who lose group employment-based health insurance, since individual health insurance is typically more costly than group coverage and may be impossible to obtain for people with pre-existing health problems.

This proposal would require employers to offer the opportunity to purchase group coverage to three categories of people:

(1) laid-off workers and their families;

(2) divorcees, widows and their children who have lost employment based health insurance coverage as the result of the death of an employed spouse or a divorce; and

(3) spouses who have lost group coverage as the result of the covered family member becoming eligible for Medicare while the spouse remains ineligible.

Laid-off workers and their families could continue group coverage for up to eighteen months; widows, divorcees, their minor dependents, and Medicare-ineligible spouses could continue coverage for up to three years.

Prohibiting Refusal of Examination or Appropriate Care to Stabilize Patients in Medical Emergencies

The transfer or failure to treat a patient with an emergency condition would be prohibited unless (1) the patient had been medically screened to verify that an emergency condition did not exist; (2) the benefits of the transfer outweigh the risk, e.g., the hospital first examining the patient does not have the specialized facilities necessary to treat his condition; (3) the transfer is an appropriate transfer, one that is made only after the patient is stabilized and another hospital has agreed to receive him. Penalties for non-compliance include a civil money penalty, the right of the patient or the receiving hospital to sue, and the possible loss of Medicare certification.

The bill does not create an obligation of any hospital to treat any patient except in an emergency situation and does not interfere with the practice of medicine.

However, the Administration's latest estimate (in its August 1985 mid-session review) of the Social Security/VA pension COLA is 3.6 percent, and the current Congressional Budget Office estimate is 3.7 percent. Based on these recent estimates, the Committee believes that it will be able, within the 3.7-percent and cost limitations noted above, to carry out with respect to the FY 1986 compensation/DIC rate COLA its longstanding policy that compensation/DIC rate COLAs should be provided at the same percentage as the automatically-indexed COLAs in Social Security and VA pension benefits.

PUBLIC HEALTH SERVICE ACT MEDICAL AMENDMENTS OF 1985

I. OVERVIEW AND SUMMARY

On January 31, 1985, Senator Quayle published a proposal to reform graduate medical education (GME) in the *Congressional Record.*

Graduate medical education (also known as residency training) refers to the training that a physician receives after graduation from medical school but before entry into practice. Generally, these are hospital based programs in which the physician specializes in clinical "hands-on" training in a specific area such as internal medicine, general surgery, etc. Almost all the states require such training before a physician can be licensed to practice.

On March 25, 1985, the Senate Subcommittee on Employment and Productivity held a hearing on this proposal. Significant modifications were made to the proposal and on May 23, 1985, Senators Quayle and Hatch introduced S. 1210, "The Public Health Service Act Medical Education Amendments of 1985".

On June 13, 1985, the Subcommittee on Employment and Productivity reported S. 1210, without amendments, to the full Senate Labor and Human Resources Committee (hereonafter referred to as the Committee) by a vote of 6–1.

On July 10, 1985, the Committee on Labor and Human Resources Committee conducted an executive session on S. 1210 during which Senators Quayle, Hatch and Kennedy offered an amendment in the nature of a roll call vote of 16–0 and the bill was reported out of the Committee.

On September 27, 1985, the committee voted to include the text of S. 1210, as reported by the committee on July 10, 1985, in its reconciliation package.

As reported, the bill provides a mechanism by which national physician manpower goals can be developed and establishes a voluntary process by which medical education institutions can work to achieve these goals. The bill is directed at addressing phyisican manpower problems of oversupply and overspecialization. It is designed to: (1) encourage a shift in the distribution of graduate medical education positions from the medical and surgical specialties and subspecialties to the primary care specialties; and (2) limit the number of positions that can be filled by graduates of foreign medical schools.

The development of this legislation was prompted by a consensus that: (1) this country will have an excess supply of physicians by 1990 and that the specialty distribution of these physicians will not be consistent with the country's needs; and (2) steps need to be taken to address the problem of the high number of U.S. citizens who, unable to achieve admission to U.S. medical schools, attend foreign medical schools of inferior quality and later return to this country to receive the graduate medical education necessary for licensure and certification.

For further specifics as to committee intent, reference Senate Report No. 99-117.

Summary of Bill

The Public Health Service Act Medical Education Amendments of 1985 establishes a mechanism to set explicit physician manpower goals and a process by which teaching hospitals and medical schools can work voluntarily with the Federal government to achieve these goals. This legislation addresses two manpower issues—the oversupply and specialty maldistribution of physicians—by focusing on the relationship between the current system of graduate medical education and the perpetuation of these manpower problems.

The bill is designed to prevent arbitrary disruptions in graduate medical education programs. The 42 month time frame for the bill allows ample time for schools, hospitals, and medical students to plan accordingly.

The Committee on Labor and Human Resources does not intend that this legislation authorize any additional budget authority for fiscal year 1986, other than that already available to the Federal agencies affected by this legislation. The Committee intends that any fiscal year 1986 costs incurred by establishing a Council on Graduate Medical Education authorized by this bill be absorbed by existing funds.

Teaching Hospital Registry

The Public Health Service Act Medical Education Amendments of 1985 requires the Secretary of Health and Human Services to establish a registry for teaching hospitals which provide assurances to the Secretary that the hospital will comply with the primary care and foreign medical graduate provisions of the bill.

In order to register, hospitals would have to agree to designate a minimum percentage of their residency positions in the primary care specialties for its class of hospital. A hospital can comply with this requirement individually or as part of a group of hospitals. Additionally, at least 75% of the residents in each of a hospital's graduate medical education programs would have to be graduates of schools of medicine accredited by the Liaison Committee on Medical Education (L.C.M.E.) or schools of osteopathy accredited by the American Osteopathic Association through its Committee on Postdoctoral Training.

Establishment of Minimum Percentages for Primary Care Specialty Positions

The bill requires, within one year of enactment, that the Council on Graduate Medical Education (established under this bill) make recommendations to the Secretary with respect to the establishment of national targets for residency positions in the primary care specialties for a four year period. To achieve the national targets, the Council must make recommendations to the Secretary for the establishment of different minimum percentages for different classes of hospitals, based on the graduate medical education programs of such hospitals in Fiscal Year 1985 and such other criteria as the Secretary deems relevant.

Within six months after receiving recommendations from the Council, the Secretary shall by regulation either establish the minimum percentages recommended by the Council for a four year fiscal period or remand such recommendations to the Council.

The minimum percentages established by the Secretary may not be effective later than 24 months after the Secretary establishes such percentages.

The Council shall submit such recommendations to the Secretary every four fiscal years and within six months of receipt the Secretary must establish these by regulation or remand the recommendations to the Council.

The bill defines primary care specialties as the medical specialties of internal medicine, pediatrics, family practice, or any other medical specialty determined by the Secretary after consultation with the Council.

For the purpose of determining whether a hospital or a group of hospitals has complied with the applicable mimimum percentage, the following types of positions are positions in primary care specialties: (1) positions leading to eligibility for board certification in a primary care specialty; and (2) positions for years of fellowship training in a primary care specialty in addition to those required for eligiblility for board certification.

For the purpose of determining whether a hospital or group of hospitals has complied with the applicable minimum percentage, the following are not considered to be graduate medical education positions: positions providing research training and for which Federal or private grant support are provided; graduate medical education positions in cancer, psychiatric, rehabilitation, eye, and ear, nose, and throat hospitals designated as specialty hospitals by the Secretary; positions held by individuals admitted to the United States under Exchange Visitors Visas; graduate medical education positions operated by the Department of Defense; and those positions in a medical specialty which the Secretary, in consultation with the Council, determines to be in relative shortage.

Council on Graduate Medical Education

The bill establishes a Council on Graduate Medical Education. The Council would be appointed by the Secretary and would be composed of nineteen private sector representatives of health care providers, health care insurers, national and specialty physician organizations, schools of medicine, and hospitals which provide graduate medical education. The Assistant Secretary for Health or his designee and the Chief Medical Director of the Veterans Administration would also be members of the Council.

Within one year after the date of enactment and every four years thereafter, the Council would be required to make recommendations to the Secretary with respect to: (1) current and future needs for physicians to practice in primary care specialties and in medical specialties which the Council determines to have a relative shortage of physicians; (2) the minimum percentages which the Secretary is required to establish for primary care residency training positions for different classes of hospitals; and (3) voluntary and cooperative efforts to be carried out by hospitals and medical and osteopathic schools to meet these minimum percentages.

State Waiver

A waiver from the minimum primary care percentage provision is permitted if the state department of health applies for the waiver and includes assurances that the hospitals in the state overall meets or exceeds the weighted average of the minimum percentages applicable to all the hospitals in the state.

Requirements for Positions to be Filled by Graduates of Approved Schools of Medicine and Osteopathy

S. 1210 provides, with two exceptions, that at least 75% of all graduate medical education positions in each specialty and subspecialty graduate medical education program in a hospital in each fiscal year must be filled by graduates of medical schools accredited by the Liaison Committee on Medical Education or schools of osteopathy accredited by the American Osteopathic Association through its Committee on Postdoctoral Training.

Positions held by foreign medical graduates who enter this country under Exchange Vistors Visas are exempted from this requirement.

This requirement will not apply in two instances: (1) GME programs which have fewer than 8 positions in a hospital in a fiscal year, if the aggregate number of positions in the hospital complies with the 75% requirement; and (2) the Secretary grants the state a substantial disruption waiver based upon a determination that the health care services in the state would be substantially disrupted if compliance with the 75% requirement was achieved.

Applications for such a waiver must be accompanied by a detailed plan of efforts that will be undertaken to reduce dependency on foreign medical graduates.

II. BUDGET ESTIMATE

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 26, 1985.

Hon. Orrin G. Hatch,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1210, as ordered reported by the Senate Labor and Human Resources Committee on July 10, 1985. This bill would establish a Council on Graduate Medical Education which would recommend national targets for primary care residency training positions to the Secretary of the Department of Health and Human Services. Individual hospitals or groups of hospitals would be required to meet the minimum percentage set in regulations by the Secretary. The legislation would also require residency programs to have at least 75 percent of their residency positions filed by graduates of approved schools of medicine or osteopathy. The bill contains no provisions that would adversely affect hospitals or residency programs that did not comply with the legislation.

Based on this review, it is assumed that the Council on Graduate Medical Education would cost approximately $200,000 in fiscal year 1986 and again in fiscal year 1990. Costs reflected in this estimate include salary, travel and per diem expenses for Council members, as well as any overhead costs associated with running the Council. This estimate assumes that the Council would meet four times for a total of 10 working days every four years. The estimate also assumes that the Council would not require the assistance of full-time staff. S. 1210 is not expected to significantly change outlays for graduate medical education in the Medicare, Medicaid, or Veterans Administration programs. The estimate assumes that enrollment in residency programs would not be significantly reduced by the voluntary quotas contained in S. 1210. This legislation would not significantly affect the budget of state and local governments.

Please call if you have questions on this estimate or have your staff contact Craig Lisk on 6-2665.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

ADDITIONAL VIEWS OF SENATOR ORRIN G. HATCH

My colleagues and I on the Labor and Human Resources Committee have worked hard to come to agreement on these amendments to the Budget Reconciliation Act of 1985 relevant to our committee jurisdiction. These amendments reflect our commitment to deficit reduction by achieving approximately $3 billion in savings over the next 3 fiscal years. However, in order to obtain approval from Senator Kennedy to move this bill, provisions were also included related to Federal mandates for private employers (requiring them to expand health benefit plans) and mandates that hospitals provide examinations or treatment for any individual who requests care in an emergency department. These provisions are part of S. 1615, the Health Care Improved Access Act of 1985 which was introduced on September 9, 1985.

The intent of this bill is honorable, that is to address concerns about inadequate health care for our citizens who do not have health insurance or who are "underinsured." I agree with Senator Kennedy that this is a problem, that as our health care system undergoes rapid changes, we must adapt to meet the needs of those least able to help themselves.

There is a percentage of our population who may not receive adequate health care services because they cannot afford them. They are without insurance because they are unemployed, have temporarily lost the protection of employee-based group insurance plans, or they are self-employed but unable to purchase insurance at affordable rates. Another category of underserved patients are those covered by affordable rates. Another category of underserved patients are those covered by medicaid, public health insurance for low-income individuals, but who are reportedly being refused hospital and medical care services because the reimbuirsement is considered too low to be "profitable." Such uninsured and underinsured individuals result in "uncompensated care" which is posing financial difficulties for hospitals and health care providers throughout the country.

During the past four years we have witnessed dramatic changes in our health care system. Traditional "fee-for-service" is being challenged by alternative delivery systems such as HMOs (Health Maintenance Organizations), IPAs (Independent Practice Association), and PPOs (Preferred Provider Organizations). The role of the hospital in our society is changing, no longer providing only acute in-patient medical care, but also providing several types of out-patient treatment, home care, and a broad range of social services. Our citizens have become much more savvy consumers—they have responded to incentives in group health insurance plans by becoming more careful and prudent purchasers of health services. All of these changes have created a remarkably competitive environment with the inevitable confusion and frustation which accompanies change.

I am a strong advocate of competition in the health care market place. But there are some "symptoms" indicating our current system may be developing an "illness" which will need treatment. But I am confident this can be done without turning to the Federal Government for significant increases in public funding or regulation. With collaboration among the public and private sector, I am convinced we can solve problems related to uncompensated care.

There are reportedly 35 million citizens in our country who fall under the category of uninsured or underinsured. It has been estimated that the cost of providing care for this group was $7.8 billion in 1983 and is rising. The reasons for the increases are complex, but among those frequently cited are the adoption of a prospective payment system for hospital care under medicare, the increasing frequency of negotiated discounts for private-paid employer health plans which limit the hospitals' ability to shift indigent care costs, and the rising costs in general.

Regardless of the causes, this problem must be addressed by society. Many are quick to say the problem lies with health providers—hospitals and physicians who are anxious to reap ever-increasing profits and who seem unconcerned with public health and well being. There have been disturbing reports about hospitals referring, and in some instances refusing to treat patients who present themselves for care, but who don't have health insurance. Others apparently require a substantial cash deposit from uninsured patients before admitting the individual for care. This has been referred to as taking a "wallet biopsy" before determining if the individual merits treatment. When this occurs to individuals in need of medical care it is unconscionable and completely contrary to the proud tradition of our health care professionals.

However, this problem is complex and the blame does not rest solely upon providers. Quality health care is expensive. As a society we are demanding more and better services. Thanks to Federal investments in basic science research, and a remarkably innovative and creative private enterprise system, we have a dazzling array of new medical technologies which promise improved health, relief of pain and disability, or at least postponing an inevitable appointment with death. None of us wants to stop progress, the advancement of science, or to discourage development of future cures and remedies. But I think it is imperative we pause and consider what services among the smorgasbord of available health care our society has a responsibility to guarantee to our citizens, regardless of their ability to pay.

Currently the Federal Government is shouldering a large portion or our Nation's health care costs, spending in excess of $100 billion of public money annually to provide services to the poor and the elderly through medicare and medicaid. But if Congress is to control our Federal expenditures we must rein in expenditures under these programs. Please note that I did not say Congress must cut—

only that their costs must be cut. We must find ways of making certain that the enormous amounts of money currently being spent are directed to help those most in need of care. In the absence of Federal legislation mandating shifting of public moneys to individuals currently underinsured or uninsured, States have taken steps to solve this dilemma. States have developed two important models: (1) Providing health insurance coverage for persons temporarily uninsured; and (2) providing financial assistance to providers of uncompensated care. Examples of these approaches vary from State to State and are modeled after local and community needs. While it is important we give national attention to the problems of the uninsured and underinsured, I believe we must recognize the novel approaches created at the local and State level. We should encourage, and perhaps reward, States who develop innovative and effective solutions. At the same time, I believe we must proceed cautiously in addressing this problem, and not usurp or impede States in their efforts.

Therefore, I do not support the provisions of S. 1615 included in this bill. I believe they are premature, over-regulatory and unnecessarily punitive. Many health professionals and hospital organizations, employers and private insurance companies have expressed strong opposition to these provisions. Some of their views were included in the House report accompanying H.R. 3128 the Deficit Reduction Amendments, and I would like them included with this statement.

There is a more prudent and reasonable way of addressing the problem of uncompensated care. For example, the Catholic Hospital Association has proposed establishing the National Council on Access to Health Care to address a broad range of problems related to health care for the poor. Legislation to accomplish this was introduced by Senators Durenberger and Simon on September 10, 1985 (S. 1620). Although the bill calls for the council to make recommendation to Congress for legislative solutions on an annual basis for the next 3 years, it does not mandate Federal solutions to current concerns. This cautious approach is much more preferable than the provisions in S. 1615. I urge my colleagues to carefully review the provisions in this bill and consider alternative proposals when it is considered on the floor of the Senate.

Submission by the Law Firm of Kenny Nachwalter & Seymour

(The following letter was sent by the law firm of Kenny Nachwalter & Seymour to the Honorable Peter W. Rodino, Jr., on Septermber 4, 1985.)

KENNY NACHWALTER & SEYMOUR,
Miami, FL, September 4, 1985.

Re: Deficit Reduction Amendments of 1985 (H.R. 3128)—Responsibilities of Medicare Hospitals in Emergency Cases.

Honorable PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, 2137 Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in regard to Section 124 of the Medicare Reconciliation Amendments of 1985 (Title I of the Deficit Reduction Amendments of 1985 [H.R. 3128]) which sets forth certain responsibilities of Medicare hospitals with respect to the provision of emergency medical services.

The Deficit Reduction Amendments were reported out of the Committee on Ways and Means on July 31, 1985, and Section 124 was referred to the Committee on the Judiciary for its consideration before September 11, 1985.

We represent a number of health care providers and a large fiscal intermediary in the State of Florida, and our interest in this subject flows from our involvement with many of the legal and economic issues relating to the provision of medical services to the indigent, and more particularly, with the difficult questions often raised by the subject of patient transfers. I am not writing on behalf of any specific client, but I thought that our perspective from an operating vantage point in which we often deal with the day-to-day challenges faced by both hospitals and physicians in the treatment of indigent patients might be of some interest to you and to the other members of the Judiciary Committee.

Section 124 requires all Medicare provider hospitals, as a condition of participation, to provide an "appropriate" medical screening examination to any person who requests to be examined, and it expressly prohibits "inappropriate" patient transfers to other medical facilities. A responsible physician who violates the Section's requirements may be imprisoned for as much as one year and fined $100,000, or, if a transferred patient dies as a result, the physician may be sentenced to five years in prison and fined up to $250,000. Civil penalties are also prescribed.

I am sympathetic to the concerns for patient safety which prompted the adoption of Section 124 by the Ways and Means Committee. I am concerned, however, that its enactment may signal a new and dramatic departure from the basic philosophical approach of the Medicare Act and that the practical operation of Section 124 may unavoidably result in some confusion and ambiguity and may lead to a degradation in the quality of American medical care and particularly in the availability of health care services to the poor.

During the twenty years since the enactment of Medicare, it has been the general philosophy of the federal government to refrain from interfering with medical decision-making by individual physicians and institutional providers or from limiting a beneficiary's freedom to choose among alternative sources of health care. These basic concerns have been incorporated into the Act itself at Sections 1801 and 1802 (42 U.S.C. §§ 1395 and 1395a), respectively.

To the best of my knowledge, Section 124, if enacted, will represent the first time that the federal government has attempted to regulate directly the manner in which medical services are provided. Section 124 seeks to prohibit inappropriate patient transfers and to require a medical screening examination for each patient who requests one. As laudable as these objectives are, however, their enforcement can only be obtained through the retrospective evaluation of intimate medical diagnostic and treatment decisions which have heretofore been left exclusively to the judgment of the physician and his patient. If section 124 becomes law, however, those decisions will be subject to the second opinion of federal prosecutors.

The enforcement of Section 124 will also be an extraordinarily complex task inasmuch as patients may be appropriately transferred to other facilities for a variety of legitimate reasons, not all of which are related to the patient's medical condition. A patient may be transferred because he or she belongs to a pre-paid health insurance plan or to a health maintenance organization which requires as condition of coverage that the patient be hospitalized in a particular facility. A patient may be transferred because his or her personal physician is on the staff of a different hospital or because the patient has established a prior relationship with a particular health care provider. Sometimes patients request to be transferred because they are eligible for the free medical care at a government hospital or at another public facility or because they wish to be treated at a location that is nearer to their residence, family and friends.

Individual decisions to transfer a patient often take place under the most difficult and time-sensitive circumstances. It may, for example, occasionally be the case that an emergency physician may redirect a patient to a different hospital on the basis of a brief examination when it is obvious that the transferring facility lacks the capability to provide for the patient's needs. The time required to examine the patient fully, complete a written determination that transfer is necessary and inform the receiving facility may literally mean the difference in some cases between life and death. At small or rural hospitals, a physician on call and away from the hospital may be required to authorize the transfer of a patient based upon the initial evaluation of an attending nurse. Section 124 may ultimately force small hospitals to choose between either closing their emergency departments or hiring additional, full-time medical personnel.

In addition, new modes of delivering emergency services have evolved during the past ten years which contemplate that patients will be routed to the nearest appropriate hospital, often on the basis of radio contact with rescue units or paramedics at the scene of an emergency. Regional trauma centers are specifically designed to direct patients among a number of different medical facilities so that patients may receive the best possible medical care as quickly as possible.

All of these developments and all of these possible transfer situations are entirely legitimate in the sense that the patients' ultimate welfare is thereby protected. Patient transfers take place for a wide variety of reasons, but Section 124 fails to take account of the fact that not all transfers are initiated for improper reasons. By sweeping all transfers into a single net, Section 124 may inadvertently penalize physicians who have actually served a patient's best interests by approving a transfer. It may encourage some emergency physicians to attempt procedures that they otherwise would not, and it may generally discourage transfers in all circumstances, even when motivated by a concern of the patient's best medical interests.

Section 124 is thus dangerously overbroad. Its enactment may contribute directly to a reduction in the quality of emergency medical services generally and indirectly to an increase in the overall costs of health care in the United States.

In addition to its overbreadth, important parts of Section 124 are extremely vague. It is not at all clear, for example, what is meant by "appropriate medical screening examination" as set forth in proposed Section 1867(a). If a patient is brought to a hospital suffering from a depressed skull fracture and the hospital has no neurological staff, is the examining physician nonetheless required to have the patient brought into the emergency department for an examination prior to the patient's transfer to an appropriate facility? Is a medical screening examination conducted by a nurse always "inappropriate"?

There is no guidance in Section 124 as to what satisfies the requirement of a written determination by a physician of the relative risks and benefits to the patient of a transfer to another medical facility as set forth in proposed Section 1867(c)(1)(A), and there is no indication of what purpose such a determination would serve. This requirement appears to constitute nothing more than an additional layer of regulatory paperwork, and it may result in a delay in treatment while the necessary forms are completed. More seriously, the language of Section 1867(c)(1)(A) would seem to prohibit any transfer of a patient until a physician can be summoned, a particular problem for hospitals which do not maintan full-service emergency departments.

I am particularly concerned by the requirement of proposed Section 1867(c)(2)(A)(ii) that the agreement of the receiving facility be obtained prior to transfer in all cases. We have encountered instances in South Florida where administrative personnel at receiving hospitals have arbitrarily refused to accept patient transfers that have already been agreed to between the responsible physicians. This provision would effectively mean that any hospital could unilaterally bar all patient transfers, regardless of medical necessity. In addition, there are occasions in which a patient's condition may be so critical that an immediate transfer is indicated and notice to the receiving facility can only be given once the patient is actually on the way. Proposed Section 1967(c)(2)(A)(ii) would prohibit such urgent transfers in all circumstances.

At the very least, to the extent that certification requirements and criminal penalty provisions are incorporated into the final act, I would suggest that such provisions should be made reciprocal. Any receiving hospital should be required to document the fact, that it does not have available space or qualified personnel for the treatment of the patient, and criminal penalties should be imposed for the violation of this requirement.

Section 124 provides for the civil enforcement of its requirements at proposed Section 1867(d)(3) by "any person or entity that is adversely affected . . ." I assume that this provision was inserted to create a cause of action on behalf of receiving medical facilities, a remedy which may seriously aggravate relations among hospitals in particular localities, but it is at least arguable that it will also inspire claims by ambulance companies and rescue services and many even be interpreted to include, for example, an individual who may be struck by an ambulance carrying a patient from one hospital to another.

The same paragraph stipulates that an action to recover damages for a violation of Section 1867 may be brought "in an appropriate court of general jurisdiction of the State in which the hospital is located or in the appropriate Federal district court . . . ." If this language is interpreted to create concurrent federal jurisdiction, the result will be a geometric increase in the number of garden-variety medical malpractice cases handled by the federal courts with all of the consequent burdens of time and expense for the federal judiciary.

Proposed Section 1867(d)(3) also contemplates the imposition of equitable relief to "deter subsequent violations." The standards under which injunctions are to be issued to restrain future violations of the Section are not spelled out, however, and this particular remedy would appear to be available to prevent future transfers of other patients not before the court. Inasmuch as patient transfer decisions are typically unique to the medical condition and personal circumstances of each patient, it should prove to be very difficult for the courts to frame appropriate orders and virtually impossible for them to monitor compliance. Because medical decision-making in any particular case is inherently a non-replicable type of activity, equitable sanctions would seem to be peculiarly inappropriate.

The primary test of physician criminal culpability spelled out in proposed Section 1867(d)(4)(A) is whether the physician's conduct represents "a gross deviation from the prevailing local standards of medical practice." To the best of my knowledge, this is a new formulation without any history of interpretation by the courts. In Florida, for example, the "accepted standard of care for a given health care provider [is] that level of care, skill, and treatment which is recognized by a reasonably prudent similar "health care provider as being acceptable under similar conditions and circumstances." Florida Statutes Section 768.45(1). How Section 124's definition will be applied in practice is unclear. It may turn out to be the case that juries will simply continue to award damages and will begin to convict physicians on the basis of their visceral sense of whether a patient has suffered any damage and how likely it is that civil penalities will ultimately be paid by malpractice insurers.

The availability of insurance coverage for violations of Section 124, however, is questionable. Most policies specifically exclude coverage for damages incurred as the result of criminal acts and insurance in such circumstances may otherwise be prohibited as a matter of state public policy.

Proposed Section 1867(d)(4)(A)(iii) sets forth the Section's criminal penalties. It provides that a responsible physician may be imprisoned for up to five years and fined as much as $250,000 "if, as a direct result of the violation of this paragraph, the patient dies . . ." It is at least conceivable that the heightened penalties may be invoked in some instances because of substandard medical care rendered at a receiving facility which results in a patient's death. The net effect may be to make physicians at the transferring facility insurers against medical malpractice committed by a different medical facility.

I further believe that most of the definitions contained in proposed Section 1867(e) are inadequate and will lead to unfortunate results in practice. Both the definitions of "emergency medical condition," and "active labor" are very liberal. They would each appear to include situations in which a patient's true medical condition could not reasonably be detected by an examining physician prior to transfer. Indeed, the definition of "active labor" set forth at proposed Section 1867(e)(2)(C) would seem, to include women with high-risk pregnancies who might actually be several months away from their expected dates of delivery.

The terms "to stabilize" and "stabilized" set forth at proposed Section 1867(e)(4) stipulate that sufficient medical treatment must be rendered "to assure" that no material deterioration in the patient's condition will take place as the result of a transfer. This type of medical guarantee is ordinarily impossible to make in actual practice; sometimes patients must be moved to other facilities for medical reasons despite the fact that the patient's condition might deteriorate in transit.

I am also troubled by the sweeping inclusion in proposed Section 1867(e)(5) of "any person employed by (or affiliated or associated, directly or indirectly with)" a hospital among those capable of triggering liability. I am sure what this definition contributes to the Section other than to expand the potential circumstances under which liability may be imposed.

Finally, Section 124, by its terms, is scheduled to take effect on October 1, 1985, This is an extraordinarily rapid effective date and will undoubtedly result in the Section's application to physicians and hospitals who are completely unaware of the Section's existence.

With respect to the enforcement provisions set forth at proposed Section 1867(d), I am generally vary skeptical as to wisdom of the civil enforcement and criminal penalties provided for at proposed Section 1867(d)(3) and 1867(d)(4). It seems to me to be peculiarly inappropriate to use the Medicare Act as the vehicle for the introduction of new criminal sanctions against physicians, particularly when those sanctions can be invoked in behalf of patients who are not even eligible for Medicare benefits (as specified at proposed Section 1867(a) and 1867(b)).

More fundamentally, there already exist a variety of sanctions for detering and punishing improper physician conduct, including the authorization of inappropriate patient transfers. I need not belabor the impact of medical malpractice liability on physician decision-making. Suffice it to say that virtually all states now recognize a duty on the part of both physicians and hospitals to render emergency medical assistance to those in need who present it at a hospital emergency department. Delaware was perhaps the first state to establish such a duty as a part of its common law. *Wilmington, General Hospital* v. *Manlove,* 174 A.2d 135 (Del. 1961). Many states, including Florida, have expressly enacted such requirements by statute. The Florida statute provides, in pertinent part, as follows:

> No general hospital licensed under this part, and no speciality hospital with an emergency room, shall deny any person treatment for an emergency medical condition which will deteriorate from a failure to provide such treatment. (Florida Statutes Section 395.0143.)

By imposing affirmative obligations to render emergency treatment to all patients, regardless of financial status, most states have already enacted to means for attaining Section 124's objectives.

The Committee should also bear in mind that most states require the revocation of a medical license upon conviction of a felony related to the practice of medicine. In

Florida, such a requirement is incorporated at Florida Statutes Section 455.227(1)(c). Thus, the violation, purposeful or inadvertent, of Section 124 by a physician will almost always result in that physician's permanent removal from the profession.

I understand the concerns which motivated Section 124, and I believe that there are ways in which the section's objectives can be met. In particular, the review of patient transfer decisions as a matter of course should logically constitute one of the functions of the utilization and quality control peer review organizations established by Sections 1151 through 1163 of title 11 (42 U.S.C. §§ 1320c–1320c-12).

