99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
99-453

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

THE COMMITTEE OF CONFERENCE

SUBMITTED THE FOLLOWING

CONFERENCE REPORT

[To accompany H.R. 3128]

DECEMBER 19, 1985.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 3128]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the text of the bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Consolidated Omnibus Budget Reconciliation Act of 1985".

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TITLE I—AGRICULTURE PROGRAMS

Subtitle A—Agricultural Program Savings

SEC. 1001. AGRICULTURAL PROGRAM SAVINGS.

The expenditures and outlays resulting from the provisions of title XI (relating to the export sales of dairy products) and title XIII (relating to emergency disaster loans and loan authorizations under the Agricultural Credit Insurance Fund) of the Food Security Act of 1985 (H.R. 2100, 99th Congress) shall be counted for purposes of determining savings under the Consolidated Omnibus Budget Reconciliation Act of 1985 as having been enacted under this Act.

Subtitle B—Tobacco Program Improvements

SEC. 1101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the maintenance of a viable tobacco price support and production adjustment program is in the interests of tobacco producers, purchasers of tobacco, persons employed directly or indirectly by the tobacco industry, and the localities and States whose economies and tax bases are dependent on the tobacco industry;

(2) the present tobacco price support program is in jeopardy and in need of reform;

(3) under present law, the levels of price support for tobacco have resulted in market prices for tobacco that are not competitive on the world market;

(4) as a consequence, extremely large quantities of domestic tobacco have been put under loan and placed in the inventories of the producer-owned cooperative marketing associations that administer the tobacco price support program;

(5) the increased inventories have led to a significant increase in the assessments producers are required to pay to maintain the tobacco price support program on a "no net cost" basis;

(6) such increasingly large assessments are creating a severe hardship on producers;

(7) the existence of such large inventories poses a threat to the orderly marketing of future crops of tobacco;

(8) inventories of producer associations must be significantly reduced or the tobacco price support program will collapse;

(9) the Commodity Credit Corporation is threatened with substantial losses on disposition of these inventories should the tobacco price support program collapse;

(10) it is imperative that such excess inventories of tobacco be disposed of, under the supervision of the Secretary of Agriculture, in a manner that—

(A) will not disrupt the orderly marketing of new tobacco crops;

(B) will minimize any losses to the Federal Government; and

(C) will be fair and equitable to all tobacco producers and purchasers;

(11) the mutual cooperation of tobacco producers, tobacco purchasers, producer associations, and the Secretary of Agriculture is necessary—

(A) to restore the tobacco price support program to a stable condition; and

(B) to prevent substantial losses to taxpayers that would result from the collapse of the program;

(12) restoration of stability to the tobacco price support program through a sharing of the cost of that program by purchasers of tobacco along with producers of tobacco is necessary to prevent undue burdens on, or obstruction of, interstate and foreign commerce in tobacco; and

(13) the system of grading tobacco should be thoroughly reviewed to ensure that grades are assigned to tobacco that properly state the quality of such tobacco.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to encourage cooperation among tobacco producers, tobacco purchasers, and the Secretary of Agriculture in reducing tobacco price support levels, assessment costs, the size of inventories of producer associations, and the exposure of taxpayers to large budget outlays;

(2) to adjust the method by which price support levels and production quotas are calculated to reflect actual market conditions;

(3) to facilitate the purchase and sale of Flue-cured and Burley tobacco presently in the inventories of producer associations through which producers of Flue-cured and Burley tobacco are provided price support;

(4) to provide that purchasers and producers of domestic tobacco share equally in the cost of maintaining the tobacco price support program at no net cost to the taxpayers; and

(5) to expedite reform of the system of grading tobacco so that grades assigned to tobacco more accurately reflect the quality of such tobacco.

SEC. 1102. PRICE SUPPORT ADJUSTMENTS.

(a) IN GENERAL.—Effective for the 1985 and subsequent crops of tobacco, section 106(f) of the Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following new paragraphs:

"(4) For the 1985 and 1986 crops of Burley tobacco, the support level shall be $1.488 per pound.

"(5) For the 1986 crop of Flue-cured tobacco, the support level shall be $1.438 per pound.

"(6)(A) Except as provided in subparagraph (B), for the 1986 and each subsequent crop of any kind of tobacco (other than Flue-cured and Burley tobacco) for which marketing quotas are in effect or are not disapproved by producers, the support level

shall be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, the amount by which—

"(i) the support level for the crop for which the determination is being made, as determined under subsection (b), is greater or less than

"(ii) the support level for the immediately preceding crop, as determined under subsection (b),

as that difference may be adjusted by the Secretary under subsection (d) if the support level under clause (i) is greater than the support level under clause (ii).

"(B) Notwithstanding subparagraph (A) and subsection (d), if requested by the board of directors of an association through which price support for the respective kind of tobacco specified in subparagraph (A) is made available to producers, the Secretary may reduce the support level for such kind of tobacco to the extent requested by the association to more accurately reflect the market value and improve the marketability of such tobacco.

"(7)(A) For the 1987 and each subsequent crop of Flue-cured and Burley tobacco for which marketing quotas are in effect or are not disapproved by producers, the support level shall be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of—

"(i) 66.7 percent of the amount by which—

"(I) the average price received by producers for Flue-cured and Burley tobacco, respectively, on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

"(II) the average price received by producers for Flue-cured and Burley tobacco, respectively, on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

"(ii) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

"(B) For purposes of subparagraph (A)—

"(i) the average market price for Burley tobacco for the 1985 marketing year shall be reduced by $0.039 per pound;

"(ii) the average market price for Burley tobacco for the 1984 and each prior applicable marketing year shall be reduced by $0.30 per pound;

"(iii) the average market price for Flue-cured tobacco for the 1985 marketing year shall be reduced by $0.25 per pound;

"(iv) the average market price for Flue-cured tobacco for the 1984 and each prior applicable marketing year shall be reduced by $0.30 per pound; and

"(v) the index of prices paid by tobacco producers shall include items representing general, variable costs of producing tobacco, as determined by the Secretary, but shall not include the cost of land, risk, overhead, management, purchase or leasing of quotas, marketing contributions or assessments, and other costs not directly related to the production of tobacco.".

(b) CERTAIN GRADES OF FLUE-CURED TOBACCO.—Effective for the 1986 and subsequent crops of tobacco, section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is further amended by striking out subsection (g).

SEC. 1103. DETERMINATION OF MARKETING QUOTAS FOR FLUE-CURED AND BURLEY TOBACCO.

(a) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) by adding at the end of paragraph (14) the following new subparagraphs:

"(C) 'Reserve stock level', in the case of Flue-cured tobacco, shall be the greater of—

"(i) 100,000,000 pounds (farm sales weight); or

"(ii) 15 percent of the national marketing quota for Flue-cured tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

"(D) 'Reserve stock level', in the case of Burley tobacco, shall be the greater of—

"(i) 50,000,000 pounds (farm sales weight); or

"(ii) 15 percent of the national marketing quota for Burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined."; and

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

"(17) 'Domestic manufacturer of cigarettes' means a person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States.".

(b) FLUE-CURED TOBACCO.—Section 317(a)(1) of such Act (7 U.S.C. 1314c(a)(1)) is amended—

(1) by striking out "'National marketing quota'" in the first sentence and inserting in lieu thereof "(A) Except as provided in subparagraph (B), 'national marketing quota'"; and

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

"(B) For the 1986 and each subsequent crop of Flue-cured tobacco, 'national marketing quota' for a marketing year means the quantity

of Flue-cured tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(i) the aggregate of the quantities of Flue-cured tobacco that domestic manufacturers of cigarettes estimate the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(ii) the average annual quantity of Flue-cured tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(iii) the quantity, if any, of Flue-cured tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured tobacco to establish or maintain such inventory at the reserve stock level for Flue-cured tobacco.

"(C) Notwithstanding any other provision of law—

"(i) the national marketing quota for Flue-cured tobacco for each of the 1986 through 1989 marketing years for such tobacco shall not be less than 94 percent of the national marketing quota for such tobacco for the preceding marketing year; and

"(ii) the national marketing quota for Flue-cured tobacco for each of the 1990 through 1993 marketing years for such tobacco shall not be less than 90 percent of the national marketing quota for such tobacco for the preceding marketing year.".

(c) BURLEY TOBACCO.—Section 319 of such Act (7 U.S.C. 1314e) is amended—

(1) in subsection (c)—

(A) by striking out "The national marketing quota" in the first sentence and inserting in lieu thereof "(1) Except as provided in paragraph (3), the national marketing quota";

(B) by striking out the second sentence;

(C) by designating the third sentence as paragraph (2); and

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

"(3)(A) For the 1986 and each subsequent crop of Burley tobacco, the national marketing quota for any marketing year shall be the quantity of Burley tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

"(i) the aggregate of the quantities of Burley tobacco that domestic manufacturers of cigarettes estimate the manufacturers intend to purchase on the United States auction markets or from producers during the marketing year, as compiled and determined under section 320A;

"(ii) the average annual quantity of Burley tobacco exported from the United States during the 3 marketing years immediately preceding the marketing year for which the determination is being made; and

"(iii) the quantity, if any, of Burley tobacco that the Secretary, in the discretion of the Secretary, determines is necessary to increase or decrease the inventories of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Burley tobacco to establish or maintain such inventories, in the aggregate, at the reserve stock level for Burley tobacco.

"(B) In determining the quantity of Burley tobacco necessary to establish or maintain the inventories of the producer associations at the reserve stock level under subparagraph (A)(iii)—

"(i) the Secretary shall provide for initially attaining the reserve stock level over a period of 5 years; and

"(ii) any downward adjustment in such inventories of Burley tobacco may not exceed the greater of—

"(I) 35,000,000 pounds; or

"(II) 50 percent of the quantity by which—

"(aa) the total inventories of Burley tobacco of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Burley tobacco; exceed

"(bb) the reserve stock level for Burley tobacco.

"(C) Notwithstanding any other provision of law—

"(i) the national marketing quota for Burley tobacco for each of the 1986 through 1989 marketing years for such tobacco shall not be less than 94 percent of the national marketing quota for such tobacco for the preceding marketing year; and

"(ii) the national marketing quota for Burley tobacco for each of the 1990 through 1993 marketing years for such tobacco shall not be less than 90 percent of the national marketing quota for such tobacco for the preceding marketing year."; and

(2) by inserting ", except in the case of Burley tobacco," after "Provided, That" in the fourth sentence of subsection (e).

(d) PURCHASE INTENTIONS.—Effective for the 1986 and each subsequent crop of tobacco, such Act is amended by inserting after section 320 (7 U.S.C. 1314f) the following new section:

"SUBMISSION OF PURCHASE INTENTIONS BY CIGARETTE MANUFACTURERS

"SEC. 320A. (a)(1) Not later than December 1 of any marketing year with respect to Flue-cured tobacco (or, in the case of the 1986 crop, 14 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985) and January 15 of any marketing year with respect to Burley tobacco (or, in the case of the 1986 crop, 14 days after the date of enactment of such Act or January 15, 1986, whichever is later), each domestic manufacturer of cigarettes shall submit to the Secretary a statement, by kind, of the quantity of Flue-cured tobacco and Burley tobacco (for which a national marketing quota is in effect or for which the Secretary has proclaimed a national marketing quota for the next succeeding marketing year) that the manufacturer intends to purchase, directly or indirectly, on the United States auction markets or from producers during the

next succeeding marketing year (hereafter in this section referred to as the 'quantity of intended purchases').

"(2) The Secretary shall aggregate the quantities of intended purchases in a manner that will not allow the identification of the quantity of intended purchases of any manufacturer.

"(b) If any domestic manufacturer of cigarettes fails to submit to the Secretary a statement of the quantity of intended purchases of the manufacturer, as required by this section, the Secretary shall establish the quantity of intended purchases to be attributed to such manufacturer for purposes of this Act, based on—

"(1) the quantity of intended purchases submitted by such manufacturer under this section for the marketing year immediately preceding the marketing year for which the determination is being made; or

"(2) if such manufacturer did not submit a statement of the quantity of intended purchases of the manufacturer for the marketing year immediately preceding the marketing year for which the determination is being made, the most recent information available to the Secretary.

"(c)(1) All information relating to the quantity of intended purchases that is submitted by domestic manufacturers of cigarettes under this section shall be kept confidential by all officers and employees of the Department of Agriculture.

"(2) Such information may only be disclosed by such officers or employees in a suit or administrative hearing—

"(A)(i) brought at the direction, or on the request, of the Secretary; or

"(ii) to which the Secretary or any officer of the United States is a party; and

"(B) involving enforcement of this Act.

"(3) Nothing in this section shall be considered to prohibit the publication, by direction of the Secretary, of the name of any person violating this Act, together with a statement of the particular provisions of the Act violated by such person.

"(4) Any officer or employee of the Department of Agriculture who violates this subsection, on conviction, shall be—

"(A) subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or to both; and

"(B) removed from office.

"(d) Notwithstanding any other provision of law, a statement of the quantity of intended purchases that is submitted under this section shall be exempt from disclosure under section 552 of title 5, United States Code.".

SEC. 1104. MARKETING QUOTA ANNOUNCEMENT DATE; PROCLAMATION OF QUOTAS FOR FLUE-CURED AND BURLEY TOBACCO.

(a) IN GENERAL.—Section 312 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312) is amended—

(1) by striking out "and February 1 of any marketing year with respect to other kinds of tobacco" in the matter preceding clause (1) of subsection (a) and inserting in lieu thereof "February 1 of any marketing year with respect to Burley tobacco, and March 1 of any marketing year with respect to other kinds of tobacco"; and

(2) by striking out "and not later than the first day of February with respect to other kinds of tobacco" in the first sentence of subsection (b) and inserting in lieu thereof ", not later than the first day of February with respect to Burley tobacco, and not later than the first day of March with respect to other kinds of tobacco".

(b) DARK AIR-CURED AND FIRE-CURED TOBACCO.—Section 319(b) of such Act (7 U.S.C. 1313e(b)) is amended by striking out "February 1" each place it appears in the fourth paragraph and inserting in lieu thereof "March 1".

(c) PROCLAMATION OF QUOTA FOR FLUE-CURED TOBACCO.—Section 317(d) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(d)) is amended by adding at the end thereof the following new sentences: "Notwithstanding any other provision of law, for the 1986 marketing year, the Secretary shall proclaim the national marketing quota for Flue-cured tobacco not later than 21 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985. Any proclamation with respect to the national marketing quota for the 1986 marketing year for Flue-cured tobacco made by the Secretary prior to such date of enactment shall become void on enactment of such Act.".

(d) PROCLAMATION OF QUOTA FOR BURLEY TOBACCO.—Section 319(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(a)) is amended by adding at the end thereof the following new sentences: "Notwithstanding any other provision of law, for the 1986 marketing year, the Secretary shall proclaim the national marketing quota for Burley tobacco not later than 21 days after the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 or February 1, 1986, whichever is later. Any proclamation with respect to the national marketing quota for the 1986 marketing year for Burley tobacco made by the Secretary prior to such date of enactment shall become void on enactment of such Act.".

SEC. 1105. REDUCTION IN EXCESS TOBACCO NOT SUBJECT TO MARKETING PENALTY.

(a) PENALTY ON EXCESS TOBACCO.—Effective for the 1986 and subsequent crops of tobacco, the Agricultural Adjustment Act of 1938 is amended—

(1) by striking out "110" in section 317(g)(1) (7 U.S.C. 1314c(g)(1)) and inserting in lieu thereof "103"; and

(2) by striking out "110" in section 319(i)(1) (7 U.S.C. 1314e(i)(1)) and inserting in lieu thereof "103".

(b) PRICE SUPPORT ON EXCESS TOBACCO.—Effective for the 1986 and subsequent crops of tobacco, section 106(c)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445(c)(1)) is amended by striking out "110" and inserting in lieu thereof "103".

SEC. 1106. PURCHASE REQUIREMENTS; PENALTY.

(a) IN GENERAL.—Effective for the 1986 and subsequent crops of tobacco, the Agricultural Adjustment Act of 1938 (as amended by section 1103(d)) is further amended by inserting after section 320A the following new section:

"PURCHASE REQUIREMENTS; PENALTY

"SEC. 320B. (a)(1) At the conclusion of each marketing year, on or before a date prescribed by the Secretary, each domestic manufacturer of cigarettes shall submit to the Secretary a statement, by kind, of the quantity of Flue-cured and Burley quota tobacco purchased, directly or indirectly, by such manufacturer during such marketing year.

"(2) The statement shall include, but not be limited to, the quantity of each such kind of tobacco purchased by the manufacturer on the United States auction markets, from producers, and from the inventories of tobacco from the 1985 and subsequent crops of the producer-owned cooperative marketing associations that have entered into loan agreements with the Commodity Credit Corporation to make price support available to producers of Flue-cured or Burley tobacco.

"(b)(1) Except as otherwise provided in this subsection, any domestic manufacturer of cigarettes that fails, as determined by the Secretary after notice and opportunity for a hearing, to purchase during a marketing year on the United States auction markets, from producers, or from the inventories of tobacco from the 1985 and subsequent crops of the producer associations described in subsection (a)(2) a quantity of Flue-cured quota tobacco and a quantity of Burley quota tobacco equal to at least 90 percent of the quantity of the intended purchases of Flue-cured tobacco and Burley tobacco, respectively, submitted by such manufacturer or established by the Secretary for such manufacturer for that marketing year under section 320A (as that quantity may be reduced under paragraph (2)) shall be subject to a penalty as prescribed in subsection (c).