Otherwise, I fear the Section 124 is overboard in its application, vague in its requirements and unnecesarily severe in its sanctions. I would hope that the Congress would chose to consider this important subject in a deliberate fashion and not attempt to enact prophylactic legislaton in haste and without an opportunity for public comment.

I am grateful for your tolerance for the length of my comments, and I hope that they may prove useful to you and the other members of the Committee. If I can be of any other service on this matter, please do not hesitate to let me know.

With best regards.

Very truly yours,

PAUL M. BUNGE.

LETTER SUBMITTED BY THE AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

(This following letter was sent by the American College of Emergency Physicians to the Honorable Peter W. Rodino, Jr. on August 30, 1985.)

AMERICAN COLLEGE OF EMERGENCY PHYSICIANS,
Dallas, TX, August 30, 1985.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The House Medicare/Medicaid Budget Reconciliation package, H.R. 3128, as approved by the House Ways and Means Committee, includes Section 124 pertaining to responsibilities of Medicare hospitals in emergency cases. That section addresses all patient transfers, not just transfers of Medicare patients. The American College of Emergency Physicians shares the Committee's concerns and does not condone inappropriate patient transfers, some of which have recently come to light in the television and newspaper media. However, turning a few selected cases into federal criminal offenses does raise a number of problems. Section 124 of H.R. 3128 has been referred to the House Judiciary Committee until September 11.

American College of Emergency Physicians is a national medical specialty society that was founded in 1968 to further the discipline of emergency medicine. Since that time, our membership has grown to more than 11,000 physicians who practice their specialty in emergency facilities across the country. Each year, approximately 77 million visits are made to emergency facilities by patients who depend on emergency care providers to evaluate and treat their illnesses and injuries and to stablize all life—and limb—threatening conditions. Emergency physicians must be available 24 hours a day, seven days a week to provide such unscheduled, episodic care.

From working in hospital emergency departments, emergency physicians have first-hand experience in providing emergency care and in dealing with the many factors in a patient transfer decision. We also are currently providing much of the medical care that indigent patients are receiving. Every day, we see price-competitive incentives being built into the health care system that work against the poor and medically indigent patient. All third-party payers, including Medicaid, insurers, and employers, are implementing cost saving measures, and they are succeeding. We are concerned about the effects on care for the poor and the near poor.

Although we are in agreement with the objective of the legislation (i.e., to eliminate inappropriate patient transfers), we believe the statutory language is excessively punitive to emergency physicians without truly addressing the patient transfer problem. The language as approved by the Ways and Means Committee is so intimidating to emergenncy physicians that transfers which are in the best interest of patient care may be avoided or delayed. Because of the uncertain nature of the practice of emergency medicine and because of the retrospective standards of liability of this provision, emergency physicians may avoid transfers in order to protect themselves against criminal penalties and ultimate loss of their medical licenses because of the potential of felony convictions. Extreme caution could also result in prolonged detentions and unnecessary admissions. Neither is in the interest of patient care and both would increase health care costs.

Emergency physicians never know what types of cases will come into the emergency department. They must make rapid decisions regarding appropriate treatment, the need for hospitalization, and the type of consultation that may be needed. Time is often critical. The practice of emergency medicine is the challenge of making the best judgments under stressful conditions with limited information. This aspect also leaves the emergency physician most vulnerable to retrospective judgments as to what the physician "knows" (or has reason to "know") at the time multiple decisions are being made in the interest of emergency care. The course of a patient's injury or illness is often unpredictable. Yet, the definition of "stablized" used in H.R. 3128 is not a medical (clinical) definition, but, rather, serves more as a warranty against "material deterioration of the condition." When is something "likely" to happen? In retrospect, if it did not happen, then it was not likely, but if something did happen in the course of time, then was it likely? Hindsight is always clearer than foresight.

Emergency physicians are central figures in the continuum of patient care. Emergency care begins in the prehospital setting, continues in the emergency facility, and concludes when the patient is discharged or when responsibility for the patient is transferred to another physician or facility. In most cases, emergency physicians do not have hospital admitting privileges and, therefore, are dependent upon hospitals and attending physicians to provide ongoing care to patients beyond the capacity of the emergency department. Only in very limited situations do emergency physicians provide inpatient services.

As central figures in the continuum of patient care, emergency physicians have become acutely aware of the patient transfer issue, as well as the more global problem of funding for indigent care. Insurers, employers, governments, physicians, and hospitals are all affected by this problem. The American College of Emergency Physicians has been and will continue to be committed to providing emergency care to indigent patients. ACEP has long held to the principle that all patients are entitled to emergency care, regardless of their ability to pay. We agree that all patients are entitled to have medical screening and stabilization. The College has established transfer guidelines which were recently expanded and updated, and we feel transfers are appropriate if they adhere to these guidelines. A copy of ACEP's patient transfer guidelines is attached. However, we as individual physicians cannot be held responsible for more than we can reasonably be expected to assure.

The conduct the proposed legislation is attempting to address is more appropriately governed by medical malpractice laws. Defensive medicine and medical malpractice are always recognized as major problems. Expanding the jurisdiction over malpractice claims into federal courts, as this bill does, will exacerbate the current medical malpractice crisis. Reprehensible as true malpractice may be, we feel it is unfair to single out emergency physicians for federal criminal penalties while allowing states to address all other forms of malpractice. We also feel strongly that the proposed approach is an intrusion into areas properly left to the states, namely standards of medical practice.

We note that Medicare started with paying medical bills for the elderly. The proposed provision brings us to the point of federal standards of medical care for the non-elderly backed by criminal penalties. This bill is also precedent-setting in that it attempts to set standards for non-Medicare patients.

Under the proposed legislation, criminal penalties are being imposed in haste as part of a budget reconciliation process when the provisions is not a monetary item. The patient transfer provision was approved by the House Ways and Means Committee without hearings. If the intent of this legislation is to incorporate emergency care into Medicare participation criteria, the penalties should reflect already-existing sanctions within the Medicare Conditions of Participation for Hospitals. We believe hospital administrations, hospital governing boards, and hospital medical staffs should jointly develop plans that demonstrate how hospitals will handle patient transfer cases. Hospitals should be responsible for providing medical screening and stabilization, as defined medically, to all emergency patients who present for treatment. All hospitals should demonstrate they have established provisions for care by members of the medical staff for any patients who need admission, particularly when they are not eligible for transfer within the guidelines. All hospitals should also demonstrate they have established adequate disciplinary actions for violations of the transfer guidelines by members of the medical staff.

Because we feel the proposed legislation is extremely vague, and appears to be open to numerous interpretations, the American College of Emergency Physicians asks that time be taken to formulate a solution that will result in optimal patient care in these potential transfer situations. We are more than willing to work with you in developing alternative solutions and offer our assistance, and that of Virginia Pitcher, Director of the College's Washington Office, in addressing the patient transfer issue. Ms. Pitcher may be contacted at 2000 L Street, NW., Suite 200, Washington, DC 20036, telephone 202/861–0979.

Sincerely,

BRUCE D. JANIAK, MD, FACEP, *President.*

Enclosure.

THE EMERGENCY PHYSICIAN AND INDIGENT CARE

Emergency medicine is a distinct medical specialty, with approximately 15,000 physicians treating more than 77 million patients annually. It was recognized as the 23 medical specialty by the American Board of Medical Specialties in 1979, and the first board certification examination was administered in 1980.

Today, 66 residency training programs in emergency medicine have graduated more than 1,500 physicians, with an additional 1,300 in training. More than 3,000 physicians are board certified in emergency medicine. The American College of Emergency Physicians, founded in 1968, is the medical specialty society representing more than 11,000 emergency physicians.

Emergency physicians practice full-time in hospital emergency departments throughout the country. Their practice is unique because they treat a wide range of medical conditions, from the victims of automobile or industrial accidents to children who have swallowed household detergent. Emergency physicians also must recognize and treat cases of child abuse and rape, in addition to working with burn victims, hypothermia victims, and patients suffering potentially deadly allergic reactions.

The emergency department often serves as an access point for patients entering the overall health care system. Emergency physicians serve as a conduit and evaluate, stabilize, and treat all patients who present to the emergency department. Inpatient treatment is almost always the responsibility of other specialists. Because most emergency physicians do not have admitting privileges to the hospital, their role ends when the patient is discharged or responsibility for the patient is transferred to the admitting physician or another facility.

Because they serve as the access point to the health care system, particularly for those who have no personal physician, emergency physicians are acutely aware of the indigent population in America. Because the indigent population frequently has nowhere to turn for medical care except the emergency department, emergency physicians frequently treat indigent patients.

The reality of this situation was reflected in recent research conducted by Medical Economics. According to the March 5, 1985, issue of Medical Economics, emergency physicians' median net practice earnings are 8% less than the median for all medical specialists. The magazine states the "principal explanation is that a high proportion of emergency department patients either can't or won't pay, while medical ethics and the policy of most hospitals require that they be treated." Most states also have statutes or regulations requiring that patients who present to hospital emergency departments be seen without regard to their ability to pay.

The Medical Economics survey of physicians showed that the typical emergency physician in 1983 rendered more than $25,000 in uncompensated care, compared to approximately $17,000 in uncompensated care provided by all physicians surveyed. The Medical Economics data indicate emergency physicians as a specialty provided more than $380 million in uncompensated care in 1983. Emergency physicians accept uncompensated care as part of their practice because their overriding concern is the patient's welfare.

Frequently, patients are transferred to other facilities following evaluation and stabilization. Transfers occur in all economic strata for any number of reasons. There are often important considerations that may justify a transfer in individual cases that are not strictly related to the availability or suitability of post-emergency medical care in the transferring facility. Some of these considerations include:

An established medical relationship may exist between the patient and the receiving facility, including a history of prior admissions for other or related complaints;

The patient's personal physician may have attending privileges at the receiving facility and not at the transferring facility;

The patient's prior medical records may be on file at the receiving facility;

The patient may prefer to receive post-emergency medical care at a different hospital;

The patient's family, relatives and friends may be inconvenienced by admission of the patient to the transferring facility because of the distance between that facility and the patient's residence; and

The availability of free medical care at a public or government-financed medical facility may obviate or reduce the economic burdens that the patient might otherwise incur.

According to the American College of Emergency Physicians Patient Transfer Guidelines, the emergency physician's role in patient transfers is to stabilize the patient and establish medical responsibility for the patient with a physician at the receiving hospital before a transfer begins. Emergency physicians will make every effort to make the patient as comfortable as possible before the transfer begins. However, patients cannot always be pain-free before transfer because the pain may be a primary symptom needed to help the receiving physician diagnose and treat the patient.

Emergency physicians believe indigent health care is a crucial issue facing the country today. Transfer of patients is only one facet of this difficult problem. We, as a society, need to addess all aspects of indigent health care, particularly the most significant element of the issue—the funding of indigent care. Emergency physicians will continue to staff emergency departments throughout the country and provide medical care to every patient who presents, regardless of their ability to pay.

Policy Statement on Transfer of Patients [1]

From time to time, patients in an Emergency Department are transferred to other facilities. The transfer may be to another Emergency Department or directly to an in-patient facility. Clearly, not all physicians or medical facilities have the capabilities to care for every patient. At times, patients, or those responsible for them, request transfer to another facility for various reasons (which may

[1] Approved by the ACEP Board of Directors on August 13, 1985. These are guidelines and are not to be construed as standards of care.

or may not be medical); at times patients are transferred to receive the benefit of more appropriate facilities and/or services than are available in the given hospital or Emergency Department; and at times patients are transferred because of economic consideration, which may include the availability of free or reduced-cost medical care at a public or other facility or in accordance with the requirements of pre-existing contracts for patients of prepaid health plans that stipulate which facilities patients are to use.

Patients should not be transferred to another facility without first being stabilized. Stabilization includes adequate evaluation and initiation of treatment to assure the transfer of a patient will not, within reasonable medical probability, result in death, or loss or serious impairment of bodily parts or organs.

Stabilization of patients prior to transfer should include:

1. Establishing and assuring an adequate airway and adequate ventilation.
2. Initiating control of hemorrhage.
3. Stabilizing and splinting the spine or fractures when indicated.
4. Establishing and maintaining adequate access routes for fluid administration.
5. Initiating adequate fluid and/or blood replacement:
6. Determining that the patient's vital signs (including blood pressure, pulse, respiration, and urinary output, if indicated) are sufficient to sustain adequate perfusion. The vital signs should remain within these parameters for a sufficient time prior to transfer to be reasonably certain they will not deteriorate while en route to the receiving hospital. However, there may be times when stabilization of a patient's vital signs is not possible because the hospital or Emergency Department does not have the appropriate personnel or equipment needed to correct the underlying process (e.g., thoracic surgeon on staff or cardiopulmonary bypass capability). In these cases, numbers 1–5 of the above should be performed and transfer carried out as quickly as possible.

At times, a patient or those responsible for the patient, may request a transfer that seems medically inappropriate. The physician is obliged to explain the medical risks involved, and an informed consent should be signed by the patient (or those responsible for the patient such as a parent or guardian) and the physician. In the event of such a transfer, the physician should still use every resource available in an attempt to stabilize the patient prior to transfer.

The following guidelines should be observed for transfer of patients:

1. The patient should be transferred to a facility appropriate to the medical needs of the patient. The facility should have adequate space and personnel available to care for the patient.

2. A physician or other responsible person at the receiving hospital must agree to accept the patient transfer prior to the transfer taking place. Acceptable "other responsible persons" should be medical personnel who are designated by the hospital and given the authority to accept the transfer of the patient. The patient transfer should not be refused by the receiving hospital when the transfer is indicated and the receiving hospital has the capability and/or responsibility to provide care to the patient.

3. Communication between responsible persons at the transferring and receiving hospitals for purposes of exchanging clinical information should occur prior to transfer. Ideally, this communication should be physician-to-physician.

4. Once a patient is accepted for transfer, an appropriate medical summary and other records (including lab results, and copies of EKGs and X-rays) should be sent with the patient.

5. A patient should be transferred via a vehicle that has appropriately trained personnel and life-support equipment. At times, it may be necessary for additional specialized personnel from the transferring or receiving hospital to accompany the patient.

At times, transfer of patients occurs routinely or is part of a regionalized plan for obtaining optimal care for patients at more appropriate and/or specialized facilities. In these situations there should be:

1. Written guidelines (e.g., types of cases appropriate for transfer) to govern the transfer of patients;

2. Pre-existing transfer agreements between the facilities, and;

3. Pre-transfer communication between appropriate responsible personnel.

Statement Submitted by the American College of Emergency Physicians

(The following statement was sent by the American College of Emergency Physicians to the House Judiciary Committee on September 6, 1985.)

STATEMENT

The American College of Emergency Physicians (ACEP) is a national medical specialty society that was founded in 1968 to further the discipline of emergency medicine. ACEP's membership now includes more than 11,000 emergency physicians who practice their specialty in emergency facilities throughout the United States. Each year, more than 77 million visits are made to emergency facilities by patients who depend upon the specialized training and expertise of emergency care providers to stabilize and treat virtually every tppe of serious illness and injury. Emergency physicians constitute the front-line of American medicine and, in many instances, they are effectively the only outpatient health care providers to a substantial portion of the nation's poorest citizens.

The United States Congress is currently considering the enactment of legislation which would regulate the provision of emergency medical services on a national basis. Section 124 of the Medicare Budget Reconciliation Amendments of 1985 (Title I of the Deficit Reduction Amendments of 1985 [H.R. 3128) sets forth certain requirements and procedures to be followed by Medicare provider hospitals with respect to the provision of emergency medical treatment and imposes criminal penalties for the knowing violation of the section's requirements.

In general, ACEP believes that the objectives of Section 124 (proposed section 1867 of Title XVIII) in attempting to prevent the arbitrary transfer of patients who may suffer serious medical consequences as a direct result are laudable. There can be no question but the health and safety of each patient is of paramount importance and that no patient should be denied access to emergency medical treatment simply because he or she may lack the ability to pay. ACEP has consistently emphasized the responsibility of all physicians to adhere to the highest standards of medical care and ethics and to contribute to the health care needs of the medically indigent. Emergency physicians in particular have discharged their obligations in this regard with the utmost attention to the professional standards of their discipline and the public interest.

ACEP is very concerned, however, with the means proposed by Section 1867 for discouraging inappropriate transfers and most particularly with the criminal sanction provisions set forth at Section 1867(d)(4). In general, Section 1867 provides insufficient guidance to physicians and other responsible medical personnel as to their duties and obligations under the law, and its enactment may unintentionally result in the imposition of harsh criminal penalties on physicians who have fully conformed to the highest standards of medical ethics in the treatment of patients with emergency medical conditions. In addition, ACEP believes that the practical effect of the law's application may be actually to reduce the quality and availability of medical services to the poor and to raise health care costs generally, results which were not in the contemplation of Section 1867's sponsors.

As a consequence, ACEP believes that the enactment of Section 1867 as currently formulated would be highly inadvisable. ACEP's specific concerns with this legislation can be grouped into the following categories:

1. The subject of inappropriate patient transfers can best be dealt with as a part of the larger issue of indigent health care generally. Patient transfers are only one aspect of this overall problem which deserves the attention and consideration of the Congress.

2. A variety of effective mechanisms already exist for discouraging transfers which may endanger a patient's

health or well-being, and the civil and criminal sanctions embodied in Section 1867 are therefore largely redundant.

3. In practice, the implementation of Section 1867's requirements may lead to a host of interpretive difficulties which may result in its unfair application in individual instances and in a general degradation of medical practice and emergency health care.

4. Acceptable and effective alternative solutions exist which could reduce the incidence of inappropriate patient transfers while preserving the independence and professional integrity of the treating physician.

It is not ACEP's position that appropriate legislation cannot be formulated to deal with some of the problems associated with patient transfers. ACEP believes, however, that the subject is a complex one, that its nature and dimensions vary widely among localities and that a comprehensive solution cannot be arrived at in isolation without addressing the broader issues of indigent health care and its overall financial requirements.

1. Indigent Health Care.—No one understands the full dimensions of indigent health care needs in the United States or the degree to which those needs are being met. There are no comprehensive data on the subject and only fragmentary analysis of the impact of indigent medical care requirements in specific communities.

We do know, however, that recent changes in the health care industry have probably affected the delivery of medical services to the poor in an adverse fashion. The rapid introduction of competitive forces into the delivery of health services during the past few years has made it increasingly difficult for the private sector to absorb the costs of uncompensated care. Most notably, the implementation of the Prospective Payment System for Medicare reimbursement has exerted significant downward pressures on all hospital charges, eliminating the margin that used to be available for other purposes including the financing of indigent health care.

In addition, both consumers and third-party payors throughout the United States have become increasingly cost-conscious, and organized health care coalitions and new forms of group medical coverage such as preferred provider organizations and HMOs have reduced hospital utilization rates and cut average patient lengths of stay.

There is also a decreasing emphasis upon the provision of inpatient hospital services generally. Alternative health care delivery systems such as ambulatory surgical centers, freestanding emergency facilities and outpatient services of every sort have served to reduce hospital operating revenues and further limit the resources available for treatment of the poor.

The net effect of these developments has been to raise serious challenges to the continued financial viability of many hospitals. Some have already been forced to close; others can be expected to do so in the coming years. The impact in terms of indigent health care has been to make it even more difficult for the private sector to absorb the costs of uncompensated medical services. Despite this fact, America's community hospitals have continued to contribute their fair share it has been estimated that the value or uncompensated hospital services rendered to the poor exceeds $6 billion annually.

It is within the context of these sweeping changes in the health care industry that the issue of patient transfers must be considered. Realistically, the economic pressures generated by new competitive forces have increased the incentives to transfer patients to publicly-supported facilities where those patients may be eligible to receive free or reduced-cost medical care that is subsidized by tax revenues. Many private hospitals no longer have the option of admitting stabilized indigent patients to their facilities in every instance inasmuch as the fiscal stability of most hospitals has been undermined without providing an alternative source of funding for indigent health care costs.

Indeed, many public hospitals throughout the United States readily acknowledge the public nature of their responsibilities and accept indigent patients from private institutions as a matter of course. The overall prevalence and impact of indigent patient transfers from private institutions, however, is unknown. Much attention has recently been focused upon the anecdotal experiences of a few large public hospitals in major cities where it may well be the case that transfers are becoming a serious problem. There is reason to believe, however, that the nationwide incidence of inappropriate transfers is relatively slight and that many public hospitals are entirely able to accommodate patient transfers with no serious repercussions.

It is important to note, in this context, that an individual patient may be safely and appropriately transferred for a variety of reasons, not all of which are related to that patient's medical needs. It is not unusual for patients to be transported over long distances (occasionally across continents) with no perceptible risk to the patient involved. Patients may request to be transferred because they belong to pre-paid health plans which require their hospitalization in certain designated institutions. Patients may prefer to be hospitalized in a facility with which they have established a pre-existing relationship, because their personal physicians or medical records may be located at a different hospital, or because they simply wish to avoid the inconvenience and expense of an extended stay at a facility which is inconvenient or distant from their residence, family or friends.

In this regard, a patient's concern with the avoidance of debt likely to be incurred as a result of hospitalization at a private facility should not be discounted. While a patient's desire to seek admission to a public hospital may be motivated by economic concerns, ACEP believes that such a decision can be a legitimate one when free medical services are available and that the patient's preferences in this regard should be respected. Indeed, no medical facility can purport to retain a patient contrary to that patient's expressed intention to refuse treatment and seek admission elsewhere. In such a circumstance, a medical facility has no choice but to assist the patient in arranging a safe transfer once it is clear that the patient's condition will not be adversely affected as a result.

The central point is that the subject of patient transfers is a subtle and complex issue whose full dimensions are not clearly understood. It is not a topic which is succeptible to quick and universal solution ACEP is concerned, however, that Section 1867, by mandating a nationwide regime of transfer standards enforced with criminal penalties, may inadvertently result in the exascerbation of the very situation it seeks to remedy.

In particular, ACEP fears that the enactment of Section 1867 may serve to discourage patient transfers under almost all circumstances. Faced with the prospect of substantial fines and possible imprisonment, many physicians may be understandably reluctant to authorize a transfer even when there may be a medical justification or when the patient has specifically requested to be transferred. The incentives to practice "defensive medicine" will become all the more compelling with the threat of criminal sanctions, and the consequent impact on health care costs generally may be unfortunate.

ACEP would consider such a development to be inconsistent with the standards of medical care and ethics and the goal of efficient health care delivery that it supports. This is particularly true inasmuch as ACEP believes that there are already existing mechanisms which strongly discourage inappropriate patient transfers in almost all cases.

2. Existing Disincentives to Inappropriate Patient Transfers.—ACEP is troubled by the implicit assumption of Section 1867 that severe criminal penalties are necessary to prevent physicians from arbitrarily transferring seriously ill and injured indigent patients to public facilities. There is no dispute that occasionally such transfers do take place, the ACEP suspects that their incidence may have been overstated in the popular media. By and large, the vast majority of physicians take their ethical responsibilities very seriously and render a significant amount of medical care without regard to a patient's ability to pay. Emergency physicians alone render an estimated $300 million in uncompensated medical services each year.

In addition to each physician's personal ethical standards, the subject of patient transfers has been addressed by a number of professional medical organizations. Both the American Hospital Association and the Joint Commission on Accreditation of Hospitals have guidelines relating to this area. A hospital which allows inappropriate transfers risks the possible loss of its accreditation. The American College of Emergency Physicians has itself recently adopted revised guidelines concerning patient transfers from emergency departments, and a copy of those guidelines accompanies this statement.

Of more immediate impact to the individual physician is the ever-present threat of liability in tort. It is now well established that a physician who authorizes a transfer which endangers a patient's life or health may be sued as a result for medical malpractice. Typical of recent cases in this area is *Thompson* v. *Sun City Community Hospital,* 141 Ariz. 597; 688 P.2d 605 (1984), in which the Arizona Supreme Court held that an aggrieved patient could recover from a hospital for any damages sustained as the result of an improper transfer.

The specter of malpractice liability has profoundly affected the practice of medicine in recent years. Most physicians are at least cognizant of the potential legal risks associated with virtually all medical procedures and some have accordingly adopted extremely conservative diagnostic and treatment modalities. The result has unfortunately exerted some pressure on health care costs throughout the nation, and the recent tendency of juries to award large verdicts in malpractice cases has dramatically increased insurance premiums. Annual malpractice insurance premiums in obstetrics and some surgical specialties now approach $100,000 in some states, and the availability of coverage for some disciplines is increasingly in doubt.

Faced with mounting insurance costs and the increasing prevalence of patient lawsuits, some physicians have reluctantly decided to abandon or restrict their practices. There can be no question but that physician accountability through the legal system has improved, but it has not been without cost. ACEP is concerned that the introduction of criminal penalties as an additional sanction for physician error may accelerate the departure of some physicians from the profession altogether and otherwise costs to the public at large.

From its perspective as the representative of the nation's emergency physicians, ACEP considers the existing disincentives to improper patient transfers to be sufficient. It is almost inconceivable that any emergency physician or hospital would knowingly run the substantial risks of civil liability that would result from a decision to transfer a patient contrary to that patient's best medical interests. ACEP acknowledges the fact that inappropriate transfers are, however, sometimes made. The existing legal system and the profession's standards of conduct, however, are capable of rectifying those mistakes when they occur and ensuring a just compensation for any patient who may suffer as a consequence.

3. Practical Problems in Implementing Section 1867.—In addition to ACEP's belief that Section 1867 provides for remedies that may not be necessary or that may be counterproductive in operation, ACEP is concerned by the section's lack of definitive guidance as to the precise conduct prohibited. In general, the implicit premise underlying Section 1867 is that medical diagnosis is an exact science, susceptible in every case to precise, retrospective evaluation. Such, unfortunately, is not always the case. Emergency physicians, in particular, are often called upon to make rapid, difficult decisions concerning a patient's treatment which may include judgments as to the medical advisability of a transfer to another facility. Not every physician may agree in all instances as to the proper course of treatment, but the existence of professional disagreement does not necessary indicate sub-standard care.

The difficulty with Section 1867 is that it is nondiscriminating in its application. Physicians may face the prospect of imprisonment and fines despite the fact that they have rendered the best possible care under the circumstances. The test of "gross deviation from the prevailing local standards of medical practice" as set forth in Section 1867 is inherently capable of a variety of interpretations.

Most disturbing is the fact that Section 1869 will, in fact, be interpreted and enforced not by medical peers but by U.S. Attorneys. ACEP believes that the interjection of nonphysician review of the most intimate diagnostic decisionmaking is not only inadvisable as a matter of policy but contrary to the admonition of Section 1801 of the Medicare Act, 42 U.S.C. § 1395, that "[n]othing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided . . ."

Further, the practical operation of Section 1867 in many cases will be to place emergency physicians in the intractable position of having to provide extended care to emergency patients who might encounter some risk in transport. Most emergency physicians do not have admitting privileges in the hospitals where they practice. Should an emergency physician be unable to locate a staff doctor willing to admit and accept responsibility for the treatment of a patient, the emergency physician will then be faced with the impossible choice of either transferring the patient and risking eventual prosecution or retaining the patient in the emergency department, effectively on an inpatient basis.

Section 1867 will have a particularly harsh impact on the nation's small and rural medical facilities. Many hospitals of this sort operate emergency departments, but many of them are not fully staffed by physicians on a twenty-four hour basis and depend instead upon the services of skilled nurses who initially evaluate the patient's condition and on physicians who are on call outside the hospital. These hospitals sometimes provide the only first-aid and life-saving facilities in their communities, but they will be particularly vulnerable because of their limited resources to inadvertent violations of Section 1867's requirements. A physician who is not physically present in such an emergency department but who is nonetheless on call and a "responsible physician" as defined in Section 1867(d)(4)(B) will be confronted with the prospect of criminal sanctions if he or she should authorize a patient transfer because it appears to be in the patient's best medical interests in light of the resources available at the transferring hospital at the time the patient is seen.

In addition, it is not clear from the language of Section 1867(a) what "an appropriate medical screening examination" is or who is required to provide it. The practice of emergency medicine has undergone considerable change in the past decade as new delivery systems such as regional trauma centers and areaswide telecommunications networks have evolved for the purose of directing patients to the nearest appropriate medical facility as quickly as possible. It is sometimes the case that preliminary evaluations of a patient's condition must take place on an urgent basis and occasionally by means of radio contact with rescue units on the scene. The requirement of providing a complete medical screening examination prior to transfer may simply be impossible to fulfill in all circumstances and may often be contrary to the patient's best medical interests in obtaining prompt medical attention at the most appropriate facility.

ACEP is also concerned by the requirement of Section 1867(c)(2)(A)(ii) that the agreement of the receiving facility be obtained in all circumstances before a patient transfer is initiated. There have been instances in which non-physician administrative personnel at some medical facilities have intervened to block or countermand patient transfers already agreed upon between responsible physicians. It is ACEP's position that a decision as to medical advisability of any transfer is a medical determination to be made by the physicians on the scene and that administrative concerns should not interfere with that process. Just as the transferring hospital has a responsibility to conduct a patient transfer in a safe and appropriate manner, so too does the receiving hospital have a responsibility not to refuse a transfer arbitrarily when otherwise indicated.

ACEP believes that the civil enforcement provisions incorporated at Section 1867(d)(3) may potentially serve only to aggravate relations among hospitals in particular localities. The inclusion of "any entity" among those eligible to claim damages as a result of an inappropriate transfer may lead to the unfortunate spectacle of hospitals bringing suit against each other over patient transfer disagreements. The resolution of individual transfer situations can often best be handled on a more informal basis; the judicial system is particularly ill-equipped to mediate such disputes.

Further, ACEP is in doubt as to the potential implications of Section 1867(d)(3)'s stipulation that an action for damages may be brought "in an appropriate court of general jurisdiction of the state in which the hospital is located or in the appropriate Federal district court." This provision may simply be an acknowledgement that certain actions will inevitably be filed in the federal courts as a part of their diversity of citizenship jurisdiction. It may, however, also be interpreted to create a new federal question basis for district court jurisdiction over cases arising out of Section 1867. If the latter, the result will be federal court adjudication of what are essentially medical malpractice cases now handled almost exclusively in state courts.

At the very least, ACEP doubts whether it is appropriate to provide for equitable sanctions in addition to the fines and other penalties already set forth in Section 1867. Each patient must necessarily be evaluated and treated on an individual basis, and it is not likely to be the case that separate patient transfers will share many of the same characteristics. Nonetheless, if injunctive relief is entered to restrain future patient transfers, it will be very difficult for a court to frame such an order and for an affected hospital or physician to know precisely what conduct has been restrained. The inevitable result may be continuing judicial supervision of ongoing medical decision-making, the kind of active judicial management of technical issues which most courts are reluctant to undertake.

The inherent ambiguity in many of Section 1867's provsions is illustrated by the definition of "to stabilize" as set forth in Section 1867(e)(4)(A). That definition stipulates that emergency medical treatment must be provided to a patient sufficient "to assure" that the patient's condition will not likely deteriorate as the result of a transfer. The practice of medicine is not, however, an exact science, and rigid guarantees and assurances as to the probable course of any illness or injury are simply not within the capacity of any physician to provide.

4. Alternative Solutions.—ACEP strongly believes that the subject of patient transfers and emergency medical care in general is sufficiently important to warrant careful and deliberate study by the Congress. The text of Section 1867 originated with the House Ways and Means Committee's deliberations on the Deficit Reduction Amendments of 1985, and no public hearings on Section 1867 have yet been held. The actual text of this legislation has been publicly available for only a few weeks. There is thus the distinct possibility that the bill may be enacted with virtually no opportunity for public comment and within the space of less than two months from start to finish.

Section 1867 is, however, a dramatic and controversial addition to federal law. ACEP believes that this legislation deserves careful and considered attention with an opportunity for the Congress to receive and evaluate the opinions of interested persons and organizations. It should not be enacted in haste as a part of the annual budget process.

Accordingly, ACEP would respectfully suggest that Section 1867 be severed from H.R. 3128 so that its merits and probable impact on American medicine can be separately evaluated. The subject is far too important to be resolved by the enactment of criminal penalties as the panacea for a situation which is inadequately understood.

In this regard, ACEP would support legislation directing the Secretary of Health and Human Services to undertake a comprehensive study to determine the scope and dimensions of indigent health care needs in the United States. Such a study would constitute an invaluable contribution to our understanding of an important aspect of American health care. There is insufficient information on the degree to which the medical requirements of the poor are now being met, and it is time that a careful analysis be conducted of the impact on indigent health care of recent changes in the health care industry. One part of this study could appropriately be devoted to an examination of the incidence and effects of patient transfers.

With specific regard to emergency medical treatment, ACEP supports the concept that all hospitals should be required to develop plans governing the provision of emergency medical services and setting forth the procedures to be followed when transferring a patient to another facility. If necessary, such a requirement could be included as a condition of participation for Medicare reimbursement. The objective would be to ensure that every patient is provided with appropriate emergency medical treatment regardless of that patient's ability to pay.

Many states now enforce such standards either through legislation or by judicial interpretation, and the enforcement of such state legislation and the adjudication of claims on behalf of aggrieved patients should continue to be matters of administrative action and civil litigation. There is very little indication that these remedies have proven to be inadequate in the past. The use of federal criminal sanctions in a field such as emergency medicine which is characterized by subjective judgment and urgent decisionmaking is peculiarly inappropriate. The potential penalties are draconian in degree. Not only may some physicians be faced with lengthy prison terms and substantial fines for a mistake in judgment, but their future livelihood may effectively be destroyed. Most states automatically revoke a medical license upon conviction of a felony. The addition of criminal penalties to civil liability to loss of the ability to practice medicine amounts to the sort of cumulative sanctions that are both unnecessary and extraordinarily harsh.

If enacted as currently written, Section 1867 will take effect on October 1, 1985, only days after it is likely to be signed into law. There will be virtually no time for physicians across the country to know and understand their duties under the law and the possible penalties they may encounter. ACEP believes that the goals and objectives of Section 1867 are worthy of support, but that the means proposed may unfortunately prove to be disastrous in application.

The American College of Emergency Physicians firmly believes in the right of every patient to be treated with dignity and compassion. Adequate medical care should be available to every individual, regardless of economic status. As the national professional society of emergency physicians, ACEP will continue to support measures designed to strengthen and improve the provision of emergency medical services and to attain the goal of a society in which access to medical care is available to every person in need. In appropriate patient transfers are only one manifestation of the fact that America has not yet reached that goal. A resolution to this issue can be found, but it must be a solution which combines concern for the rights and dignity of the individual patient with an appreciation for the difficult and demanding challenges of the profession of emergency medicine.

The American College of Emergency Physicians stands ready to work with the Congress in formulating a reasonable and effective solution to this important issue.

POLICY STATEMENT ON TRANSFER OF PATIENTS [1]

From time to time, patients in an Emergency Department are transferred to other facilities. The transfer may be to another Emergency Department or directly to an inpatient facility. Clearly, not all phyiscians or medical facilities have the capabilities to care for every patient. At times, patients or those responsible for them, request transfer to another facility for various reasons (which may or may not be medical); at times patients are transferred to receive the benefits of more appropriate facilities and/or services than are available in the given hospital or Emergency Department; and at times patients are transferred because of economic considerations, which may include the availability of free or reduced-cost medical care at a public or other facility or in accordance with the requirements of pre-existing contracts for patients of prepaid health plans that stipulate which facilities patients are to use.

Patients should not be transferred to another facility without first being stabilized. Stabilization includes adequate evaluation and initiation of treatment to assure the transfer of a patient will not, within reasonable medical probability, result in death, or loss or serious impairment of bodily parts or organs.

Stabilization of patients prior to transfer should include:

1. Establishing and assuring an adequate airway and adequate ventilation.
2. Initiating control of hemorrhage.
3. Stabilizing and splinting the spine or fractures when indicated.

[1] Approved by the ACEP Board of Directors on August 13, 1985. These are guidelines and are not to be construed as standards of care.

4. Establishing and maintaining adequate access routes for fluid administration.

5. Initiating adequate fluid and/or blood replacement.

6. Determining that the patient's vital signs (including blood pressure, pulse, respiration, and urinary output, if indicated) are sufficient to sustain adequate perfusion. The vital signs should remain within these parameters for a sufficient time prior to transfer to be reasonably certain they will not deteriorate while en route to the receiving hospital. However, there may be times when stabilization of a patient's vital signs is not possible because the hospital or Emergency Department does not have the appropriate personnel or equipment needed to correct the underlying process (e.g., thoracic surgeon on staff or cardiopulmonary bypass capability). In these cases, numbers 1–5 of the above should be performed and transfer carried out as quickly as possible.

At times, a patient or those responsible for the patient, may request a transfer that seems medically inappropriate. The physician is obliged to explain the medical risks involved, and an informed consent should be signed by the patient (or those responsible for the patient such as a parent or guardian) and the physician. In the event of such a transfer, the physician should still use every resource available in an attempt to stabilize the patient prior to transfer.

The following guidelines should be observed for transfer of patients:

1. The patient should be transferred to a facility appropriate to the medical needs of the patient. The facility should have adequate space and personnel available to care for the patient.

2. A physician or other responsible person at the receiving hospital must agree to accept the patient transfer prior to the transfer taking place. Acceptable "other responsible persons" should be medical personnel who are designated by the hospital and given the authority to accept the transfer of the patient. The patient transfer should not be refused by the receiving hospital when the transfer is indicated and the receiving hospital has the capability and/or responsibility to provide care to the patient.

3. Communication between responsible persons at the transferring and receiving hospitals for purposes of exchanging clinical information should occur prior to transfer. Ideally, this communication should be physician-to-physician.

4. Once a patient is accepted for transfer, an appropriate medical summary and other records (including lab results and copies of EKGs and X-rays) should be sent with the patient.

5. A patient should be transferred via a vehicle that has appropriately trained personnel and life-support equipment. At times, it may be necessary for additional special-

ized personnel from the transferring or receiving hospital to accompany the patient.

At times, transfer of patients occurs routinely or is part of a regionalized plan for obtaining optimal care for patients at more appropriate and/or specialized facilities. In these situations there should be:

1. Written guidelines (e.g., types of cases appropriate for transfer) to govern the transfer of patients:
2. Pre-existing transfer agreements between the facilities, and;
3. Pre-transfer communication between appropriate responsible personnel.

ORRIN G. HATCH.

ADDITIONAL VIEWS OF SENATOR CHARLES E. GRASSLEY

I want to condemn in the strongest possible terms the procedure followed by the Committee on Labor and Human Resources to decide on its reconciliation bill. I certainly trust that this procedure will not become the modus operandi of the committee in furture reconciliation, or indeed, in any other work of the committee. Members of this committee were placed in the position of having to agree to a poll of three items in addition to those contained in our reconciliation instructions from the Budget Committee. Although the committee does have discretion to ignore Budget Committee instructions, the additional items in question were suggested for inclusion in this polling procedure only late Friday with the reconciliation bill due to the Budget Committee by 12:00 midnight that day. One of these items had indeed been considered by a subcommittee and subsequently by the full committee (although no hearings had been held on that bill). The other two items, however, had not been considered by the committee. There had been no mark-up on these items. There had been no hearings of the committee in this Congress on these items. Many staff were absent and could not be reached. Members were absent; most were probably out of town. I myself was reached by my subcommittee staff director only at 10:00 p.m. by phone. Documentation was initially unavailable for two of the bills in question. When documentation was provided it was, in one case, a long elaborate bill with many handwritten insertions and strike-outs; some sections were unnumbered. Another item apparently had been passed by the House Ways and Means Committee, as though that had any bearing at all on what the Committee on Labor and Human Resources should or would want to do, but had not been considered by the Labor Committee. This item contained a provision dealing with the medicare program, clearly not within the jurisdiction of this committee. This same item contained a major provision which would affect the standing in law of certain classes of individuals and therefore it could be argued that it falls within the jurisdiction of the Judiciary Committee. As I sit on both of these committees, I have more than a casual or academic interest in this aspect of this particular bill.

In any case, as were other members of the committee, I was faced with the unappealing prospect of refusing to poll these items and thus causing the committee to fail to meet its reconciliation deadline, or acquiescing in the poll.

As far as I am concerned, any item in the Committee on Labor and Human Resources reconciliation bill not part of the original instructions to this committee from the Budget Committee will be fair game for amendments on the floor, and I reserve the right to support such amendments if they are proposed.

CHARLES E. GRASSLEY.

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 28, 1985

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The attached cost estimate includes the amendments to the Guaranteed Student Loan program, the Walsh-Healey Act, and the Contract Work Hours and Safety Standard Act contained in the package of legislative changes provided to the Senate Budget Committee on September 27, 1985 in response to the First Concurrent Budget Resolution for Fiscal Year 1986.

In addition to these changes, you also provided legislative language to (1) amend the Public Health Service Act to permit continuation of health benefits coverage for certain uninsured individuals and to prohibit hospitals from refusing to examine or provide appropriate treatment to stabilize patients in medical emergencies, (2) amend the Public Health Service Act to authorize the Secretary of Health and Human Services to establish a registry of teaching hospitals, and (3) amend the Employee Retirement Income Security Act (ERISA) of 1974 for the purpose of improving the single-employer pension plan termination insurance program and for other purposes.

The amendments to the Public Health Service Act are expected to have a very small cost to the federal government. In particular, we have estimated the costs of a Council on Graduate Medical Education at $200,000 in fiscal year 1986.

Our preliminary assessment is that the ERISA amendments could result is savings to the federal government. The magnitude and timing of these potential savings are impossible to quantify precisely.

If you wish further details on these estimates, we would be pleased to provide them.

With best wishes,

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

September 27, 1985

1. BILL NUMBER: None.

2. BILL TITLE: None.

3. BILL STATUS:

   As reported by the Senate Committee on Labor and Human Resources on September 27, 1985.

4. BILL PURPOSE:

   The purposes of this bill are: (1) to make changes in spending in the Guaranteed Student Loan Programs, and (2) to amend the Walsh-Healey Public Contracts Act and the Contract Work Hours and Safety Standards Act, all for the purpose of deficit reduction consistent with the budget process.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

   This bill is intended as a reconciliation act, we have, therefore, done the estimates relative to the baseline used for the first budget resolution for 1986. The baseline differs from current law primarily in that it reflects the full projected cost of the current programs for the next five years.

TABLE 1. ESTIMATED FEDERAL COSTS RELATIVE TO BASELINE UNDER THE ECONOMIC ASSUMPTION CONSISTENT WITH THE FIRST CONCURRENT RESOLUTION ON THE BUDGET--FISCAL YEAR 1986

(by fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Changes to Baseline:					
Guaranteed Student Loans (Function 500)					
Budget Authority	-315	-225	-325	-240	-250
Outlays	-270	-215	-325	-245	-255
Walsh-Healey Provisions (Function 920)					
Budget Authority	-570	-610	-635	-660	-685
Outlays	-70	-285	-510	-580	-630
Bill Total:					
Budget Authority	-885	-835	-960	-900	-935
Outlays	-340	-500	-835	-825	-885

The costs of the bill fall within budget function 500 and 920.

Basis of Estimate:

Guaranteed Student Loan Program

This legislation makes several programmatic changes to the Guaranteed Student Loan (GSL) program. Specifically, these changes would: (1) require lenders to make multiple disbursements of loans for education programs longer than six months, would allow federal subsidies to be paid only on the disbursed amount and would require payment of the 5 percent fee at the time the loan is originated (2) recall $75 million in advances to state guarantee agencies in 1988, (3) extend by 120 days to a total of 240 days the time period a state agency has to collect on a delinquent loan before applying for insurance, (4) allow for third-party pre-claims assistance cost reimbursement, (5) change some of the collection procedures to require certain borrowers to have a loan endorsed and would require other borrowers who have defaulted on their loan to repay the federal government the cost of collecting the loan, (6) reduce the yield to all lenders by 0.25 percent, (7) accelerate SALLIE MAE's current FFB repayment schedule to begin in 1986, and (8) allow for loan consolidation with the consolidated interest rate at 10 percent and would reduce lender yields on consolidated loans by 0.5 percent.

CBO projects that the GSL program will cost $3.3 billion under current law for 1986, the first full year of implementation of these proposed changes. This level assumes $8.5 billion in new loans to 3.6 million students.

This bill would reduce the lender yield on GSLs by 0.25 percent, to a total yield of the 91-day treasury bill rate plus 3.25 percent. The estimated savings from this proposed change reflect the change in yield on all new loan commitments as of the implementation date. In addition, lenders would be required to disburse the loans over the school year with the federal government paying interest subsidies only on the disbursed amount. We have assumed that only the loans to students attending school for more than one semester/quarter would be affected by this change. The federal government would continue to collect the 5 percent origination fee upfront. Currently, the lender has the option of making multiple disbursements but receives federal subsidies on the full amount of the loan from the first disbursement. This change will increase the lender servicing cost at the same time yields are reduced, but no reduction in lender participation has been assumed as a result of this change.

This bill would also require state guarantee agencies to repay part of their federal advance funds. A total of $75 million would be returned to the Student Loan Insurance fund in fiscal year 1988.

In addition, this bill would include federal reimbursement for pre-claim assistance. Current federal law and regulations require lenders to prove "due diligence" in pursuing a delinquent loan before filing a default claim with the state guarantee agency that, in turn, files it with the federal government (after meeting certain requirements). There are no detailed time tables with specific courses of action under the federal definitions of "due diligence" requirements, leaving each state to define and enforce it. In 1986, federal payments for default claims are projected to be approximately $850 million for an estimated 250,000 claims with average outstanding balances of $3,000. The vast majority of these claims are from loans originally insured by a state guarantee agency and reinsured by the federal government. It is these loans which would be affected by this proposal.

Many of the state guarantee agencies have implemented and enforced within their state very specific "due diligence" requirements for lenders filing default claims. Lenders today, depending on the state requirements, could use a third-party agency for pre-claim assistance but the lender would have to pay for the administrative costs. This estimate assumes that 10 percent of the projected default claims in 1986 would be turned over by the lender to a third-party pre-claim collection agency whose administrative cost would be reimbursed by the federal government. It is assumed that this increased effort would have a net success rate of returning 25 percent of these delinquent loans to repayment. It is also assumed that the federal government would pay an average of $30 per claim to cover the administrative costs resulting in federal costs of $1 million in 1986. As a result of these pre-default efforts, federal payments for defaults would decline an estimated $20 million in 1986 and $23 million in 1990. Since current law projections of the GSL program assume that the federal government would be successful in bringing many of these loans into repayment once the government has paid the lender and acquired the loan, this estimate assumes that half of those loans would have been brought into repayment; thus, federal collections on acquired defaulted loans would decrease in the outyears.

New GSL program regulations are being considered by the Department of Education to specify "due diligence" requirements of lenders seeking federal reinsurance payments on their defaulted loans. Tightening the "due diligence" regulations could potentially lower the level of federal payments on default claims similar to this legislation. At this point in time, the regulatory changes being considered would not allow for federal reimbursement of administrative costs if a lender chose to use a third-party agency to aid in their "due diligence" requirements. If this amendment were implemented after the proposed regulations, the net effect of this amendment could be to increase federal administrative costs.

Increasing by 120 days the time period state agencies must attempt to collect on delinquent loans would save an estimated $200 million in 1986. Of this amount, $190 million reflects a one-time change in the default claim obligations and outlays associated with shifting the payments from a 120-day basis to a 240-day basis. The remaining savings reflects a net effect of federal default payment increases for additional months of interest and a reduction of one percent in the total number of guarantee agency default claims.

The debt collection and default recovery provisions in this bill would make several technical changes relating to loan disbursements, debt collection, and default recoveries in both components of the GSL program—the federally insured student loan (FISLP) component and the state guarantee agency component (GA). The changes would also affect the National Direct Student Loan program (NDSL).

The federal savings associated with these provisions would result primarily from two specific changes to the FISLP program; the endorsement provision and the debt collection fee provision. FISLP loans are currently less than one half of one percent of all GSL loans.

In 1986, FISLP loan volume is projected to be $40 million. Estimated savings for the endorsement provision assume that all FISLP lenders would require an endorsement for a loan. As a result, CBO estimates that FISLP loan volume would be reduced by half, resulting in interest subsidy savings of $5 million in 1990. CBO also estimates that requiring loan endorsements would reduce default costs on the remaining FISLP loan volume by 90 percent, saving an estimated $2 million in 1990. The Secretary of Education would be authorized to charge borrowers who have defaulted up to 20 percent of their monthly repayments to cover the cost of federal debt collection. Based on available data and assuming the entire 20 percent is charged, these collections would approximately equal the current cost of federal debt collection which is 20 cents per dollar collected. Federal collections would increase an estimated $15 million annually.

This legislation would allow any borrower with two or more student loans in excess of $5,000 to consolidate these loans. The repayment period would be extended to fifteen years. The interest rate would be 10 percent and the lender's total yield would be the treasury bill rate plus 3 percent. The proposal would include as eligible borrowers any student currently in repayment who meets the outstanding loan balance criteria.

The estimated savings is a net effect of several changes. The special allowance costs would increase due to the extended repayment terms but would decrease due to the combined effect of setting the total yield at the 91-day treasury bill rate plus 3 percent and increasing the interest rate on the loan to 10 percent. The estimate also assumes that one percent of the loan volume being consolidated would have defaulted otherwise and thus consolidation would result in default reductions. Approximately 5 percent of the consolidated amount is assumed to be NDSL loans on which the federal government would now pay interest subsidies.

The estimate of this loan consolidation proposal assumes that 80,000 borrowers with $1.05 billion in loans would opt to consolidate their loans during 1986 under the new consolidation terms. Most of these borrowers would be borrowers who had already entered repayment over the last few years but would seek the consolidation and extended terms. Most of the loans consolidated in 1986 would be primarily GSL's and would have been initially made at 7 percent; by 1990 most of the loans consolidated would have been 8 percent loans. Approximately 5 percent of the consolidated loan levels would be NDSL's. The average loan size for consolidated loans in this estimate is assumed to be $12,500.

The FFB currently holds $5 billion in SALLIE MAE notes; there is no plan to increase that borrowing. Under current agreements with the Treasury Department, SALLIE MAE is to begin repayment of those loans in 1987 but most of the notes will not come due until 1996 and 1997. This legislation would accelerate those repayments to begin in 1986 would reduce outlays in 1986 by the net amount of increased principle repayment less foregone interest income. This would result in estimated savings of $30 million in 1986. Since the FFB uses the principle repayments to pay off the Treasury debt, interest on the public debt would also be reduced marginally. Federal outlays would be increased in 1995 when the current schedule requires the retirement of the debt.

Walsh-Healey Provisions

Both the Walsh-Healey Public Contracts Act and the Contract Work Hours and Safety Standards Act provide for the payment of a wage premium for work over eight hours per day and forty hours per week to employees working on certain types of government contracts. This bill would delete the requirement for overtime pay for workdays exceeding eight hours.

Eliminating daily overtime pay requirements would probably reduce federal contract costs by directly cutting the overtime wage bill, by encouraging more firms to bid on government contracts, and by prompting companies currently covered by the Walsh-Healey and the Contract Work Hours Acts to examine alternative, and perhaps more efficient, work schedules.

Although information does not exist to permit a precise estimate of the budgetary impact of the elimination of these requirements, we have followed the Analysis of the Grace Commission's Major Proposals for Cost Control, a joint study by the Congressional Budget Office and the General Accounting Office, and have assumed that the above combination of factors would reduce new contract costs by 0.5 percent. Budget authority savings are estimated to be $570 million in fiscal year 1986 and $3,160 million over the 1986-1990 period. These savings are estimated by inflating the value of contracts subject to Walsh-Healey requirements in fiscal year 1984 by CBO's deflator for federal purchases and by assuming that 0.5 percent of this value is saved each year. These estimates are very uncertain. Savings could be significantly above or significantly below those shown in this estimate. Because about 90 percent of federal contracts subject to Walsh-Healey provisions are for military material and equipment purchases, which take several years to be completed, the budget authority for a given year's contracts spends out over several years. This causes outlay savings to be relatively small in the initial years and to accumulate over time.

The estimate assumes that the savings from the Walsh-Healey Provisions are implemented in appropriations acts.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

This bill would not affect the budgets of state and local governments. Virtually all of the GSL programs state guarantee agencies operating revenues come from the federal government, insurance premium charged borrowers, or defaulted loan collections. The Walsh-Healey and Contract Work Hours Acts affect only federal contracts.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

On September 20, 1985, CBO prepared a cost estimate on the Reconciliation Provisions reported from the House Education and Labor Committee. That bill would save an estimated $1.7 million in outlays from baseline over five years, $400 million more than this bill. The House bill limits the GSL program eligibility to assessed financial need, recalls less of the state guarantee agency advance funds, and increases by 90 days the state guarantee agency time to collect on delinquent loans. The House bill would not change lender yields or accelerate SALLIE MAE FFB debt reduction.

On May 20, 1985, CBO prepared a cost estimate on S. 1160, the National Defense Authorization Act, as ordered reported by the Senate Committee on Armed Services. That bill would shield all defense contracts from the Walsh-Healey and Contract Work Hours and Safety Standards Act daily overtime pay provisions. As amended and passed by the Senate and adopted by the conference, that bill would waive the daily overtime provisions for all federal contracts, starting January 1, 1986. Because of the three month delay in implementation, that bill is estimated to save $55 million less in budget authority and outlays than this bill over the 1986-1990 period.

On July 26, 1985, CBO prepared a cost estimate on S. 1105, the Federal Contractor Employees Flexitime Act, as ordered reported by the Senate Committee on Labor and Human Resources, July 17, 1985. That bill, which would exempt all federal contracts from daily overtime requirements starting January 1, 1987, is estimated to save $725 million less in budget authority and $595 million less in outlays over the 1986-1990 period than this bill because of the later implementation date.

9. ESTIMATE PREPARED BY:

Deborah Kalcevic and Richard Hendrix (226-2820).

10. ESTIMATE APPROVED BY:

C. G. Nuckols
for James L. Blum
Assistant Director
for Budget Analysis

COMMITTEE ON SMALL BUSINESS

Title X

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United States Senate
COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510

September 27, 1985

Honorable Pete V. Domenici
Chairman
Committee on Budget
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the reconciliation instruction included in section 2(k) of S. Con. Res. 32 and section 301(b) of the Congressional Budget Act, enclosed are changes in law to achieve cost savings as required by this Committee's reconciliation instruction. Also enclosed is the Small Business Committee's Report to accompany these statutory provisions.

On July 16, 1985, the Senate passed S. 408, legislation to fund the Small Business Administration's programs and activities for fiscal years 1986-1988. The provisions contained in this submission are identical in all respects to S. 408, as amended and passed the Senate on July 16th. We are advised by the Congressional Budget Office that the statutory provisions in S. 408 as amended and passed the Senate meet or exceed the Small Business Committee's instruction for fiscal years 1986-1988.

Sincerely,

Dale Bumpers
DALE BUMPERS
Ranking Minority Member
Enclosure

LOWELL WEICKER, Jr.
Chairman

THE SENATE COMMITTEE ON SMALL BUSINESS

SUBMITS THE FOLLOWING

REPORT

TOGETHER WITH
ADDITIONAL VIEWS

To Accompany Transmittal of Changes in Law To Achieve Cost Savings Required by the Reconciliation Instruction Pursuant to S. Con. Res. 32, to the Senate Committee on Budget.

The Senate Committee on Small Business, pursuant to Sec. 2(k) of S. Con. Res. 32 and Section 301(b) of the Congressional Budget Act herewith transmits changes in law to achieve cost savings as required by the Committee's reconciliation instruction.

I. SUMMARY OF RECONCILIATION INSTRUCTION

Section 2(k) of S. Con. Res. 32 provides that:

> (k) The Senate Committee on Small Business shall report (1) changes in laws within its jurisdiction which provide spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974, sufficient to reduce authority and outlays, (2) changes in laws within its jurisdiction other than those which provide spending authority as defined in section 401(c)(2)(C) of the Act, sufficient to achieve savings in budget authority and outlays, or (3) any combination thereof, as follows: $448,000,000 in budget authority and $509,000,000 in outlays in fiscal year 1986, $564,000,000 in budget authority and $972,000,000 in outlays in fiscal year 1987, $1,060,000,000 in budget authority and $998,000,000 in outlays in fiscal year 1988.

The Committee's primary consideration has been to insure that legislative changes included herein comply with this instruction.

Only Small Business Administration programs are authorized by the Committee on Small Business. These programs are broken down into the seven separate items listed and briefly described below.

The Budget Authority and Outlay figures listed with each program are the current policy baselines provided to the Committee by the Congressional Budget Office. Current policy is based on SBA's policy and programs in effect in fiscal year 1985, with appropriate adjustments for inflation over the next three fiscal years. These levels represent the baselines used by the Senate Budget Committee as their starting point for determining savings to be achieved. These same levels were used by this Committee in making its program reductions to meet the reconciliation instruction.

1. Business Loan and Investment Fund (BLIF)

Current Policy ($ in millions)

	1986	1987	1988
BA	523	531	541
O	510	526	531

Through BLIF, SBA funds direct and guaranteed loans to small businesses. Various classes of loans have been statutorily established by the Congress within BLIF to target assistance to certain economic sectors, including the handicapped, Minority Enterprise Small Business Investment Companies, and Veterans.

BLIF is a revolving fund. Repayments of principal on loans are kept within the fund and are available to finance new obligations. These repayments are supplemented by annual appropriations to meet current program needs.

2. Lending Programs financed through Federal Financing Bank (FFB)

For the first time, the Senate Budget Committee, under the unified budget approach, scored certain SBA guarantee loan programs financed through FFB as a direct federal expenditure. This change artifically doubled the size of SBA's current policy budget over the previous fiscal years. Two important SBA lending programs listed below are funded in this particular manner.

(a) Small Business Investment Company (SBIC) Program.

	Current Policy	($ in millions)	
	1986	1987	1988
BA	203	212	220
O	83	63	43

Through the SBIC program, SBA licenses companies which provide essential long-term, equity financing to small firms in need of venture capital. SBIC's are qualified to apply to SBA for a guarantee of debentures which under current law are sold to the Federal Financing Bank.

(b) Section 503 Certified Development Company Program.

	Current Policy	($ in millions)	
	1986	1987	1988
BA	304	317	331
O	296	307	320

Through the 503 program, SBA certifies local development companies to make bricks-and-mortar financing available to healthy small businesses for planned expansion and job creation. SBA guarantees up to 40 percent of approved project costs through guaranteeing debentures, which are sold to the FFB.

3. Salaries and Expenses (S&E)

	Current Policy	($ in millions)	
	1986	1987	1988
BA	243	248	253
O	299	322	331

Over 60 percent of the total amount provided for this fund is for salaries and related personnel expenses.

In addition, this portion of the Agency's budget funds all non-lending programs, including management assistance, procurement assistance, small business development centers, advocacy and minority small business assistance.

4. Disaster Loan Fund

Current Policy ($ in millions)

	1986	1987	1988
BA	0	0	460
O	-127	171	276

SBA makes direct loans to homeowners and businesses, including agricultural enterprises, affected by physical disasters. In addition, small businesses have been eligible for "non-physical" disaster assistance when affected by occurrences specified in statute, such as businesses impacted by foreign currency devaluation or the Department of Agriculture's Payment-in-Kind program.

5. Surety Bond Guarantee Revolving Fund

Current Policy ($ in millions)

	1986	1987	1988
BA	12	16	15
O	14	15	16

Under this program, SBA extends to surety companies guarantees of up to 90 percent against loss in order to make bonding for small businesses more easily obtainable.

This is solely a guarantee program; therefore, the amount appropriated is used only to honor the guarantee on defaulted bonds. Thus, $9 million in appropriations for this fund in fiscal year 1985 would be sufficient to permit the agency to guarantee $1.115 billion in surety bonds.