"(2)(A) If the total quantity of Flue-cured or Burley quota tobacco, respectively, marketed by producers at auction in the United States during the marketing year in question is less than the national marketing quota (including any adjustments for overmarketings or undermarketings) for that kind of tobacco for that marketing year, the quantity of intended purchases of each domestic manufacturer of cigarettes, for purposes of paragraph (1), shall be reduced by a percentage equal to the percentage by which the total quantity marketed at auction in the United States during the marketing year is less than the national marketing quota (including any adjustments for overmarketings or undermarketings) for that kind of tobacco for the marketing year.

"(B) For purposes of this section, the term 'marketed' shall include disposition of tobacco by consigning the tobacco to a producer association described in subsection (a)(2) for a price support advance.

"(c) The amount of any penalty to be imposed on a manufacturer under this section shall be determined by multiplying—

"(1) twice the per pound assessment (as determined under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1 or 1445-2)) for the kind of tobacco involved; by

"(2) the quantity by which—

"(A) the purchases by such manufacturer on the United States auction markets, from producers, or from the inventories of tobacco from the 1985 and subsequent crops of the producer associations described in subsection (a)(2) of Flue-

cured and Burley quota tobacco, respectively, for the marketing year; are less than

"(B) 90 percent of the quantity of intended purchases of such kinds of tobacco, respectively, submitted by the manufacturer or established by the Secretary for such manufacturer for that marketing year under section 320A (as that quantity may be reduced under subsection (b)(2)).

"(d)(1) An amount equivalent to the penalty collected by the Secretary under this section shall be transmitted by the Secretary to the appropriate producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured or Burley tobacco, as the case may be.

"(2) Each association to which amounts are transmitted by the Secretary under this section shall deposit such amounts in the No Net Cost Fund or Account of such association in accordance with section 106A or 106B of the Agricultural Act of 1949.

"(e) The limitations on disclosure set forth in subsections (c) and (d) of section 320A shall apply to information submitted by domestic manufacturers of cigarettes under this section with respect to the quantity of purchases of Flue-cured and Burley quota tobacco during a marketing year. Any officer or employee of the Department of Agriculture who violates such limitations on disclosure shall be subject to the penalties set forth in section 320A(c)(4).

"(f) As used in this section, the term 'quota tobacco' means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.".

(b) CONFORMING AMENDMENT.—Effective for the 1986 and subsequent crops of tobacco, the last sentence of section 372(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1372(b)) is amended by striking out "The" and inserting in lieu thereof "Except as provided in section 320B, the".

SEC. 1107. LEASE AND TRANSFER OF BURLEY TOBACCO QUOTAS.

Effective with respect to the 1985 and subsequent crops of Burley tobacco, the fourth proviso of section 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(g)) is amended by inserting after "July 1 of that crop year" the following: "or, if such record of the transfer is filed with the county committee after July 1, the county committee determines with the concurrence of the State committee that all interested parties agreed to such lease and transfer before July 1 and that the failure to file such record of the transfer did not result from gross negligence on the part of any party to such lease and transfer".

SEC. 1108. ASSESSMENTS TO NO NET COST FUNDS OR ACCOUNTS.

(a) NO NET COST FUND.—Effective for the 1986 and subsequent crops of tobacco, section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (5);

(B) by redesignating paragraph (6) as paragraph (7); and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) the term 'purchaser' means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, Flue-cured or Burley quota tobacco; and";

(2) by inserting "or paid by or on behalf of purchasers" after "producer-members" in the second sentence of subsection (c);

(3) in subsection (d)—

(A) by striking out "and" at the end of clause (i) of paragraph (1)(A);

(B) by inserting after clause (ii) of paragraph (1)(A) the following new clause:

"(iii) each purchaser of Flue-cured and Burley quota tobacco shall pay to the appropriate association, for deposit in the Fund of the association, an assessment, in an amount determined from time to time by the association with the approval of the Secretary, with respect to purchases of all such kind of tobacco marketed by a producer from a farm (including purchases of such tobacco from the 1986 and subsequent crops from the association); and";

(C) by striking out "The" in the last sentence of paragraph (1) and inserting in lieu thereof the following: "The amount of producer contributions and purchaser assessments shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining the Fund of an association. In making such determination with respect to the assessment of a purchaser, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco shall be taken into account. The";

(D) by inserting "and assessments" after "contributions" in the last sentence of paragraph (1);

(E) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) require that any producer contribution or purchaser assessment due under paragraph (1) shall be collected—

"(A) from the person who acquired the tobacco involved from the producer, except that if the tobacco is marketed by sale, an amount equal to the producer contribution may be deducted by the purchaser from the price paid to such producer;

"(B) if the tobacco involved is marketed by a producer through a warehouseman or agent, from such warehouseman or agent, who may—

"(i) deduct an amount equal to the producer contribution from the price paid to the producer; and

"(ii) add an amount equal to the purchaser assessment to the price paid by the purchaser; and

"(C) if the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer, who may add an amount equal to the purchaser assessment to the price paid by the purchaser;";

(F) by striking out "producers who contribute" in the proviso of paragraph (3) and inserting in lieu thereof "producers and purchasers who contribute or pay";

(G) by striking out "and" at the end of paragraph (5);

(H) by inserting "effective for the 1982 through 1985 crops of quota tobacco," after the paragraph designation in paragraph (6);

(I) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(J) by inserting after paragraph (6) the following new paragraph:

"(7) effective for the 1986 and subsequent crops of quota tobacco, provide, in loan agreements between the Corporation and an association, that if the Secretary determines that the amount in the Fund or the net gains referred to in paragraph (5) exceeds the amounts necessary for the purposes specified in this section, the association, with the approval of the Secretary, may suspend the payment and collection of contributions and assessments under this section on terms and conditions established by the association, with the approval of the Secretary."; and

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

"(h)(1)(A) Each person who fails to collect any contribution or assessment as required by subsection (d)(2) and remit such contribution or assessment to the association, at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(B) The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(C) Any penalty provided for under this paragraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(2)(A) Any person against whom a penalty is assessed under this subsection may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after such penalty is imposed.

"(B) The Secretary shall promptly file in such court a certified copy of the record on which the penalty is based.

"(3) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under this subsection.

"(4) An amount equivalent to any penalty collected by the Secretary under this subsection shall be transmitted by the Secretary to the appropriate association, for deposit in the Fund of such association.

"(5) The remedies provided in this subsection shall be in addition to, and not exclusive of, other remedies that may be available.".

(b) NO NET COST ACCOUNT.—Effective for the 1986 and subsequent crops of tobacco, section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-2) is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (6);

(B) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(8) the term 'purchaser' means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, Flue-cured or Burley quota tobacco.";

(2) by inserting "and purchasers" after "producers" in subsection (c)(1);

(3) in subsection (d)—

(A) by inserting at the end of paragraph (1) the following new sentence: "The Secretary shall also require (in lieu of any requirement under section 106A(d)(1)) that each purchaser of Flue-cured and Burley quota tobacco shall pay to the Corporation, for deposit in the Account of such association, an assessment, as determined under paragraph (2) and collected under paragraph (3), with respect to purchases of all such kind of tobacco marketed by a producer from a farm (including purchases of such tobacco from the 1986 and subsequent crops from the association).";

(B) by striking out "area. Such amount" in paragraph (2)(A) and inserting in lieu thereof "area and the amount of the assessment to be paid by purchasers of tobacco. The amount of the assessment to be paid by producers and purchasers shall be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining the Account of an association. In making such determination with respect to the assessment of a purchaser, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco shall be taken into account. The amount of the assessment";

(C) by inserting at the end of paragraph (2)(A) the following: "Notwithstanding the foregoing provisions of this paragraph, the amount of any assessment that is determined by the Secretary for the 1986 and subsequent crops of Burley quota tobacco shall be determined without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with such association with respect to the 1983 crop of such tobacco."; and

(D) by amending paragraph (3) to read as follows:

"(3)(A) Except as provided in subparagraphs (B) and (C), any assessment to be paid by a producer or a purchaser under paragraph (1) shall be collected from the person who acquired the tobacco involved from such producer, except that if the tobacco is marketed by sale, an amount equal to the producer assessment may be deducted by the purchaser from the price paid to such producer.

"(B) If tobacco of the kind for which an Account is established is marketed by a producer through a warehouseman or agent, both the producer and the purchaser assessment shall be collected from such warehouseman or agent, who may—

"(i) deduct an amount equal to the producer assessment from the price paid to the producer; and

"(ii) add an amount equal to the purchaser assessment to the price paid by the purchaser.

"(C) If tobacco of the kind for which an Account is established is marketed by a producer directly to any person outside the United States, both the producer and the purchaser assessment shall be collected from the producer, who may add an amount equal to the purchaser assessment to the price paid by the purchaser."; and

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

"(j)(1)(A) Each person who fails to collect any assessment as required by subsection (d)(3) and remit such assessment to the Corporation, at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(B) The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(C) Any penalty provided for under this paragraph shall be assessed by the Secretary after notice and opportunity for a hearing.

"(2)(A) Any person against whom a penalty is assessed under this subsection may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after such penalty is imposed.

"(B) The Secretary shall promptly file in such court a certified copy of the record on which the penalty is based.

"(3) The district courts of the United States shall have jurisdiction to review and enforce any penalty imposed under this subsection.

"(4) An amount equivalent to any penalty collected by the Secretary under this subsection shall be transmitted by the Secretary to the Corporation, for deposit in the Account of the appropriate association.

"(5) The remedies provided in this subsection shall be in addition to, and not exclusive of, other remedies that may be available.".

(c) IMPLEMENTATION.—The Secretary of Agriculture shall implement sections 1102 through 1109, and the amendments made by such sections, without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code, or in any directive of the Secretary.

(d) CONFORMING AMENDMENT.—The section heading of section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1) is amended to read as follows:

"PRODUCER CONTRIBUTIONS AND PURCHASER ASSESSMENTS FOR NO NET COST TOBACCO FUND".

SEC. 1109. PURCHASE OF INVENTORY STOCK.

Notwithstanding any other provision of law, in order to reduce or eliminate the excessive inventories of Flue-cured and Burley tobacco held by associations from the 1976 through 1984 crops, and in order to provide for the orderly disposition of such excessive inventories of tobacco in a manner that will not disrupt the orderly marketing of new tobacco crops and will minimize any losses to the Federal Government:

(a) SALE OF INVENTORY STOCK.—(1) The producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Flue-cured tobacco shall offer to sell the stocks of Flue-cured tobacco of the association from the 1976 through 1984 crops as provided in this section.

(2) Each producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers of Burley tobacco shall offer to sell its stocks of Burley tobacco from the 1982 and 1984 crops as provided in this section.

(3)(A)(i) Not later than 30 days after the date of enactment of this subtitle, the Commodity Credit Corporation shall acquire title to the Burley tobacco from the 1983 crop that is pledged as security for loans on such tobacco by calling the loans on such tobacco.

(ii) The Corporation shall, then, offer such tobacco for sale at such times, in such quantities, and subject to such conditions as the Corporation considers appropriate.

(B) If the Commodity Credit Corporation has not sold all of the stocks of the 1983 crop of Burley tobacco within 2 years from the date the Corporation calls the loans on such tobacco, the Corporation may offer to sell to domestic manufacturers of cigarettes the remaining stocks of such tobacco as provided in this section.

(b) SALE PRICES.—(1)(A) The stocks of Flue-cured tobacco from the 1976 through 1984 crops shall be offered for sale at the base prices, including carrying charges, in effect as of the date of the offer, reduced by—

(i) 90 percent for Flue-cured tobacco from the 1976 through 1981 crops; and

(ii) 10 percent for Flue-cured tobacco from the 1982 through 1984 crops.

(B) The purchasers of the stocks of Flue-cured tobacco from the 1976 through 1984 crops shall pay the full carrying charges that have accrued to such tobacco from the date of the offer made under this section to the date that such tobacco is removed from the inventory of the association.

(2)(A) The stocks of Burley tobacco from the 1982 crop shall be offered for sale at the listed base price in effect as of July 1, 1985.

(B) The stocks of Burley tobacco from the 1984 crop shall be offered for sale at the costs of the association for such tobacco as of the date of enactment of this subtitle.

(C) The purchasers of the stocks of Burley tobacco from the 1982 crop shall pay the full carrying charges that have accrued to such tobacco.

(D) The purchasers of the stocks of Burley tobacco from the 1984 crop shall pay the full carrying charges that have accrued to such tobacco from the date of enactment of this subtitle to the date such tobacco is removed from the inventories of the associations.

(3)(A) After the 2-year period specified in subsection (a)(3)(B) has expired, if the Commodity Credit Corporation offers to sell the stocks of the Corporation of Burley tobacco from the 1983 crop to domestic manufacturers of cigarettes, such stocks shall be offered for sale at the costs of the association, including carrying charges, as of the date on which the Corporation calls the loans on such tobacco, reduced by 90 percent.

(B) Neither tobacco producers nor tobacco purchasers shall be responsible for carrying charges that accrue to the 1983 crop Burley tobacco after the date on which the Commodity Credit Corporation calls the loans on such tobacco.

(c) TERMS OF AGREEMENTS.—(1)(A) Each domestic manufacturer of cigarettes may enter into agreements to purchase inventory stocks of Flue-cured and Burley tobacco, in accordance with this section.

(B) To be eligible for the reductions in price specified in this section, such manufacturer shall enter into such agreements as soon as practicable, but not later than 90 days after the date of enactment of this subtitle, except that, with respect to the 1983 crop of Burley tobacco, if the Corporation offers to sell the stocks of such tobacco pursuant to subsection (b)(3)(A), such agreements shall be entered into as soon as practicable, but not later than 90 days after the end of the 2-year period referred to in subsection (a)(3)(B).

(C)(i) Such agreements shall provide that, over a period of time, each participating domestic manufacturer of cigarettes shall purchase a percentage of the stocks of Flue-cured and Burley tobacco held—

(I) by the producer-owned cooperative marketing associations at the close of the 1984 marketing year; or

(II) in the case of the 1983 crop of Burley tobacco, by the Commodity Credit Corporation at the time the Corporation offers such tobacco for sale to domestic manufacturers of cigarettes under this section.

(ii) The period of time referred to in clause (i) may not exceed—

(I) in the case of Flue-cured tobacco, 8 years from the date of enactment of this subtitle;

(II) in the case of Burley tobacco from the 1982 and 1984 crops, 5 years from the date of enactment of this subtitle; and

(III) in the case of the 1983 crop of Burley tobacco, 5 years from the end of the 2-year period referred to in subsection (a)(3)(B).

(2)(A)(i) The percentage to be purchased by each participating manufacturer shall be at least equal to the respective percentage of the participating manufacturer of the total quantity of net cigarettes manufactured for use as determined by the Secretary of Agriculture under this paragraph on the basis of the monthly reports ("Manufacturer of Tobacco Products—Monthly Reports") submitted (on ATF Form 3068) by manufacturers of tobacco products to the

Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

(ii) The Secretary of Agriculture shall request from the Secretary of the Treasury copies of such monthly reports necessary to make the determinations required under this section.

(iii) Notwithstanding any other provision of law, the Secretary of the Treasury may release and disclose such information to the Secretary of Agriculture.

(B) "Net cigarettes manufactured for use" shall be computed by subtracting—

(i) the cumulative figures entered for large and small cigarettes in item 16f of ATF Form 3068 ("Reduction to tobacco"); from

(ii) the cumulative figures entered for large and small cigarettes in item 7 of such form ("Manufactured").

(C)(i) The percentage to be purchased by each participating manufacturer shall be determined—

(I) on the date of enactment of this subtitle; and

(II) annually thereafter over the course of the respective buy-out periods specified in this subsection.

(ii) Such percentage shall be determined by dividing—

(I) the average net cigarettes manufactured by a manufacturer for use for the 12-month period immediately preceding the appropriate determination date (the date of enactment of this subtitle and annually thereafter over the course of the respective buy-out periods specified in this subsection); by

(II) the aggregate average net cigarettes manufactured by all domestic cigarette manufacturers for use for such 12-month period.

(D)(i) The quantity of tobacco to be purchased by each participating manufacturer shall be determined annually.

(ii) Such quantity shall be based on—

(I) the percentage of net cigarettes of a manufacturer manufactured for use, as determined under subparagraph (C); multiplied by

(II) the appropriate annual quantity to be withdrawn from the inventories of the associations or the Commodity Credit Corporation.

(iii) The appropriate annual quantity to be withdrawn from inventories shall be—

(I) 12½ percent of the inventories of Flue-cured tobacco from the 1976 through 1984 crops on hand on the date of enactment of this subtitle;

(II) 20 percent of the inventories of Burley tobacco from the 1982 and 1984 crops on hand on the date of enactment of this subtitle; and

(III) 20 percent of the inventories of Burley tobacco from the 1983 crop held by the Commodity Credit Corporation on the date that is 2 years after the call of the loans on such tobacco by the Corporation.

(E) Any purchases by a manufacturer from the inventories of the associations or from the Commodity Credit Corporation for a crop covered by this section in any year of the buy-out period that exceed the quantity of the purchases of the manufacturer required under

the agreement, as determined under this section, shall be applied against future purchases required of such manufacturer.

(3) In carrying out this section, manufacturers may confer with one another and, separately or collectively, with associations, the Secretary of Agriculture, and the Commodity Credit Corporation, as may be necessary or appropriate to carry out this section and the purposes of this subtitle.

(d) APPROVAL OF AGREEMENTS.—(1)(A) Each agreement entered into under this section shall be submitted to the Secretary of Agriculture for review and approval.

(B) In the case of an agreement to purchase tobacco from the inventory of a producer association, the agreement shall be submitted by the association.

(C) No agreement may become effective until approved by the Secretary.

(2) The Secretary of Agriculture shall not approve any agreement submitted under this section unless the Secretary has determined that—

(A) the agreement—

(i) will not unduly impair or disrupt the orderly marketing of current and future tobacco crops during the term of the agreement; and

(ii) is otherwise consistent with the purposes of this subtitle; and

(B) the price and other terms of sale are uniform and nondiscriminatory among various purchasers.

(e) DISCLOSURE.—The limitations on disclosure set forth in subsections (c) and (d) of section 320A of the Agricultural Adjustment Act of 1938 (as added by section 1103(d)) shall apply to information submitted by domestic manufacturers of cigarettes under this section with respect to net cigarettes manufactured for use, including information provided on ATF Form 3068. Any officer or employee of the Department of Agriculture who violates such limitations on disclosure shall be subject to the penalties set forth in section 320A(c)(4) of such Act.

SEC. 1110. REVIEW OF TOBACCO GRADING SYSTEM AND DISASTER CROP DESIGNATION.

(a) STUDY.—(1)(A) The Secretary of Agriculture shall conduct a comprehensive study of the methods and procedures for grading tobacco marketed in the United States.

(B) In carrying out such study, the Secretary shall evaluate, among other things—

(i) the extent to which grades assigned to tobacco accurately reflect the quality of such tobacco;

(ii) the extent to which the number of grades of tobacco affects the operation of the grading system; and

(iii) the competence and independence of tobacco graders.

(2) The Secretary shall also study the feasibility and desirability of—

(A) providing for a grade that would be used to designate tobacco that is of such poor quality as a result of a natural disaster as to affect substantially the marketability of such tobacco; and

(B) establishing a price support level, if any, for such tobacco that may be adjusted by the Secretary as necessary to facilitate the sale of such tobacco and protect the no net cost funds or accounts.

(b) REPORT.—(1) Not later than 120 days after the date of enactment of this subtitle, the Secretary of Agriculture shall report the results of the studies required under subsection (a), together with any recommendations for necessary legislation, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(2) As soon as practicable after submission of the report required under paragraph (1), but not later than the opening of the marketing season for the 1986 crop of Flue-cured tobacco, the Secretary shall implement any recommendations made in such report that may be implemented by the Secretary under existing authority.

SEC. 1111. INVESTMENT OF TOBACCO INSPECTION FEES.

Section 5 of The Tobacco Inspection Act (7 U.S.C. 511d) is amended—

(1) by inserting "late payment penalties, and interest earned from the investment of such funds," after "The fees and charges," in the ninth sentence;

(2) by inserting after the ninth sentence the following new sentences: "Any funds realized from the collection of fees or charges authorized under this section and section 6 and credited to the current appropriation account incurring the cost of services provided under this section and section 6, late payment penalties, and interest earned from the investment of such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any income realized from this activity may be used to pay the expenses of the Secretary of Agriculture incident to providing services under this Act or reinvested in the manner authorized in the preceding sentence."; and

(3) by striking out "Such fees and charges" in the tenth sentence (as it existed before the amendment made by clause (2)) and inserting in lieu thereof "The fees and charges authorized in this section".

SEC. 1112. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, this subtitle and the amendments made by this subtitle shall become effective on the date of enactment of this subtitle.

TITLE II—ARMED SERVICES AND DEFENSE-RELATED PROGRAMS

SEC. 2001. COLLECTION BY THE UNITED STATES OF INPATIENT HOSPITAL COSTS INCURRED ON BEHALF OF CERTAIN PERSONS.

(a) IN GENERAL.—(1) Chapter 55 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1095. Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents

"(a)(1) In the case of a person who is covered by section 1074(b), 1076(a), or 1076(b) of this title, the United States shall have the right to collect from a third-party payer the reasonable costs of inpatient hospital care incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such costs on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is the reasonable cost of the care provided less the appropriate deductible or copayment amount.

"(2) A person covered by section 1074(b), 1076(a), or 1076(b) of this title may not be required to pay an additional amount to the United States for inpatient hospital care by reason of this section.

"(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).

"(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided inpatient hospital care to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

"(d) Notwithstanding subsections (a) and (b), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

"(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

"(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

"(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of inpatient hospital care. Computation of such reasonable cost may be based on—

"(1) per diem rates; or

"(2) such other method as may be appropriate.

"(g) In this section, 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"1095. Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents.".

(b) EFFECTIVE DATE.—Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to inpatient hospital care provided after September 30, 1986, but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of the enactment of this Act.

SEC. 2002. EXTENSION OF DEADLINE FOR REPORT ON USE BY CHAMPUS SYSTEM OF MEDICARE PROSPECTIVE PAYMENT PROGRAM.

Section 634(c) of the Department of Defense Authorization Act, 1985 (Public Law 98-525; 98 Stat. 2544), is amended by striking out "February 28, 1985" and inserting in lieu thereof "June 30, 1986".

TITLE III—HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

SEC. 3001. SHORT TITLE AND TABLE OF SECTIONS.

(a) SHORT TITLE.—This title may be cited as the "Housing and Community Development Reconciliation Amendments of 1985".

(b) TABLE OF SECTIONS.—

SEC. 3002. PURCHASE OF CDBG GUARANTEED OBLIGATIONS BY THE FEDERAL FINANCING BANK.

(a) PROHIBITION.—Section 108 of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following:

"(1) Notes or other obligations guaranteed under this section may not be purchased by the Federal Financing Bank.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1986.

(c) ADMINISTRATIVE ACTIONS.—The Secretary of Housing and Urban Development shall take such administrative actions as are necessary to provide by the effective date of subsection (a) private sector financing of loans guaranteed under section 108 of the Housing and Community Development Act of 1974.

SEC. 3003. PUBLIC HOUSING OPERATING SUBSIDIES.

Section 9(c) of such Act is amended by striking out "and by" after "1983," and by inserting after "1984" the following: ", and not to exceed $1,279,000,000 on or after October 1, 1985".

SEC. 3004. PUBLIC AND INDIAN HOUSING FINANCING REFORMS.

Section 4 of the United States Housing Act of 1937 is amended by adding at the end thereof the following new subsection:

"(c)(1) At such times as the Secretary may determine, and in accordance with such accounting and other procedures as the Secre-

tary may prescribe, each loan made by the Secretary under subsection (a) that has any principal amount outstanding or any interest amount outstanding or accrued shall be forgiven; and the terms and conditions of any contract, or any amendment to a contract, for such loan with respect to any promise to repay such principal and interest shall be canceled. Such cancellation shall not affect any other terms and conditions of such contract, which shall remain in effect as if the cancellation had not occurred. This paragraph shall not apply to any loan the repayment of which was not to be made using annual contributions, or to any loan all or part of the proceeds of which are due a public housing agency from contractors or others.

"(2)(A) On the date of the enactment of the Housing and Community Development Reconciliation Amendments of 1985, each note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b), together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

"(B) On September 30, 1986, and on any subsequent September 30, each such note or other obligation issued by the Secretary to the Secretary of the Treasury pursuant to subsection (b) during the fiscal year ending on such date, together with any promise to repay the principal and unpaid interest that has accrued on each note or obligation, shall be forgiven; and any other term or condition specified by each such obligation shall be canceled.

"(3) Any amount of budget authority (and contract authority) that becomes available during any fiscal year as a result of the forgiveness of any loan, note, or obligation under this subsection shall be rescinded.".

SEC. 3005. RURAL HOUSING AUTHORIZATIONS.

Subsection (a)(1) of section 513 of the Housing Act of 1949 is amended to read as follows:

"(a)(1) The Secretary may insure and guarantee loans under this title during fiscal year 1986 in an aggregate amount not to exceed $2,146,600,000, of which—

"(A) $1,209,600,000 shall be for loans under section 502;
"(B) $17,000,000 shall be for loans under section 504;
"(C) $19,000,000 shall be for loans under section 514;
"(D) $900,000,000 shall be for loans under section 515; and
"(E) $1,000,000 shall be for loans under section 524.".

SEC. 3006. MANAGEMENT OF INSURED AND GUARANTEED RURAL HOUSING LOANS.

(a) SALE OF INSURED AND GUARANTEED LOANS TO PUBLIC.—Section 517(c) of the Housing Act of 1949 is amended by adding at the end thereof the following new sentence: "Any loan made and sold by the Secretary under this section after the date of the enactment of the Housing and Community Development Reconciliation Amendments of 1985 (and any loan made by other lenders under this title that is insured or guaranteed in accordance with this section, is purchased by the Secretary, and is sold by the Secretary under this section after such date) shall be sold to the public and may not be sold to the Federal Financing Bank, unless such sale to the Federal Financing Bank is required to service transactions under this title

between the Secretary and the Federal Financing Bank occurring on or before such date.".

(b) INTEREST SUBSIDY ON INSURED AND GUARANTEED LOANS OFFERED FOR SALE TO PUBLIC.—Section 517(d) of the Housing Act of 1949 is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) Each loan made by the Secretary or other lenders under this title that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by an agreement by the Secretary to pay to the holder of such loan (through an agreement to purchase such loan or through such other means as the Secretary determines to be appropriate) the difference between the rate of interest paid by the borrower of such loan and the market rate of interest (as determined by the Secretary) on obligations having comparable periods to maturity on the date of such sale.".

(c) PROTECTION OF BORROWERS UNDER LOANS SOLD TO PUBLIC.—Section 517(d) of the Housing Act of 1949, as amended by subsection (b) of this section, is amended by adding at the end thereof the following new paragraph:

"(3) Each loan made by the Secretary or other lenders under this title that is insured or guaranteed in accordance with this subsection shall, when offered for sale to the public, be accompanied by agreements for the benefit of the borrower under the loan that provide that—

"(A) the purchaser or any assignee of the loan shall not diminish any substantive or procedural right of the borrower arising under this title;

"(B) upon any substantial default of the borrower, but prior to foreclosure, the loan shall be assigned to the Secretary for the purpose of avoiding foreclosure; and

"(C) following any assignment under subparagraph (B) and before commencing any action to foreclose or otherwise dispossess the borrower, the Secretary shall afford the borrower all substantive and procedural rights arising under this title, including consideration for interest subsidy, moratorium, reamortization, refinancing, and appeal of any adverse decision to an impartial officer.

"(4) From the proceeds of loan sales under paragraph (2), the Secretary shall set aside as a reserve against future losses not less than 5 percent of the outstanding face amount of the loans held by the public at any time.".

(d) USE OF RURAL HOUSING INSURANCE FUND.—Section 517(j) of the Housing Act of 1949 is amended—

(1) by striking out "and" at the end of paragraph (4);

(2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; and"; and

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

"(6) to make payments and take other actions in accordance with agreements entered into under paragraphs (2) and (3) of subsection (d).".

(e) ELIGIBILITY FOR GUARANTEED LOANS.—Section 517 of the Housing Act of 1949 is amended by striking out subsection (n).

(f) REGULATIONS.—Section 517(o) of the Housing Act of 1949 is amended—

(1) by inserting "(1)" after the subsection designation; and

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

"(2) Not later than the expiration of the 90-day period following the date of the enactment of the Housing and Community Development Reconciliation Amendments of 1985, the Secretary shall issue regulations to facilitate the marketability in the secondary mortgage market of loans insured or guaranteed under this section. Such regulations shall ensure that such loans are competitive with other loans and mortgages insured or guaranteed by the Federal Government.".

SEC. 3007. EXTENSION OF FEDERAL HOUSING ADMINISTRATION MORTGAGE INSURANCE PROGRAMS.

(a) TITLE I INSURANCE.—Section 2(a) of the National Housing Act is amended by striking out "prior to December 16, 1985" in the first sentence and inserting in lieu thereof "not later than March 17, 1986".

(b) GENERAL INSURANCE.—Section 217 of the National Housing Act is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(c) LOW AND MODERATE INCOME HOUSING INSURANCE.—Section 221(f) of the National Housing Act is amended by striking out "December 15, 1985" in the fifth sentence and inserting in lieu thereof "March 17, 1986".

(d) SECTION 235 HOMEOWNERSHIP.—

(1) ASSISTANCE PAYMENTS AUTHORITY.—Section 235(h)(1) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(2) INSURANCE AUTHORITY.—Section 235(m) of the National Housing Act is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(3) HOUSING STIMULUS AUTHORITY.—Section 235(q)(1) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(e) CO-INSURANCE.—

(1) GENERAL AUTHORITY.—Section 244(d) of the National Housing Act is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(2) RENTAL REHABILITATION AND DEVELOPMENT PROJECTS.—Section 244(h) of the National Housing Act is amended by striking out "on or after December 16, 1985" in the last sentence and inserting in lieu thereof "after March 17, 1986".

(f) GRADUATED PAYMENT AND INDEXED MORTGAGE INSURANCE.—Section 245(a) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(g) REINSURANCE CONTRACTS.—Section 249(a) of the National Housing Act is amended by striking out "December 15, 1985" in the second sentence and inserting in lieu thereof "March 17, 1986".

(h) ARMED SERVICES HOUSING INSURANCE.—

(1) CIVILIAN EMPLOYEES OF ARMED FORCES.—Section 809(f) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(2) DEFENSE HOUSING FOR IMPACTED AREAS.—Section 810(k) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(i) LAND DEVELOPMENT INSURANCE.—Section 1002(a) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(j) GROUP PRACTICE FACILITIES INSURANCE.—Section 1101(a) of the National Housing Act is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

SEC. 3008. EXTENSION OF REHABILITATION LOAN AUTHORITY.

Section 312(h) of the Housing Act of 1964 is amended—

(1) by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986"; and

(2) by striking out "prior to December 16, 1985" and inserting in lieu thereof "on or before such date".

SEC. 3009. EXTENSION OF RURAL HOUSING AUTHORITIES.

(a) RENTAL HOUSING LOAN AUTHORITY.—Section 515(b)(4) of the Housing Act of 1949 is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(b) RURAL AREA CLASSIFICATION.—Section 520 of the Housing Act of 1949 is amended by striking out "December 15, 1985" in the last sentence and inserting in lieu thereof "March 17, 1986".

(c) MUTUAL AND SELF-HELP HOUSING GRANT AND LOAN AUTHORITY.—Section 523(f) of the Housing Act of 1949 is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

SEC. 3010. EXTENSION OF FLOOD AND CRIME INSURANCE PROGRAMS.

(a) FLOOD INSURANCE.—

(1) GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(2) EMERGENCY IMPLEMENTATION.—Section 1336(a) of the National Flood Insurance Act of 1968 is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(3) ESTABLISHMENT OF FLOOD-RISK ZONES.—Section 1360(a)(2) of the National Flood Insurance Act of 1968 is amended by striking out "December 15, 1985" and inserting in lieu thereof "March 17, 1986".

(b) CRIME INSURANCE.—Section 1201(b)(1) of the National Housing Act is amended by striking out "December 15, 1985" in the matter preceding subparagraph (A) and inserting in lieu thereof "March 17, 1986".

SEC. 3011. MISCELLANEOUS EXTENSIONS.

(a) COMMUNITY DEVELOPMENT BLOCK GRANT CLASSIFICATIONS.—

(1) METROPOLITAN CITY.—Section 102(a)(4) of the Housing and Community Development Act of 1974 is amended by striking out "December 15, 1985" in the second sentence and inserting in lieu thereof "March 17, 1986".

(2) URBAN COUNTY.—Section 102(a)(6) of the Housing and Community Development Act of 1974 is amended by striking out "December 15, 1985" in the second sentence and inserting in lieu thereof "March 17, 1986".

(b) SECTION 202 INTEREST RATE LIMITATION.—Section 223(a)(2) of the Housing and Urban-Rural Recovery Act of 1983 is amended by striking out "prior to December 16, 1985" and inserting in lieu thereof "not later than March 17, 1986".

(c) HOME MORTGAGE DISCLOSURE ACT OF 1975.—Section 312 of the Home Mortgage Disclosure Act of 1975 is amended by striking out "December 16, 1985" and inserting in lieu thereof "March 17, 1986".

TITLE IV—TRANSPORTATION AND RELATED PROGRAMS

Subtitle A—Railroads

SEC. 4001. SHORT TITLE.

This subtitle may be cited as the "Amtrak Reauthorization Act of 1985".

SEC. 4002. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Section 601(b)(2) of the Rail Passenger Service Act (45 U.S.C. 601(b)(2)) is amended—

(1) in subparagraph (A) by striking out "and" after "403(b) of this Act;";

(2) in subparagraph (B) by striking out the period and inserting in lieu thereof a semicolon; and

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

"(C) not to exceed $600,000,000 for the fiscal year ending September 30, 1986;

"(D) not to exceed $606,100,000 for the fiscal year ending September 30, 1987; and

"(E) not to exceed $630,300,000 for the fiscal year ending September 30, 1988.".

(b) LIMITATION.—Such section 601(b) is further amended by adding at the end a new paragraph as follows:

"(5) Unless sufficient funds are otherwise available to operate the Corporation's rail system at substantially the same level of service, maintenance, and equipment overhauls in effect on the date of the enactment of this paragraph, funds appropriated to or for the benefit of the Corporation under this section before the date of the enactment of this paragraph which the Corporation has designated for nonoperational capital projects shall be used as necessary to maintain the operations of the system at such level.".

SEC. 4003. CAPITAL ASSETS.

Section 304(c) of the Rail Passenger Service Act (45 U.S.C. 544(c)) is amended by adding at the end thereof the following new paragraph:

"(3) The preferred stock issued pursuant to paragraphs (1) and (2) of this subsection shall be deemed to have been issued as of the date

of receipt by the Corporation of the funds for which such stock is issued.".

SEC. 4004. GOVERNMENT TRAVEL.