6. Pollution Control Bond Guarantee Revolving Fund

Current Policy ($ in millions)

	1986	1987	1988
BA	0	0	0
O	4	4	3

SBA, in cooperation with commercial banks and state agencies, aids small businesses in obtaining long term financing for mandated pollution control facilities. Under this program, SBA can guarantee 100 percent of payments due under qualified contracts, associated with planning, designing, financing or installing pollution control facilities.

7. Lease Guarantee Revolving Fund

Current Policy ($ in millions)

	1986	1987	1988
BA	0	0	0
O	1	1	1

Because of excessive losses associated with this program, it was discontinued in 1976. The $1 million annual appropriation is required to resolve outstanding obligations.

Summary

Savings required under reconciliation are subtracted from the current policy baseline to arrive at new budget authority and outlay figures which the Committee cannot exceed and still meet reconciliation:

($ in millions)

	1986		1987		1988	
	BA	O	BA	O	BA	O
Total Current Policy Baseline For SBA . .	1,287	1,072	1,324	1,399	1,820	1,511
Savings Required Under Reconciliation	-448	-509	-564	-972	-1,060	-998
Revised Budget Ceiling. .	839	563	760	427	760	513

Cuts of such magnitude require significant changes in SBA's structure and operations. Options available to the Committee to meet such instructions were limited.

As can be seen, only four program areas -- BLIF, Disaster, programs financed through the FFB, and, to a lesser extent, Salaries and Expenses, allow for significant reductions to achieve cost savings.

Considering the limited options available to the Committee to achieve cost savings, and the magnitude of the reconciliation instruction, the Committee was required to significantly reduce, and in some cases eliminate programs. Many of these decisions were reached by the Committee during the mark-up of S. 408, the SBA Authorization bill, held in March, 1985, long before any final actions by the Congress on a Budget Resolution. Other significant policy changes were necessitated by the final reconciliation instruction.

II. SUMMARY OF CHANGES IN LAW

The Committee submits the following changes in laws under its jurisdiction which have already been agreed to by the full Senate with the passage of S. 408 on July 16, 1985:

(1) Direct lending programs would be reduced from $257 million to $76 million in fiscal year 1986, and frozen at that level in fiscal years 1987 and 1988. Direct loans would be available only to the handicapped ($15 million), veterans ($20 million) and Minority Enterprise Small Business Investment Companies (MESBIC's) ($41 million).

(2) Guaranteed loans under Section 7(a) of the Small Business Act would be frozen in fiscal year 1986 at fiscal year 1985 levels and increased slightly by an inflation factor in fiscal years 1987 and 1988. In addition, the maximum SBA guaranteed portion of such loans would be reduced from 90 percent to 80 percent, and the loan guarantee fee paid by the borrower would be increased from 1 percent to 2 percent.

(3) Effective October 1, 1985, the non-physical disaster loan program would be eliminated.

(4) Agricultural enterprises would no longer be eligible for disaster loan assistance at SBA.

(5) Development company loans would be reduced from $450 million to $200 million in each of fiscal years 1986-88.

(6) Salaries and expenses would be frozen in fiscal Year 1986 at fiscal year 1985 levels and increased slightly by an inflation factor in fiscal years 1987 and 1988.

(7) SBIC's would be required to sell their 100 percent federally guaranteed debentures to the private capital markets rather than to the Federal Financing Bank.

III. BACKGROUND AND NEED FOR LEGISLATION

A. The Administration's Plan.

The President's budget proposal for fiscal year 1986 would have eliminated the Small Business Administration (SBA) as an independent executive agency, terminated all SBA financial assistance programs and transferred the existing SBA loan portfolio to the Treasury Department for liquidation, terminated all but a few of the SBA's small business management assistance programs, and transferred to the Department of Commerce the remaining SBA programs.

The Committee's response to the President's proposal was immediate and clear. The Committee was joined by virtually every small business association in rejecting the Administration's plan to terminate SBA.

Section 202 of Public Law 163 well states the policy of Congress which led to the establishment of the Small Business Administration:

> The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist and protect insofar as is possible, the interests of small business concerns in order to preserve free-competitive enterprise.

These reasons supporting the original Congressional authorization of the SBA still hold true today. It is evident to the Committee that SBA fulfills an important public policy purpose and that the agency should be maintained and strengthened.

SBA, the only Federal agency whose sole mission is to serve small enterprises, has an impressive record of providing critical assistance to large numbers of small business owners and operators. The agency's role in maintaining a viable and progressive small business sector and creating an economic climate conducive to individual initiative and opportunity is demonstrated by the following accomplishments:

- The 7(a) Guaranteed Lending Program has resulted in 500,000 small business loans, a great majority of them long-term, totalling $36 billion. These loans helped fill a long-term credit gap, which has been documented over the past 50 years by studies conducted by the Department of Commerce, the Federal Reserve Board, the Senate Committee on Banking and Currency, and the General Accounting Office;

- SBA, through its Small Business Investment Company (SBIC) and Minority Enterprise Small Busines Investment Company (MESBIC) venture capital programs, has provided $2 billion in equity capital to 70,000 small businesses, creating 250,000 jobs;

- SBA, through its 503 Development Company Loan Program, has provided $703 million in economic development loans, generating 100,000 jobs;

- Management assistance programs including Small Business Development Centers (SBDC), Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and Small Business Institutes (SBI), have counseled or trained more than 3 million entrepreneurs, teaching them essential management skills, without which many businesses fail;

- The Surety Bond Guarantee Program, enabling small contractors to obtain the surety bonding required to bid on almost all federal, federally-funded, and private construction contracts, has guaranteed 166,000 surety bonds permitting the award of $12.9 billion in contracts to small businesses which otherwise would not have been able to obtain such contracts;

- Pollution Control Equipment Contract Guarantee Bond Program has provided small firms with an important source of capital as they seek to comply with mandated environmental standards;

- Procurement programs have helped to direct $118.4

billion in federal contracts to small enterprises, $52.3 billion having been achieved through small business "set-asides", and $75.2 billion in subcontracts, since 1980;

- SBA's 8(a) program brings minority contractors into the economic mainstream through participation in the federal procurement process. From fiscal year 1981 through fiscal year 1984, 19,115 Section 8(a) contracts were awarded totalling slightly less than $10 billion;

- The SBA Administrator and the Chief Counsel for Advocacy have been effective advocates for this Nation's small businesses. Through the issuance of The State of Small Business: Report of the President, the establishment of a small business economic data base, the installation of a toll-free phone line at the SBA to answer small business questions, the sponsorship of state and local legislative issues conferences, and the planned participation in the White House Conference on Small Business, the SBA has been a strong voice for small business in the executive branch; and

- The recently created Small Business Innovation Research (SBIR) Program, which the SBA oversees, resulted in 11 federal agencies making research awards to small research and development companies totalling $416.5 million.

The Committee believes that the SBA's record of economic accomplishments, in terms of number of jobs created and revenues generated far exceeds the cost to the government, and add up to a convincing case for maintaining the agency.

B. Legislative Response.

On February 6, 1985, in response to the Administration's proposal to eliminate SBA, Senators Weicker and Bumpers, joined by six Committee Members, introduced S. 408, a bill to provide program levels, salary and expense levels and authorizing funds for the SBA's programs and activities for fiscal years 1986-1988. The bill maintained SBA as an independent agency, along with its vital functions and field structure, while at the same time achieving substantial savings through a budget freeze and certain program eliminations.

The Small Business Committee conducted three days of hearings on the bill on February 21, 28, and March 7, 1985. All of the witnesses who testified, with the exception of Budget

Director David Stockman, attested to the important financial services provided by SBA to the small business community and urged the Committee to maintain funding for the SBA programs at adequate levels. Furthermore, all the witnesses stressed the importance of maintaining the SBA as an independent agency and advocate for small business.

On March 26, 1985, the Committee met in executive session to consider S. 408, adopted two new policy changes in the SBA loan guarantee program designed to generate additional savings, and, by a vote of 16-3, favorably reported the bill to the Senate. According to the Congressional Budget Office (CBO), the bill, as reported, achieved savings of $1.1 billion in budget authority and $851 million in outlays from the programs under SBA's jurisdiction during fiscal years 1986-1988. These savings were realized by:

(1) eliminating the SBA direct lending program, with the exception of loans to the handicapped ($20 million), Vietnam-era or disabled veterans ($25 million), and Minority Enterprise Small Business Investment Companies ($41 million). Thus, the SBA's direct lending program level would be reduced from $257 million to $86 million in fiscal year 1986. This would result in a savings of $171 million in budget authority in fiscal year 1986;

(2) eliminating the non-physical disaster loan program, which is currently authorized at $100 million annually;

(3) freezing for fiscal year 1986, the SBA loan programs authorized by S. 408, along with the Surety Bond Guarantee and the Pollution Control Equipment Contract Guarantee Program at fiscal year 1985 levels; and

(4) reducing the salaries and expense portion of the budget by $24 million in outlays.

Although the Committee believed that the savings in S. 408 were not only adequate, but exemplary in terms of small businesses' participation in Congress' budget reduction efforts, it became clear that these savings were insufficient to convince the Administration to back off of the proposal in its budget package to terminate SBA.

Working from the provisions in S. 408, negotiations were then initiated with the Senate Republican Leadership and the Administration in an effort to work out a compromise between the positions held by the Committee and the Administration regarding the future of SBA. On May 10, 1985, these negotiations resulted in the inclusion of funding to restore the SBA's programs for fiscal year 1986-1988 in the First Concurrent Budget Resolution, S. Con. Res. 32, which passed the Senate by a vote of 50-49.

The SBA compromise adopted as part of S. Con. Res. 32 assumed program cuts and savings of $2.5 billion over the next three fiscal years. The bulk of the savings achieved, over and above those achieved by S. 408 as reported, came from requiring SBIC's to go to the private capital markets for financing with their 100 percent government guaranteed debentures, removing agricultural enterprises from eligibility for assistance under the SBA disaster loan program, and reducing the program level for section 503 development companies to $200 million in each of fiscal years 1986-1988. In addition, the Handicapped and Veterans direct loan programs were each reduced by $5 million in fiscal year 1986 and, along with the MESBIC program, were frozen in fiscal years 1987 and 1988. The following chart summarizes the savings achieved under the compromise adopted in S. Con. Res. 32:

TOTAL SAVINGS ACHIEVED BY S. 408, AS AMENDED

[In millions of dollars]

	1986 Budget authority	1986 Outlay	1987 Budget authority	1987 Outlay	1988 Budget authority	1988 Outlay	Outlay years
Savings from S 408, as reported with proposed technical amendments:							
Freeze of salaries and expenses in fiscal year 1986	−33	−24	−34	−32	−35	−38	−9
Eliminate bulk of direct loans; freeze guarantee lending; freeze MESBICS in fiscal year 1986	−201	−128	−188	−192	−195	−185	−5[illegible]
Terminate nonphysical disaster	0	59	0	−68	−346	−63	−1[illegible]
Freeze in fiscal year 1986 the SBIC	−9	−9	−10	−8	−9	−5	−2[illegible]
Freeze in fiscal year 1986 the 503	−13	−13	−13	−13	−15	−15	−[illegible]
Total savings	−256	−233	−246	−314	−600	−306	−8[illegible]
Additional savings achieved:							
Require Small Business Investment Companies to sell their 100 percent federally guaranteed debentures to the private capital markets rather than the Federal Financing Bank	−194	−194	−202	−181	−211	−154	−5[illegible]
Effective Oct. 1, 1985, require farmers to go to FmHA for disaster assistance	0	−70	0	−353	−113	−394	−81
Reduce 503 program from $450 million to $200 million in fiscal year 1986; freeze fiscal years 1987 to 1988; Reduce Handicapped and Veterans direct loan program by $5 million in fiscal year 1986, freeze program in fiscal years 1987 and 1988	−10	−6	−180	−178	−193	−190	−37
Total savings	−204	−270	−382	−712	−517	−738	−1,72[illegible]

On July 16, 1985, S. 408 was considered by the Senate. Among the amendments adopted, was an amendment offered by Senator Weicker to make S. 408 consistent with the compromise adopted in S. Con. Res. 32. S. 408, as amended, passed the Senate by a vote of 94 to 3. According to CBO, $2.5 billion in savings over the next 3 fiscal years would be achieved by the enactment of this legislation.

The following is a description of the SBA programs and action taken by the Senate in S. 408, as amended, which would result in savings of $2.5 billion over the next three fiscal years. It has been noted by the distinguished Chairman of the Budget Committee in his floor statement of September 20, 1985, that these recommendations for savings exceed by $93 million the final recommendation in instructions given to the Committee in the Conference agreement on S. Con. Res. 32, adopted by the Senate on August 1, 1985.

C. Program Changes

1. Business Loan Program Levels.

The most substantial savings approved by the Committee come from the business lending programs administered by SBA, especially the direct lending, Section 503 programs and SBIC programs.

In developing these funding levels and programmatic changes, this Committee, as in the past, emphasized those programs that have been proven most effective and which rely heavily on private sector resources. Thus, adequate funding was provided for the 7(a) general business guarantee loan program which has proven more cost-effective than the 7(a) direct loan program. By utilizing the capital of nearly 10,000 banks across the country, the guaranteed lending program is able to provide a substantially greater number of loans to the small business sector at a much lower cost to the government than through the direct loan program.

In addition, the Committee was able to provide adequate funding for the SBIC program, but only by changing the funding mechanism for the program; SBIC's will now be required to take their 100 percent government guaranteed debentures directly to the private capital markets for financing.

Unfortunately, because of the magnitude of the savings required under its reconciliation instructions, the Committee was not able to authorize adequate funding for the Section 503 program. The Committee was forced to cut the funds for this program by over 55 percent in each of fiscal years 1986-1988.

The following chart summarizes the Committee's recommendations as reflected in actions taken by S. 408 as passed by the Senate, with regard to business lending functions of SBA:

-13(a)-

BUSINESS LOAN AND INVESTMENT FUND
SMALL BUSINESS ADMINISTRATION PROGRAM LEVELS
(In millions of dollars)

	FY 1985 Appropriated	S. 408, as amended, program level		
		1986	1987	1988
General business loans	2,758.0	2,650.0	2,766.0	2,882.0
Direct and IP	108.0	0.0	0.0	0.0
Guaranteed	2,650.0	2,650.0	2,766.0	2,882.0
Handicapped loans	29.0	20.0	20.0	20.0
Direct and IP	24.0	15.0	15.0	15.0
Guaranteed	5.0	5.0	5.0	5.0
Economic opportunity loans	105.0	60.0	63.0	65.0
Direct and IP	45.0	0.0	0.0	0.0
Guaranteed	60.0	60.0	63.0	65.0
Energy loans	18.0	15.0	16.0	16.0
Direct and IP	3.0	0.0	0.0	0.0
Guaranteed	15.0	15.0	16.0	16.0
Development company loans	455.0	200.0	200.0	200.0
Direct and IP	5.0	0.0	0.0	0.0
Guaranteed	450.0	200.0	200.0	200.0
Investment company loans	312.0	291.0	302.0	313.0
Direct and IP	47.0	41.0	41.0	41.0
Guaranteed	265.0	250.0	261.0	272.0
Veterans loans	25.0	20.0	20.0	20.0
Direct and IP	25.0	20.0	20.0	20.0
Guaranteed	0.0	0.0	0.0	0.0
Total business loans	3,720.0	3,256.0	3,387.0	3,516.0
Direct and IP	257.0	76.0	76.0	76.0
Guaranteed	3,445.0	3,180.0	3,311.0	3,440.0

(a) Direct Loan Program Levels and Reductions.

The Committee is recommending the elimination of the SBA's direct loan program, with the exception of assistance to Minority Enterprise Small Business Investment Companies (MESBIC's), the handicapped, and veterans.

The recommendation to eliminate the rest of the SBA direct loan program funding is consistent with action by this Committee last Congress.

The Committee began to address direct loan program funding constraints in 1981 through changes enacted as part of the Reconciliation Act of that year. Specifically, the Committee initiated, and the Congress approved, a 50 percent reduction in the total program levels for direct loans at the SBA and the elimination of the interest subsidy that those loans enjoyed in prior law.

In part, due to statutory changes, the number and average size of the loans have also decreased. In fiscal year 1984, the agency made less than half the loans, at half the dollar amount, than it made prior to the decrease in this program level: 2,295 loans for a total of $184.1 million. In the Committee's view, it is misleading to tell prospective borrowers that a direct loan program exists when, in fact, so few dollars are available to so few businesses for loan-making purposes.

The administrative function of making loans is also costly and highly labor-intensive. SBA estimates that it could reduce its personnel level by 65 positions and save $2.1 million in administrative costs through elimination of the direct loan program. SBA Administrator James Sanders, in testifying before the Committee, has consistently advocated the elimination of this program for similar reasons to those cited above. In addition, it has been his advice, and the opinion of this Committee, that the SBA's limited resources can be utilized more effectively and efficiently by being directed into the agency's other financial assistance programs which leverage private sector resources and expertise.

Loans to the handicapped assist one of the most disadvantaged groups, and loans to Vietnam-era and disabled veterans assist a highly deserving segment of our society, often requiring extra help to adapt and succeed as they re-enter America's mainstream. Therefore, the Committee retained direct loans for these important sectors of the community, but at reduced levels. Loans for handicapped were authorized at $15 million in each of fiscal years 1986-1988, and for veterans were authorized at $20 million in each of fiscal years 1986-1988.

The MESBIC Program, which is also funded through the direct loan program, was authorized at a level of $41 million for each of fiscal years 1986-1988.

(b) Loan Guarantee Program.

The SBA's 7(a) Loan Guarantee Program fills a critical void in the credit market by providing small enterprises with long-term loans which are generally not available from banks, absent the SBA guarantee.

The General Accounting Office, in its 1983 report to Congress, SBA's 7(a) Loan Guarantee Program: An Assessment of its Role in the Financial Market, reported the findings of its extensive study of the 7(a) program. GAO called the SBA's general business loan program, "the Federal Government's answer to small business' need for long-term financing." The study revealed that the guarantee program has encouraged lenders to finance new ventures, make longer term and larger small business loans, with no evidence of "crowding out" of other small business borrowers.

GAO's statistical sampling of approximately 60 percent of all commercial banks found that:

> 13 percent of all outstanding small business loans were SBA-guaranteed;
>
> 74 percent of SBA guaranteed loans were long-term, while only 15 percent of non-guaranteed loans to small businesses were long-term;
>
> 82 percent of lenders stated that without the SBA guarantee, the loans they issued to small businesses would not have been made, or would have had more stringent terms and conditions.

John W. McClure, in testimony submitted to the Committee on behalf of the American Bankers Association (ABA), referred to GAO's conclusions on the 7(a) program, and confirmed that "these results reflect the experience of our Small Business Credit Committee members with this program." He further noted,

> We believe the Administration's proposed elimination of the 7(a) Loan Guarantee Program would have an adverse effect on the ability of our members to provide financial assistance in their communities. In addition to increasing the liquidity of our members, the 7(a) Loan Guarantee Program is helpful in promoting economic development, particularly for many smaller

community banks.

Mr. McClure submitted ABA statistics showing the market penetration of SBA loan guarantees, and the void in long-term financing that would result if they were eliminated:

> The banking industry has been a major participant in various SBA programs for years. A primary example is the loan guarantee program, which was authorized by section 7(a) of the Small Business Act of 1953. As of September 30, 1984, 9,923 commercial banks, almost 70 percent of the industry total had at least one guaranteed loan outstanding. Of that total, an estimated 1,627 banks had between 10-24 loans, and 635 banks had 25 or more loans each . . . The small businesses that would be affected by the Administration's proposed elimination of the 7(a) Loan Guarantee Program could lose their only source of financing or find themselves unable to develop a viable long-term financing package.

Kenneth Guenther, Executive Director of the Independent Bankers Association of America (IBAA), in a statement submitted to the Committee on behalf of the 7,800 community banks comprising the organization, stated that,

> .... every leading expert in small business finance would argue that long-term credit is essential to growing small firms and that the supply is woefully inadequate. It is precisely in this area that the SBA's presence is so significant.

The IBAA's statement further elaborated on the importance of the SBA's loan guarantees in helping to meet small business credit needs:

> Deregulation of the interest rates banks can pay on deposits has alrady had an impact on the financing available to small businesses. Real interest rates are higher and more volatile than before and the greater uncertainty in the cost of funds has all but eliminated the ability of banks to make long-term, fixed rate commercial loans. In such an environment the SBA loan guarantee program has played a critical role in making this important form of financing available to small firms.

Bailey S. Barnard, President of the National Association of Government Guaranteed Lenders refuted the Administration's criticisms of the 7(a) guarantee program in testimony at the

Committee's March 7th hearing, calling them "uniformed, inaccurate and unjustified." He stated that,

> Mr. Stockman demonstrates his naivete and lack of understanding of the financial marketplace in his contention that federal loan guarantees are unnecessary, that private capital sources alone are sufficient for expansion financing for business. There is, in reality, a void in the financial marketplace. Without guarantees by the SBA, long term capital is simply not available to many good quality, creditworthy small businesses ... It is the SBA loan guarantee program that has made possible what long term financing does exist for small businesses.

In summary, the SBA's loan guarantee program effectively utilizes private sector resources and expertise in forming a classic public/private partnership that provides small firms with access to long-term financing, otherwise unavailable. With this in mind, S. 408 maintains the 7(a) guarantee loan program in fiscal year 1986 at $2.73 billion, and adjusts that level for inflation in fiscal years 1987 and 1988.

(c) Reforms in the 7(a) Guaranteed Loan Program.

(1) Statutory Fee Increase From 1% to 2%.

While fully supporting the 7(a) guaranteed loan program, the Committee took action to increase revenue and cut losses even further. Under its current regulations, the SBA charges a 1% fee for loans guaranteed under the 7(a) guaranteed loan program. During mark-up on S. 408, the Committee adopted an amendment that would make this fee statutory, and would increase it to 2% for loans whose terms exceed one year. The Committee expects that SBA, in structuring loans, will minimize the impact of this increased fee on borrowers.

The Committee carefully considered several proposals including the recommendation by The National Federation of Independent Business (NFIB) that the fee be raised to 5%, and has reached the conclusion that a fee greater than 2% would have a serious adverse effect on the program. This assessment was buttressed by the SBA, the Independent Bankers Association of America, and the American Bankers Association.

Administrator Sanders responded to the proposal to raise the fee to 5%:

> In our judgment, the program would not be adversely

> affected to a severe extent with an increase to 2 percent. However, we believe there could be serious adverse program implications on the demand side if the increase was to 5 percent. We would need experience factors at 2 percent before being able to assess any greater increases.

The SBA calculated that for a loan of $171,063 (the average size of a loan made under the 7(a) guaranteed loan program) this would add only $24 per month to the cost of the loan made out at an interest rate of 13.25% for a term of 9 years (the average term for a 7(a) guaranteed loan).

In a similar vein, Kenneth A. Guenther, executive vice president of the Independent Bankers Association, strongly opposed increasing this fee from 1% to 5%.

He did conclude, however, that a slight increase in this fee might be advisable:

> It is possible that the guarantee is underpriced at 1%. Because there is no existing market for long-term loans, especially at fixed rates, it is impossible to say what the market-determined price would be. Conversations with several lenders indicate that it is probably in the range of 1 to 2%. Ideally, the value of a guarantee could best be determined by a market process such as following the borrower to bid for a guarantee. But absent such a mechanism, the best way to raise the guarantee fee would be to do so gradually while observing the effect on the market (e.g., raise it from 1 to 2% for a period of time, then raise it again only if it appears that borrowers and lenders have not dropped out of the market, and continue incrementally until a true market value is approached). To raise the fee to 5% all at once seems both unjustifiable and unwise.

According to CBO, the increase in the upfront fee paid by the borrower will generate $49 million in savings over the next three fiscal years.

(2) Reduction of the SBA Percentage of Guarantee Under The 7(a) Loan Program.

Currently, the SBA is required by law to guarantee not less than 90% of the amount of a loan not exceeding $100,000 made under the 7(a) guaranteed loan program. For loans over $100,000 the SBA may not guarantee more than 90% of the face amount of the loan. Under the Committee amendment, for loans under $100,000 the minimum SBA guarantee would be reduced 90% to 80% and for loans over $100,000, the maximum SBA guarantee would be reduced from 90% to 80%.

When asked by the Committee for his assessment of the effect of reducing the percentage of guarantee from 90% to 80% under the 7(a) loan program, the SBA Administrator James C. Sanders responded:

> In our judgment we would still have a viable loan guarantee program if we reduced the percentage of guarantee from 90 percent to 80 percent. There is no question that some lenders would lose interest and drop out of the program if the percentage of guarantee is dropped below 90 percent. Those lenders in particular that rely heavily on the secondary market would not find the 80 percent guarantee as attractive as the 90 percent guarantee. At the same time, our experience suggests that the guarantee program would still be regarded by lenders as a valuable tool in their small business lending efforts. We believe that there would be healthy demand and a viable loan guarantee program at the 80 percent guarantee level.

Accordingly, for loans under $100,000 the Committee's bill gives the SBA the "option" of lowering its guarantee from 90% to 80%. For loans over $100,000, the SBA's maximum guarantee would be reduced from 90% to 80%. This action is consistent with the Committee's desire to work with the SBA to help ensure quality lending while at the same time providing needed long term financing to small businesses not available through any other private sector or government lending program. According to CBO, this proposal will generate $28 million in savings over the next three fiscal years.

(d) Small Business Investment Company (SBIC) And Minority Enterprise Small Business Investment (MESBIC) Programs.

The Small Business Investment Act of 1958, which authorized the Small Business Investment Company (SBIC) Program, recognized "that small business concerns are faced with a real difficulty in obtaining long-term and equity capital required for adequate growth and development. Commercial banks are not able to furnish such financing; their function lies primarily in short and intermediate-term lending; they do not supply venture capital or long-term credit." Since its inception, the SBIC industry has become a major source of equity capital for small businesses, and it now represents over 20 percent of venture capital funds dispersed.

SBIC's and MESBIC's are SBA licensed companies which, through a private and public sector partnership, provide equity capital, long-term loans, and management assistance to small businesses. SBIC's are responsible for many of our nation's great small business success stories. Companies which have stimulated the economy and provided thousands of jobs, such as Cray Research Inc., and Essence Magazine, would not have started without SBA financing.

In return for a commitment to invest in small businesses, SBIC's are licensed by the SBA and authorized to issue debentures backed by federal guarantees. SBIC's obtain funding from the Federal Financing Bank at the cost of money to the Treasury, plus a premium. There is no government subsidy attached to the loan. MESBIC's, as noted earlier, are funded through the direct purchase of debentures by SBA. To be licensed as an SBIC or MESBIC, an applicant must have at least $1 million in private sector, paid-in capital. Before an SBIC or MESBIC can obtain any leverage funds, it must have first committed at least 60 percent of its own capital to investments in small business concerns.

The SBIC and MESBIC venture capital programs have produced jobs, economic gains, and tax revenues far exceeding government outlays.

On September 21, 1983, President Reagan addressed the National Association of Small Business Investment Companies (NASBIC) at their 25th anniversary commemoration. The President delivered this eloquent testimonial to the success of the SBA's equity capital programs, inspiring every SBIC manager, small business entrepreneur, member of Congress, and SBA official present:

> SBIC's and MESBIC's have been pioneers of private sector/government efforts to expand the availability of venture capital for small businesses. Your product and service breakthroughs, the jobs created and retained, the economic gains, and, yes, the additional taxes collected over the last quarter century from your program's success have real meaning for all of us.
>
> You've proven that public/private partnership can do things that government alone cannot accomplish. The ingenuity, perseverance, and profit motive of the private sector works remarkably well with government encouragement. This is where you fit in. And it's not just money. Even more than the impressive financial assistance you've provided is the development of a reservoir of human capital. The SBIC managers have strengthened the ability of the small business sector to innovate, compete,

and grow.

> The sole role of the minority enterprise small business investment companies, which we also recognize tonight, is to assist small businesses whose ability to compete is hampered by racial or ethnic considerations. This mission ties in directly with my goal of ensuring that all Americans share in the opportunities of our free enterprise system.

The Committee agreed completely with the President's assessment of the contributions made by the SBIC industry to the economy. William R. Thomas, Chairman of the National Association of Small Business Investment Companies (NASBIC), and President of Capital Southwest Venture Corporation, Dallas, Texas, in testifying before the Committee, noted that the SBIC program has more than paid for itself. He stated,

> At NASBIC's annual meeting last November, an official of the investment division of SBA stated that SBA had written off only $38 million in loans to SBICs during the first 25 years of the program. That's an average of $1.5 million a year. We estimate that the average outstanding leverage during that 25 year period has exceeded $500 million, so you can see that SBA's average loss on its portfolio is less than one-half of one percent a year. On February 21, John Carlson of Cray Research told your Committee that his company owed its existence to the work of an SBIC; he also stated that Cray Research has already paid a total of $83 million in federal corporate taxes in the few years since it became profitable. Think of it: Uncle Sam has lost a total of $38 million on its loans to all SBICs, but has received more than twice that amount in taxes from just one company.

Patrick Owen Burns, Chairman of the American Association of Minority Enterprise Small Business Investment Companies (AAMESBIC), in testimony before the committee, presented impressive statistics regarding the assistance provided by MESBIC's to minority businesses:

> Since 1976, the MESBIC industry has invested over $391 million in 4,772 small business concerns. MESBIC investments since 1977 have helped to create or maintain over 75,000 jobs. More importantly in terms of the budget, MESBIC investments since 1978 have generated federal and state tax revenues of approximately $487 million. When combined with the unemployment wages saved through MESBIC job generation, the total benefit over the seven year period is approximately $886 million. In looking at the annual cost to the

government of administering the MESBIC program, the excess government revenue over costs is well over $150 million.

Thus, the Committee determined that if the program was to remain viable, it had to be permitted to continue without reductions in program levels.

MESBIC's, as noted previously, are funded from appropriations for the direct loan program and were maintained at a program level of $41 million for each of fiscal years 1986-1988.