Section 306(f) of the Rail Passenger Service Act (45 U.S.C. 546(f)) is amended by inserting ", which shall include allowing the Corporation to participate in the contract air program administered by the General Services Administration in markets where service provided by the Corporation is competitive as to rates and total trip times" before the period.

SEC. 4005. REPORT CONSOLIDATION.

Section 308(a) of the Rail Passenger Service Act (45 U.S.C. 548(a)) is amended to read as follows:

"(a) The Corporation shall submit to the Congress a report not later than February 15 of each year. The report shall include, for each route on which the Corporation operated intercity rail passenger service during the preceding fiscal year, data on ridership, passenger miles, short-term avoidable profit or loss per passenger mile, revenue-to-cost ratio, revenues, the Federal subsidy, the non-Federal subsidy, and on-time performance. Such report shall also specify significant operational problems which have been identified by the Corporation, together with proposals by the Corporation to resolve such problems.".

SEC. 4006. CHARTER TRAINS.

Section 402 of the Rail Passenger Service Act (45 U.S.C. 562) is amended—

(1) by repealing subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

SEC. 4007. MISCELLANEOUS AMENDMENTS.

(a) AUDITS.—Section 805 of the Rail Passenger Service Act (45 U.S.C. 644) is amended—

(1) in subsection (2)(A) by striking out "shall conduct annually a" in the first sentence and inserting in lieu thereof "may conduct"; and

(2) in subsections (2)(A) and (2)(B) by striking "audit" wherever it appears and inserting in lieu thereof "audits".

(b) REPEAL OF STUDIES AND REPORTS.—Sections 306(k), 806, 810, and 811 of the Rail Passenger Service Act (45 U.S.C. 546(k), 645, 649, and 650) are repealed.

(c) EMERGENCY ASSISTANCE.—Title VII of the Rail Passenger Service Act (45 U.S.C. 621 and 622) is repealed.

(d) NORTHEAST CORRIDOR REPORTS.—Section 703(1)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(D)) is repealed.

(e) PERFORMANCE EVALUATION CENTER.—(1) Section 305(1) of the Rail Passenger Service Act (45 U.S.C. 545(1)) is repealed.

(2) Section 305(m) of the Rail Passenger Service Act (45 U.S.C. 545(m)) is amended by striking out "Center" each place it appears and inserting in lieu thereof "Corporation".

SEC. 4008. REVENUE-COST RATIO.

Section 404(c)(4)(A) of the Rail Passenger Service Act (45 U.S.C. 564(c)(4)(a)) is amended by adding at the end the following new sentence: "Commencing in fiscal year 1986, the Corporation shall set a

goal of recovering an amount sufficient that the ratio of its revenues, including contributions from States, agencies, and other persons, to costs, excluding capital costs, shall be at least 61 percent.".

SEC. 4009. LABOR-RELATED COST SAVINGS.

Amtrak and the representatives of employees of Amtrak shall negotiate changes in existing agreements between such parties that will result in substantial cost savings to Amtrak, and shall report the results of such negotiations to the Congress within six months after the date of enactment of this Act.

SEC. 4010. ROUTE DISCONTINUANCE.

Amtrak shall not, by reason of any provision of this subtitle, including section 4002, reduce the frequency of service on any line on which, as of May 1, 1985, three or fewer trains operated per week.

SEC. 4011. EMPLOYMENT VACANCY FILING.

(a) LIABILITY.—Section 704(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797c(c)) is amended—

(1) by inserting "(1)" after "VACANCY NOTICES.—"; and

(2) by adding at the end a new paragraph as follows:

"(2)(A) As soon as the Board becomes aware of any failure on the part of a railroad to comply with paragraph (1), the Board shall issue a warning to such railroad of its potential liability under subparagraph (B).

"(B) Any railroad failing to comply with paragraph (1) of this subsection after being warned by the Board under subparagraph (A) shall be liable for a civil penalty in the amount of $500 for each subsequent vacancy with respect to which such railroad has so failed to comply.".

(b) EXTENSION.—Section 704(f) of such Act (45 U.S.C. 797c(f)) is amended by striking out "4-year" and inserting in lieu thereof "6-year".

(c) EXEMPTION.—The provisions of section 703 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 797b), section 8 of the Milwaukee Railroad Restructuring Act (45 U.S.C. 907), and section 105 of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1004) shall not apply to the National Railroad Passenger Corporation in the hiring of qualified train and engine employees who hold seniority rights to work in intercity rail passenger service in connection with the assumption by such Corporation of functions previously performed under contract by other carriers.

(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (c) shall take effect on the date of enactment of this Act, and the amendment made by subsection (b) shall be effective as of August 1, 1985.

SEC. 4012. TRANSPORTATION OF USED UNOCCUPIED VEHICLES.

Section 103(3) of the Rail Passenger Service Act (45 U.S.C. 502(3)) is amended by inserting ", and, when space is available, of used unoccupied vehicles" after "and their occupants".

SEC. 4013. AMTRAK CORPORATE CITIZENSHIP.

Section 306(m) of the Rail Passenger Service Act (45 U.S.C. 546(m)) is amended by inserting "only" immediately after "citizen".

SEC. 4014. ROUTE AND SERVICE CRITERIA.

(a) ROUTE AND SERVICE CRITERIA AMENDMENTS.—The Rail Passenger Service Act is amended—

(1) in section 403(d) (45 U.S.C. 563(d))—

(A) by striking out "criteria set forth in section 404(d)(2)(B)" and inserting in lieu thereof "criterion set forth in section 404(d)(2)"; and

(B) by inserting after the first sentence thereof the following: "Beginning October 1, 1986, if such service is not projected to meet such criterion, the Corporation may discontinue, modify, or adjust such service so that the applicable criterion will be met.";

(2) in section 404(c)(3)(B) (45 U.S.C. 564(c)(3)(B))—

(A) by striking out "60" and inserting in lieu thereof "120";

(B) by striking out "either the Senate" and all that follows through "that it does" and inserting in lieu thereof "the Senate and the House of Representatives adopt a joint resolution during such period stating that they do"; and

(C) by adding at the end thereof the following: "For purposes of this subparagraph, continuity of session of the Congress is broken only by an adjournment sine die and the days on which either House is not in session because of adjournment of more than 3 days to a day certain are excluded in the computation of such 120-day period.";

(3) by amending section 404(c)(4)(B) (45 U.S.C. 564(c)(4)(B)) to read as follows:

"(B) The Corporation shall conduct an annual review of each route in the basic system to determine if such route is projected to meet the criterion appropriate to such route set forth in subsection (d), as adjusted to reflect constant 1979 dollars. If the Corporation determines on the basis of such review that such route will not meet such criterion, the Corporation shall discontinue, modify, or adjust the operation of rail passenger service over such route so that the criterion will be met.";

(4) in the first sentence of section 404(d)(1) (45 U.S.C. 564(d)(1))—

(A) by striking out "if—" and inserting in lieu thereof "if";

(B) by striking out "(A)"; and

(C) by striking out all after "mile" the second time it appears therein and inserting in lieu thereof a period;

(5) in the second sentence of section 404(d)(1) (45 U.S.C. 564(d)(1)) by striking out "and passenger mile per train mile";

(6) by striking out the last sentence of section 404(d)(1) (45 U.S.C. 564(d)(1)); and

(7) in section 404(d)(2) (45 U.S.C. 564(d)(2))—

(A) by striking out "if—" and inserting in lieu thereof "if";

(B) by striking out "(A)"; and

(C) by striking out all after "mile" the second time it appears therein and inserting in lieu thereof a period.

(b) EFFECTIVE DATE.—The provisions of this section shall take effect on October 1, 1986.

SEC. 4015. ICC REGULATION.

Section 306(a)(3) of the Rail Passenger Service Act (45 U.S.C. 546(a)(3)) is amended by striking out ", except as otherwise provided in this Act,".

SEC. 4016. MEANING OF "DISCONTINUANCE" FOR LABOR PROTECTION PURPOSES.

Section 405(a) of the Rail Passenger Service Act (45 U.S.C. 565(a)) is amended by adding at the end thereof the following: "For purposes of subsection (c) of this section and any agreement designed to implement the provisions of such subsection, a 'discontinuance of intercity rail passenger service' shall not include any adjustment in frequency of intercity rail passenger trains the effect of which is a temporary suspension of service unless such suspension causes a reduction of passenger train operations on a particular route to a frequency of less than three round trips per week at any time during any calendar year.".

SEC. 4017. NORTHEAST CORRIDOR COST DISPUTE DECISIONS.

(a) ICC DECISIONS.—(1) Section 1163(a)(2) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111(a)(2)) is amended to read as follows:

"(2) The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization between intercity rail passenger service and commuter rail passenger service.".

(2) Any decisions of the Interstate Commerce Commission before the date of enactment of this Act under section 1163(a)(2) of the Northeast Rail Service Act of 1981 (45 U.S.C. 1111(a)(2)) shall have no force and effect after the date of enactment of this Act.

(b) ASSIGNMENT OF COSTS.—Section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a)) is amended—

(1) by inserting "(1)" immediately after "(a)";

(2) by inserting "(2)" immediately before "Notwithstanding";

(3) in the second sentence of paragraph (2), as so designated by paragraph (2) of this subsection, by striking out "180" and inserting in lieu thereof "120";

(4) in the last sentence of paragraph (2), as so designated by paragraph (2) of this subsection, by striking out "shall consider all relevant factors, and shall not permit cross subsidization among intercity, commuter," and inserting in lieu thereof "shall not permit cross subsidization between intercity rail passenger service"; and

(5) by adding at the end of paragraph (2), as so designated by paragraph (2) of this subsection, the following: "The Commission, in making such a determination, shall assign to a freight railroad obtaining services pursuant to this paragraph the costs incurred by the Corporation solely for the benefit of that railroad, plus a proportionate share of all other costs of providing services covered by this paragraph that are incurred for the common benefit of the Corporation and such freight railroad. The proportionate share of such other costs assigned to a freight railroad shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of the rail properties covered by this paragraph.

Nothing in this paragraph shall be construed to preclude parties from entering into an agreement under this paragraph either before or after a determination of the Commission under this paragraph.".

(c) EFFECTIVENESS OF STANDARD.—The compensation standard established by the amendment made by subsection (b) of this section shall be effective in any proceeding instituted under section 402(a)(2) of the Rail Passenger Service Act (45 U.S.C. 562(a)(2)) after the date of enactment of this Act.

(d) CONGRESSIONAL POLICY.—Nothing in this section, or any amendment made by this section, shall be construed to alter the Congressional policy against cross subsidization among intercity, commuter, and rail freight services expressed in the last sentence of section 402(a) of the Rail Passenger Service Act, as in effect before the date of enactment of this Act.

SEC. 4018. LOCAL RAIL SERVICE ASSISTANCE.

Section 5(q) of the Department of Transportation Act (49 U.S.C. App. 1654(q)) is amended—

(1) by inserting after "September 30, 1984." the following: "Of the funds authorized to be appropriated under this subsection, there are authorized to be appropriated not to exceed $12,000,000 for the fiscal year ending September 30, 1986, not to exceed $10,000,000 for the fiscal year ending September 30, 1987, and not to exceed $8,000,000 for the fiscal year ending September 30, 1988."; and

(2) by adding at the end thereof the following: "No funds are authorized to be appropriated under this subsection for any period after September 30, 1988.".

Subtitle B—Highway Programs

SEC. 4101. REDUCTIONS IN HIGHWAY APPORTIONMENTS.

(a) PRIMARY SYSTEM.—The first sentence of section 105(a)(1) of the Highway Improvement Act of 1982 is amended by striking out "$2,450,000,000" and inserting in lieu thereof "$2,375,000,000".

(b) BRIDGE REPLACEMENT AND REHABILITATION.—Section 202(1) of the Highway Safety Act of 1982 is amended by striking out "$2,050,000,000" and inserting in lieu thereof "$1,900,000,000".

(c) INTERSTATE 4R.—The first sentence of section 105 of the Federal-Aid Highway Act of 1978 is amended by striking out "$3,150,000,000" and inserting in lieu thereof "$2,975,000,000".

(d) APPORTIONMENT ADJUSTMENTS.—

(1) DETERMINATION OF ADJUSTMENT AMOUNT.—On the first day following the effective date of this section, the Secretary of Transportation shall determine—

(A) the amount of funds that would have been apportioned to each State on October 1, 1985—

(i) for the Federal-aid primary system program if the amendment made by subsection (a) had been in effect on such date;

(ii) for the highway bridge replacement and rehabilitation program if the amendment made by subsection (b) had been in effect on such date; and

(iii) for the program to resurface, restore, rehabilitate, and reconstruct routes on the National System of Interstate and Defense Highways if the amendment made by subsection (c) had been in effect on such date; and

(B) the amount by which the amount which was apportioned to such State on October 1, 1985, for such program exceeds the amount determined under subparagraph (A) for such program.

(2) ADJUSTMENTS TO CURRENT APPORTIONMENT.—To the extent that any funds—

(A) which were apportioned to a State on October 1, 1985, for any program referred to in paragraph (1)(A); and

(B) which are unobligated on the first day following the effective date of this section;

do not exceed the amount determined under paragraph (1)(B) for such program, such apportioned and unobligated funds shall lapse on such first day.

(3) ADJUSTMENT TO FUTURE APPORTIONMENT.—If the amount determined under paragraph (1)(B) with respect to the apportionment made on October 1, 1985, to any State for any program referred to in paragraph (1)(A) is greater than the amount of funds which lapse from the apportionment to such State for such program under paragraph (2), the Secretary of Transportation shall reduce the amount which, but for this paragraph, would otherwise be apportioned to such State for such program on October 1, 1986, by the amount of such excess.

SEC. 4102. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $13,125,000,000 for fiscal year 1986;

(2) $13,525,000,000 for fiscal year 1987; and

(3) $14,100,000,000 for fiscal year 1988.

(b) EXCEPTIONS.—The limitations under subsection (a) shall not apply to obligations—

(1) under section 125 of title 23, United States Code;

(2) under section 157 of such title;

(3) under section 320 of such title;

(4) under section 147 of the Surface Transportation Assistance Act of 1978;

(5) under section 9 of the Federal-Aid Highway Act of 1981;

(6) under sections 131(b) and 131(j) of the Surface Transportation Assistance Act of 1982; and

(7) under section 118 of the National Visitor Center Facilities Act of 1968.

(c) DISTRIBUTION OF OBLIGATIONAL AUTHORITY.—For each of the fiscal years 1986, 1987, and 1988, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid

highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(d) LIMITATION ON OBLIGATIONAL AUTHORITY.—During the period October 1 through December 31 of each of the fiscal years 1986, 1987, and 1988, no State shall obligate more than 35 percent of the amount distributed to such State under subsection (c) for such fiscal year, and the total of all State obligations during such period shall not exceed 25 percent of the total amount distributed to all States under such subsection for such fiscal year.

(e) REDISTRIBUTION OF UNUSED OBLIGATIONAL AUTHORITY.—Notwithstanding subsections (c) and (d), the Secretary of Transportation shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

(2) after August 1 of each of the fiscal years 1986, 1987, and 1988, revise a distribution of the funds made available under subsection (c) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses and Federal lands highways programs.

(f) CONFORMING AMENDMENT.—Section 157(b) of title 23, United States Code, is amended by striking out the period at the end of the last sentence and inserting in lieu thereof "and section 4102(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985.".

SEC. 4103. INCREASE IN THE STATE EMERGENCY REPAIR FUND LIMITATION.

The first sentence of section 125(b) of title 23, United States Code, is amended by inserting after "$30,000,000" the following: "(and $55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985)".

SEC. 4104. NATIONAL MINIMUM DRINKING AGE AMENDMENTS.

(a) EXTENSION OF PENALTY FOR NON-COMPLIANCE.—Section 158(a)(2) of title 23, United States Code, is amended by striking out "the fiscal year succeeding" and inserting in lieu thereof "each fiscal year after".

(b) COMPLYING STATE LAWS.—Subsection (a) of section 158 of such title is amended by adding at the end thereof the following new paragraph:

"(3) STATE GRANDFATHER LAW AS COMPLYING.—If, before the later of (A) October 1, 1986, or (B) the tenth day following the

last day of the first session the legislature of a State convenes after the date of the enactment of this paragraph, such State has in effect a law which makes unlawful the purchase and public possession in such State of any alcoholic beverage by a person who is less than 21 years of age (other than any person who is 18 years of age or older on the day preceding the effective date of such law and at such time could lawfully purchase or publicly possess any alcoholic beverage in such State), such State shall be deemed to be in compliance with paragraphs (1) and (2) of this subsection in each fiscal year in which such law is in effect.".

(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NON-COMPLIANCE.—Subsection (b) of section 158 of such title is amended to read as follows:

"(b) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NON-COMPLIANCE.—

"(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—

"(A) FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 1988.—Any funds withheld under this section from apportionment to any State on or before September 30, 1988, shall remain available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section 104(b)(5)(A) of this title but for this section, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

"(ii) If such funds would have been apportioned under section 104(b)(5)(B) of this title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of this title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

"(B) FUNDS WITHHELD AFTER SEPTEMBER 30, 1988.—No funds withheld under this section from apportionment to any State after September 30, 1988, shall be available for apportionment to such State.

"(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1)(A), the State makes effective a law which is in compliance with subsection (a), the Secretary shall on the day following the effective date of such law apportion to such State the withheld funds remaining available for apportionment to such State.

"(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure as follows:

"(A) Funds apportioned under section 104(b)(5)(A) of this title shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

"(B) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of this title shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of this title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.

"(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not made effective a law which is in compliance with subsection (a), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of this title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of this title.".

(d) CONFORMING AMENDMENTS.—Such section 158 is further amended—

(1) in subsection (a) by inserting "WITHHOLDING OF FUNDS FOR NONCOMPLIANCE.—" before "(1) The";

(2) in subsection (a)(1) by inserting "FIRST YEAR.—" before "The Secretary";

(3) by indenting paragraphs (1) and (2) of subsection (a) and aligning them with paragraph (3) of such subsection as inserted by subsection (b) of this section;

(4) in subsection (a)(1) by inserting "first" before "fiscal year" the second place it appears;

(5) in subsection (a)(2) by inserting "AFTER THE FIRST YEAR.—" before "The Secretary"; and

(6) in subsection (c) by inserting "ALCOHOLIC BEVERAGE DEFINED.—" before "As".

SEC. 4105. OHIO RIVER BRIDGE FUND REPROGRAMMING.

Section 147 of the Federal-Aid Highway Act of 1978 is amended by inserting "(a)" after "SEC. 147." and by adding at the end thereof the following new subsection:

"(b)(1) Of the funds which have been set aside previously pursuant to the fourth and fifth sentences of subsection (a) of this section and which are in excess of the amounts needed to complete the projects authorized by such subsection—

"(A) $65,000,000 shall be available to the Secretary of Transportation to carry out the state-of-the-art technology projects described in paragraph (2) of this subsection; and

"(B) the remainder shall be apportioned under subsection (e) of section 144 of title 23, United States Code, for carrying out projects under such section.

"(2) The state-of-the-art technology projects referred to in paragraph (1) of this subsection are the following:

"(A) Construction of a bridge (including approaches thereto) across the Ohio River between Newport, Kentucky, and Cincinnati, Ohio, to replace a bridge on a highway designated as a United States route.

"(B) Construction of a bridge (including approaches thereto) across the Ohio River between Covington, Kentucky, and Cincinnati, Ohio, to replace a bridge on a Kentucky State highway.

"(C) Construction of a bridge (including approaches thereto) across the Ohio River near Maysville, Kentucky, and Aberdeen, Ohio, to replace a bridge on a highway designated as a United States route.

"(3) In order to demonstrate the latest high-type geometric design features (including safety hardware) and new advances in highway bridge construction, the projects authorized by this subsection shall utilize state-of-the-art technology, and all design elements, including the decking, shall be designed to provide the best life-cycle costs, thereby minimizing future maintenance and rehabilitation costs.

"(4) The Secretary of Transportation may provide necessary technical assistance in the design and construction of projects under this subsection.

"(5) Not later than one year after the completion of the state-of-the-art technology projects under this subsection, the Secretary of Transportation shall submit a report to Congress, including but not limited to the results of such projects, the effects of using the best available technology on safety and other considerations, recommendations for applying the results to other bridge projects, and any changes that may be necessary by law to permit further use of such features.

"(6) In allocating funds made available to carry out the projects described in paragraph (2) of this subsection, the Secretary shall give priority to completing the projects described in subparagraphs (A) and (B) of such paragraph. At such time as the Secretary determines and certifies in writing that sufficient funds have been set aside, from the amount made available under paragraph (1)(A), to complete the projects described in subparagraphs (A) and (B) of paragraph (2), any remaining funds shall be used to carry out the project described in subparagraph (C) of paragraph (2).

"(7) Funds made available to carry out the projects described in paragraph (2) of this subsection shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that such funds shall be available until expended and shall not be subject to any obligation limitation. The Federal share of the projects described in paragraph (2) of this subsection shall be that provided in subsection (a).".

TITLE V—CORPORATION FOR PUBLIC BROADCASTING AND FEDERAL COMMUNICATIONS COMMISSION

SEC. 5001. CORPORATION FOR PUBLIC BROADCASTING.

(a) PUBLIC TELECOMMUNICATIONS FACILITIES.—Section 391 of the Communications Act of 1934 (47 U.S.C. 391) is amended—

(1) by striking out "and" after "1983,"; and

(2) by inserting ", $24,000,000 for fiscal year 1986, $28,000,000 for fiscal year 1987, and $32,000,000 for fiscal year 1988," immediately after "1984,".

(b) ALLOCATION OF APPROPRIATIONS.—Section 393 of the Communications Act of 1934 (47 U.S.C. 393) is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(c) FINANCING OF CORPORATION FOR PUBLIC BROADCASTING.—(1) Section 396(k)(1)(C) of the Communications Act of 1934 (47 U.S.C. 396(k)(1)(C)) is amended—

(A) by striking out "and 1986" and inserting in lieu thereof "1986, 1987, 1988, 1989, and 1990";

(B) by striking out "and" after "fiscal year 1985,"; and

(C) by inserting ", $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" immediately before the period at the end thereof.

(2) Section 396(k)(3)(A)(i)(II) of the Communications Act of 1934 (47 U.S.C. 396(k)(3)(A)(i)(II)) is amended by striking out "research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness,".

(3) Section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)) is amended—

(A) by striking out paragraph (8); and

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

SEC. 5002. FEDERAL COMMUNICATIONS COMMISSION.

(a) AUTHORIZATION OF APPROPRIATIONS.—(1) Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended to read as follows:

"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.".

(2) The amendment made by paragraph (1) of this subsection shall apply with respect to fiscal years beginning after September 30, 1985.

(b) REIMBURSED EXPENSES.—Section 4(g)(2) of the Communications Act of 1934 (47 U.S.C. 154(g)(2)) is amended—

(1) in subparagraph (D), by striking out "1985" and inserting in lieu thereof "1987"; and

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

"(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.".

(c) ANNUAL REPORT.—Section 5(g) of the Communications Act of 1934 (47 U.S.C. 155(g)) is amended by striking out "January 31" and inserting in lieu thereof "March 31".

(d) ADDITIONAL SAVINGS.—For provisions of law which, through relocation of the Fort Lauderdale, Florida, Monitoring Station of the Federal Communications Commission, reduce spending for fiscal year 1986 in satisfaction of the reconciliation requirements imposed by section 2(e) of S. Con. Res. 32 (99th Congress), see the material under the heading "FEDERAL COMMUNICATIONS COMMISSION" in the Supplemental Appropriations Act, 1985 (Public Law 99-88).

(e) CHARGES FOR OPERATIONS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting immediately after section 7 the following new section:

"CHARGES

"SEC. 8. (a) The Commission shall assess and collect charges at such rates as the Commission shall establish or at such modified rates as it shall establish pursuant to the provisions of subsection (b) of this section. The Schedule of Charges established under this subsection shall be implemented not later than 360 days after the date of enactment of this section.

"(b)(1) The Schedule of Charges established under this section shall be reviewed by the Commission every two 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 $5.00 in the case of fees under $100.00, or 5 percent in the case of fees of $100.00 or more. All fees which require adjustment will be rounded upward to the next $5.00 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 under 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 Commission 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 under this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use 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.".

(f) Until modified pursuant to section 8(b) of the Communications Act of 1934 (as added by subsection (e) of this section), the Schedule of Charges which the Federal Communications Commission shall prescribe pursuant to section 8(a) of such Act shall be as follows:

Schedule of Charges

	Service	*Fee amount*
	PRIVATE RADIO BUREAU	
1.	*Marine Coast Stations (New, Modifications, Renewals)*	*$60.00*
2.	*Operational Fixed Microwave Stations (New, Modifications, Renewals)*	*135.00*
3.	*Aviation (Ground Stations) (New, Modifications, Renewals)*	*60.00*
4.	*Land Mobile Radio Licenses (New, Modifications, Renewals)*	*30.00*
	EQUIPMENT APPROVAL SERVICE	
1.	*Certification*	
	a. Receivers (Except TV & FM Receivers)	*250.00*
	b. All Other Devices	*650.00*
2.	*Type Acceptance*	
	a. Approval of Subscription TV Systems	*2,000.00*
	b. All Others	*325.00*
3.	*Type Approval*	
	a. Ship (Radio Telegraph) Automatic Alarm Systems	*6,500.00*
	b. Ship and Lifeboat (Radio Telegraph) Transmitters	*3,250.00*
	c. All Others (With Testing)	*1,300.00*
	d. All Others (Without Testing)	*150.00*
4.	*Notifications*	*100.00*
	MASS MEDIA BUREAU	
1.	*Commercial TV Stations*	
	a. New and Major Change Construction Permits Application Fees	*2,250.00*
	b. Minor Changes Application Fee	*500.00*
	c. Hearing Charge	*6,000.00*
	d. License Fee	*150.00*
2.	*Commercial Radio Stations*	
	a. New and Major Change Construction Permits	
	(1) Application Fee AM Station	*2,000.00*
	(2) Application Fee FM Station	*1,800.00*
	b. Minor Changes Appl. Fee-AM & FM	*500.00*
	c. Hearing Charge	*6,000.00*
	d. License Fee	
	(1) AM	*325.00*
	(2) FM	*100.00*
	e. Directional Antenna License Fee (AM only)	*375.00*
3.	*FM/TV Translators and LPTV Stations (New & Major Change Construction Permits)*	
	a. Application Fee	*375.00*
	b. License Fee	*75.00*
4.	*Station Assignment and Transfer Fees*	
	a. AM, FM and TV Commercial Stations	
	(1) Application Fee (Forms 314/315)	*500.00*
	(2) Application Fee (Form 316)	*70.00*
	b. FM/TV Translators & LPTV Stations	*75.00*
5.	*Auxiliary Services Major Actions—Application Fee*	*75.00*
6.	*Renewals—All Services*	*30.00*

Schedule of Charges—Continued

Service	Fee amount
7. *Cable Television Service*	
a. *Cable Television Relay Service—Construction Permits, Assignments & Transfers, Renewals & Modifications.*	135.00
b. *Cable Special Relief Petitions—Filing Fee*	700.00
8. *Direct Broadcast Satellite New & Major Change CPs*	
a. *Application for Authorization to Construct a Direct Broadcast Satellite*	1,800.00
b. *Issuance of CP & Launch Authority*	17,500.00
c. *License to Operate Satellite*	500.00
d. *Hearing Charge*	6,000.00
COMMON CARRIER BUREAU	
1. *Domestic Public Land Mobile Stations (Base, Dispatch, Control & Repeater Stations)*	
a. *New or Additional Facility Authorizations, Assignments & Transfers (Per transmitter/per station).*	200.00
b. *Renewals and Minor Modifications (Per station)*	20.00
c. *Air-Ground Individual License Renewals & Modifications*	20.00
2. *Cellular Systems*	
a. *Initial Construction Permits & Major Modification Applications (Per cellular systems).*	200.00
b. *Assignments & Transfers (Per station)*	200.00
c. *Initial covering license (Per cellular system)*	
(1) *Wireline carrier*	525.00
(2) *Nonwireline carrier*	50.00
d. *Renewals*	20.00
e. *Minor modifications and additional licenses*	50.00
3. *Rural Radio (Central Office, Interoffice or Relay Facilities)*	
a. *Initial Construction Permit, Assignments & Transfers (Per transmitter)*	90.00
b. *Renweals & Modifications (Per station)*	20.00
4. *Offshore Radio Service*	
a. *Initial Construction Permit, Assignments & Transfers (Per transmitter)*	90.00
b. *Renewals & Modifications (Per station)*	20.00
5. *Local Television or Point To Point Microwave Radio Service*	
a. *Construction Permits, Modifications of Construction Permits, and Renewals of Licenses.*	135.00
b. *Assignments & Transfers of Control (Per Station)*	45.00
c. *Initial License for New Frequency*	135.00
6. *International Fixed Public Radio (Public & Control Stations)*	
a. *Initial Construction Permits, Assignments & Transfers*	450.00
b. *Renewals & Modifications*	325.00
7. *Satellite Services*	
a. *Transmit Earth Stations*	
(1) *Initial Station Authorization*	1,350.00
(2) *Assignments & Transfers of Station Authorizations*	450.00
(3) *All Other Applications*	90.00
b. *Small Transmit/Receive Earth Stations (2 meters or less)*	
(1) *Lead Authorization*	3,000.00
(2) *Routine Authorization*	30.00
(3) *All Other Applications*	90.00
c. *Receive Only Earth Stations*	
(1) *Initial Station Authorization*	200.00
(2) *All Other Applications*	90.00
d. *Applications For Authority To Construct a Space Station*	1,800.00
e. *Applications For Authority To Launch & Operate a Space Station*	18,000.00
f. *Satellite System Application*	
(1) *Initial Station Authorization*	5,000.00
(2) *Assignments & Transfers of Systems*	1,333.00
(3) *All Other Applications*	90.00
8. *Multipoint Distribution Service*	
a. *Construction Permits, Renewals & Modifications of Construction Permits*	135.00
b. *Assignments & Transfers of Control (Per Station)*	45.00
c. *Initial License (Per channel)*	400.00

Schedule of Charges—Continued

	Service	*Fee amount*
9.	*Section 214 Applications*	
	a. Applications for Overseas Cable Construction	*8,100.00*
	b. Applications for Domestic Cable Construction	*540.00*
	c. All Other 214 Applications	*540.00*
10.	*Tariff Filings*	
	a. Filing Fee	*250.00*
	b. Special Permission Filings	*200.00*
11.	*Telephone Equipment Registration*	*135.00*
12.	*Digital Electronic Message Service*	
	a. Construction Permits, Renewals & Modifications of Construction Permits	*135.00*
	b. Assignments & Transfers of Control (Per station)	*45.00*
	c. Initial License (First License or License Adding a New Frequency)	*135.00*

TITLE VI—MARITIME, COASTAL ZONE, AND RELATED PROGRAMS

Subtitle A—Boating Safety Fund

SEC. 6001. BOATING SAFETY FUND.

An amount equal to one-third of the amount transferred for fiscal year 1985 to the Boat Safety Account under section 9503(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. 9503(c)(4)) shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities. Section 13106(a) of title 46, United States Code, shall be applied with respect to fiscal year 1985 by substituting "one-third" for "two-thirds" in the first sentence.

Subtitle B—NOAA Nautical and Aeronautical Products

SEC. 6011. SALE AND DISTRIBUTION OF NOAA NAUTICAL AND AERONAUTICAL PRODUCTS.

(a) Section 1307 of title 44, United States Code, is amended to read as follows:

"§ 1307. National Oceanic and Atmospheric Administration: nautical and aeronautical products, sale and distribution

"(a)(1) All nautical and aeronautical products created or published by the National Oceanic and Atmospheric Administration shall be sold at such prices as the Secretary of Commerce shall establish annually, in accordance with the provisions of this subsection. The Secretary shall publish annually the prices at which nautical and aeronautical products are sold to the public.

"(2)(A) Subject to subparagraph (B) of this paragraph, the prices of nautical and aeronautical products may be increased over a period of not less than three years after the date of enactment of this section so as to recover all costs attributable to data base management, compilation, printing, and distribution of such products. The prices of such products may be maintained to recover all such costs thereafter. At the end of such period and every three years thereafter, the Secretary, after consultation with the Secretary of

Transportation, shall report to the Congress on the effect of imposing or maintaining such increased prices, including any impact on aviation and marine safety.

"(B) The Secretary, after consultation with the Secretary of Transportation, shall adjust the prices of nautical or aeronautical products in such manner as is necessary to avoid any adverse impact on aviation and marine safety attributable to the prices specified in subparagraph (A) of this paragraph.

"(3) This section shall not be construed to require the establishment of any price for a nautical or aeronautical product where, in the judgment of the Secretary, furnishing of that product to a recipient is a reasonable exchange for voluntary contribution of information by the recipient to a program of the National Oceanic and Atmospheric Administration.

"(4) Prices established under this section may not include costs attributable to the acquisition or processing of nautical or aeronautical data.

"(b) Fees collected from the sale of nautical or aeronautical products under this section and from any licensing of such products which is permitted under any other provision of law shall be deposited in the miscellaneous receipts fund of the United States Treasury.

"(c) The Secretary may distribute nautical and aeronautical products—

"(1) without charge to each foreign government or international organization with which the Secretary or a Federal department or agency has an agreement for exchange of these products without cost; and

"(2) at prices which the Secretary establishes, to the departments and officers of the United States requiring them for official use.

"(d) The fees provided for in this section are for the purpose of reimbursing the United States Government for the costs of creating, publishing or distributing aeronautical and nautical products of the National Oceanic and Atmospheric Administration. The collection of fees authorized by this section shall not alter or expand any duty or liability of the United States under existing law for the performance of functions for which fees are collected, nor shall the collection of fees constitute an express or implied undertaking by the United States to perform any activity in a certain manner.

"(e) For purposes of this section, the term 'nautical and aeronautical products' includes all nautical and aeronautical charts, tide and tidal current tables, tidal current charts, coast pilots, water level products, and associated data bases which are created or published by the National Oceanic and Atmospheric Administration.".

(b) The item relating to section 1307 in the analysis of chapter 13 of title 44, United States Code, is amended to read as follows:

"1307. National Oceanic and Atmospheric Administration: nautical and aeronautical products, sale and distribution.".

Subtitle C—Foreign Fishing Permit Fees

SEC. 6921. FOREIGN FISHING PERMIT FEES.

Paragraph (10) of section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)) is amended to read as follows:

"(10) FEES.—(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation.

"(B) Unless subparagraph (C) applies, the fees imposed under subparagraph (A) shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year.

"(C) If the Secretary, in consultation with the Secretary of State, finds that any foreign nation receiving an allocation under section 201(e)—

"(i) is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

"(ii) is failing to take sufficient action to benefit the conservation and development of United States fisheries;

the fees imposed under subparagraph (A) for the next fiscal year shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone during such preceding year. If the Secretary, in consultation with the Secretary of State, finds, at any time during a fiscal year in which fees calculated under this subparagraph are in effect with respect to a foreign nation, that the conditions requiring that calculation no longer exist, the fees imposed under this paragraph with respect to that nation for the remainder of the fiscal year shall be calculated under subparagraph (B).