Under current law, SBIC's are funded through the Federal Financing Bank (FFB) when they present 100 percent SBA guaranteed debentures for financing. Since, under the "unified budget concept" adopted for the first time this year in the budget process, financing through the FFB was scored for the first time as counting "dollar for dollar" against the budget allocation of SBA, the Committee was forced to find a different financing mechanism for this important program.

Accordingly, in passing S. 408, the Senate adopted a proposal requiring SBIC's to take their 100 pecent government guaranteed debentures directly to the private capital markets for financing. The SBIC industry utilized this financing mechanism from 1971 through 1974 and was successful in attracting sufficient sources of capital to finance the needs of the industry. Thus, rather than receiving financing directly from FFB, SBICs would again receive funding from investors who purchase their government guaranteed SBIC debentures in the private capital market.

By adopting this funding change for the SBIC program in the passage of S. 408, the Senate was able to preserve this essential public-private partnership program which has helped thousands of small business entrepreneurs and innovators. Thus, the Senate was able to maintain the program level for SBIC's at $250 million for fiscal year 1986, provide for modest increases for inflation in fiscal years 1987 and 1988, and at the same time generate savings of $529 million over the next three years.

(e) Section 503 Certified Development Program.

As one of the Federal Government's primary economic development programs, Section 503 represents a partnership among federal, state and local governments and the private sector in making "bricks and mortar" financing available to healthy small businesses for planned expansion and job creation. Section 503 authorizes the SBA to guarantee debentures issued by certified development companies (CDC's) to finance the acquisition of land, plants, and equipment for small business expansion. With a required commitment for a substantial number of new jobs resulting from the financing before any loan is made, SBA will guarantee up to 40 percent of the project costs, with 50 percent coming from a private sector lender, and 10 percent from the small business itself.

Five hundred forty one CDC's have been certified, funding over 2300 projects, and creating or retaining nearly 100,000 jobs. In every quarter since the program's inception, more and more jobs have been created, and the federal commitment per job has declined. This is a federal program that works, and works well.

The 503 program has had nationwide impact in cities and rural areas alike, greater than its size would initially suggest. Many state and local public officials believe economic development in their areas would come to a virtual halt without SBA programs like Section 503. Mayor J. Michael Houston of Springfield, Illinois, testifying on behalf of the United States Conference of Mayors at the Committee's March 7th hearing, gave his reaction to the Administration's proposed elimination of the SBA, and with it, the 503 program. He said,

> It is important to review just how essential the SBA's financing programs have been to economic development efforts in American's cities. The two are closely linked. Eliminating the SBA at this time would send a shock wave rippling through America's economy which would destroy the most successful public-private partnership which has ever been created. I am speaking of the SBA 503 program ... Across America, the 503 program has proven to be an unqualified success. Through it, the SBA has emerged as a full and equal partner with our financial institutions in encouraging economic development. That partnership has helped the SBA shed its image as the lender of last resort.

The 503 program is an essential component in the current efforts to revitalize America's cities and rural communities.

As noted earlier, however, because of the magnitude of savings required of the Committee in its reconciliation instructions, the only viable way to achieve the savings required was to make substantial cuts in the 503 program. Reluctantly, therefore, the Committee was forced to reduce the 503 program level to $200 million in each of fiscal years 1987-1988, and did so only in order to reach the savings required under its reconciliation instruction.

2. Salaries and Expenses.

The salaries and expenses portion of the SBA budget provides funding for the agency's personnel and administrative costs, as well as all of the non-lending activites of the agency. The Committee, since the late 1970's, has urged the SBA to place a greater emphasis on its procurement assistance, training and counseling, advocacy, economic research, and special outreach programs. This increased activity has been achieved with fewer staff at the SBA and by more reliance on the private sector for delivery of its services. Since 1981, the number of full time employees has been reduced 17 percent from 5,915 to 4,900. Again, this reduction has occurred during a period when the actual workload of the agency has increased.

The Committee is pleased with the reforms that SBA Administrator James Sanders has initiated and the increased productivity by SBA employees.

The following chart prepared by the SBA documents how the 4,900 SBA personnel are allocated by activity and their accomplishments in fiscal year 1984:

-24(a)

Activity	Full-time employees	1984 accomplishments
Procurement assistance	298	Approximately $15 billion in set-aside awards: savings of $324 million.
		Spare parts savings of $151 million.
		Issued 525 certificates of competency for $19 million in savings.
		120,000 small businesses in Procurement Automated Source Selection for savings of $30 million.
		Over $20 billion in subcontracts to small businesses.
Management assistance	353	Trained 301,102 people.
		Counseled 208,857 people.
		Distributed 12.5 million copies of publications.
Finance and investment:		
Financing	489	21,274 loans for $3.0 billion.
Portfolio management	1,215	Services a portfolio of 400,000 loans totaling $17.3 billion.
Special guarantee and investment	90	7,262 surety bonds for $571 million.
		3 pollution bonds for $11 million.
		187 investment company loans for $200 million.
Disaster assistance	414	14,128 loans for $314.2 million.
Innovation, research and technology	9	$111 million in small business innovation research awards.
Minority small business/capital ownership development	318	5,005 8(a) contracts for $2.7 billion.
Advocacy	59	Submitted 49 comments on regulatory proposals, for executive agencies.
		Maintains small business data base.
		Prepares "The State of Small Business" report.
		Mans the small business answer desk.
Special programs	45	34,600 veterans counseled.
		10–15,000 Vietnam-era veterans participated in training seminars.
		468 international trade conferences.
		21 national women's conferences.
Management and administration	421	All financial and administrative accounting functions and systems.
		Payroll and personnel systems.
		All loan and administration processing.
		Annual collections over $1.3 billion.
		Loan accounting data base of 1.5 million loans.
		Implementation of administrative reforms suggested by the Grace Commission and OMB.
General counsel	331	Over 4,000 litigation claims.
Inspector General	129	Conducted 1,117 audits for $3.3 billion.
		Closed 510 investigation cases.
		Recovered $87 million in Federal money.
Hearings and appeals	22	1,000 freedom of information requests.
		263 cases and 3 court hearings.
Public communications	26	Information to the public and media.
		Graphics, design and printing support.
		Communications policy.
Congressional and legislative affairs	13	Coordinates all congressional inquiries.
		Attends and reports on congressional hearings.
Executive Director and field administration	668	Direction and support to the 118 field locations.
Total	4,900	

Accordingly, the Committee bill would maintain sufficient funding for the salaries and expenses account to support these important activities of the agency. In order to achieve additional savings, however, the Committee has reduced the Salaries and Expense Account in fiscal year 1986 from $234 million to $210 million in budget authority. This account is adjusted for inflation in fiscal years 1987-1988

(3) Disaster Assistance.

(a) Elimination of the Non-Physical Disaster Loan Program.

Public Law 98-270, restored at a $100 million level the non-physical disaster program, which had been zero-funded in 1981.

In addition, P.L. 98-270 created two new programs which were made eligible for funding under the non-physical disaster loan program. One program permitted assistance to agricultural-related businesses harmed as a result of the Department of Agriculture's Payment-in-Kind (PIK) program. The other permitted assistance to businesses injured as a result of the Mexican government's devaluation of the Peso. S. 408 would eliminate these programs. In response to questions by Small Business Committee, the SBA Administrator James C. Sanders stated that these programs were "wasteful" and a drain on the Government's budget. Mr. Sanders recommended that this program again be eliminated. John Sloan, President and Chief Executive Officer of the National Federation of Independent Business (NFIB),in testimony before the Committee concurred with the Administrator's assessment:

> In today's climate of 200 billion dollar deficits, we simply cannot afford to spend money we don't have to help businesses hurt by electrical fires in telephone trunk lines, peso devaluation, or not enough snow. Business interruption insurance is available to cover these types of situations; this is one program we can easily sacrifice.

By eliminating the non-physical disaster loan program, savings of $346 million in budget authority and $189 million outlays would be achieved over a three year period.

(b) Elimination of Agricultural Enterprises from Eligibility For Disaster Loan Assistance.

In S. 408 as passed by the Senate, agricultural enterprises were made ineligible for disaster assistance at SBA.

Savings of $817 million over the next three fiscal years were estimated by CBO as a result of adoption of this proposal. When S. 408 was considered on the Senate floor, an amendment was offered by Senators Bumper and others which would have deleted the provisions of the compromise amendment agreed to by the Republican Leadership which removed agricultural enterprises from disaster lending assistance at SBA. The Bumpers amendment failed by a vote of 52-45. Accordingly, the Senate having spoken on this issue, the Committee bill includes this provision.

In 1980, in Public Law 96-302, Congress first removed agricultural enterprises from disaster assistance at SBA through a formula which required agricultural enterprises to go first to the Farmers Home Administration (FmHA) for disaster assistance, so long as interest rates between the two agencies remained substantially similar. This measure was effective only so long as the interest rates for disaster victims at SBA and FmHA were substantially similar.

In 1984 with the passage and signing into law of the Omnibus Reconciliation Bill, P.L. 98-270, farmers were once again able to come to SBA first for disaster assistance because this Act lowered interest rates at SBA for disaster victims. This meant that agricultural enterprises could once again pick and choose as to which agency it would go to for disaster assistance. This action demonstrated how tenuous the "substantially similar" solution was for ensuring that FmHA, and not SBA, was the primary Federal agency responsible for providing disaster assistance to agricultural enterprises.

S. 408, as passed the Senate, has resolved this issue by removing agricultural enterprises from eligibility for disaster assistance at SBA. As noted, this provision would achieve $817 million in savings in fiscal years 1986-1988, was specifically adopted by the Senate, and is recommended by the Committee.

4. Surety Bond Guarantee Program.

Small business contractors and subcontractors are often required to furnish surety bonds in order to obtain public, and sometimes private, construction contracts. Through its surety bond guarantee program, the SBA assists qualified small business contractors by extending a guarantee to a surety of up to 90 percent against loss in order to make bonding more easily obtainable. Under present law, bid bonds, as well as payment and/or performance bonds, may be guaranteed on contracts of up to $1,000,000. The SBA may guarantee up to 90 percent of loss on bonds less than $250,000 and up to 80 percent of loss on bonds from $250,000 to $1,000,000.

Since its inception in 1971, this program has guaranteed over 166,000 surety bonds, permitting the award of over $12 billion in contracts to small businesses. Prior to its enactment, small and minority small business contractors, with limited track records and resources, found it difficult, if not impossible, to bid on construction contracts requiring surety bonds. With the assistance of the SBA surety bond guarantee program, small businesses are now able to obtain the surety bonding required to bid on federally funded and private construction contracts.

In response to a specific inquiry from the Committee concerning the cost of this program, the SBA, after deducting program costs including losses, can identify approximately $504 million in direct savings to the Treasury as a result of this program, based on the differential between the bid price of small business participants who obtained contracts with an SBA surety bond guarantee and the next lowest bidder.

Accordingly, the Committee has recommended a program level of $1.1 billion, for this program in fiscal year 1986, the same as in fiscal year 1985. This recommendation results in a cost of only $12 million in budget authority to cover losses.

5. Pollution Control Bond Program.

In 1976 Congress authorized the SBA to guarantee 100 percent of the payments due from eligible small businesses under qualified contracts for the planning, design, financing or installation of pollution control facilities or equipment, which have been mandated by governmental pollution control regulations. Financing of such contracts may be obtained from the proceeds of tax-exempt bonds issued by state or municipal authorities. The SBA cooperates with commercial and investment banks and local and state authorities to make financing available to eligible small business.

Small business owners, bankers, underwriters, and state pollution control financing agencies have attested to the importance of small businesses' continued access to this small but crucial source of guarantee authority. It is sound public and fiscal policy to continue to permit small businesses, which are forced to install non-productive pollution control equipment, to have access to this important source of capital.

Accordingly, the Committee recommends a program level in fiscal year 1986 of $150 million, identical to the program level in fiscal year 1985. CBO estimates that there will be no additional budget authority required in order to maintain this program.

6. Program Guarantee Authority.

During Committee mark-up on S. 408 in March, 1985, the Committee included a provision offered by Senator Levin to provide that the Small Business Administration shall enter into commitments to guarantee loans, debentures and other types of financial assistance in the full amounts provided by law, subject only to the availability of qualified applications, and limitations contained in appropriations acts.

By adoption of this amendment, the Committee specifically prohibits SBA from administratively reducing commitments below guarantee levels established in law. Reductions would be effective only if the Congress subsequently approves, through appropriate action, recommendations for reductions submitted to the proper Committees by the Executive branch.

7. Other Considerations.

On July 16, 1985, when the Senate considered S. 408 as amended, the following additional amendments were offered and adopted. These amendments, which have no budget impact, would do the following:

- increase from $1,000,000 to $1,500,000 the maximum contract amount that SBA may guarantee under the surety bond guarantee program;

- codify SBA's current administrative practice that small business concerns owned by Indian tribes are eligible to participate in the section 8(a) program;

- establish a maximum of $500,000 in average annual receipts as the size standard for agricultural enterprises under the Small Business Act; and

- encourage the Small Business Administration to evaluate the effectiveness of and work toward the formation of Veterans Business Resource Councils.

IV. SECTION-BY-SECTION ANALYSIS

SECTION I

Amends the Small Business Act by authorizing the following program levels for fiscal year 1986:

(1) $35 million in direct loans, of which:
$15 million is for handicapped; and
$20 million is for Vietnam and disabled veterans.

(2) $2,930 million in guaranteed loans, of which:
$5 million is for handicapped;
$60 million is for economic opportunity loans for minorities;
$15 million is for energy loans;
$2,650 million is for general business loans; and
$200 million is for 503 economic development loans.

(3) $41 million in direct loans to Minority Enterprise Small Business Investment Companies (MESBIC's) and $250 million in guaranteed debentures for Small Business Investment Companies (SBIC's).

(4) Surety bond guarantees not to exceed $1,115 million.

(5) Pollution control equipment contract guarantees not to exceed $150 million.

(6) Authorizes the appropriation of funds necessary and appropriate to make loans to victims of physical disasters.

(7) $534 million to be appropriated for fiscal year 1986, of which $312 million is to fund all of the programs in the Business Loan and Investment Fund Account; $12 million is for the surety bond guarantee program; and $210 million is for salaries and expenses.

Amends the Small Business Act by authorizing the following program levels for fiscal year 1987:

(1) $35 million in direct loans, of which:
$15 million is for handicapped; and
$20 million is for Vietnam and disabled veterans.

(2) $3,050 million in guaranteed loans, of which:
$5 milion is for handicapped;
$63 million is for economic opportunity loans for minorities;
$16 million is for energy loans;
$2,766 million is for general business loans; and
$200 million is for 503 economic development loans.

(3) $41 million in direct loans to Minority Enterprise Small Business Investment Companies (MESBIC's) and $261 million in guaranteed debentures for Small Business Investment Companies (SBIC's).

(4) Surety bond guarantees not to exceed $1,164 million.

(5) Pollution control equipment contract guarantees not to exceed $157 million.

(6) Authorizes the appropriation of funds necessary and appropriate to make loans to victims of physical disasters.

(7) $561 million to be appropriated for fiscal year 1986, of which $331 millon is to fund all of the programs in the Business Loan and Investment Fund Account; $16 million is for the surety bond bond guarantee program; and $214 million is for salaries and expenses.

Amends the Small Business Act by authorizing the following program levels for fiscal year 1988:

(1) $35 million in direct loans, of which:
$15 million is for handicapped; and
$20 million is for Vietnam and disabled veterans.

(2) $3,169 million in guaranteed loans, of which:
$6 million is for handicapped;
$65 million is for economic opportunity loans for minorities;
$16 million is for energy loans;
$2,882 million is for general business loans; and
$200 million is for 503 economic development loans.

(3) $41 million in direct loans to Minority Enterprise Small Business Investment Companies (MESBIC's) and $272 million in guaranteed debentures for Small Business Investment Companies (SBIC's).

(4) Surety bond guarantees not to exceed $1,213 million.

(5) Pollution control equipment contract guarantees not to exceed $163 million.

(6) Authorizes the appropriation of funds necessary and appropriate to make loans to victims of physical disasters.

(7) $566 million to be appropriated for fiscal year 1986, of which $333 million is to fund all of the programs in the Business Loan and Investment Fund Account; $15 million is for the surety bond guarantee program; and $218 million is for salaries and expenses.

(2) Eliminates from the Small Business Act the $100 million funding for

the non-physical disaster program in fiscal year 1986.

SECTION 2

Amends the Small Business Act to permit SBA to reduce its guarantee for loans of less than $100,000 guaranteed under the 7(a) loan program from 90 percent to 80 percent; for loans of $100,000 or more, lowers the maximum guarantee from 90 percent to 80 percent.

SECTION 3

Amends section 7(a) of the Small Business Act to require SBA to collect a 2 percent fee for loans of one year or more guaranteed under the 7(a) loan program, and permits the lending institution to pass this fee on to the borrower. SBA by regulation currently imposes a one percent fee.

SECTION 4

Amends section 20(a) of the Small Business Act to provide that the Small Business Administration shall enter into commitments to guarantee loans, debentures and other types of financial assistance in the full amounts provided by law, subject only to the availability of qualified applications, and limitations contained in appropriations acts.

SECTION 5

Amends the Small Business Act to remove agricultural enterprises from eligibility for assistance under the disaster loan program.

Amends the Small Business Act to eliminate the non-physical disaster loan program.

Removes a paragraph from the Small Business Act that is inconsistent with provisions enacted in P.L. 98-270.

SECTION 6

Amends the Small Business Investment Act of 1958 to require Small Business Investment Companies to sell their 100 percent federally guaranteed debentures to the private capital markets rather than the Federal Financing Bank.

SECTION 7

Amends the Small Business Investment Act of 1958 to increase from $1,000,000 to $1,500,000 the contract amount that SBA may guarantee under the surety bond guarantee program.

SECTION 8

Amends the Small Business Investment Act of 1958 to codify SBA's current administrative practice that small business concerns owned by Indian tribes are eligible to participate in the section 8(a) program.

SECTION 9

Establishes a maximum of $500,000 in average annual receipts as the size standard for agricultural enterprises under the Small Business Act.

SECTION 10

Encourages the Small Business Administration to evaluate the effectiveness of, and work toward, the formation of Veterans Business Resource Councils.

V. REGULATORY IMPACT STATEMENT

In compliance with Rule XXVI (11)(b) of the Standing Rules of the Senate, it is the Committee's belief that this bill will have no regulatory or privacy impact on the small businesses affected by the legislation.

VI. COST OF LEGISLATION

In compliance with Rule XXVI of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

September 19, 1985

Rudolph G. Penner
Director

Honorable Lowell P. Weicker, Jr.
Chairman
Committee on Small Business
United States Senate
428A Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

At the request of Committee staff, CBO has prepared the attached table which shows the difference between the budget impact of S. 408, as passed, and the baseline used for S. Con. Res. 32, the First Concurrent Resolution on the Budget - Fiscal Year 1986, as passed on May 10, 1985.

If you wish further details on this estimate, we would be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Dale Bumpers
Ranking Minority Member

COST OR SAVINGS (-) RELATIVE TO THE BASELINE
(by fiscal years, in millions of dollars)

	1986	1987	1988	3-YR TOTAL
SBA BUSINESS PROGRAMS Function 370				
Budget Authority	-460	-628	-659	-1,747
Outlays	-374	-605	-588	-1,566
SBA DISASTER PROGRAM Function 450				
Budget Authority	---	---	-459	-459
Outlays	-129	-421	-457	-1,007
TOTAL, SMALL BUSINESS PROGRAMS				
Budget Authority	-460	-628	-1,118	-2,206
Outlays	-503	-1,026	-1,044	-2,573
INTEREST PAID TO THE TREASURY Function 900				
Budget Authority	---	26	96	122
Outlays	---	26	96	122
TOTAL, S. 408 AS PASSED				
Budget Authority	-460	-602	-1,022	-2,084
Outlays	-503	-1,000	-948	-2,451

Details may not add to totals due to rounding.

VII. Changes in Existing Law

In compliance with rule XXVI (12) of the Standing Rules of the Senate, changes in existing law made by the statutory provisions of the bill are as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, and existing law in which no change is proposed is shown in roman):

Small Business Act

* * * * * * *

SEC. 2. * * *

(e)(1) * * *

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, *Indian tribes,* Asian Pacific Americans, and other minorities;

* * * * * * *

SEC. 7 * * *

(a)(2) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Adminstration, except as provided in paragraph (6), shall be:

(A) not less than [90] *80* per centum of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $100,000; and Italic

(B) subject to the limitation in paragraph (3)—

(i) not less than 70 per centum nor more than [90] *80* per centum of the financing outstanding at the time of disbursement if such financing exceeds $100,000 but is less than $714,285, and Italic

(ii) less than 70 per centum of the financing outstanding at the time of disbursement if such financing exceeds $714,285;

Provided, That the Administration shall not use the per centum of guarantee requested as a criterion to establish priorities in approving guarantee requests nor shall the Adminstration reduce the per centum guaranteed to less than [90] *80* per centum pursuant to subparagraph (B) other than by a determination made on each application. Italic

* * * * * * *

(16) The Administration shall collect a guarantee fee equal to 2 percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less or a loan under paragraph (13). The fee shall be payable by the participating lending institution and may be charged to the borrower.

* * * * * * *

(b) [The]*Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the* Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts --

(1) (A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of floods, riots or civil disorders, or other catastrophes: Provided, That such damage or destruction is not compensated for by insurance or otherwise;

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: Provided, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise[;]. Italic

* * * * * * *

[(3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith, or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: Provided, That the maximum loan made to any small business concern under this paragraph shall not exceed $500,000 and the amount thereof shall be based solely on a determination made on each application: Provided further, That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere. For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government Action; and

(4) To make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall exceed $100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.]

* * * * * * *

(c) (4)* * *

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

[Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph (1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: <u>Provided</u>, That no loan under paragraphs (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.]

* * * * * * *

SEC. 8. (a) * * *

(4) [For purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern —

(A) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(B) whose management and daily business operations are controlled by one or more of such individuals.]

Italic

(A) For purposes of this section, the term 'socially and economically disadvantaged small business concern' means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum owned by—

(I) one or more socially and economically disadvantaged individuals, or

(II) an economically disadvantaged Indian tribe, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by—

(I) one or more socially and economically disadvantaged individuals, or

(II) an economically disadvantaged Indian tribe.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I), or

(ii) members of the economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II).

* * * * * * * *

(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. *In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.*

* * * * * * *

Italic

(13) For purposes of this subsection, the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

* * * * * * *

SEC. 18(a) The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government. Italic [, except to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries: Provided, That prior to October 1, 1987, an agricultural enterprise shall not be eligible for loan assistance under paragraph (1) of section 7(b) to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act, and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.]

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Italic **SEC. 20(a)*(1)* For fiscal years 1981, 1982, 1983 and 1984 there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. For fiscal year 1985 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. All appropriations whether specifically or generally authorized shall remain available until expended.**

(2) Notwithstanding any other provision of law, the Administration shall enter into commitments to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to (A) the availability of qualified applications for such guarantees, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter commitments for such guarantees to qualified applicants.

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(t)*(1)* For [each of fiscal years 1985 and 1986,] *fiscal year 1985* for the programs authorized by sections 7(b)(1) and 7(b)(2) the Administration is authorized to make $500,000,000 in direct loans and [for each of such years] for the programs authorized by sections 7(b)(3) and 7(b)(4) the Administration also is authorized to make $100,000,000 in direct loans.

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[(t)]*(2)* There are hereby authorized to be appropriated for fiscal year 1985, $30,000,000 to be available solely [(1)]*(A)* to carry out the provisions and purposes of the Small Business Development Center Program in section 21, [(2)]*(B)* to pay the expenses of the National Small Business Development Center Advisory Board as provided in subsection 21(h), and [(3)]*(C)* to reimburse centers for participation in evaluations as provided in subsection 21(j).

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(u) The following program levels are authorized for fiscal year 1986:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sums, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era, as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $2,930,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $60,000,000 in loans as provided in paragraph (11), $15,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees and debentures as provided in section 503.

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(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $250,000,000 in guarantees of debentures.

(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,115,000,000.

(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $150,000,000.

(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

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(v) There are authorized to be appropriated to the Administration for fiscal year 1986, $534,000,000. Of such sum $312,000,000 shall be available for carrying out the programs referred to in subsection (u), paragraphs (1) through (3); $12,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $210,000,000 shall be available for salaries and expenses of the Administration.

(w) The following program levels are authorized for fiscal year 1987:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era,

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as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,050,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), $63,000,000 in loans as provided in paragraph (11), $16,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $261,000,000 in guarantees of debentures.

(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,164,000,000.

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(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $157,000,000.

(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

(x) There are authorized to be appropriated to the Administration for fiscal year 1987, $561,000,000. Of such sum $331,000,000 shall be available for carrying out the programs referred to in subsection (w), paragraphs (1) through (3); $16,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $214,000,000 shall be available for salaries and expenses of the Administration.

(y) The following program levels are authorized for fiscal year 1988:

(1) For the programs authorized in section 7(a) of this Act, the Administration is authorized to make $35,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in para-

graph (10), and $20,000,000 in loans to be made only to disabled veterans, and veterans of the Vietnam era, as defined in section 1841, title 38, United States Code, under the general terms and conditions of title III of Public Law 97-72.

(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,169,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $6,000,000 in loans as provided in paragraph (10), $65,000,000 in loans as provided in paragraph (11), $16,000,000 in loans as provided in paragraph (12), and $200,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

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(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $41,000,000 in direct purchases of debentures and preferred securities and to make $272,000,000 in guarantees of debentures.

(4) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $1,213,000,000.

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(5) For the programs authorized in sections 404 and 405 of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $163,000,000.

(6) There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving funds such sums as may be necessary and appropriate for such administrative expenses.

(z) There are authorized to be appropriated to the Administration for fiscal year 1988, $566,000,000. Of such sum $333,000,000 shall be available for carrying out the programs referred to in subsection (y), paragraphs (1) through (3); $15,000,000 shall be available for the purpose of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $218,000,000 shall be available for salaries and expenses of the Administration.

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SMALL BUSINESS INVESTMENT ACT OF 1958

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TITLE III -- SMALL BUSINESS INVESTMENT COMPANIES

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GUARANTEED OBLIGATIONS NOT ELIGIBLE FOR PURCHASE BY FEDERAL FINANCING BANK

SEC. 320. Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire after September 30, 1985—

(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this title,

(2) any obligation which is an interest in any obligation described in paragraph (1), or

(3) any obligation which is secured by, or substantially all of the value of which is attributable to, any obligation described in paragraph (1) or (2).

* * * * * *

Sec. 411. AUTHORITY OF THE ADMINISTRATION

(a) The Administration may, upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety (the terms and conditions of said guarantees and commitments may vary from surety to surety on the basis of the Administration's experience with the particular surety) against loss, as hereinafter provided, as the result of a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary and coterminous therewith, by a principal on any contract up to [$1,000,000] *$1,500,000*, subject to the following conditions:

* * * * * *

(e) Pursuant to any such guarantee or agreement, the Administration shall reimburse the surety, as provided in subsection (c) of this section, except that the Administration shall be relieved of all liability if —

(1) the surety obtained such guarantee or agreement, or applied for such reimbursement, by fraud or material misrepresentation, or

(2) the total contract amount at the time of execution of the bond or bonds exceeds [$1,000,000] *$1,500,000*.

VIII. ADDITIONAL VIEWS OF SENATORS BUMPERS, NUNN, SASSER, BAUCUS, LEVIN, DIXON, BOREN, HARKIN, AND KERRY

We write separately to underscore for the public record our deep concern and disagreement with the actions of the Senate in the passage of S. 408 - which have now been incorporated into this budget reconciliation measure - with regard to disaster lending to America's farm families. By a vote of 52-45, the Senate rejected our amendment to preserve the option of disaster lending for farmers at the Small Business Administration.

The dire predictions which some of us made with regard to farm disaster lending are now being realized in the treatment of farm disasters by the Agriculture Committee in its recently reported farm bill. Not only have agricultural businesses been made ineligible for any disaster lending at SBA on the reasoning that they should go to FmHA for assistance, they will also be made ineligible for disaster lending at FmHA in the pending farm legislation. Thus, farmers will be the only American businesses who are not eligible for disaster loan assistance from the federal government when natural disasters strike.

Every other category of business - large and small is able to obtain a disaster loan from the Small Business Administration under its physical disaster program for losses not covered by insurance. Ordinarily, no one is compelled by law to buy insurance. By the Senate's rejection of the Bumpers amendment on S. 408 farmers were banished from SBA's disaster lending program and sent to FmHA for help, ostensibly on the theory that FmHA has more expertise in agricultural lending. The answer recently given by the Senate Agriculture Committee is that they must buy crop insurance because there will be no disaster loans for any farmer who could have bought crop insurance.

It goes without saying that this double discrimination against American farm families comes, in our judgment, at an especially painful and inappropriate time.

COMMITTEE ON VETERANS' AFFAIRS

Title XI

United States Senate

COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

September 27, 1985

Honorable Pete V. Domenici, Chairman
Honorable Lawton Chiles, Ranking Minority Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Pete and Lawton:

Pursuant to section 2(1) of Senate Concurrent Resolution 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986, and action of the Committee at a September 26, 1985, meeting, the Committee on Veterans' Affairs is submitting to the Budget Committee the enclosed legislation and report recommending budget savings. The reconciliation instructions contained in section 2(1) of S. Con. Res. 32 require this Committee to report changes in laws within this Committee's jurisdiction sufficient to reduce both budget authority and outlays for veterans' programs by $300 million in fiscal year 1986, by $400 million in fiscal year 1987, and by $450 million in fiscal year 1988.

In order to meet these requirements, our Committee, by a 9 to 3 vote, makes the following recommendations in the enclosed legislation: First, to revise certain VA health-care eligibility criteria and to provide for certain veterans with substantial incomes to make modest payments for VA care furnished for non-service-connected disabled veterans (Part A); second, to authorize the United States to recover from health insurers certain reasonable costs of care and services furnished through VA facilities or non-VA facilities at VA expense for veterans with no service-connected disabilities who are covered under health-plan contracts (Part B); and third, to restrict the FY 1986 disability compensation/DIC COLA rate increase to the 3.7 percent estimated as the forthcoming Social Security benefit COLA (Part C). We believe that these recommendations provide the most reasonable means for the Committee to comply with our reconciliation instructions in S. Con. Res. 32.

Estimated savings resulting from enactment of the legislation we are submitting would exceed the three-year total of $1.15 billion in required reconciliation savings by $150 million. The Committee legislation would achieve net savings of $1.3 billion in budget authority and outlays over fiscal years 1986 through 1988, according to CBO estimates, approximately $1.1 billion of which is through increased revenues to be deposited directly in the Treasury in order to reduce the deficit.

We have also enclosed report language and a section-by-section analysis which explain our reconciliation legislation in greater detail as well as a cost estimate prepared by the Congressional Budget Office.

The Committee's reconciliation legislation demonstrates our Committee's commitment to reducing our national deficit while continuing to provide fair and equitable treatment to the veterans of our Nation.

Sincerely,

Frank H. Murkowski
Chairman

Alan Cranston
Ranking Minority Member

Enclosures

TITLE XI: BUDGET RECONCILIATION RECOMMENDATIONS OF THE COMMITTEE ON VETERANS' AFFAIRS

INTRODUCTION

The Committee on Veterans' Affairs has been instructed by the Congress in section 2(1) of Senate Concurrent Resolution 32, the First Concurrent Resolution on the Budget for Fiscal Year 1986, to submit, not later than September 27, 1985, to the Committee on the Budget, recommendations for changes in laws within the jurisdiction of the Committee on Veterans' Affairs, including those which provide spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974, in order to reduce budget authority by $300,000,000 and outlays by $300,000,000 in fiscal year 1986; to reduce budget authority by $400,000,000 and outlays by $400,000,000 in fiscal year 1987; and to reduce budget authority by $450,000,000 and outlays by $450,000,000 in fiscal year 1988.

The Committee legislation would achieve savings during fiscal years 1986-88 as required by section 2(1) of S. Con. Res. 32.

In order to prepare for the reconciliation process this year, this Committee held hearings on May 7 and June 20, 1985, for the purpose of receiving testimony on several of the Administration's legislative proposals, including a means test for Veterans' Administration health-care eligibility and reimbursement from health insurers.

After due consideration, on September 26, 1985, this Committee met in open markup session and voted, 9 to 3, to recommend and to submit to the Budget Committee reconciliation legislation including: in Part A, an income eligibility criterion which is substantially different from the Administration's means-test proposal; in Part B, authorization for reimbursement from health insurers which is derived from the Administration's proposal; and in Part C, a limitation on the FY 1986 cost-of-living adjustment rates for the VA compensation and dependency and indemnity compensation (DIC) programs.

On September 26, 1985, this Committee met in open markup session and voted, 9-3, to report the reconciliation legislation favorably.

DISCUSSION

The Committee, after careful consideration of all the testimony presented during the May 7 and June 20, 1985, hearings on the Administration's means test and third-party reimbursement proposals, has concluded that legislation to (1) revise certain VA health-care eligibility criteria and to provide for certain veterans with substantial incomes to make modest payments for VA care furnished for non-service-connected disabled veterans, in the way set forth in Part A, (2) authorize the United States to recover certain reasonable costs of care and services furnished through VA facilities or non-VA facilities at VA expense for veterans with no service-connected disablilities who are covered under health-plan contracts, and (3) restrict a disability compensation/DIC COLA rate increase to 3.7 percent estimated as the forthcoming Social Security benefit COLA is the best available means for the Commitee to comply with the reconciliation instructions to it in section 2 (*l*) of the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32).

The Committee notes generally that further explanation and expression of Committee views is found in the section-by-section analysis of the Committee legislation later in the report.

PART A: ENTITLEMENTS AND ELIGIBILITIES FOR HEALTH CARE FROM THE VETERANS' ADMINISTRATION

Part A of the Committee legislation would clarify eligibility categories and priorities for health care provided for or furnished by the Veterans' Administration, would establish expanded eligibility for such health care for certain veterans with service-connected disabilities, and establish an income eligibility criterion for non-service-connected veterans.

Hospital Care

This legislation would create three categories of eligibility for hospital care. In the first category the Administrator would be required to furnish hospital care determined to be reasonably necessary to veterans for their service-connected disabilities and for any disability of veterans who have service-connected disabilities rated at 50 percent or more. This care would be required to be furnished through VA facilities or non-VA facilities to the extent authorized. The Committee notes that this eligibility would not in anyway alter the authority of the Administrator with respect to incarcerated veterans.

The second category would maintain the Administrator's authority under current law to furnish reasonably necessary hospital care to veterans with a service-connected disability rated at less than 50 percent (including zero-percent rated veterans); veterans who, but for the receipt of retired pay, would be entitled to disability compensation; veterans who, but for a suspension in disability compensation paid for a disability incurred as a VA patient or as a participant in a VA vocational rehabilitation program, would be entitled to such compensation; veterans who were discharged from service for a disability incurred or aggravated during service; former prisoners of war; Vietnam veterans exposed to certain toxic substances and veterans exposed to ionizing radiation from a nuclear blast; Spanish-American War, Mexican border period, World War I, or permanently housebound veterans; and veterans unable to defray the cost of necessary care.

Under the third category, the Administrator would have the authority to furnish within otherwise available space and resources, reasonably necessary hospital care for disabilities of veterans not covered by categories one or two, whose annual family income exceeds $25,000 and who agree to make certain payments to the United States in connection with such care. In determining the incomes of veterans for the purpose of this category, the Administrator would be required to use the same methods and criteria used to determine annual income (including taking into account family income) for the purposes of VA pension eligibility. Further, the Administrator would be given authority to prescribe regulations defining the circumstances under which a non-service-connected veteran having an annual income or estate above a certain level would be ineligible for VA care.

The Committee, after careful consideration of testimony presented at hearings on May 7 and June 20, 1985, is recommending the new entitlement/eligibility criteria and the income eligibility criterion to ensure (1) that service-connected veterans, whom the VA health-care system was primarily designed to serve, are furnished VA health care; (2) that all other veterans eligible under current law, including those who are unable to defray the cost of needed care, may continue to receive reasonably necessary care from the VA; and that veterans with family incomes above the $25,000 income eligibility criterion would not be barred from VA care but could receive care and services if capacity and resources are available and if they meet modest payment requirements.

With reference to determining whether a veteran meets the new income eligibility criterion, the Committee notes that it does not support a "spend down" provision and that under the Committee legislation no veteran over that income level would be required to "spend down". The Committee has structured this new criterion to require veterans who can defray the cost of care to pay the VA for a modest portion of the cost of the care they receive.

With reference to the third category of veterans discussed above -- those with incomes over $25,000 -- the Committee notes that, by virtue of the new eligibility provision, a veteran with income over $25,000 who is 65 year of age or older would still be eligible for VA care (on a space-available basis) upon agreement to pay a modest payment and would be afforded priority for care ahead of a veteran with income over $25,000 who is under age 65. There would be no eligibility change as to a veteran over age 65 with annual income of $25,000 or less; the veteran, however, could be required to demonstrate the level of his or her family income. The Committee notes further with respect to this discretionary category of eligibility that it does not intend that beneficiary travel be paid or that, absent extraordinary circumstances, appliances as described in the definition of "medical services" in title 38 be provided in connection with the care of these veterans. The eligibility of this category of veterans for care "to obviate the need of. . . hospital admission" would be the lowest order of priority and would be strictly on a space-and-resource-available basis. The Committee also notes its intent that the eligibility of this category of veterans on a space-and-resources-available basis should not be taken into account for purpose of planning, budgeting, or appropriations for the VA health-care system.

The Committee notes its intention that every veteran applying for care on the basis of inability to defray expenses should sign an agreement to pay the VA the payments provided for veterans with annual incomes over $25,000 in the event it is determined that the veteran's annual income is in excess of that amount and the veteran has no other eligibility for care.

The Committee notes that, although a veteran with income above $25,000 would generally be eligible for care or services only upon the veteran (or someone authorized to act for him or her) entering into a written agreement to pay a modest amount for those services before they are provided, the VA has full authority under current section 611(b) to furnish hospital care and medical services in emergency cases and then to charge appropriately for such care and this emergency authority would be applicable in the case of a veteran in this category of eligibility who is unable to execute such an agreement prior to the commencement of care.

With reference to the authority to determine a veteran's income, the Committee expects that the Administrator would generally, as has been done for purposes of the pension program, disregard the value of the veteran's primary residence as well as a vehicle used for transportation purposes.

Nursing Home Care

The Committee legislation would also provide for an entitlement to reasonably necessary nursing home care (direct VA or by contract with a community facility) for a service-connected disability. This change is consistent with the changes in eligibility for hospital and ambulatory or outpatient care. The Administrator would continue to have authority to furnish nursing home care determined to be reasonably necessary for veterans for the care of non-service-connected disabilities.

Domiciliary Care

Under the Committee legislation, the Administrator would have the authority to furnish reasonably necessary domiciliary care to veterans who are determined by the Administrator to be incapacitated from earning a living and to have no adequate means of support. This standard based on a veteran's resources is the same as exists in current law for determining service-connected veterans' eligibility for domiciliary care and is the standard generally applied under current VA regulation (38 C.F.R. 17.47(c)(3) and (d)(3)).

Ambulatory or Outpatient Medical Services

Under the Committee legislation the Administrator would be required to furnish reasonably necessary ambulatory or outpatient medical services and home health services for the treatment of service-connected disabilities and for any disability of veterans who have service-connected disabilities rated at 50 percent or more. The Administrator would continue to have discretionary authority to provide ambulatory or outpatient medical services to (1) veterans eligible for hospital care in order to prepare for or obviate the need for hospital care or to provide post-hospital care and (2) generally to veterans who are former prisoners of war and to veterans of the Mexican border period or of World War I or who are in receipt of (or, but for receipt of retired pay, would be in receipt of) increased pension or additional compensation or allowance based on the need of regular aid and attendance or being permanently housebound.

Amounts of Payments

The Committee has given careful consideration to the establishment of the new income eligibility criterion and to the treatment of those veterans who, under this criterion, are determined able to defray the cost of necessary care. The Committee bill would establish a new requirement of payment in connection with hospital, nursing home, and medical services which is generally comparable to the payment structure for Medicare under the Social Security Act. However, the payments required under the Committee provisions would be substantially less than payment under Medicare for episodes of inpatient care beyond 60 days. Under the Committee bill, for each period of hospital or nursing home care up to 60 days, such a veteran would be required to pay a deductible equal to either the amount of the hospital deductible required under Medicare (estimated to rise to approximately $476 in fiscal year 1986) or the cost of the care, whichever is the lesser. In the case of ambulatory or outpatient care, such a veteran would be required to pay an amount equal to 20 percent -- the percentage that Medicare generally does not pay for such care -- of the average cost of an outpatient visit in a Veterans' Administration facility as determined by the Administrator pursuant to regulations.

The Committee notes that under these provisions, a veteran who has received 60 days of hospital or nursing home care would not be liable for any more than the actual cost of the care furnished during any subsequent period. For example, if a veteran with more than $25,000 income received care in a VA nursing home from the VA for 62 consecutive days, the veteran would not have to pay a second time the Medicare-hospital-equivalent deductible, but rather would pay for the 61st and 62nd day of VA nursing home care (currently costed at approximately $112 per day) in addition to the deductible for the first 60 days of care.

The Committee notes that any amount collected from a veteran for hospital care or medical services by virtue of these provisions would reduce the amount of reimbursement that the VA could collect by virtue of the amendments proposed to made by Part B of the Committee legislation, from third-party health-care contractors.

Priorities

The Committee legislation would also require the Administrator to establish statutory priorities for furnishing hospital, domiciliary, and nursing home care and medical services and to prescribe regulations to ensure that care and services are provided in that order. Except in the cases of a medical emergency, the priorities for hospital, domiciliary, and ambulatory or outpatient care would be the following: (1) veterans who require treatment for service-connected disabilities, (2) veterans with service-connected disabilities for any disability rated at 50 percent or more, (3) veterans with compensable service-connected disabilities rated at less than 50 percent, (4) veterans who, but for the receipt of retired pay, would be entitled to disability compensation, (5) veterans who, but for a suspension in compensation paid for a disability incurred as a VA patient or as a participant in a VA vocational rehabilitation program, would be entitled to disability compensation, (6) veterans (A) who were discharged from service for a disability incurred or aggravated during service or (B) with noncompensable service-connected disabilities, (7) (A) former prisoners of war and (B) Vietnam veterans exposed to certain toxic substances or veterans exposed to ionizing radiation from nuclear blasts, (8) Spanish-American War veterans, Mexican border period veterans, or World War I veterans, or veterans receiving VA pension who are permanently housebound or in need of aid and attendance, (9) other veterans in receipt of needs-based VA pension, (10) other veterans who are unable to defray the cost of health-care, and (11) veterans who have incomes above $25,000, who are 65 year old, and who are eligible for hospital and nursing home care by virtue of agreeing to make payments to the VA.

The Committee legislation would require the Administrator to prescribe regulations to establish priorities for nursing home care taking into account the level of need for care. Under these regulations, veterans who, because of the nature of their disability, are in need of a level or type of nursing home care that is not readily available in a contract facility in an appropriate geographic area but which is available in a VA facility would receive priority for admission to a VA-run nursing home over a veteran not in need of such a level of care. Veterans in need of a level or type of nursing home care that is readily available in a contract facility in an appropriate geographic area would receive the second basic priority. Within each of these two categories of veterans, the general priority order (described above) would apply.

Income Measurement

In reaching a determination as to an appropriate level of income above which veterans would be considered as able to defray the cost of needed care, the Committee carefully evaluated the testimony and information received during its deliberation on this issue. Based upon its review, the Committee believes that an across-the-board $25,000 income threshold as included in the Committee bill, is more equitable than the level based on a multiple of twice the applicable VA pension income standard, set forth in the original Administration proposal, which would produce an approximately $15,000 income level for a veteran with one dependent. Under the Committee bill a non-service-connected veteran with family income above $25,000 would be required to pay a modest amount for VA hospital, nursing home, or ambulatory or outpatient care received. The veteran's income would be determined (upon the first application for care each year) based on the veteran's family income for the calendar year immediately preceding the veteran's application for care (rather than being required to be determined upon each application based on the 12 months immediately preceding the application for care). In the event that an annual cost-of-living adjustment (COLA) were provided for VA pension, the Administrator would be required to raise the income threshold by the same percentage as the pension COLA.

During the course of the Committee's May 7 and June 20 hearings on various Administration proposals relating to VA health-care eligibility, a number of witnesses expressed concerns over the wide variations that exist in income levels and medical care costs throughout the country. Accordingly, under the Committee legislation, the Administrator would be provided with the discretionary authority to increase, in any fiscal year. the income level for a specified geographic area, in order to avoid substantial hardship on the part of veterans requiring care.

Reports

The Committee legislation would require the Administrator to submit to the Veterans' Affairs Committees, not later than December 1, 1985, a report on the implementation of the income eligibility criterion and other criteria established by or under this legislation and the mechanism for collecting payments from veterans who are able to defray the cost of necessary hospital care, nursing home care, or medical services. The Committee directs the Administrator to take action to ensure the prompt establishment of guidelines for payment and debt-collection procedures in order to implement the provision for payments. These guidelines should include instructions to ensure that in the case of a veteran who is furnished care under the first or second basic eligibility categories (discussed above) but later is determined eligible for care only under the third eligibility category, the veteran would be billed for the care as though furnished under the third category.

Effective Date

The amendments made by the Committee bill would apply to care provided after November 1, 1985, except in cases where the veteran was being furnished hospital or nursing home care on October 31, 1985. These veterans would be unaffected until they are discharged from such care. During the month of November 1985, the Administrator would be authorized to continue a course of ambulatory or outpatient treatment begun prior to November 1, without regard to the Committee recommended legislation.

Savings

The Congressional Budget Office has estimated that the provisions in part A of the Committee legislation would generate net reconciliation savings of $50 million in budget authority and $47 million in outlays in FY 1986, $92 million in budget authority and $86 million in outlays in FY 1987, and $101 million in budget authority and $95 million in outlays in FY 1988.

PART B: RECOVERY OF THE COST OF CERTAIN HEALTH CARE AND SERVICES FURNISHED BY THE VETERANS' ADMINISTRATION

Part B of the Committee legislation would revise current section 629 of title 38, United States Code, to allow the United States to recover from a third party the cost of medical care and services furnished to certain veterans through VA facilities or non-VA facilities at VA expense. Recovery under revised section 629 of title 38 would be authorized only for non-service-connected veterans insured under a health-plan contract and only to the extent that the veteran or the provider would be eligible for payment by the third party if the care or services had not been provided by a department or agency of the United States.

As in current law, revised section 629 of title 38 would authorize the United States to recover or collect the reasonable costs of care and services furnished under chapter 17 of title 38 for the treatment of non-service-connected disabilities which are covered under a workers' compensation law, any State law concerning no-fault automobile insurance, or any State or local program of compensation for victims of a crime of personal violence.

Currently, most health insurance plans and contracts contain exclusionary clauses which bar reimbursement to the United States for care provided by the VA because the veteran is not charged for the care and services furnished. The Committee legislation authorizing third-party reimbursement despite such exclusionary clauses is derived, with modifications, from the draft bill transmitted by the Administration on May 7, 1985, and would place the VA in a status comparable to that of private health-care providers with respect to their ability to recover from health insurers.

Constitutionality of Prospective Application

Representatives of private health insurers who testified before the Veterans' Affairs Committee on June 20, 1985, expressed strong concern over the constitutionality of the recovery legislation under consideration. Revised section 629 would apply only to care and services provided on or after the date of enactment and would not affect or nullify any provision of an existing health-plan contract which is entered into prior to the enactment date of this legislation, unless the contract is modified or renewed after the enactment date. For care and services provided after the date of such a renewal or modification, revised section 629 would take effect on the day following any such modification or renewal. "Modification" is defined as including any change of premium or coverage under a health-plan contract. These prospective aspects of the provision for health-plan contract recoveries are designed to address the concerns expressed by the insurers. The legal opinions this Committee has received from the Department of Justice and the General Counsel of the Veterans' Administration conclude that legislation to authorize prospective recovery from third-party health insurers would be constitutional.

New Provisions

The Committee legislation would add to title 38 several new corollary provisions necessary to implement the expansion of section 629.

Deductible and copayment contract provisions: If a health-plan contract between a veteran and a third party provides for a deductible or a copayment, the VA could not require any veteran eligible for care or services to make any such deductible payment or copayment to the VA in order to receive VA care. However, the Committee notes that the fact that the veteran does not pay the deductible or copayment required under a health-care contract for care or services furnished by the VA would not bar the recovery or collection from a third party by the United States for the reasonable cost of the VA-furnished care in excess of the amount of the deductible or copayment.

Collection of payments: The Administrator of Veterans' Affairs would be authorized to compromise, settle, or waive any claim of the United States in accordance with the provisions of pertinent Federal law. Funds collected or recovered by the United States would be deposited in the Treasury as miscellaneous receipts and would not be used to reduce or to offset annual appropriations for the Veterans' Administration health-care system.

Determining the amount of payments: The Administrator would be required under the Committee legislation, after consultation with the Comptroller General of the United States, to prescribe regulations for determining the "reasonable cost" of care and services provided by this section. The Comptroller General would be required to submit to the Veterans' Affairs Committees written comments on the regulations the VA adopts. The legislation would also provide that the amount which may be recovered or collected under a health-plan contract from a third party could not exceed the amount that the third-party payer demonstrates to the satisfaction of the Administrator is its prevailing rate of reimbursement, under comparable health-plan contracts, to non-federal health-care facilities in the same geographical area. This provision would provide a safeguard in response to the private health insurers' concerns about the effectiveness of cost containment measures within the Veterans' Administration. Also, the Committee legislation would permit a third-party payer, subject to confidentiality protections to be prescribed by regulations, to inspect and to review the medical records of a veteran beneficiary to verify that the care or services upon which reimbursement is based were furnished and that they were provided in accordance with the criteria of the health-plan contract.

Reports to Congress: The Committee believes that the changes that would be made by this health-insurance recovery legislation might result in major policy changes within the VA Department of Medicine and Surgery. Therefore, the Committee legislation would require the Administrator to submit reports to Congress within six months after enactment, and by February 1, 1987, and annually thereafter, on the implementation process and the results of the part B legislation, including administrative costs incurred and the amount of receipts and collections from third parties. The Committee intends that the initial report provide detailed descriptions of the implementation process and results. Annual reports thereafter would update the information included in the initial report.

Current Law Provisions Retained

Finally, revised section 629 retains many provisions of current law. These include: subrogation, intervention and joinder rights of the United States against a third party; the right of the United States to institute and to prosecute legal proceedings for recovery or collection from a third party; a prohibition against the denial of care or services by reason of this section to eligible veterans; and a provision protecting the right of the United States to recover or to collect from third parties under section 629 and section 611(b) of title 38 (relating to VA care furnished in emergency cases) from being defeated by any state or local law or any provision of a contract or other agreement.

Emergency Care

The Committee notes that there may be situations, after enactment of the income eligibility criterion in part A of the Committee legislation and the new third-party reimbursement legislation, wherein a veteran who would be considered able to defray the cost of his or her care under the new income eligibility criterion is furnished VA care or services in an emergency, even though under non-emergency circumstances the veteran would have been required, prior to the commencement of care, to sign a written agreement to make payment to the United States for the care. In these situations, the Committee intends that the treatment be provided if a medical necessity exists. However, the veteran would be required, in accordance with part A of this legislation, to make a limited payment to the VA. Also, if such a veteran is covered by a health-plan contract, the United States would be authorized to obtain reimbursement from the third party for the reasonable cost of care in excess of the amount charged the veteran. Whether and to what extent the veteran, in turn, would be entitled to have the third party pay the amount charged would be determined by the terms and conditions of the health-care contract.

Compliance with Basic Contract Terms and Conditions

With respect to part B generally, the Committee notes that the language providing for the right of recovery of the cost of care "to the extent" that the veteran or a non-Federal provider would be eligible to receive payment generally leaves the Federal Government's right to recover contingent upon compliance with the terms and conditions of the law, contract, or other arrangement under which the veteran would be eligible for payment by the third party. Only where the Committee legislation specifically overrides such terms or conditions -- for example, the provision in the legislation nullifying preclusions of liability for VA care or the provisions providing for recovery despite a deductible or copayment requirement not being met -- would such requirements be avoided. Thus, contract requirements conditioning the third-party's liability (such as for pre-hospitalization screening, second opinions prior to surgery, or other specified utilization review procedures) would apply. Likewise, provisions imposing general limitations on the third-party's liability -- such as contract clauses placing specific dollar limits on payments for certain procedures or limiting a carrier's liability to a percentage of certain charges -- would apply. The Committee intends the VA to adopt procedures necessary to comply with such contract requirements in order to make maximum collections under these health-plan contracts. Further, the Committee notes that any payment collected from a veteran for hospital care or medical services by virtue of new section 612B proposed to be added by part A of this Committee legislation would reduce the amount of reimbursement that the VA could collect from third-party health-care contractors.

Savings

The Congressional Budget Office has estimated that the third-party reimbursement legislation would generate net budget authority and outlay reconciliation savings of $203 million for FY 1986, $354 million for FY 1987, and $403 million for FY 1988.

PART C: LIMITATION ON VA COMPENSATION
COST-OF-LIVING ADJUSTMENT LEGISLATION

Part C of the Committee legislation would limit any fiscal year 1986 increase in rates for disability compensation, additional compensation for dependents, the clothing allowance paid to certain service-connected disabled veterans, dependency and indemnity compensation (DIC) paid to certain surviving spouses and children of deceased veterans or servicemembers, and supplemental DIC paid to the surviving children of certain deceased veterans.

This provision would require that the cost of legislation that would increase those rates be limited to no more than \$311,000,000 in budget authority or \$280,000,000 in outlays in fiscal year 1986, and that none of the rates be increased during fiscal year 1986 by more than 3.7 percent.

The First Concurrent Resolution on the Budget for FY 1986 assumed a 4.1-percent rate adjustment due to projected increases in the cost of living. This figure was based on the Administration's February 1985 estimate of the percentage by which Social Security and VA pension benefits will be automatically increased under current law effective December 1, 1985. The Congressional Budget Office's most current estimate is 3.7 percent, and the Administration's latest estimate (in its August 1985 mid-session review) is 3.6 percent. In view of these more recent estimates, the Committee believes that even with the compensation/DIC increase limited to 3.7-percent, the Committee would be able to propose legislation providing compensation and DIC beneficiaries with the same increase as that projected for Social Security and VA pension beneficiaries. This would continue the Committee's longstanding policy that cost-of-living adjustments for disability compensation and DIC should be at the same percentage as the indexed Social Security/VA pension increases, while, in this reconciliation proposal, still achieving the additional savings necessary (when coupled with those estimated to be achieved by parts A and B of the Committee legislation) to meet the reconciliation savings mandated under the First Concurrent Resolution on the Budget for FY 1986.

Savings

An increase of 3.7 percent rather than 4.1 percent would result in budget authority savings of $34 million and outlay savings of $30 million in fiscal year 1986, $40 million savings in both budget authority and outlays in FY 1987, and $39 million savings in both budget authority and outlays in FY 1988.

COST ESTIMATE

On September 27. 1985, the Congressional Budget Office (CBO) provided the Committee with a cost estimate of the Committee legislation. The Committee adopts the cost estimate of the Congressional Budget Office, however, the Committee understands that CBO estimated that administrative costs for the implementation and operation of part A of the Committee legislation would be $22 million during fiscal year 1986, whereas the Veterans' Administration has estimated that the fiscal year 1986 administrative costs of part A would be $7.9 million. The Committee believes that the estimate of the Veterans' Administration is more accurate. Thus, the Committee assumes that the fiscal year 1986 administrative costs for part A of the Committee legislation will be approximately $10 million, and believes that the overall Function 700 savings reflected in the CBO cost estimate for fiscal year 1986 should be increased accordingly by $12 million in both budget authority and outlays. This increased savings would result in a total of $299 million savings in budget authority and $292 million savings in outlays for the Veterans' Administration for fiscal year 1986.

The Congressional Budget Office estimate is as follows:

CBO COST ESTIMATE

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

September 27, 1985

Honorable Frank H. Murkowski
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for the provisions reducing spending in programs within the jurisdiction of the Senate Committee on Veterans' Affairs, as ordered transmitted to the Senate Committee on the Budget by the Senate Committee on Veterans' Affairs, September 26, 1985.

The estimates included in the attached report represent the 1985-1990 effects on the federal budget and on the budget resolution baseline of the Committee's legislative proposals. CBO understands that the staff of the Committee on the Budget will be responsible for interpreting how the savings contained in these legislative proposals measure against the budget resolution reconciliation instructions.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudy Penner

Rudolph G. Penner

cc: Honorable Alan Cranston
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 27, 1985

1. BILL TITLE:

Provisions reducing spending in programs within the jurisdiction of the Senate Committee on Veterans' Affairs.

2. BILL STATUS:

As ordered reported by the Senate Committee on Veterans' Affairs, September 26, 1985.

3. BILL PURPOSE:

To reduce expenditures authorized by the Senate Committee on Veterans' Affairs in response to budgetary requirements established for that Committee by the First Concurrent Resolution on the Budget for fiscal year 1986.

4. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Function 700					
Budget Authority	-289	-489	-547	-602	-662
Outlays	-285	-489	-547	-602	-662
Function 570					
Budget Authority	2	3	4	3	4
Outlays	5	9	10	11	13
Net Budgetary Impact					
Budget Authority	-287	-486	-543	-599	-658
Outlays	-280	-480	-537	-591	-649

The effects of this bill would fall in budget functions 700 and 570.

Basis of Estimate:

This estimate assumes an enactment date of October 1, 1985. If enactment of the bill should occur after this date, the budgetary impact in fiscal year 1986 could be significantly different from that shown above.

The following cost analysis only addresses those sections of the bill that could be expected to have a significant budgetary impact.

Part A. Entitlements and Eligibilities for Health Care from the Veterans Administration.

This section would establish an income test that would be applied to certain veterans seeking health care from the VA. All veterans with family incomes below $25,000 (the income eligibility criterion) and certain categories of veterans without regard to income would be considered eligible for free hospital, ambulatory, and nursing home care in VA facilities. Veterans with incomes above this amount would be provided medical care if space is available but would be required to pay coinsurance, equal to the deductible charged by Medicare, for every 60 days of inpatient care that they receive. For outpatient care, veterans with incomes above the income eligibility criterion would be required to pay coinsurance, equal to 20 percent of the average VA cost of an outpatient visit, for every outpatient visit.

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Function 700					
Budget Authority	-52	-95	-105	-115	-125
Outlays	-52	-95	-105	-115	-125
Function 570					
Budget Authority	2	3	4	3	4
Outlays	5	9	10	11	13
Net Budgetary Impact					
Budget Authority	-50	-92	-101	-112	-121
Outlays	-47	-86	-95	-104	-112

This estimate was derived through the use of a computer model that is based on a projection of total discharges expected from all VA hospitals in future years under current law. This projection was derived by multiplying age-specific projections of the veteran population by estimated use rates. (See Congressional Budget Office, Veterans Administration Health Care: Planning for Future Years, April 1984.) The model reduces the anticipated number of discharges by the percent estimated in each year who would qualify for free health care under the bill and, thus, would not be subject to the income test.