"(D) Before the end of each fiscal year, the Secretary, in consultation with the Secretary of State, shall review, based on the criteria established in subparagraph (C) (i) and (ii), the performance of every nation receiving an allocation under section 201(e) and provide written notice to the Congress of his findings and reasons therefor before the end of the fiscal year.

"(E) For purposes of this paragraph, the total cost of carrying out the provisions of this Act includes, but is not limited to, fishery conservation and management, fisheries research, ad-

ministration, and enforcement, but excludes costs for observers covered by surcharges under section 201(i)(4).

"(F)(i) The amounts collected by the Secretary under this paragraph (except the amounts referred to in clause (ii)) shall be transferred to the fisheries loan fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(c)) for so long as such fund exists and used for the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts.

"(ii) The Secretary shall deposit into the general fund of the United States Treasury the difference between the amounts collected under subparagraph (C) and the amounts that would have been collected from such nations had that subparagraph not been enacted.".

Subtitle D—Ocean and Coastal Resources Management and Development Block Grant Act

SEC. 6031. DEFINITIONS.

For purposes of this subtitle—

(1) The term "block grant" means a National Ocean and Coastal Resources Management and Development Block Grant.

(2) The term "coastal population" means that term as defined in regulations issued on May 17, 1982, at 15 CFR Part 927.

(3)(A) The term "coastal-related energy facilities" means any equipment or facility that—

(i) is or will be used primarily in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource or for the manufacture, production, or assembly of equipment, machinery, products, or devices that are involved in any such energy-resource activity, and

(ii) is, or is likely to be, sited, constructed, expanded, or operated in, or in close proximity to, the coastal zone of any State because of technical requirements.

(B) The term includes—

(i) electric generating plants;

(ii) facilities associated with the transportation, transfer, or storage of coal;

(iii) petroleum refineries and associated facilities;

(iv) gasification plants;

(v) facilities associated with the transportation, conversion, treatment, transfer, or storage of liquefied natural gas;

(vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes;

(vii) facilities, including deepwater ports, for the transfer of petroleum;

(viii) facilities used for alternative ocean energy activities, including those associated with ocean thermal energy conversion; and

(ix) pipelines, transmission facilities, and terminals associated with any of the foregoing.

(C) For the purposes of this subtitle, the siting, construction, expansion, or operation of any coastal-related energy facilities is "in close proximity to the coastal zone of any state" if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(4) The term "coastal state" means the Commonwealth of Puerto Rico and any state of the United States in, or bordering on, the Atlantic Ocean, the Pacific Ocean, the Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes.

(5) The term "coastal territory" means the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, American Samoa, or Guam.

(6) The term "Fund" means the Ocean and Coastal Resources Management and Development Fund.

(7) The term "local government" means that term as defined in section 304(11) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(11)) and, with respect to the State of Alaska, the term includes unincorporated communities, including Alaska Native villages.

(8) The term "outer Continental Shelf planning area" means one of the geophysical regions of the outer Continental Shelf which is so designated in the Outer Continental Shelf Leasing Program (43 U.S.C. 1344), dated July 21, 1982, or as so designated in subsequent outer Continental Shelf leasing programs.

(9) The term "proportionately" means in the same ratio as a state's allocation.

(10) The term "Secretary" means the Secretary of Commerce.

(11) The term "shoreline mileage" means that term as defined in regulations issued on May 17, 1982, at 15 CFR Part 927.

(12) The term "state" means any coastal state or coastal territory.

SEC. 6032. OCEAN AND COASTAL RESOURCES MANAGEMENT AND DEVELOPMENT FUND.

(a) There is established in the Treasury of the United States a fund to be known as the Ocean and Coastal Resources Management and Development Fund.

(b)(1) Subject to the limitations in paragraph (2), for each fiscal year after fiscal year 1987, the Secretary of the Treasury shall deposit into the Fund, not later than 60 days after the end of the previous fiscal year, an amount equal to 20 per centum of the amount, if any, by which the aggregate of the sums deposited into the Treasury of the United States pursuant to section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338) during the previous fiscal year exceeded $5,000,000,000.

(2) The amount in the Fund at any time during a fiscal year may not exceed the following maximum amount:

(A) During fiscal year 1988, $150,000,000.

(B) During fiscal year 1989, $300,000,000.

(C) During fiscal year 1990, an amount equal to 105 percent of the maximum amount specified under subparagraph (B).

(D) During each fiscal year after fiscal year 1990, an amount equal to 105 percent of the maximum amount applicable under this paragraph for the immediately preceding fiscal year.

(c) As provided in advance by appropriation Acts, the Secretary shall use the total amount of any amounts deposited in the Fund during each fiscal year to carry out the purposes of, and in accordance with, section 6033.

SEC. 6033. NATIONAL OCEAN AND COASTAL RESOURCES MANAGEMENT AND DEVELOPMENT BLOCK GRANTS.

(a) Subject to the provisions of section 6032(c) and this section, for fiscal year 1988 and for each subsequent fiscal year, the Secretary shall provide to each state a national ocean and coastal resources management and development block grant from amounts in the Fund.

(b)(1) No state may receive a block grant for a fiscal year unless such state has submitted to the Secretary a report for such fiscal year that—

(A) specifies the proposed allocation by such state of the block grant among coastal zone management activities, coastal energy impact activities, living marine resource activities, and natural resource preservation, enhancement and management activities under section 6034(a); and

(B) describes each proposed activity receiving funds provided by the block grant and the amounts proposed to be expended for each activity.

(2) In order to be eligible to receive a block grant pursuant to this subtitle and before submitting the report required under paragraph (1), each state shall provide opportunities for the public to review and comment on the report and shall hold at least one public hearing on such report at a site in the state convenient for encouraging maximum public participation.

(c) A block grant shall not be paid from the Fund to a state until the state has established a trust fund for the receipt of such grant.

(d) The amount of each block grant provided under subsection (a) shall be determined by the Secretary under a formula established by the Secretary which gives equal consideration to each of the following criteria:

(1) For each state, the equal combination of—

(A) the amount of actual leasing with respect to oil and gas which is carried out under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) during the previous fiscal year which occurs within the Outer Continental Shelf planning area to which such state is adjacent; and

(B) the volume of oil and gas produced from Outer Continental Shelf acreage leased by the Federal Government which is first landed in such state during the previous fiscal year.

(2) For each state, any proposed oil and gas lease sales specified by the Outer Continental Shelf leasing program prepared under section 18(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1344(a)) and scheduled to occur within the Outer Continental Shelf planning area to which such state is adjacent.

(3) The coastal-related energy facilities (including coal facilities) located within each state during the previous fiscal year. For any state for which the Secretary has not approved a coastal zone management program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), this criterion shall be reduced by 50 per centum. The amounts resulting from such reduction shall be reallocated proportionately, under this paragraph, among states for which the Secretary has approved such a management program.

(4) The shoreline mileage of each state for which the Secretary has approved a coastal zone management program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(5) The coastal population of each state for which the Secretary has approved a coastal zone management program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(e) For purposes of paragraphs (4) and (5) of subsection (d)—

(1) the Secretary shall be presumed to have approved the coastal zone management program of any state if the Secretary determines that, in any fiscal year, such state is making satisfactory progress toward the development of a coastal zone management program which will be approvable under section 306 of the Coastal Zone Management Act (16 U.S.C. 1455). Such presumption may be renewed only once and for a period not to exceed one additional fiscal year if the Secretary makes such determination under this subsection for such additional fiscal year; and

(2) a state shall not receive in excess of 30 per centum of the amounts attributable to either criterion.

If any state would receive an allotment greater than 30 per centum, the Secretary shall reduce such allotment to 30 per centum. The amounts resulting from such reduction shall be reallocated proportionately among those states that receive less than 30 per centum of the amounts attributable to such criterion.

(f)(1) For states for which the Secretary has approved a coastal zone management program under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), a coastal state shall receive not less than one and sixty two one-hundredths per centum, and a coastal territory not less than one-half of one per centum, of the total amount available for block grants under section 6032(c) during any fiscal year.

(2) If, after the calculations required under subsection (d), any coastal state or coastal territory is to receive a block grant that is less than the respective minimum grant levels established under paragraph (1), the Secretary shall increase such state's block grant to the minimum level. Amounts necessary to make such increases shall be derived by reducing proportionately the block grant of each state which, as determined under subsection (d), exceeds the respective minimum level under paragraph (1).

(3) For the purposes of the implementation of section 6034(b), block grant levels may fall below the respective minimum levels established under this section.

(g) If, after the calculations required under subsections (d), (e) and (f), any state would receive a block grant which is greater than 15 per centum of the funds appropriated under section 6032(c), the Secretary shall reduce such state's block grant to 15 per centum. The amounts resulting from such reduction shall be reallocated proportionately among states receiving less than 15 per centum of such funds and more than the minimum grant levels under subsection (f).

(h)(1) After determining the amount of a block grant for any State for any fiscal year under subsections (d) through (g), the Secretary shall determine the final amount of that grant by deducting (but not below 0) from the amount determined under those subsections—

(A) an amount equal to 50 percent of the average annual amount of all Federal assistance received by that State under the Coastal Zone Management Act of 1972 during the 3 immediately preceding fiscal years; and

(B) subject to paragraph (2), an amount equal to 50 percent of the average annual amount received by that State under section 8(g) of the Outer Continental Shelf Lands Act during the 3 immediately preceding fiscal years.

(2) In calculating the average annual amount under paragraph (1)(B) for any 3-year period that includes the year in which the state received payment under section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985, the Secretary shall treat the state as having received, under section 8(g) of the Outer Continental Shelf Lands Act, an amount equal to 20 percent of the payment under such section 8004—

(i) for the fiscal year in which the payment under such section 8004 was received; and

(ii) for any fiscal year in the 3-year period that preceded the fiscal year referred to in clause (i).

(3) The Secretary shall deposit moneys equal to the amounts by which block grants are reduced under paragraph (1) into the general fund of the United States Treasury as miscellaneous receipts.

SEC. 6034. REQUIREMENTS ON THE USE OF BLOCK GRANTS.

(a) Block grants provided to a state under section 6033(a) shall be used for the enhancement and management of ocean and coastal resources and for the amelioration of any adverse impacts that result from the siting, construction, expansion, or operation of coastal-related energy facilities. Such block grants shall be used only for each of the following activities:

(1) Activities of such state authorized by the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Activities of such state pursuant to the coastal energy impact program administered under section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1457).

(3) Activities of such state for the enhancement, management and development of living marine resources.

(4) Activities of such state for the preservation, enhancement and management of its natural resources including coastal habitats.

(b) Nothing in this subtitle shall be construed to repeal or modify, by implication or otherwise, section 312 of the Coastal Zone Man-

agement Act of 1972 (16 U.S.C 1461). The Secretary shall reduce any block grant, provided under this subtitle to a state that has an approved program under section 306 of the Coastal Zone Management Act (16 U.S.C. 1455), by no more than 30 per centum of the amount of such state's block grant that is attributable to paragraphs (4) and (5) of section 6033(d), if the Secretary makes the determination provided in section 312(c) of the Coastal Zone Management Act.

SEC. 6035. LOCAL GOVERNMENTS.

(a) Each state receiving a block grant in any fiscal year under section 6033(a) shall—

(1) establish an effective mechanism for consultation and coordination with its local governments with respect to the allocation of such block grant within the state; and

(2) provide to its local governments allocations from such block grant, taking into consideration the responsibilities of the local governments in carrying out activities under section 6034(a).

(b) In carrying out its responsibilities under subsection (a)(2), the state shall give particular emphasis to the activities of local governments in—

(1) providing public services and public facilities required as a result of the siting, construction, expansion, or operation of coastal-related energy facilities; and

(2) preventing, reducing, or ameliorating any unavoidable loss of valuable environmental or recreational resources if such loss results from the siting, construction, expansion, or operation of coastal-related energy facilities.

(c) In carrying out its responsibilities under this section, each state shall provide no less than 33⅓ per centum of each block grant received under section 6033(a) to its local governments.

SEC. 6036. AUDIT.

(a) Under regulations promulgated by the Secretary, any state receiving a block grant under section 6033(a) shall, for each fiscal year that it receives such grant, provide that amounts received under this subtitle be subject to audit in accordance with chapter 75 of title 31, United States Code, and be submitted to the Secretary. The income derived from such trust fund for each fiscal year shall be included in the audit required by this section.

(b) Each audit submitted by a state under subsection (a) shall—

(1) contain a statement of all funds provided by the block grant received by such state for the fiscal year; and

(2) include a statement of all financial assistance provided to such state's local governments pursuant to section 6035.

(c) After receiving a state's financial audit under this section, the Secretary shall—

(1) make a preliminary evaluation of each audit submitted pursuant to this section. If the Secretary determines, in the preliminary evaluation of a state's audit, that all or any part of the block grant has not been used as required by this subtitle, the Secretary shall publish notice of this finding in the Federal Register. In addition, the Secretary may suspend, and place in escrow, an amount from any future block grant which is equiv-

alent to the amount misused, pending final determination pursuant to paragraph (3);

(2) provide the state with an opportunity for a hearing; and

(3) make a final determination.

(d) If the Secretary makes a final determination under subsection (c)(3) that all or any part of such funds were not used as required by this subtitle, the Secretary shall—

(1) provide in writing to the state the reasons for the determination and the amount of funds misused; and

(2) take appropriate action to recover an amount equal to that determined to have been misused under subsection (c), including the withholding of such amount from a State's future block grant or the amount which may have been suspended under subsection (c)(1).

(e) If no appeal of the final determination is filed within sixty days following notification to the State of the final determination, any funds withheld or recovered by the Secretary under subsection (d)(2) shall be returned to the Fund.

(f) If an appeal of the final determination is filed within the sixty-day period specified in subsection (e), any funds withheld by the Secretary shall be held in escrow until such time as a final determination is made of the appeal.

SEC. 6037. RULES AND REGULATIONS.

The Secretary shall promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for participation by relevant Federal agencies, State agencies, local governments, regional organizations, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this subtitle.

Subtitle E—Amendments to the Coastal Zone Management Act

SEC. 6041. SHORT TITLE.

This subtitle may be cited as the "Coastal Zone Management Reauthorization Act of 1985".

SEC. 6042. REFERENCE.

Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment, or repeal, of a section, subsection, paragraph, or other provision, the reference is to be considered to be made to a section, subsection, paragraph, or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) unless otherwise specified.

SEC. 6043. REDUCTION OF ADMINISTRATIVE GRANTS.

(a) Section 312(c) (16 U.S.C. 1458(c)) is amended by striking "if the Secretary determines" and all that follows thereafter and inserting in lieu thereof the following: "if the Secretary determines that the coastal state—

"(1) is failing to make significant improvement in achieving the coastal management objectives specified in section 303(2) (A) through (I); or

"(2) is failing to make satisfactory progress in providing in its management program for the matters referred to in section 306(i) (A) and (B).".

(b)(1) Subsection (a) of section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) is amended by striking out "The Secretary may" and all that follows through "if the Secretary—" and substituting in lieu thereof the following: "The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; 1 to 1 for any fiscal year after fiscal year 1988. The Secretary may make the grant only if the Secretary—".

(2) Section 306A is amended by striking section (d)(1) and substituting in lieu thereof the following:

"(d)(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988.".

(c) Section 306(g) (16 U.S.C. 1455) is amended by striking out the period at the end of the first sentence and all that follows thereafter and inserting in lieu thereof the following: ", and subject to the following conditions:

"(1) The state shall promptly notify the Secretary of any proposed amendment, modification or other program change and submit it for Secretarial approval. The Secretary may suspend all or part of any grant made under this section pending state submission of the proposed amendment, modification or other program change.

"(2) Within 30 days from the date on which the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days from the date the Secretary received the proposed amendment. The Secretary may extend this 120-day period only as necessary to meet the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

"(3) The state may not implement any proposed amendment as part of its approved program pursuant to section 306, until after the proposed amendment has been approved by the Secretary.".

SEC. 6044. NATIONAL ESTUARINE RESERVE RESEARCH SYSTEM.

Section 315 (16 U.S.C. 1461) is amended to read as follows:

"NATIONAL ESTUARINE RESERVE RESEARCH SYSTEM

"SEC. 315. (a) ESTABLISHMENT OF THE SYSTEM.—There is established the National Estuarine Reserve Research System (hereinafter referred to in this section as the 'System') that consists of—

"(1) each estuarine sanctuary designated under this section as in effect before the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985; and

"(2) each estuarine area designated as a national estuarine reserve under subsection (b).

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a national estuarine reserve.

"(b) DESIGNATION OF NATIONAL ESTUARINE RESERVES.—After the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985, the Secretary may designate an estuarine area as a national estuarine reserve if—

"(1) the Governor of the coastal state in which the area is located nominates the area for that designation; and

"(2) The Secretary finds that—

"(A) the area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

"(B) the law of the coastal State provides long-term protection for reserve resources to ensure a stable environmental for research;

"(C) designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

"(D) the coastal State in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section.

"(c) ESTUARINE RESEARCH GUIDELINES.—The Secretary shall develop guidelines for the conduct of research within the System that shall include—

"(1) a mechanism for identifying, and establishing priorities among, the coastal management issues that should be addressed through coordinated research within the System;

"(2) the establishment of common research principles and objectives to guide the development of research programs within the System;

"(3) the identification of uniform research methodologies which will ensure comparability of data, the broadest application of research results, and the maximum use of the System for research purposes;

"(4) the establishment of performance standards upon which the effectiveness of the research efforts and the value of reserves within the System in addressing the coastal management issues identified in subsection (1) may be measured; and

"(5) the consideration of additional sources of funds for estuarine research than the funds authorized under this Act, and strategies for encouraging the use of such funds within the System, with particular emphasis on mechanisms established under subsection (d).