Of the population subject to the income test, it was assumed that 6.5 percent of those who would be required to pay coinsurance would chose to receive their care elsewhere. This number of discharges was multiplied by the projected average cost per patient treated to calculate the savings from veterans choosing alternative care. The model then calculates the number of veterans who would exceed the income criterion based on income distribution data from the 1979 National Survey of Veterans conducted by the VA. The number of veterans paying coinsurance was distributed by 60-day increments of length of stay, based on an actual distribution of 1984 VA hospital discharges by length of stay. The number of veterans in each 60-day increment was then multiplied by the projected Medicare deductible amount and the expected number of payments to determine the estimated amount of coinsurance collections. A similar process was used to estimate the copayment collections and the savings from those leaving the outpatient care system.

Based on data from the Survey of Aging Veterans (Lou Harris and Associates, 1983), it was estimated that in 1986, 23 percent of the veterans who would choose to obtain their health care outside of the VA rather than pay the required coinsurance would have Medicare Hospital Insurance and 21 percent would have Supplementary Medical Insurance. The shifting of these few cases from VA hospitals to Medicare-covered stays in private or community hospitals would result in the small offsetting cost in budget function 570 shown above.

This estimate assumes that the interview and paperwork required to evaluate a prospective patient without statutory eligibility for free care would take one hour, on the average, and would be performed by a GS-7 employee. The assumed grade level is based on information from the VA. An average cost of billing and collecting inpatient coinsurance payments of $30 per bill was used, based on data from the General Accounting Office (GAO) study, Legislation to Authorize VA Recoveries from Private Health Insurance Would Result in Substantial Savings (GAO/HRD-85-24, Feb. 1985). This average cost was reduced to $20 per bill in the cases of copayment billings for outpatient care, however. Because the average copayment for outpatient care would be far less than for inpatient care, it is expected that collection efforts would be considerably less extensive for these bills.

Several important assumptions were made in the development of this estimate. We assumed that the VA could implement the income eligibility criterion and copayment provisions fully within 90 days of enactment of the legislation. This assumption is based on statements to that effect contained in a letter, dated July 16, 1985, from John Ditzler, M.D., Chief Medical Director of the VA, to Mack Fleming, Chief Counsel and Staff Director of the House Veterans' Affairs Committee. Should significantly more time be required to implement the legislation, the fiscal year 1986 savings could fall considerably below the level estimated above.

Two additional assumptions were made regarding the implementation of this bill. First, it was assumed that the bill would not result in a significant increase in the use of contract care by the VA to provide care outside of the VA system. Because the bill does not substantively amend the current law restrictions on use of contract care, it was assumed that no more veterans would be considered eligible for and in need of contract care under this bill than under current law. Second, it was assumed that the change in eligibility standards would not affect the future hospital and nursing home construction plans of the VA. If the bill is interpreted by the VA to increase the government's obligation to provide medical care to broad categories of veterans, however, the agency could respond by increasing contract care and facility construction, which would offset a portion of the savings from this bill.

This estimate does not reflect the possibility that some additional demand for care could be induced by changes in the eligibility provisions of the bill or by the replacement of the poverty oath with a specific income test. This effect could not be included because the size and likelihood of the induced demand would be heavily dependent on the amount of publicity given to the changes by the VA and by veterans service organizations. This cannot be predicted with any certainty. Also, there is no data on which to base an estimate of the effect these amendments would have on the demand for care, even if the changes were highly publicized. The size of such induced demand, however, is not expected to be large. Nevertheless, any additional demands for care resulting from these provisions would reduce the savings generated by the bill.

Part B. Recovery of the Cost of Certain Care and Services.

This section would authorize the VA to recover from third-party health insurers the cost of medical care provided to insured veterans who have no service-connected disabilities.

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Budget Authority	-203	-354	-403	-449	-500
Outlays	-203	-354	-403	-449	-500

Based on the GAO study of third-party reimbursement (GAO/HRD-85-24, Feb. 1985), it was assumed that 18.4 percent of the episodes of medical and surgical care in VA hospitals and 10.8 percent of episodes of psychiatric care would be provided to veterans with valid health insurance. Also based on this study, it was assumed that 85 percent, on the average, of the cost of care would be reimbursed by the insurer. An average cost for billing and collection activities of $30 per bill was used.

A factor not considered in this estimate is the possibility that the health insurers would fight the constitutionality of this legislation in the courts. In a 1979 review of a similar provision, S. 759, the Department of Justice concluded that there would be no constitutional bar to such legislation. Some delay in the receipt of recoveries would be expected, however, if the insurers choose to take the issue to the courts.

Part C. Limitation on Legislation Increasing Rates of Benefits.

This section would specify that no cost-of-living adjustment (COLA) in excess of 3.7 percent could be made in the benefit rates of disability compensation and dependency and indemnity compensation to be effective in fiscal year 1986.

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Budget Authority	-34	-40	-39	-38	-37
Outlays	-30	-40	-39	-38	-37

The baseline of the First Concurrent Resolution on the Budget for fiscal year 1986 assumes a cost-of-living adjustment in compensation rates of 4.1 percent, which is estimated to cost $345 million in budget authority and $311 million in outlays in fiscal year 1986. By specifying that the COLA could not exceed 3.7 percent, this provision would result in the savings from the resolution baseline shown above. The provision would, however, have no effect on current law benefit rates or costs of the compensation program.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENT:

   The Congressional Budget Office has determined that the budgets of state and local governments would not be directly affected by enactment of this bill.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

On September 13, 1985, CBO submitted an estimate of the cost of H.R. 1538, the Veterans' Compensation and Health Care Amendments of 1985, to the House Committee on Veterans' Affairs. H.R. 1538 is the vehicle through which the House Veterans' Affairs Committee proposes to satisfy the expenditure reduction requirements of the first budget resolution. H.R. 1538 was estimated to result in the following savings from the budget resolution baseline:

(by fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Budget Authority	-274	-481	-537	-592	-652
Outlays	-274	-479	-529	-583	-643

There are a number of points of similarity and of difference between H.R. 1538 and the Senate-reported provisions. These are discussed below:

Compensation Rate Increase. H.R. 1538 would increase the rates of veterans' and survivors' compensation by 3.7 percent,effective December 1, 1985. The corresponding Senate provision would limit any future increase in rates effective in FY 1986 to a maximum of 3.7 percent. While both measures would effect the same savings from the resolution baseline, the Senate provision would have no affect on the current law costs of the compensation program. H.R. 1538 would actually raise compensation benefit rates by 3.7 percent and, thus, would raise current law costs for compensation by $311 million in 1986 budget authority and $280 million in outlays.

Income Eligibility Criterion and Copayments. The savings estimates for the income eligibility criterion and copayment provisions reported by the House and Senate Committees differ only by about $4 million. There are, however, a number of substantive differences between the two proposals, which are for the most part offsetting. For example, the income ceiling for the receipt of VA medical care in H.R. 1538 would be tied to the income standard for the VA pension program and, thus, would vary with family size. In the Senate bill, the income ceiling would be set at $25,000--the equivalent of the House ceiling for a veteran with one dependent--for all veterans regardless of family size. Since approximately 56 percent of the veteran patients in VA hospitals are unmarried, it is expected that significantly more veterans would qualify for free medical care under the Senate bill than under H.R. 1538. On the other hand, H.R. 1538 would cap the total annual reimbursements required of a veteran whose income exceeds the ceiling at an amount equal to the Medicare deductible. The Senate bill contains no such cap and, further, would require a coinsurance payment equal to the Medicare deductible for every 60 days, or portion thereof, of hospital or nursing home care. Thus, while fewer veterans would be expected to make copayments under the Senate bill than under the House bill, the amount of the average copayment required by the Senate bill would be higher than that required under H.R. 1538.

Third-Party Reimbursement. The provisions of H.R. 1538 and the Senate bill are substantively identical.

Other Provisions. H.R. 1538 contains some additional provisions not included in the Senate bill that would have only a minor budgetary impact.

9. ESTIMATE PREPARED BY: K.W. Shepherd (226-2820).

10. ESTIMATE APPROVED BY:

C.G. Nuckols
for James L. Blum
Assistant Director
for Budget Analysis

SECTION-BY-SECTION ANALYSIS OF
TITLE XI -- VETERANS' PROGRAMS

PART A -- ENTITLEMENTS AND ELIGIBILITIES FOR HEALTH CARE FROM THE VETERANS' ADMINISTRATION

Section 1101

Would revise present section 610(a) of title 38, United States Code, relating to eligibility for hospital and nursing home care from the VA, to create a paragraph (1) providing as follows:

Division (i) of subparagraph (A) of paragraph (1) of revised section 610(a): Would require that the Administrator (except as provided in division (ii) of this subparagraph), through VA or other Government facilities or through contracts with private facilities, furnish such hospital care as the Administrator determines to be reasonably necessary to a veteran for a disability rated as service connected and for any disability of a veteran with a service-connected disability rated at 50 percent or more. Under current law, section 610(a)(1)(A), the Administrator "may" furnish hospital care to a veteran for a service-connected disability and to a veteran who is in receipt of disability compensation (or but for the receipt of retired pay would be entitled to disability compensation), which includes service-connected-disabled veterans rated from 10 through 100 percent disabled. There is no explicit requirement in current law to furnish care to any particular category of veterans or to furnish care for service-connected disabilities.

Also under current law, through the provision in section 610(a) authorizing the furnishing of care "within the limits of Veterans'

Administration facilities" and the definition of "Veterans' Administration facilities" in section 601(4) as including -- in addition to the VA's own facilities and Government facilities for which the VA contracts -- private facilities with which the VA may contract for hospital care or medical services in certain cases, the VA has authority to contract for such care in the applicable circumstances specified in section 601(4)(C).

The Committee provisions (in amendments made by section 1107 (discussed below)) would delete private contract facilities from that definition of "Veterans' Administration facilities". In lieu of that part of that definition, the Committee bill would add a new section 603 providing expressly that a requirement or authority in section 610 or in section 612, relating to outpatient medical services, to furnish hospital care or medical services includes a requirement or authority, as the case may be, to contract with non-VA facilities in order to provide care or services in certain circumstances. Those circumstances are identical to those specified in present section 601(4)(C) and include the universally applicable prequisite to the use of contract care that the VA be unable to furnish economical care directly because of geographic inaccessibility or be incapable of directly furnishing the care required.

The Committee notes that the use of the phrase "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603 of this title" or "as provided in section 620 of this title in the case of nursing home care" in lieu of the current law phrase "within the limits of Veterans'

Administration facilities" in this section -- as well as in other eligibility provisions with respect to hospital care (section 610(a)(1)(A), (B), and (C)), nursing home care (section 610(a)(2)(A) and (B)), domiciliary care (section 610(b)), and medical services (section 612(a), (f), and (g)) -- and the shifting of current law section 601(4)(C) to a new section 603 are not intended to change the effect of current law but rather to achieve greater clarity regarding the extent of eligibility for contract care (often referred to as "fee-basis" care). This new drafting formulation is also intended to clarify (as is the drafting of section 610(a)(2) (as proposed in section 1102(a) of the Committee provisions), relating to nursing home care, by the use of the phrase "or as provided in section 620 of this title") that the extent to which any fee-basis authority is provided is determined solely by what is in section 603 (or section 620 as to nursing home), in conjunction with other provisions of chapter 17, and that the Administrator's general authority to contract under current section 213 is not available with respect to any of these chapter 17 health-care authorities. The Committee construes the words "within the limits" in current law as providing the same limitation, but believes that the new formulation is more definitive in this regard.

In addition, the Committee notes that in revising the above-mentioned provisions relating to VA health-care eligibility, the criterion of "reasonably necessary" care has been used uniformly. Current law in some of these provisions uses a criterion of "needed" care or "in need of" care (section 610(a) and section 610(b)(2)) or "necessary or appropriate" care (section 612(a), second sentence, and section 612(f), second sentence). The Committee's use of the consistent terminology for this purpose is not intended to change the extent of current law in this respect.

Division (ii) of subparagraph (A) of paragraph (1) of revised section 610(a): Would provide that, in the case of a veteran who either is seeking care for a service-connected disability or has a service-connected disability rated at 50 percent or more, the Administrator, despite the general requirement in division (i) of this subparagraph t o furnish hospital care to such a veteran, may decide not to furnish care in a VA facility if the veteran is incarcerated and the Administrator determines that so furnishing care is not feasible in terms of the security requirements that would be necessary for the custody of the veteran or the safety of other patients. Also, in the case of such a veteran, the Administrator would be authorized -- but not be required -- to furnish care through a contract with a non-VA facility. There are no provisions in current law expressly dealing with the furnishing of medical services to incarcerated veterans.

Subparagraph (B) of paragraph (1) of revised section 610(a): Would specify that the Administrator -- either through VA facilities or through non-VA facilities to the extent authorized in new section 603 (as proposed to be added by section 1107(b) (discussed below)) -- may furnish such hospital care as the Administrator determines to be reasonably necessary to veterans as described in five clauses as follows:

Clause (i) -- a veteran who has a service-connected disability rated at less than 50 percent (including a veteran with a non-compensable service-connected disability); a veteran who, but for the receipt of retired pay, would be entitled to VA disability compensation; a veteran who is entitled to disability compensation pursuant to section 351 of title 38 as a result of suffering an injury during VA care or while pursuing a VA program of vocational rehabilitation or, but for a suspension pursuant to that section, would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for VA care is not limited in the judgment or settlement described in section 351; and a veteran whose discharge or release from active duty in the Armed Forces was for a disability incurred or aggravated in line of duty.

Clause (ii) -- a veteran who is a former prisoner of war.

Clause (iii) -- a veteran exposed to a toxic substance in Vietnam or to radiation from a nuclear detonation, as provided for in present section 610(e).

Clause (iv) -- a veteran of the Spanish-American War, Mexican border period, or World War I.

Clause (v) -- for the non-service-connected disability of a veteran who is unable to defray the expenses of necessary care.

Under current law, each of the foregoing categories is eligible for hospital care directly from the VA and, to a limited extent, through contract facilities. This subparagraph recodifies current law in these respects

The Committee notes that the use of "may furnish" in this subparagraph (as well as in subparagraph (C) of this paragraph and in other health-care eligibility provisions in sections 610(a)(2)(B), 610(b), and 612(f)(1) and (2)) provides the same eligibility as under current law to the categories of veterans covered -- essentially eligible veterans other than those requiring care for a service-connected disability and; for any disability, those with 50-percent-or-more service-connected disabilities, for which categories an entitlement to hospital care and medical services (and in the case of the former category for nursing home care as well) is established by virtue of the amendments made to section 610(a)(1)(A) by this section of the Committee legislation -- for hospital care, domiciliary care (as to all veterans), nursing home care, and medical services. The only eligibility change that is made (other than as noted above regarding the establishment of an entitlement) is with respect to section 610(a)(1)(C) (discussed below) regarding veterans with incomes over $25,000 per year.

Subparagraph (C) of paragraph (1) of revised section 610(a): Would specify that the Administrator may furnish such hospital care, either through VA facilities or non-VA facilities to the extent authorized in new section 603, to the extent facilities and resources are otherwise available for providing such care and subject to new subparagraph (D) of this paragraph (discussed below) for a non-service-connected disability of a veteran who agrees to make payment to the United States under new section 612B of title 38, as added by section 1105 of the Committee legislation (discussed below).

The Committee notes that by virtue of this provision, in conjunction with new subsection (b) of section 622 (as proposed to be added by section 1106(a)(4) of the Committee legislation, discussed below), a veteran with annual family income over $25,000 who is 65 years of age or older would still be eligible for VA care (on a space-available basis) upon agreement to make a modest payment prescribed in new section 612B (as proposed to be added by section 1105(a)(11) and (b)(2) (as proposed to be added by such section 1105(a)) would be afforded priority ahead of a veteran with annual family income over $25,000 who is under age 65).

The Committee notes that with respect to this category of eligibility the Committee does not intend that beneficiary travel -- which under present section 111 of title 38 (and by virtue of present section 601(b)(ii)) is discretionary -- be paid or that, in the absence of extraordinary circumstances, appliances as described in the definition of "medical services" in current section 601(6)(A)(i) be provided. The Committee also notes its intention that the eligibility of this category of veterans on a space-and-resources-available basis should not be taken into account for purpose of planning, budgeting, or appropriations for the VA health-care system.

Further, the eligibility of this category of veterans for care under section 612(f)(1) "to obviate the need of ... hospital admission" would be the lowest order of priority and would be strictly on a space-and-resources-available basis.

Finally, the Committee notes that, although a veteran with annual family income of $25,000 would generally be eligible for care or services only upon the veteran (or someone authorized to act for him or her) agreeing to pay for those services before they are provided, the VA has full authority under current section 611(b) to furnish hospital care or medical services in emergency cases and to charge appropriately for such care, and that this emergency authority would be applicable in the case of a veteran in this category of eligibility who is unable to execute such an agreement prior to the commencement of care.

Subparagraph (D) of paragraph (1) of revised section 610(a): Would authorize the Administrator to prescribe regulations under which a veteran with an annual family income above an amount specified in the regulations or an estate with a corpus above an amount so specified would not be eligible, despite being willing to agree to make payment to the United States, to receive care under new subparagraph (C) of this section (described above). For the purpose of this subsection, the Administrator would be required to determine income in accordance with section 503 of title 38, relating to income determinations for the current VA pension program, and, in so doing, to count as income of the veteran any income of the veteran's family member that would be taken into account under section 521(c) of title 38, relating to the amount of VA pension that a veteran is entitled to receive. With reference to this authority and the comparable authority with regard to nursing home care in section 610(a)(2)(C) as proposed to be revised by section 1102 of the Committee legislation (discussed below), the Committee expects that the Administrator would generally, as has been done for purposes of the pension program, disregard the value of the veteran's primary residence as well as of a vehicle used for transportation purposes.

Section 1102

Would further amend present section 610(a) to create a paragraph (2) providing as follows:

Subparagraph (A) of paragraph (2) of revised section 610 (a): Would require the Administrator to furnish such nursing home care as the Administrator determines to be reasonably necessary to a veteran for a service-connected disability. The Administrator would provide such nursing home care through VA facilities or through non-VA facilities as provided for in section 620 of title 38, which authorizes the Administrator, under specified circumstances, to provide nursing home care in non-VA facilities. Under current law, nursing home care is authorized for such disabilities, but there is no explicit requirement in this regard.

Subparagraph (B) of paragraph (2) of revised section 610(a): Would specify that the Administrator may furnish such nursing home care -- either through VA facilities or through non-VA facilities as provided for in section 620 -- as the Administrator determines to be reasonably necessary to any veteran eligible for hospital care under subparagraphs (A) and (B) of paragraph (1) of this subsection (described above), for any disability other than a service-connected disability. This provision restates the VA nursing home care eligibility in current law with respect to the veterans described in those paragraphs.

Subparagraph (C) of paragraph (2) of revised section 610(a): Would specify that the Administrator may furnish such nursing home care, either through VA facilities or through non-VA facilities, to the extent facilities and resources are otherwise available to provide such care and subject to new subparagraph (D) of this this paragraph (discussed below), to a veteran eligible for hospital care under subparagraph (C) of paragraph (1) of this subsection (described above) who agrees to make payment to the United States under new section 612B of title 38, as added by section 1105 of this Act (described below). (See the discussion of paragraph (1)(C) of revised section 610(c), above, regarding the effect of this provision in conjunction with certain other provisions in providing for eligibility for VA care in the cases of veterans with annual family incomes above $25,000.)

Subparagraph (D) of paragraph (2) of revised section 610(a): Would authorize the Administrator to prescribe regulations under which a veteran with an annual family income above an amount specified in the regulations or an estate with a corpus above an amount so specified would not be eligible, despite being willing to agree to make payment to the United States, to receive care under new subparagraph (C) of this subsection (described above). For the purpose of this subsection, the Administrator would be required to determine income in accordance with section 503 of title 38, relating to income determinations for the current VA pension program, and, in so doing, to count as income of the veteran any income of the veteran's family member that would be taken into account under section 521(c) of title 38, relating to the amount of VA pension that a veteran is entitled to receive.

Section 1103

Would amend present section 610(b) of title 38, relating to eligibility for VA domiciliary care, to authorize the Administrator to furnish such domiciliary care as the Administrator determines to be reasonably necessary to a veteran if the Administrator finds, pursuant to regulations which the Administrator would be required to prescribe, that the veteran is incapacitated from earning a living and has no adequate means of support. This resource standard is the same standard as exists in clause (1) of present section 610(b), which relates to domiciliary care for veterans with service-connected conditions and is the standard generally applied under current VA regulations (38 C.F.R. 17.47(c)(3) and (d)(3)). (The reference in current clause (2) to eligibility on the basis of inability to defray the expenses of necessary domiciliary care is no longer appropriate, as a domiciliary-care eligibility criterion, in view of the definition of such inability, in new subsection (b) of section 622 (as proposed to be added by section 1106(a) of the Committee legislation), as meaning having an annual family income of $25,000 or less.) Thus, this amendment has the effect of establishing a single statutory standard by which the resources of a veteran seeking domiciliary care will be determined.

Section 1104

Would amend present section 612 of title 38, relating to eligibility for ambulatory or outpatient medical services, to establish new eligibility criteria for certain veterans and to make other changes to that section.

Subclause (A) of clause (1) of subsection (a) of section 1104 would redesignate subsection (a) of present section 612 as paragraph (1) and amend the first sentence thereof, relating to the eligibility of a veteran for medical services for a service-connected disability, so as to require the Administrator (except as specified in new paragraph (1) of this subsection (discussed below), relating to incarcerated veterans, and in subsection (b) of section 612, relating to outpatient dental services) to furnish such medical services as the Administrator determines to be reasonably necessary (1) to any veteran for a service-connected disability (including a disability that was incurred or aggravated in line of duty and for which the veteran was discharged from the Armed Forces) and (2) to a veteran who has a service-connected disability rated at 50 percent or more. The Administrator would be required to furnish the services through VA or other Government facilities or contracts with private facilities.

Under current law, the Administrator "may" furnish medical services to a veteran for a service-connected disability (under present section 610(a)) and to a veteran with a service-connected disability rated at 50 percent or more (under present section 612(f)(2)), but there is no explicit requirement in current law to furnish medical services to any particular category of veterans or to furnish medical services for service-connected disabilities.

Subclause (B) of clause (1) of subsection (a) of section 1104 would amend the second sentence of present subsection (a) of section 612, relating to the eligibility of a veteran for home health services for a service-connected disability, so as to make a clarifying change specifying that the home health services described in that sentence are provided to the veteran "as part of" the medical services furnished under the first sentence of subsection (a) of section 612 and, by cross-reference to that sentence, to require that such home health services as the Administrator finds necessary or appropriate be furnished for a veteran for a service-connected disability or for any disability of a veteran with a service-connected disability rated at 50 percent or more. As in the case of medical services generally, as discussed above with respect to the amendment made by subclause (B) of this clause, there is no express requirement in current law for the furnishing of home health services in any circumstances.

Subclause (C) of clause (1) of subsection (a) of section 1104 would delete the third sentence of subsection (a) of present section 612 -- relating to eligibility for medical services for a disability which was incurred or aggravated in line of duty and for which the veteran was discharged -- as a conforming amendment in connection with the amendment proposed to be made by subclause (A) of this clause to the first sentence of subsection (a) of section 610, pursuant to which the substance of the third sentence is included in the first sentence of such subsection (a).

Subclause (D) of clause (1) of subsection (a) of section 1104 would add to section 612(a) a new paragraph (2), as follows:

New paragraph (2) of section 612(a): Would provide that, in the case of a veteran who either is seeking care for a service-connected disability or has a service-connected disability rated at 50 percent or more, the Administrator, despite the general requirement in the first sentence of paragraph (1) of section 612(a) (as proposed to be amended by subclause (A) of this clause of the Committee legislation) to furnish medical services to such a veteran, may decide not to furnish medical services in a VA facility if the veteran is incarcerated and the Administrator determines that so furnishing such services is not feasible in terms of the security requirements that would be necessary for the custody of the veteran and the safety of other patients. Also, in the case of such a veteran, the Administrator would be authorized -- but not required -- to furnish care through a contract with a non-VA facility. There are no provisions in current law expressly dealing with the furnishing of medical services to incarcerated veterans.

Division (i) of subclause (A) of clause (2) of subsection (a) of section 1104 would amend the first sentence of subsection (f) of present section 612, relating to the eligibility of a veteran for medical services for other than a service-connected disability, so as to delete the phrase specifying that the services furnished pursuant to that section are to be furnished "within the limits of Veterans' Administration facilities" and replacing it with a phrase specifying that the services are to be furnished "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603" of title 38. An explanation of an identical non-substantive change and the reasoning behind it is provided in the above discussion of subparagraph (A) of paragraph (1) of section 610(a), as proposed to be revised by section 1101 of the Committee legislation.

Divisions (ii), (iii), and (iv) of subclause (A) of clause (2) of subsection (a) of section 1104 would further amend the first sentence of subsection (f) of present section 612, so as to delete clause (2), relating to the eligibility for medical services of a veteran with a service-connected disability rated at 50 percent or more, and to make appropriate conforming changes. This deletion of clause (2) conforms the first sentence of subsection (f) with the provisions of clause (1) of subsection (a) of this section of the Committee legislation which amend the first sentence of section 612(a) so as to provide the same category of veterans with entitlement to medical services.

Subclause (B) of clause (2) of subsection (a) of section 1104 would amend the second sentence of present subsection (f) of section 612, relating to the eligibility of certain veterans for home health services for other than a service-connected disability, so as to make a clarifying change (similar to the one made in the third sentence of section 612(a) by clause (1) of subsection (a) of this section of the Committee legislation) specifying that the home health services described in that sentence are provided to veterans "as part of" the medical services furnished under the first sentence of subsection (f) of section 612.

Subclause (C) of clause (2) of subsection (a) of section 1104 would amend the third sentence of subsection (f) of present section 612, relating to the Administrator's authority to furnish outpatient dental care to certain veterans who are former prisoners of war, so as to delete the phrase specifying that the care furnished pursuant to that sentence is to be furnished "within the limits of Veterans'

Administration facilities" and replace it with a phrase specifying that care is to be furnished "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603" of title 38. An explanation of this particular type of non-substantive change and the reasoning behind it is provided in the above discussion of subparagraph (A) of paragraph (1) of section 610(a), as proposed to be revised by section 1101 of the Committee legislation.

Clause (3) of subsection (a) of section 1104 would amend subsection (g) of present section 612, relating to the eligibility for medical services of certain veterans -- veterans of the Mexican border period or of World War I and those who are in receipt of or, but for the receipt of retired pay, would be in receipt of increased VA pension or additional compensation based on needing regular aid and attendance or being permanently housebound -- so as to delete the phrase specifying that the services furnished are to be furnished "within the limits of Veterans' Administration facilities" and replace it with the phrase "through Veterans' Administration facilities or through non-Veterans' Administration facilities to the extent authorized in section 603" of title 38. An explanation of this particular type of non-substantive change and the reasoning behind it is provided in the above discussion of subparagraph (A) of paragraph (1) of section 610(a), as proposed to be revised by section 1101 of the Committee legislation.

Clause (4) of subsection (a) of section 1104 would further amend section 612 by deleting subsection (i), relating to the priority that the Administrator is to accord in providing medical services, and by redesignating present section (j) of section 612 as subsection (i). The deletion of that subsection would be a conforming change in connection with the addition of new section 612C of title 38, as proposed to be added by section 1105 of the Committee legislation (discussed below), which would prescribe the order of priority for the furnishing of VA hospital, nursing home, and domiciliary care and medical services.

Subsection (b) of section 1104 would amend present section 612A of title 38, relating to eligibility for readjustment counseling and related mental health services, to replace the phrase "within the limits of Veterans' Administration facilities" in subsection (a) and (b)(1) with the phrase "through Veterans' Administration facilities" and, in subsection (e)(1), to substitute new cross references (to sections 612(a)(2) and 603(2)(A)) in order to conform to amendments made by other secitons of the Committee legislation (subsection (a) of this section and section 1107, respectively). None of the amendments made by this subsection would have any substantive effect.

Section 1105

Subsection (a) of section 1105 would amend present subchapter II of chapter 17 of title 38, relating to VA hospital, nursing home, or domiciliary care and medical services, to add two new sections, section 6132B entitled "Payment in connection with hospital and nursing home care and medical services", and section 612B entitled "Priorities in furnishing hospital, nursing home, and domiciliary care and medical services". as follows:

Paragraph (1) of subsection (a) of new section 612B: Would provide that a veteran who is eligible for hospital, nursing home, or domiciliary care under section 610 of title 38, or for medical services under section 612(f)(1) of title 38, because of section 610(a)(1)(C) or (2)(C) (as added by sections 1101 and 1102 of the Committee legislation, respectively), relating to the eligibility for VA care and services (to the extent facilities and resources are otherwise available) of veterans who are not determined to be income eligible (that is, unable to defray the cost of necessary care), would not be furnished care or services unless the veteran agrees to make a specified payment to the United States in connection with receiving such care. Pursuant to clause (A) of this paragraph, the required payment in the case of each 60 days of hospital or nursing home care within an episode of hospital care or nursing home care -- as defined in subsection (c) of new section 612B (described below) -- would be an amount equal to the lesser of the Medicare inpatient hospital deductible in effect under section 1813 of the Social Security Act (42 U.S.C. 1395e(b)) at the time the care is provided or the cost of furnishing the care, as determined by the

Administrator. The Medicare inpatient hospital deductible in fiscal year 1986 is estimated to be $476.

With reference to each visit for outpatient or ambulatory care, clause (B) would provide that such a veteran would be required to make a payment equal to a specified percentage of the estimated average cost of a VA outpatient visit during the fiscal year in which the services are furnished. The specified percentage would be the percentage of reasonable charges not paid under Medicare Part B for non-hospital care pursuant to section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395ℓ(a)(1). The percentage payable by the veteran, as so derived from the Social Security Act, would be 20 percent. The Administrator would have discretion to determine what would constitute a "visit" for outpatient purposes.

The Committee intends that any veteran seeking VA care for a non-service-connected disability on the basis of the veteran's "inability to defray expenses" would execute a written agreement to make the prescribed payments to the VA in the event that it is not determined that the veteran is unable to defray the cost of necessary care.

Paragraph (2) of subsection (a) of new section 612B: Would provide that in any case in which the Administrator determines that it is not feasible to request a veteran (or other individual acting on behalf of a veteran) to pay the VA as required by paragraph (1) (discussed above), an obligation to make payments would nevertheless be established.

Subsection (b) of new section 612B: Would specify that any moneys collected or received by the VA under this section would be deposited in the Treasury as miscellaneous receipts. The Committee notes that, as is the case with respect to collections under section 629 of title 38 (as proposed to be revised by section 1111 of the Committee legislation, discussed below) moneys so collected or received would not be used or available to reduce the budget or appropriations for the VA health-care system.

<u>Paragraph (1) of subsection (c) of new section 612B</u>: Would define, for the purpose of subsection (a) of this section, the term "episode of hospital or nursing home care" to mean a period of consecutive days beginning with the first day (not included in a prior episode of care) on which a veteran is furnished hospital or nursing home care under subchapter II of chapter 17 of title 38, and ending at the close of the first period of 60 consecutive days thereafter on each of which the veteran is not being furnished either such hospital care or nursing home care. Thus, an episode of care is ended only when the veteran has been discharged from care for 60 consecutive days.

<u>Paragraph (2) of subsection (c) of new section 612B</u>: Would define, for the purpose of subsection (a) of this section, the term "60 days of care" to mean (A) in the case of a veteran who during an "episode of hospital or nursing home care" (as that term is defined in paragraph (1) of this subsection) is furnished 60 or fewer days of care, up to 60 days of hospital or nursing home care (or of any combination of days of such care) or (B) in the case of a veteran who during such a defined "episode of hospital or nursing home care" is furnished care for a number of days greater than 60, each period of hospital or nursing home care (or of any combination thereof) of 60 days and, if the total number of days cannot

be evenly divided by 60, any remaining period of care that is less than 60 days.

The following examples demonstrate the operation of the payment provisions in new section 612B. In each example the veteran is a non-service-connected-disabled veteran with family income in excess of $25,000 who is eligible for VA care only upon agreeing to make payment to the VA in connection with the care. All care is provided directly in VA hospitals or nursing homes.

Example A

The veteran receives 5 days of hospital care from the VA and, in connection with that care, pays the VA an amount equal to the Medicare inpatient hospital deductible (estimated to be $476 in fiscal year 1986). Six months later the veteran is again admitted for 5 days of care.

Because a period of more than 60 consecutive days has elapsed since the veteran's initial hospitalization, the veteran has entered a second "episode of hospital or nursing home care" (as defined in subsection (c)(1) of new section 612B) and, thus, in order to be eligible, must have agreed to pay the VA a second amount equal to the Medicare inpatient hospital deductible.

Total payments by the veteran: $952.

Example B

The veteran suffers a stroke and is admitted to a VA hospital for a period of 35 days. At the end of the hospitalization, the veteran is admitted to a nursing home and discharged after 26 days. The veteran is readmitted to the hospital, 45 days after being discharged from the nursing home, for 3 days of care for a medical condition unrelated to the stroke.

In this example, all of the care was furnished within one "episode of hospital or nursing home care" because, from the day when the veteran first entered the hospital, there was not a period of 60 consecutive days during which the veteran did not receive either hospital or nursing home care through the VA. At the time of the veteran's initial hospital admission, the veteran agreed to make payment to the VA and, because the cost of the veteran's treatment exceeded the Medicare inpatient hospital deductible, the veteran was required to pay the VA an amount equal to that amount. At the time the veteran was transferred to the VA nursing home, the veteran had only been under VA care for 35 days. Thus, the first 25 days of the VA nursing home care were covered by the veteran's payment in connection with the initial "60 days of care". The 26th and final day of nursing home care would, however, come under a second period of "60 days of care" and, because the cost of that day (currently, the cost of each day of VA nursing home care is approximately $112) would be less than the Medicare inpatient hospital deductible, the veteran would pay that smaller amount, the actual cost of the care. At the time of the veteran's rehospitalization 45 days after discharge from the nursing home, the veteran was still in the same "episode of hospital or nursing home care", even though the hospitalization was for a different condition, and still receiving care in connection with the second "60 days of care". However, the cost of the subsequent 3 days of inpatient care exceeded the Medicare hospital inpatient deductible, so the veteran became responsible for making a second $476 payment to the VA. The amount previously paid ($112) in connection with the second "60 days of care" would be counted toward the veteran's satisfaction of the payment requirement, leaving a balance due of $364.

Total payments by the veteran: $952.

Example C

A veteran is hospitalized for 3 days for the purpose of undergoing diagnostic tests, thereby beginning an "episode of hospital or nursing home care" for which the veteran agrees to make payment to the VA. Six weeks later, the veteran is readmitted to the hospital for 4 days for exploratory surgery. Five weeks after being discharged from that admission, the veteran is again admitted, this time for 14 days for major surgery and treatment. Following that admission, the veteran is discharged to a community nursing home where the veteran receives 180 days of care at VA expense.

Because the veteran never experienced a period of 60 consecutive days after the initial hospital admission during which the veteran received neither hospital nor nursing home care through the VA, the entire period of care in this example is one "episode of hospital or nursing home care" during which the veteran received a total of 201 days of care. Those days of care equal four periods of "60 days of care" -- three full 60 day periods and a final 21 day period -- for each of which the veteran would make a payment to the VA equal to the Medicare inpatient hospital deductible.

Total payments by the veteran: $1,904.

Subsection (a) of new section 612C: Would require the Administrator to prescribe regulations setting forth the priority order to be followed in furnishing VA hospital or domiciliary care or medical services. This order, which would be followed except in cases involving medical emergencies which pose a serious threat to life or health, would be as follows:

(1) To a veteran for a service-connected disability.

(2) To a veteran with a service-connected disability rated at 50 percent or more.

(3) To a veteran who has a service-connected disability rated at less than 50 percent but which is compensable in degree -- including any veteran who is being examined to determine the existence or rating of a service-connected disability, for the purpose of the examination (the same language in section 612(i)(3) has been determined to include pension, as well as compensation, eligibility examinations).

(4) To a veteran who, but for the receipt of retired pay, would be entitled to disability compensation.

(5) To a veteran who is entitled to disability compensation pursuant to section 351 of title 38 (as a result of suffering an injury during VA care or while pursuing a VA program of vocational rehabilitation) or who, but for a suspension of compensation payments under that section, would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for VA care is not limited by the judgment or settlement described in section 351.

(6) To a veteran (A) whose discharge or release from active duty in the Armed Forces was for a disability incurred or aggravated in line of duty, or (B) with a disability which is service-connected but which is not compensable in degree.

(7) To a veteran (A) who is a former prisoner of war, or (B) who was exposed to a toxic substance in Vietnam or radiation from a nuclear detonation who is eligible for care under new section 610(a)(1)(B)(iii), as added by section 1101 of the Committee legislation (described above), for care as specified in present section 610(e) of title 38.

(8) To a veteran of the Spanish-American War, the Mexican border period, or World War I, or who is otherwise being furnished VA services under present section 612(g) of title 38, by reason of being in receipt of (or who, but for the receipt of retired pay, would be in receipt of) increased VA pension or additional compensation or allowance based on needing regular aid and attendance or being permanently housebound.

(9) To a veteran in receipt of VA pension under chapter 15 of title 38.

(10) To a veteran who is unable to defray the expenses of necessary care.

(11) To a veteran being furnished care or services because of section 610(a)(1)(C) or (2)(C) of title 38, as added by sections 1101 and 1102 of the Committee legislation (described above), who is 65 years of age or older.

Under current law, the only express statutory requirement for priorities, in section 612(i), relates to the furnishing of outpatient medical services and requires that VA regulations ensure that, except for medical emergencies, priority be accorded in the following order to:

(1) A veteran for a service-connected disability.

(2) A veteran described in item (2), above.

(3) A veteran described in item (3), above.

(4) A veteran described in item (7), above.

(5) A veteran described in item (8), above.

Subsection (b) of new section 612B: Would require the Administrator to prescribe regulations which would set forth the priority categories to be followed in furnishing VA nursing home care. The regulations would be required to establish two overall priority categories and specify that within each of those categories the priority order required under subsection (a) of this new section (discussed above) must be followed. The two overall categories are (1) care in a VA-run facility for a veteran in need of a level or type of nursing home care that is not readily available in the appropriate geographic area in a non-VA nursing home with which the VA can contract but which is available in a VA nursing home and (2) care for a veteran in need of a level or type of care that is readily available in the appropriate geographic area in such a non-VA nursing home.

Subsection (c) of new section 612B: Would require the Administrator to ensure that no VA guideline, regulation, or other issuance has the effect of encouraging, directly or indirectly, the furnishing of care or services in any fashion not consistent with the priorities established pursuant to subsections (a) and (b) of this new section to veterans eligible for such care or services under paragraph (1)(C) or (2)(C) of section 610(a) of title 38 (as proposed to be revised by sections 1101 and 1102 of the Committee legislation (discussed above)), relating to eligibility for VA care based on agreement to pay for a portion of the cost.

Subsection (b) of section 1105 would amend the table of sections at the beginning of Chapter 17 to reflect the addition of new sections 612B and 612C proposed by subsection (a) of this section.

Section 1106

Would amend present section 622, relating to the determination of a veteran's ability to defray necessary expenses, to redesignate the existing provision as subsection (a); to change a cross-reference in that provision from "610(a)(1)(B)" to "610(a)(1)(B)(v)" to reflect a change in designation made by section 1101 of the Committee legislation (discussed above); to delete a cross-reference to section 610(b)(2), relating to domiciliary care, as no longer appropriate as a result of a change in that section made by section 1103 of the Committee legislation (discussed above); and to add a new subsection (b), providing that veterans with family incomes below certain levels will be generally determined to be unable to defray the cost of their care, as follows:

Subparagraph (A) of paragraph (1) of new subsection (b) of section 622: Would provide that -- subject to subparagraph (B) of this paragraph, relating to inflation adjustments in the income eligibility criterion, and except as provided in paragraph (3) of this new subsection, relating to determinations that as a result of the amount of the veteran's assets the veteran is not income eligible (that is, unable to defray the costs of necessary care) -- the Administrator would be required to determine that a veteran with a family income of $25,000 or less during the calendar year preceding the date of the veteran's application for VA care is unable to defray the expenses of necessary care. As discussed above in connection with the provision relating to eligibility for hospital care (paragraph (1)(B)(v) of section 610(a), as proposed to be revised by section 1101 of the Committee legislation), such a determination of inability to defray provides eligibility for VA hospital care and -- by virtue of the derivative eligibility for nursing home care and medical services for veterans eligible for hospital care (in paragraph (2)(B) of section 610(a), as so proposed to be revised, and in section 612(f), both in current law and as proposed to be amended by section 1104(a)(2) of the Committee legislation) -- for VA nursing home care and medical services.

Provisions of current law do not specify such an income eligibility criterion. However, provisions in current law (section 622(a)(1), (2), and (3)) not amended by the Committee legislation specify that veterans who are eligible for Medicaid, who have a service-connected disability, or who are in receipt of VA pension are deemed to be eligible by reason of inability to defray necessary expenses.

Division (i) of subparagraph (B) of paragraph (1) of new subsection (b) of section 622: Would require that, after December 1, 1985, the $25,000 income eligibility criterion established under subparagraph (A) of this paragraph be increased by the same percentage and effective on the same date as maximum annual rates of VA pension under chapter 15 of title 38 are increased pursuant to section 3112(a) of title 38.

Division (ii) of subparagraph (B) of paragraph (1) of new subsection (b) of section 622: Would authorize the Administrator, pursuant to regulations which the Administrator would be required to prescribe and in order to avoid hardship, to increase for a specified geographic area in any fiscal year the income level established under subparagraph (A) of this paragraph (and as increased under division (i) of this subparagraph (discussed above)).

Paragraph (2) of new subsection (b) of section 622: Would specify that, for the purpose of this new subsection, the Administrator must determine a veteran's income in accordance with section 503 of title 38, relating to income determinations for VA pension purposes, and must count as income of the veteran any income of the veteran's family members that would be taken into account under section 521(c) of title 38, relating to the computation of the amount of VA pension that a veteran is entitled to receive.

Subparagraph (A) of paragraph (3) of new subsection (b) of section 622: Would prohibit the Administrator from making a determination that a veteran is unable to defray necessary medical expenses if the corpus of the estate of the veteran (and of the veteran's spouse and dependent children, if any) is such that, under all the circumstances (including consideration of the income of the veteran and the veteran's family members), the Administrator finds it is unreasonable to make such a determination.

Subparagraph (B) of paragraph (3) of new subsection (b) of section 622: Would require the Administrator, in evaluating the corpus of a veteran's estate for the purpose of this paragraph to consider the same items to be part of the corpus as would be so considered in making a determination under section 522 of title 38, relating to determinations of net worth for the purpose of eligibility for VA pension. In this connection, the Committee expects that the Administrator would generally, as is done for purposes of the pension program, disregard the value of the veteran's primary residence as well as of a vehicle used for transportation purposes.

Generally as to this new section, the Committee intends that as nearly as practicable income and determinations with respect to the new income eligibility criterion be made in the same manner as for purposes of the VA improved pension program carried out under chapter 15 of title 38 and that such determinations be made annually at the time that a veteran first applies each year for VA care.

Section 1107

Paragraph (1) of subsection (a) of section 1107 would amend paragraph (4) of section 601 of title 38, relating to the definition of "Veterans' Administration facilities". to delete clause (C) in connection with the amendment made by subsection (b) of this section of the Committee legislation, which incorporates the text of present clause (C) in a new section 603 which would be added by subsection (b)(1) of this section of the Committee legislation (discussed below).

Paragraph (2) of subsection (a) of section 1107 would add a new paragraph (9) to section 601, to define the term "non-Veterans' Administration facilities" to mean facilities other than "Veterans' Administration facilities", a term defined in paragraph (4) of section 601 as proposed to be amended by paragraph (1) of this subsection (discussed above).

Paragraph (1) of subsection (b) of section 1107 would amend subchapter I of chapter 17, relating to general matters concerning the VA health-care system, to add a new section 603, entitled "Contract hospital care and medical services". as discussed below. As noted above under the discussion of paragraph (1) of subsection (a) of this section of the Committee legislation, the text of new section 603 is derived directly from present clause (C) of section 601(4). The rationale for making this revision -- which is not intended to change present law in any substantive way -- is explained in the above discussion of the revision of section 610(a) proposed to be made by section 1101 of the Committee legislation.

New section 603: Would provide that in cases in which VA facilities are not capable of furnishing economical hospital care (because of geographic inaccessibility) or of furnishing care or services required, a requirement (as to a service-connected disabled veteran for a service-connected disability or to a veteran with a disability rated at 50 percent or more) or an authority in section 610 (relating to hospital, nursing home, or domiciliary care) or section 612 (relating to outpatient or ambulatory care) includes a requirement or authority, as the case may be, to contract with non-VA facilities for the furnishing of hospital care or medical services as specified in clauses (1) through (6), as follows:

Clause (1) -- Hospital care or medical services for a service-connected disability or for a disability for which a veteran was discharged from active service.

Clause (2) -- Medical services (A) for any disability of a veteran with a service-connected disability rated at 50 percent of more, (B) for any disability of a veteran who has been discharged from a VA hospital and is in need of post-hospital outpatient care (for up to twelve months) to complete the treatment which was begun in the hospital, (C) limited to dental services, treatment, and related appliances for a veteran who is a former prisoner of war who was interned for at least six months, or (D) for any disability of a veteran of the Mexican border period or of World War I or who is in receipt of (or, but for the receipt of retired pay, would be in receipt of) increased VA pension or additional compensation or allowance based on the need of regular aid and attendance or on being permanently housebound, if the medical condition of the veteran precludes treatment in VA facilities.

Clause (3) -- Hospital care or medical services in medical emergencies which pose a serious threat to the life or health of a veteran receiving care or services in a VA facility, until such time as the veteran can be safely transferred back to a VA facility.

Clause (4) -- Hospital care for women veterans.

Clause (5) -- In Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States, and within certain limitations, hospital care or medical services that would obviate the need for hospital admission.

Clause (6) -- Diagnostic services necessary for determining eligibility for, or of the appropriate course of treatment in connection with, the provision of medical services at independent VA outpatient clinics to obviate the need for hospital admission.

The final sentence of new section 603 would require the VA to review periodically the necessity for continuing a contract entered into under this section.

With respect to clause (3) of new section 603, which is derived directly from clause (C)(ii) of section 601(4), the cross-reference which is construed as creating contract dental care eligibility for former prisoners of war who had at least six-month internments ("any disability of a veteran described . . . in the third sentence of . . . section 612(g)") has been modified by inserting "(but only to the extent authorized therein)" after the section reference. This modification clarifies that the ex-POW contract eligibility therein provided is only in connection with the dental treatment described and authorized in the third sentence of section 612(f) (which makes reference back to the limitation established in section 612(b)(1)(G) on the furnishing of dental care).

Subsection (b) of section 1107 would amend the table of sections at the beginning of chapter 17 to reflect the addition of new section 603 proposed by subsection (a) of this section.

Section 1108

Would require the Administrator, not later than December 1, 1985, to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the procedures that the Administrator would by then have established to implement new section 612B of title 38, relating to payment by certain veterans in connection with VA care (as added by section 1105 of the Committee legislation, discussed above). This report would be required to provide information regarding the guidelines and processes for implementing the income eligibility criterion and other criteria for determing VA health-care eligibility established by or under the amendments made by this Part of the Committee legislation and for the collection of payments pursuant to these amendments.

Section 1109

Subsection (a) of section 1109 would provide that, except as set forth in subsection (b) of this section, the amendments made by this Part of the Committee legislation shall apply to hospital care, nursing home care, domiciliary care, and medical services furnished on or after November 1, 1985.

Paragraph (1) of subsection (b) of section 1109 would provide that the provisions of section 610, relating to eligibility for VA hospital care, nursing home care, or domiciliary care, and section 622, relating to determinations regarding veterans' inability to defray the cost of necessary care, as in effect on the day before the date of the enactment of the Committee legislation shall apply with respect to hospital and nursing home care furnished on or after November 1, 1985, to veterans who were furnished such care on October 31, 1985, but only to the extent that such care is furnished with respect to the same period of care -- defined in paragraph (3) of this subsection as ending on the date the veteran is discharged from the hospital or nursing home -- for which such care was being furnished on October 31, 1985. Thus, a veteran being furnished hospital or nursing home care on October 31, 1985, could continue to receive such care under the same terms and conditions that applied under the law in effect when he or she was admitted, but only until he or she is discharged from the hospital or nursing home facility. Thereafter, as to any subsequent period of care, the amendments made by this Part of the Committee legislation would apply.

Paragraph (2) of subsection (b) of section 1109 would authorize the Administrator, during the month of November 1985, to continue to provide medical services on an ambulatory or outpatient basis to a veteran who was receiving such services prior to November 1, 1985, without regard to the amendments made by this Part, in order to continue a course of treatment.

Paragraph (3) of subsection (b) of section 1109 would define, for the purpose of this subsection, the terms" period of care" (as noted above under the discussion of paragraph (1)), to mean a period of care ending on the date a veteran is discharged from the hospital or nursing home facility); "hospital care", "medical services", and "domiciliary care" (to have the meanings given those terms in paragraphs (5), (6), and (8), respectively, of section 601 of title 38); and "veteran" and "nursing home care" (to have the meanings given those terms in paragraphs (2) and (28), respectively, of section 101 of title 38).

PART B -- RECOVERY OF THE COST OF CERTAIN HEALTH CARE
AND SERVICES FURNISHED BY THE VETERANS' ADMINISTRATION

Section 1111

Subsection (a) of section 1111 would amend present section 629 of title 38, relating to the United States' authority generally to recover the reasonable costs of Veterans' Administration-furnished non-service-connected health care from workers' compensation insurance carriers (or self-insured employers), automobile accident reparation (auto no-fault) insurance carriers, or State or local crime victims' compensation programs, where the carrier (or employer) or program would be liable to a non-Federal Government provider. Revised section 629 would add authority for the VA to recover from health insurers the reasonable costs of VA care furnished (directly in VA facilities, in other Government facilities, or in other facilities under contract with the VA) to insured veterans who have no service-connected disabilities. Although in proposing to expand the coverage of section 629 the Committee provisions would restructure that section, except as noted below no substantive changes in current law are intended with respect to the right to recover from the entities specified in present section 629. Section 629 would be revised as follows:

Paragraph (1) of subsection (a) of revised section 629: Would provide that the United States has the right to recover or collect the reasonable cost of care or services furnished directly or under contract by the VA to veterans, for non-service-connected disabilities described in paragraph (2) of this subsection, to the extent that the veteran or a non-Federal provider of care would be eligible to receive "payment" (as proposed to be defined in subsection (i) of revised section 629, discussed below) from the "third party" concerned (as also proposed to be defined in subsection (i)) for such care or services if the care or services had not been provided by a United States Government entity. Reasonable cost would be determined by the Administrator under regulations that would be required by subsection (c)(2) of revised section 629 (discussed below).

The Committee notes that section 629 as proposed to be revised does not contain the first sentence of present section 629(b), which states:

> The amount that may be recovered by the United States under subsection (a) of this section may not exceed the lesser of (1) an amount equal to the reasonable cost of the care and services furnished the veteran under this chapter, as determined by the Administrator, or (2) the maximum amount specified by the law of the State or political subdivision concerned or by any relevant contractual provision to which the veteran was a party or was subject.

In the Committee's view this language is redundant in light of the provision in subsection (a)(1) limiting recovery to reasonable cost "to the extent" that the veteran or a non-Federal provider would be eligible for payment. Such a veteran's or provider's rights would be subject to applicable State or local law as well as to the contract itself. Thus, this deletion is not a substantive change.

Paragraph (2) of subsection (a) of revised section 629: Would specify that the right to recover under paragraph (1) applies in situations involving a non-service-connected disability where the disability--

(1) was incident to the veteran's employment and is covered under workers' compensation;

(2) was the result of an automobile accident in a State requiring automobile accident reparations insurance;

(3) was the result of a crime of personal violence in a State, or a local subdivision thereof, which provides health care to victims of such crimes in that State or subdivision; or

(4) was incurred by a veteran who has no service-connected disability and who is entitled to health care or payment of the expenses of such care under a "health-plan contract" (as proposed to be defined in subsection (i) of revised section 629 (discussed below)), such as a health-insurance policy.

Paragraph (3) of subsection (a) of revised section 629: Would provide, with reference to a recovery by the United States from a third party under a health-plan contract containing a requirement for a deductible or copayment by the veteran, that the veteran's not having paid the deductible or copayment with respect to VA care or services does not preclude the recovery and that the amount that may be recovered would be reduced by the appropriate unpaid deductible or copayment amount, or both.

Paragraph (1) of subsection (b) of revised section 629: Would provide that the United States is subrogated to any right or claim that the veteran or the veteran's personal representative, successor, dependent, or survivors might have against a third party -- such as an insurance carrier -- in connection with a recovery under subsection (a) (discussed above).

Paragraph (2) of subsection (b) of revised section 629: Would provide that the United States, in order to enforce its right of subrogation (under paragraph (1) of this subsection (discussed above))

(1) may intervene or join in any legal action brought against a third party by the veteran or the veteran's personal representative, successor, dependents, or survivors, and (2) may institute and pursue legal action independently if no such legal action were instituted within 180 days after the VA began to furnish the care involved and the United States has given 60 days' notice to the veteran (or the veteran's representative or successor) of its intention to institute legal proceedings.

Paragraph (1) of subsection (c) of revised section 629: Would expressly authorize the Administrator to compromise, settle, or waive any claim which the United States has under this section. All pertinent provisions of Federal law, such as the Federal Claims Collection Act, would apply.

Subparagraph (A) of paragraph (2) of subsection (c) of revised section 629: Would require the Administrator, after consulting with the Comptroller General of the United States, to prescribe regulations for determining the reasonable cost of care and services for which recovery may be sought under this section. Any determination of such costs would be made in accordance with the regulations so prescribed.

Subparagraph (B) of paragraph (2) of subsection (c) of revised section 629: Would require that the regulations issued pursuant to subparagraph (A) of this paragraph (discussed above) provide that the reasonable cost of care and services sought to be recovered from a third party under a health-plan contract (such as a health insurance carrier) could not exceed an amount equal to the prevailing rate that the third party could demonstrate it would pay, under comparable health-plan contracts, for the care and services in non-Federal health care facilities in the same geographic area.

Subparagraph (C) of paragraph (2) of subsection (c) of revised section 629: Would require the Comptroller General -- not later than 45 days after the Administrator (1) first prescribes regulations relating to the reasonable cost of VA care and services, or (2) prescribes any amendments to those regulations -- to submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the Comptroller General's comments on and recommendations regarding the regulations or amendments.

Subsection (d) of revised section 629: Would provide that, in the case of any contract or agreement entered into by the Administrator with a person under section 3718 of title 31 (relating to contracts by the heads of Federal agencies for debt-collection services, for services for the collection of indebtedness owed the United States under section 629 as amended) the contract or agreement would be required to provide that, with respect to such collection services, the person would be subject to section 3301 of title 38 (relating to the confidentiality of general VA records relating to veterans and others claiming VA benefits) and section 4132 of such title (relating to the confidentiality of certain VA medical records).

Subsection (e) of revised section 629: Would provide that a veteran (1) may not, by virtue of this section, be denied VA health care, and (2) shall not, by virtue of this section, be required to make any copayment or deductible payment in order to receive VA care. This provision would not, of course, relieve a veteran with income over $25,000 from having to pay the "coinsurance" amounts applicable under paragraphs (1)(C) and (2)(C) of section 610(a) of title 38 (as proposed to be amended by sections 1101 and 1102 of the Committee provisions (discussed above)).

Subsection (f) of revised section 629: Would provide that no law of any State or subdivision of a State and no provision of any contract or agreement would operate to prevent recoveries under this section or with respect to care or services furnished under section 611(b) of title 38, relating to the VA's authority to provide, and charge for, care and services to other than eligible veterans in emergency situations.

Subsection (g) of revised section 629: Would provide that recoveries pursuant to this section are to be deposited in the United States Treasury as miscellaneous receipts. This provision codifies the current practice under present section 629, which does not specify the disposition of amounts collected thereunder.

Subsection (h) of revised section 629: Would provide that, where recovery is being sought for the cost of VA care for a veteran who is a health-plan beneficiary, the VA medical records of that veteran would be available to representatives of the health plan -- subject to conditions prescribed by the Administrator to protect the confidentiality of the records -- for the purpose of permitting the plan to verify that the care or services were furnished and that the provision of such care and services meets criteria (such as a second-opinion or other utilization-review requirement) generally applicable under the health-plan contract.

<u>Subsection (i) of revised section 629</u>: Would define the terms "health-plan contract", "payment", and "third-party" for the purpose of this section.

"Health-plan contract" would mean an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of health services are paid. The Committee intends this definition to be construed broadly so as to achieve broad coverage under this section with respect to the types of health plans under which recoveries and collections may be sought.

"Payment" would include, but not be limited to, reimbursement and indemnification, the terms used in present section 629 in the same context that "payment" is used in section 629 as proposed to be revised.

"Third party" would mean a State or political subdivision of a State, an employer, an employer's insurance carrier, automobile accident reparations insurance carrier, or a person obligated to provide, or to pay the expenses of, health services under a health-plan contract. However, the definition would specifically exclude an insurance program described in section 1811 of the Social Security Act (Medicare hospital insurance) or established by section 1831 of that Act (Medicare supplementary medical insurance) or a State plan for medical assistance approved under title XIX of that Act (Medicaid).

<u>Subsection (b) of section 1111</u> would provide that the amendments made to section 629 by subsection (a) of this section of the Committee provisions would generally apply to care and services provided on or after the date of enactment of this Act, but that the amendments would

not apply in the case of a health-plan contract entered into before the enactment date and not modified or renewed after that date. In the case of a health-plan contract entered into before the enactment date but modified (including any change in premium or coverage) or renewed after that date, the amendment would apply with respect to the plan as of the day after the date of modification or renewal and with respect to care and services provided after the date of modification or renewal.

Subsection (c) of section 1111 would require the Administrator to report to the Committees on Veterans' Affairs of the Senate and House of Representatives (1) not later than 6 months after the date of enactment of this Act, on the process for and results of the implementation of the amendments made by subsection (a) of this section of the Committee provisions; and (2) not later than February 1, 1987, and February 1 of each year thereafter, on the process and results of implementation with respect to the most recent full fiscal year preceding the due date for the report.

PART C -- LIMITATION ON INCREASE IN RATES OF VETERANS' ADMINISTRATION COMPENSATION

Section 1121

Would prohibit the enactment of legislation increasing any of the rates of benefits under chapter 11 of title 38, United States Code, relating to disability compensation paid to service-connected disabled veterans, or under chapter 13 of title 38, relating to dependency and indemnity compensation (DIC) paid to the survivors of those who die from service-connected causes, if such legislation would increase any such rates by more than 3.7 percent or would result in costs of more than $311 million in budget authority or $280 million in outlays in fiscal year 1986. These dollar amounts reflect the Congressional Budget Office's estimate of the cost of a 3.7-percent increase effective December 1, 1985.

The Committee notes that the economic assumptions underlying the First Concurrent Resolution on the Budget for FY 1986 (S.Con.Res. 32) are those of the Administration. Thus, the budget resolution assumes that the indexed cost-of-living adjustment (COLA) that will automatically be made in the rates of Social Security benefits and need-based VA pension (pursuant to section 215(i) of the Social Security Act (42 U.S.C. 415(i)) and section 3112(a) of title 38, respectively), effective December 1, 1985, will be 4.1 percent, the percentage projected by the Administration in February 1985, when the Budget for FY 1986 was submitted. In keeping with Veterans' Affairs Committee and Congressional practice over the past several years, the budget resolution also assumes the enactment of a compensation/DIC COLA at the same percentage as the Social Security/VA pension COLA.

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