In developing the guidelines under this section, the Secretary shall consult with prominent members of the estuarine research community.

"(d) PROMOTION AND COORDINATION OF ESTUARINE RESEARCH.—The Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes including—

"(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting estuarine research, give priority consideration to research that uses the System; and

"(2) consulting with other Federal and State agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research.

"(e) FINANCIAL ASSISTANCE.—(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants—

"(A) to a coastal State—

"(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve,

"(ii) for purposes of operating or managing a national estuarine reserve and constructing appropriate reserve facilities, or

"(iii) for purposes of conducting educational or interpretive activities; and

"(B) to any coastal State or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c).

"(2) Financial assistance provided under paragraph (1) shall be subject to such terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal States to execute suitable title documents setting forth the property interest or interests of the United States in any lands and waters acquired in whole or part with such financial assistance.

"(3)(A) The amount of the financial assistance provided under paragraph (1)(A)(i) of subsection (e) with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 per centum of the costs of the lands, waters, and interests therein or $4,000,000, whichever amount is less.

"(B) The amount of the financial assistance provided under paragraph (1)(A) (ii) and (iii) and paragraph (1)(B) of subsection (e) may not exceed 50 per centum of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve.

"(f) EVALUATION OF SYSTEM PERFORMANCE.—(1) The Secretary shall periodically evaluate the operation and management of each national estuarine reserve, including education and interpretive activities, and the research being conducted within the reserve.

"(2) If evaluation under paragraph (1) reveals that the operation and management of the reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under subsection (c), the Secretary may suspend the eligibility of that reserve for financial assistance under subsection (e) until the deficiency or inconsistency is remedied.

"(3) The Secretary may withdraw the designation of an estuarine area as a national estuarine reserve if evaluation under paragraph (1) reveals that—

"(A) the basis for any one or more of the findings made under subsection (b)(2) regarding that area no longer exists; or

"(B) a substantial portion of the research conducted within the area, over a period of years, has not been consistent with the research guidelines developed under subsection (c).

"(g) REPORT.—The Secretary shall include in the report required under section 316 information regarding—

"(1) new designations of national estuarine reserves;

"(2) any expansion of existing national estuarine reserves;

"(3) the status of the research program being conducted within the System; and

"(4) a summary of the evaluations made under subsection (f).".

SEC. 6045. REPEALS.

The following are repealed:

(1) Section 310 (16 U.S.C. 1456c; relating to research and technical assistance programs and grants).

(2) Section 314 (16 U.S.C. 1460; establishing the Coastal Zone Management Advisory Committee).

(3) Subsection (c) of section 15 of the Coastal Zone Management Act Amendments of 1976, Public Law 94-370 (16 U.S.C. 1451 note; relating to certain additional personnel positions).

SEC. 6046. AUTHORIZATIONS OF APPROPRIATIONS.

Section 318 (16 U.S.C. 1464) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) such sums, not to exceed $35,000,000 for the fiscal year ending September 30, 1986, not to exceed $36,600,000 for the fiscal year ending September 30, 1987, $37,900,000 for the fiscal year ending September 30, 1988, $38,800,000 for the fiscal year ending September 30, 1989, and $40,600,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under sections 306 and 306A, to remain available until expended;".

(2) by striking paragraph (2) and renumbering the succeeding paragraphs; and

(3) by amending paragraphs (3), (4), and (5) (as renumbered by paragraph (2) of this section) to read as follows:

"(3) such sums, not to exceed $1,000,000 for the fiscal year ending September 30, 1986, and not to exceed $1,500,000 for each of the fiscal years occurring during the period beginning October 1, 1986, and ending September 30, 1990, as may be necessary for grants under section 309, to remain available until expended;

"(4) such sums, not to exceed $2,500,000 for the fiscal year ending September 30, 1986; not to exceed $3,800,000 for the fiscal year ending September 30, 1987, $4,500,000 for the fiscal year ending September 30, 1988, $5,000,000 for the fiscal year ending September 30, 1989, and $5,500,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under section 315, to remain available until expended; and

"(5) such sums, not to exceed $3,300,000 for the fiscal year ending September 30, 1986, not to exceed $3,300,000 for the fiscal year ending September 30, 1987, $3,300,000 for the fiscal

year ending September 30, 1988, $4,000,000 for the fiscal year ending September 30, 1989, and $4,000,000 for the fiscal year ending September 30, 1990, as may be necessary for administrative expenses incident to the administration of this title.".

SEC. 6047. TECHNICAL AMENDMENT.

Section 308(h) (16 U.S.C. 1456a(h)) is amended by deleting "subsections (c)(1)" each place it appears and inserting instead "subsections (c)".

Subpart F—National Oceanic and Atmospheric Administration

SEC. 6051. AUTHORIZATION OF APPROPRIATIONS.

(a) For purposes of this section—

(1) The term "Administration" means the National Oceanic and Atmospheric Administration.

(2) The term "Department" means the Department of Commerce.

(b) There are authorized to be appropriated to the Department to enable the Administration to carry out its executive direction and administration functions and duties under law, $47,667,000 for fiscal year 1986 and $49,812,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to executive direction and administration authorized by the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857–1 et seq.), and any other law involving such functions and duties. Such functions and duties include management, administrative support, retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development.

(c) There are authorized to be appropriated to the Department to enable the Administration to carry out its marine services functions and duties under law, $61,791,000 for fiscal year 1986 and $64,572,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to marine services authorized by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such functions and duties. Such functions and duties include ship operations, maintenance, and support.

(d) There are authorized to be appropriated to the Department to enable the Administration to carry out its aircraft services functions and duties under law, $14,779,000 for fiscal year 1986 and $15,440,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to aircraft services authorized by the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Service to the Department of Agriculture", approved October 1, 1890 (15 U.S.C. 311 et seq.), and any other law involving such functions and duties. Such functions and duties include aircraft operations, maintenance, and support.

(e) For the purpose of enabling the Administration to carry out its functions and duties under the National Advisory Committee on Oceans and Atmosphere Act of 1977 (33 U.S.C. 857-13 et seq.), there are authorized to be appropriated to the Department $500,000 for fiscal year 1986.

(f)(1) There are authorized to be appropriated to the Department to enable the Administration to carry out its nonliving marine resource functions and duties under law, $1,800,000 for fiscal year 1986 and $1,881,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to nonliving marine resources authorized by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such functions and duties. Such functions and duties include research, development, and licensing responsibilities pertaining to ocean thermal energy conversion and the deep seabed mining of manganese nodules, and polymetallic sulfide analyses and research.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to moneys authorized under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 et seq.), and the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), for the purpose of carrying out such functions and duties relating to nonliving marine resources.

(g)(1) There are authorized to be appropriated to the Department to enable the Administration to carry out its ocean research functions and duties under law, $33,884,000 for fiscal year 1986 and $35,409,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to ocean research authorized by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such functions and duties. Such functions and duties include undersea marine resources, air-sea interaction, and ocean and Great Lakes environmental research.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to ocean research moneys authorized under the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) for the purpose of carrying out such functions and duties relating to ocean research.

(h)(1) There are authorized to be appropriated to the Department to enable the Administration to carry out its ocean service functions and duties under law, $17,181,000 for fiscal year 1986 and $17,954,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to ocean services authorized by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such functions and duties. Such functions and duties include coordination of interagency research in ocean dumping and marine pollution, and provision of tide and current data for the safe and efficient use of the oceans and Great Lakes by government, commerce, and the private sector.

(2) The authorization provided for under paragraph (1) of this subsection shall be in addition to moneys authorized under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), and the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.), for the purpose of carrying out such functions and duties relating to ocean services.

(i) There are authorized to be appropriated to the Department to enable the Administration to carry out its mapping, charting, and geodesy functions and duties under law, $47,943,000 for fiscal year 1986 and $50,100,000 for fiscal year 1987. Moneys appropriated pursuant to this authorization shall be used to fund those functions and duties relating to mapping, charting, and geodesy authorized by the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.), and any other law involving such functions and duties. Such functions and duties include aeronautical and nautical mapping and charting activities, and geodetic data collection and analysis.

(j) There are authorized to be appropriated to the Department to enable the Administration to carry out its programs at current levels such sums as may be necessary to accommodate salary, pay, and other employee benefits authorized by law for fiscal years 1986 and 1987.

Subtitle G—Marine Protection, Research, and Sanctuaries Act Amendments

SEC. 6061. CONSOLIDATION OF REPORT.

Section 201 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441) is amended by striking out all that follows "connecting waters" and inserting in lieu thereof a period.

SEC. 6062. MARINE RESEARCH REQUIREMENTS.

Section 202 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1442) is amended—

(1) by inserting "(1)" before "The Secretary" in subsection (a);

(2) by striking out "in consultation" in the first sentence of subsection (a) and inserting in lieu thereof "in close consultation";

(3) by adding at the end of subsection (a) the following new paragraph:

"(2) The Secretary of Commerce shall ensure that the program under this section complements, when appropriate, the activities undertaken by other Federal agencies pursuant to title I and section 203. That program shall include but not be limited to—

"(A) the development and assessment of scientific techniques to define and quantify the degradation of the marine environment;

"(B) the assessment of the capacity of the marine environment to receive materials without degradation;

"(C) continuing monitoring programs to assess the health of the marine environment, including but not limited to the monitoring of bottom oxygen concentrations, contaminant levels in biota, sediments, and the water column, diseases in fish and

shellfish, and changes in types and abundance of indicator species;

"(D) the development of methodologies, techniques, and equipment for disposal of waste materials to minimize degradation of the marine environment."; and

(4) by striking out subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

SEC. 6063. REGIONAL MANAGEMENT PLANS.

Section 203 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1443) is amended by adding at the end thereof the following new subsections:

"(c) The Administrator, in cooperation with the Secretary, the Secretary of Commerce, and other officials of appropriate Federal, State, and local agencies, shall assess the feasibility in coastal areas of regional management plans for the disposal of waste materials. Such plans should integrate where appropriate Federal, State, regional, and local waste disposal activities into a comprehensive regional disposal strategy. These plans should address, among other things—

"(1) the sources, quantities, and types of materials that require and will require disposal;

"(2) the environmental, economic, social, and human health factors (and the methods used to assess these factors) associated with disposal alternatives;

"(3) the improvements in production processes, methods of disposal, and recycling to reduce the adverse effects associated with such disposal alternatives;

"(4) the applicable laws and regulations governing waste disposal; and

"(5) improvements in permitting processes to reduce administrative burdens.

"(d) The Administrator, in cooperation with the Secretary of Commerce, shall submit to the Congress and the President, not later than one year after the date of enactment of this provision, a report on sewage sludge disposal in the New York City metropolitan region. The report shall—

"(1) consider the factors listed in subsection (c) as they relate to landfilling, incineration, ocean dumping, or any other feasible disposal or reuse/recycling option;

"(2) include an assessment of the cost of these alternatives; and

"(3) recommend such regulatory or legislative changes as may be necessary to reduce the adverse impacts associated with sewage sludge disposal.".

SEC. 6064. AUTHORIZATION OF APPROPRIATIONS.

Section 204 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1444) is redesignated as section 205; and such section as so redesignated is amended by striking out "and" immediately following "fiscal year 1981" and by striking out "1982." and inserting in lieu thereof the following: "1982, not to exceed $10,635,000 for fiscal year 1986, and not to exceed $11,114,000 for fiscal year 1987.".

SEC. 6065. CONSOLIDATION OF REPORTS.

Section 205 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1445) is transferred to a point immediately following section 203 of such Act and redesignated as section 204; and such section as so transferred and redesignated is amended to read as follows:

"ANNUAL REPORT

"SEC. 204. (a) In March of each year, the Secretary of Commerce shall report to the Congress on his activities under this title during the previous fiscal year. The report shall include—

"(1) the Secretary's findings made under section 201, including an evaluation of the short-term ecological effects and the social and economic factors involved with the dumping;

"(2) the results of activities undertaken pursuant to section 202;

"(3) with the concurrence of the Administrator and after consulting with officials of other appropriate Federal agencies, an identification of the short- and long-term research requirements associated with activities under title I, and a description of how Federal research under titles I and II will meet those requirements; and

"(4) activities of the Department of Commerce under section 5 of the Act of March 10, 1934 (48 Stat. 401; 16 U.S.C. 665).

"(b) In March of each year, the Administrator shall report to the Congress on his activities during the previous fiscal year under section 203.".

Subtitle H—National Ocean Pollution Planning Act Amendments

SEC. 6071. FINDINGS AND PURPOSES.

(a) Section 2(a) of the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701) is amended by adding at the end thereof the following new paragraphs:

"(6) Numerous Federal agencies have initiated and supported research projects to study, enhance, manage, preserve, protect, or restore the resources of the Great Lakes, the Chesapeake Bay, Puget Sound, and other estuaries of national significance.

"(7) Various research projects relating to the Great Lakes, the Chesapeake Bay, Puget Sound, and other estuaries of national significance, including those conducted at the college and university level and those conducted at the State and local governmental level, can be more effectively coordinated in order to obtain maximum benefits.".

(b) Section 2(b) of the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701) is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) to provide for the effective coordination of research conducted to support the preservation and protection of the environmental quality of the Great Lakes, the Chesapeake Bay, Puget Sound, and other estuaries of national significance, and to encourage the use of such research in determinations that affect the environmental quality of the Great Lakes, the Chesa-

peake Bay, Puget Sound, and other estuaries of national significance; and".

SEC. 6072. NATIONAL OCEAN POLLUTION PROGRAM OFFICE AND NATIONAL OCEAN POLLUTION POLICY BOARD.

The National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) is further amended as follows:

(1) Section 3 is amended—

(A) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively;

(B) by inserting after paragraph (2) the following new paragraph:

"(3) The term 'Board' means the National Ocean Pollution Policy Board established under section 3A(b).''; and

(C) by adding at the end thereof the following new paragraph:

"(8) The term 'Office' means the National Ocean Pollution Program Office established under section 3A(a).".

(2) The following new section is inserted immediately after section 3:

"SEC. 3A. NATIONAL OCEAN POLLUTION PROGRAM OFFICE AND NATIONAL OCEAN POLLUTION POLICY BOARD.

"(a) PROGRAM OFFICE.—(1) The Administrator shall establish within the Administration the National Ocean Pollution Program Office.

"(2) The Office shall—

"(A) serve as the lead entity responsible for administering the program established under section 4;

"(B) be headed by a director who shall represent the Board and shall be the spokesman for the program;

"(C) serve as the staff for the Board and its supporting committees and working groups; and

"(D) review each department and agency budget request transmitted under section 4(d) and submit an analysis of the requests to the Board for its review.

The analysis described in subparagraph (D) shall include an analysis of how each departmental or agency budget request relates to the priorities and goals of the Plan established under section 4.

"(b) POLICY BOARD.—(1) The Administrator, with the cooperation of the Federal departments and agencies referred to in section 7, shall establish a National Ocean Pollution Policy Board consisting of representatives of those departments and agencies.

"(2) The Board shall—

"(A) be responsible for coordinated planning and progress review for the program established under section 4;

"(B) review all department and agency budget requests transmitted to it under section 4(d) and submit a report to the Office of Management and Budget and to the Congress concerning those budget requests;

"(C) establish and maintain such interagency groups as the Board determines to be necessary to carry out its activities; and

"(D) consult with and seek the advice of users and producers of ocean pollution data, information, and services to guide the

Board's efforts, keeping the Director and the Congress advised of such consultations.

"(3) The Board biennially shall select a Chair from among its members. A Board member who is a representative of an agency may not serve as Chair of the Board for a term if an individual who represented that same department or agency on the Board served as the Board's Chair for the previous term.".

SEC. 6073. FEDERAL PLANNING TO INCLUDE GREAT LAKES.

Section 4 of the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1703) is amended—

(1) by inserting after "general research on marine ecosystems" in subsection (b)(2)(A) the following: ", including the Great Lakes, the Chesapeake Bay, Puget Sound, and other estuaries of national significance,"; and

(2) in subsection (b)(4)—

(A) by striking out "BUDGET REVIEW.—" and inserting in lieu thereof "PLAN REVIEW.—"; and

(B) by striking out "to coordinate the budget review process"; and

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

"(d) BUDGETING.—Each Federal agency and department included under the Plan shall prepare and submit to the Office of Management and Budget, the Office, and the Board on or before the date of submission of departmental requests for appropriations to the Office of Management and Budget, an annual request for appropriations to carry out the activities of that agency or department under the Plan during the subsequent fiscal year. The Office of Management and Budget shall review the request for appropriations as an integrated, coherent, and multiagency request, taking into account the review by the Board of those requests under section 3A(b).".

SEC. 6074. DISSEMINATION OF INFORMATION ON GREAT LAKES.

Section 8 of the National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1707) is amended by adding "(a)" after "SEC. 8." and by adding at the end thereof the following new subsection:

"(b) The Administrator shall ensure that the findings and information regarding ocean pollution research activities associated with the Great Lakes identified pursuant to section 4(b) be disseminated in a timely manner and in useful forms to relevant departments of the Federal Government, State governments, and other persons with an interest in such information.".

SEC. 6075. AUTHORIZATION OF APPROPRIATION.

Section 10 of the National Ocean Pollution Planning Act of 1978, as amended (33 U.S.C. 1709), is amended by striking out "and" after "1981," and by striking out "1982." and inserting in lieu thereof "1982, and not to exceed $3,571,000 for fiscal year 1986, and not to exceed $3,732,000 for fiscal year 1987.".

Subtitle I—Weather Modification

SEC. 6081. AUTHORIZATION OF APPROPRIATIONS.

Section 6 of the Act entitled "An Act to provide for the reporting of weather modification activities to the Federal Government", ap-

proved December 18, 1971 (85 Stat. 736; 15 U.S.C. 330e), is amended—

(1) by striking "and"; and

(2) by inserting immediately after "1981," the following: "$100,000 for the fiscal year ending September 30, 1986, $100,000 for the fiscal year ending September 30, 1987, $100,000 for the fiscal year ending September 30, 1988,".

SEC. 6082. OCEAN SATELLITE DATA.

The Administrator of the National Oceanic and Atmospheric Administration (hereinafter referred to in this subtitle as the "Administration") shall take such actions, including the sponsorship of applied research, as may be necessary to assure the future availability and usefulness of ocean satellite data to the maritime community.

SEC. 6083. AWARDING OF CONTRACTS.

The Administration may not award any contract for the performance of any "commercial activity", as defined by paragraph 6.a. of Office of Management and Budget Circular Memorandum A-76, which is performed by Administration employees until at least 30 calendar days after the Administrator of the Administration has presented, in writing, to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries and the Committee on Science and Technology of the House of Representatives, a full and complete description of such proposed contract, together with supporting documentation. Such documentation shall include—

(1) a comparison of the cost of such activity as performed by employees of the Administration and the cost of such activity as performed under the proposed contract;

(2) a comparison of the services performed by employees of the Administration and the services to be performed under the proposed contract; and

(3) an assessment of the benefits to the Federal Government of proceeding with the proposed contract.

SEC. 6084. NATIONAL CLIMATE PROGRAM.

(a) Section 4 of the National Climate Program Act (15 U.S.C. 2903) is amended—

(1) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively; and

(2) by inserting before paragraph (2), as so redesignated, the following new paragraph:

"(1) The term 'Board' means the Climate Program Policy Board.".

(b) Section 5(c) of the National Climate Program Act (15 U.S.C. 2904(c)) is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by designating the third sentence as paragraph (4); and

(3) by striking the second sentence and inserting in lieu thereof the following new paragraphs:

"(2) The Office shall—

"(A) serve as the lead entity responsible for administering the program;

"(B) be headed by a Director who shall represent the Climate Program Policy Board and shall be spokesperson for the program;

"(C) serve as the staff for the Board and its supporting committees and working groups;

"(D) review each agency budget request transmitted under subsection (g)(1) and submit an analysis of the requests to the Board for its review;

"(E) be responsible for coordinating interagency participation in international climate-related activities; and

"(F) work with the National Academy of Sciences and other private, academic, State, and local groups in preparing and implementing the 5-year plan (described in subsection (d)(9)) and the program.

The analysis described in subparagraph (D) shall include an analysis of how each agency's budget request relates to the priorities and goals of the program established pursuant to this Act.

"(3) The Secretary may provide, through the Office, financial assistance, in the form of contracts or grants or cooperative agreements, for climate-related activities which are needed to meet the goals and priorities of the program set forth in the 5-year plan pursuant to subsection (d)(9), if such goals and priorities are not being adequately addressed by any Federal department, agency, or instrumentality.".

(c) Section 5(d) of the National Climate Program Act (15 U.S.C. 2904(d)) is amended—

(1) by striking the semicolon at the end of paragraph (7) and inserting in lieu thereof the following: ". Such mechanisms may provide, among others, for the following State and regional services and functions: (A) studies relating to and analyses of climatic effects on agricultural production, water resources, energy needs, and other critical sectors of the economy; (B) atmospheric data collection and monitoring on a statewide and regional basis; (C) advice to regional, State, and local government agencies regarding climate-related issues; (D) information to users within the State regarding climate and climatic effects; and (E) information to the Secretary regarding the needs of persons within the States for climate-related services, information, and data. The Secretary may make annual grants to any State or group of States, which grants shall be made available to public or private educational institutions, to State agencies, and to other persons or institutions qualified to conduct climate-related studies or provide climate-related services;";

(2) by striking "biennially" in paragraph (9) and inserting in lieu thereof "at least once every four years"; and

(3) by striking "under section 6" in paragraph (9) and inserting in lieu thereof "described in paragraph (7)".

(d) Section 5(e) of the National Climate Program Act (15 U.S.C. 2904(e)) is amended to read as follows:

"(e) CLIMATE PROGRAM POLICY BOARD.—(1) The Secretary shall establish and maintain an interagency Climate Program Policy Board, consisting of representatives of the Federal agencies specified

in subsection (b)(2) and any other agency which the Secretary determines should participate in the Program.

"(2) The Board shall—

"(A) be responsible for coordinated planning and progress review for the Program;

"(B) review all agency and department budget requests related to climate transmitted under subsection (g)(1) and submit a report to the Office of Management and Budget concerning such budget requests;

"(C) establish and maintain such interagency groups as the Board determines to be necessary to carry out its activities; and

"(D) consult with and seek the advice of users and producers of climate data, information, and services to guide the Board's efforts, keeping the Director and the Congress advised of such contacts.

"(3) The Board biennially shall select a Chair from among its members. A Board member who is a representative of an agency may not serve as Chair of the Board for a term if an individual who represented that same agency on the Board served as the Board's Chair for the previous term.".

(e) Section 5(f)(2) of the National Climate Program Act (15 U.S.C. 2904(f)(2)) is amended by inserting "with the Office" immediately after "cooperate".

(f) The first sentence of section 5(g)(1) of the National Climate Program Act (15 U.S.C. 2904(g)(1)) is amended by inserting immediately before the period the following: "and shall transmit a copy of such request to the National Climate Program Office".

(g) Section 6 of the National Climate Program Act (15 U.S.C. 2905) is repealed.

(h) There are authorized to be appropriated to the Administration, for purposes of carrying out the provisions of the amendments made by this section, $1,897,000 for fiscal year 1986 and $1,982,000 for fiscal year 1987. Of such funds, at least 25 percent shall be made available for intergovernmental climate-related activities described in section 5(d)(7) of the National Climate Program Act (15 U.S.C. 2904(d)(7)), and at least 20 percent shall be made available during each fiscal year for experimental climate forecast centers described in section 5(d)(8) of the National Climate Program Act (15 U.S.C. 2904(d)(8)).

SEC. 6085. COOPERATIVE AGREEMENTS FOR MAPPING AND CHARTING SURVEYS.

Section 5 of the Act entitled "An Act to define the functions of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (61 Stat. 788, 33 U.S.C. 883e) is amended—

(1) by inserting "(1)" after "SEC. 5.";

(2) by inserting "any Federal agency," after "or subdivision thereof"; and

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

"(2) The Secretary of Commerce is authorized to establish the terms of any cooperative agreement entered into under this section, including the amount of funds to be received, and may contribute that portion of the costs incurred by the National Oceanic and Atmospheric Administration, including shiptime and personnel ex-

penses, which the Secretary determines represents the amount of benefits derived by the Administration from the cooperative agreement.".

Subtitle J—Maritime Authorizations

SEC. 6091. MARITIME PROGRAMS.

(a) Funds are authorized to be appropriated without fiscal year limitation as the appropriation Act may provide for the use of the Department of Transportation for fiscal year 1986 as follows:

(1) for payment of obligations incurred for operating-differential subsidy, not to exceed $335,084,000;

(2) for expenses necessary for research and development activities, not to exceed $9,900,000; and

(3) for expenses necessary for operations and training activities, not to exceed $71,967,000, including not to exceed—

(A) $34,847,000 for maritime education and training expenses, including not to exceed $19,633,000 for maritime training at the Merchant Marine Academy at Kings Point, New York, $10,915,000 for financial assistance to State maritime academies, $3,000,000 for fuel oil assistance to State maritime academy training vessels, and $1,299,000 for expenses necessary for additional training;

(B) $9,277,000 for national security support capabilities, including not to exceed $7,932,000 for reserve fleet expenses, and $1,345,000 for emergency planning/operations; and

(C) $27,843,000 for other operations and training expenses.

(b) Funds are authorized to be appropriated for the use of the Federal Maritime Commission, in the amount of $11,940,000 for fiscal year 1986.

TITLE VII—ENERGY AND RELATED PROGRAMS

Subtitle A—Pipeline Programs

SEC. 7001. NATURAL GAS PIPELINE SAFETY AUTHORIZATIONS.

Section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(a)) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

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

"(4) $3,450,000 for the fiscal year ending September 30, 1986.".

SEC. 7002. AUTHORIZATIONS FOR FEDERAL GRANTS-IN-AID.

(a) COMBINED PROGRAM.—Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended by adding at the end thereof the following new subsections:

"(c) For the purpose of carrying out the Federal grants-in-aid provisions of section 5(d) of this Act and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)) there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1986.

"(d) Not less than 5 percent of any amounts appropriated for carrying out the Federal grants-in-aid provisions for any fiscal year beginning after September 30, 1985, shall be available only for carrying out the Federal grants-in-aid provisions of section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)).".

(b) CONFORMING AMENDMENTS.—

(1) Section 5(d)(2) of such Act (49 U.S.C. App. 1674(d)(2)) is amended—

(A) by striking out "authorized to be appropriated by section 17(b) of this Act" and inserting in lieu thereof "appropriated for carrying out the Federal grants-in-aid provisions of this subsection"; and

(B) by striking out "(1) of this section" and inserting in lieu thereof "(1) of this subsection".

(2) Section 205(d)(2) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)(2)) is amended by striking out "authorized to be appropriated by section 214 of this title" and inserting in lieu thereof "appropriated for carrying out the Federal grants-in-aid provisions of this subsection".

(3) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended by inserting after "subsection (b)" the following: "or section 17(c) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(c))".

(4) Section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(a)) is amended by inserting after "subsection (b)" the following: "or (c)".

SEC. 7003. REPORTS.

(a) GRANTS MERGER REPORT.—

(1) MERGER RECOMMENDATIONS.—The Secretary of Transportation shall prepare a report which shall contain details of the Secretary's recommendations with respect to the potential merger and joint administration of the Federal grants-in-aid provisions of section 5(d) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(d)) and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)).

(2) CONSULTATION.—In preparing the report required by paragraph (1), the Secretary shall consult with appropriate State authorities. The Secretary shall include in such report a summary of the views and recommendations of such State authorities.

(b) GRANTS ALLOCATION REPORT.—

(1) CONTENTS.—The Secretary of Transportation shall prepare a report which shall contain an explanation of the method by which the Secretary allocates funds to the States under section 5(d) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C App. 1674(d)) and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)).

(2) PUBLICATION.—The Secretary shall publish in the Federal Register, as a matter of public information, the explanation contained in the report required by paragraph (1).

(c) REPORT DEADLINE.—The reports required by subsections (a)(1) and (b)(1) shall be submitted to Congress no later than July 1, 1986.

SEC. 7004. HAZARDOUS LIQUID PIPELINE SAFETY AUTHORIZATIONS.

Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph: "(4) $875,000 for the fiscal year ending September 30, 1986.".

SEC. 7005. PIPELINE SAFETY USER FEES.

(a) ESTABLISHMENT.—

(1) SCHEDULE.—The Secretary of Transportation (hereafter in this section referred to as the "Secretary") shall establish a schedule of fees based on the usage, in reasonable relationship to volume-miles, miles, revenues, or an appropriate combination thereof, of natural gas and hazardous liquid pipelines. In establishing such schedule, the Secretary shall take into consideration the allocation of departmental resources.

(2) COLLECTION.—The Secretary shall establish procedures for the collection of such fees. The Secretary may use the services of any Federal, State, or local agency or instrumentality to collect such fees, and may reimburse such agency or instrumentality a reasonable amount for such services.

(3) LIABILITY.—Fees established under this section shall be assessed to the persons operating—

(A) all pipeline facilities subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.); and

(B) all pipeline transmission facilities and all liquefied natural gas facilities subject to the jurisdiction of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.).

(b) TIME OF ASSESSMENT.—The Secretary shall assess and collect fees described in subsection (a) with respect to each fiscal year before the end of such fiscal year.

(c) USE OF FUNDS.—Funds received under subsection (a) shall be used, to the extent provided for in advance in appropriation Acts, only—

(1) in the case of natural gas pipeline safety fees, for activities authorized under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.); and

(2) in the case of hazardous liquid pipeline safety fees, for activities authorized under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.).

(d) FEE SCHEDULE.—Fees established by the Secretary under subsection (a) shall be assessed against all natural gas and hazardous liquids transported by pipelines subject to the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 after September 30, 1985, and shall be sufficient to meet the costs of activities described in subsection (c), beginning on October 1, 1985, but at no time shall the aggregate of fees received for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

Subtitle B—Strategic Petroleum Reserve

SEC. 7101. AUTHORIZATIONS OF APPROPRIATIONS FOR FISCAL YEARS 1986, 1987, AND 1988.

Funds are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve—

(1) to carry out part B of title I of the Energy Policy and Conservation Act (including any drawdown and distribution of the Reserve), except acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve—

(A) for fiscal year 1986, $135,912,000;
(B) for fiscal year 1987, $358,996,000; and
(C) for fiscal year 1988, $156,692,000; and

(2) to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution of the Reserve—

(A) for fiscal year 1986, $357,548,000;
(B) for fiscal year 1987, $333,695,000; and
(C) for fiscal year 1988, $357,000,000.

SEC. 7102. FILL-RATE OF THE RESERVE; LIMITATION ON UNITED STATES' SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) FILL-RATE OF THE RESERVE.—Section 160(c) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)) is amended by adding the following new paragraph at the end:

"(3) Notwithstanding paragraph (2), beginning in fiscal year 1986 and continuing through fiscal years 1987 and 1988 until the quantity of crude oil in storage within the Reserve is at least 527,000,000 barrels, the President shall carry out petroleum acquisition, transportation, and injection activities at a level sufficient to assure a minimum average annual fill-rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution.".

(b) LIMITATION ON UNITED STATES' SHARE OF THE NAVAL PETROLEUM RESERVE.—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) by striking out "500,000,000 barrels" in subparagraph (A) and inserting in lieu thereof "527,000,000 barrels"; and

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

"(C) acquisition, transportation, and injection activities for the Reserve are being undertaken, beginning in fiscal year 1986 and continuing through fiscal years 1987 and 1988 until the quantity of crude oil in storage within the Reserve is at least 527,000,000 barrels, at a level sufficient to assure that petroleum products in storage in the Reserve will be increased at a minimum annual average rate of at least 35,000 barrels per day in addition to any petroleum products acquired for the Reserve to replace petroleum products withdrawn from the Reserve as a result of a test drawdown and distribution.".

Subtitle C—Federal Energy Conservation Shared Savings

SEC. 7201. SHARED ENERGY SAVINGS.

(a) IN GENERAL.—The National Energy Conservation Policy Act (42 U.S.C. 8201 and following) is amended by adding at the end the following new title:

"TITLE VIII—SHARED ENERGY SAVINGS

"SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

"The head of a Federal agency may enter into contracts under this title solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

"SEC. 802. PAYMENT OF COSTS.

"Any amount paid by a Federal agency pursuant to any contract entered into under this title may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy expenses (and related operation and maintenance expenses).

"SEC. 803. REPORTS.

"Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this title, and the Secretary shall include in the report submitted to Congress under section 550 a description of the progress made by each Federal agency in—

"(1) including the authority provided by this title in its contracting practices; and

"(2) achieving energy savings under contracts entered into under this title.

"SEC. 804. DEFINITIONS.

"For purposes of this title—

"(1) the term 'Federal agency' means an agency defined in section 551(1) of title 5, United States Code, and

"(2) the term 'energy savings' means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

"(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.".

(b) TABLE OF CONTENTS.—The table of contents of such Act is amended by adding the following at the end:

"TITLE VIII—SHARED ENERGY SAVINGS

"Sec. 801. Authority to enter into contracts.
"Sec. 802. Payment of costs.
"Sec. 803. Reports.
"Sec. 804. Definitions.".

Subtitle D—Biomass Energy and Alcohol Fuels Loan Guarantees

SEC. 7301. BIOMASS ENERGY AND ALCOHOL FUELS LOAN GUARANTEES.

Section 221 of the Biomass Energy and Alcohol Fuels Act of 1980 (Public Law 96-294; 42 U.S.C. 8821) is amended by—

(1) striking out "September 30, 1985" and inserting in lieu thereof "June 30, 1986"; and

(2) adding at the end thereof the following: "Notwithstanding any other provision of this subtitle, the Secretary of Energy may modify the terms and conditions of any conditional commitment for a loan guarantee under this subtitle made before October 1, 1984, including the amount of the loan guarantee. Nothing in this section shall be interpreted as indicating Congressional approval with respect to any pending conditional commitments under this Act.".

Subtitle E—Synthetic Fuels

SEC. 7401. SHORT TITLE.

This subtitle may be cited as the "Synthetic Fuels Corporation Act of 1985".

SEC. 7402. CESSATION OF FINANCIAL ASSISTANCE AUTHORITY.

Effective on the date of enactment of this Act, the United States Synthetic Fuels Corporation (hereafter in this subtitle referred to as the "Corporation") may not make any legally binding awards or commitments for financial assistance (including any changes in an existing award or commitment) pursuant to the Energy Security Act for synthetic fuel project proposals, except that nothing in this Act shall impair or alter the powers, duties, rights, obligations, privileges, or liabilities of the Corporation, its Board or Chairman, or project sponsors in the performance and completion of the terms and undertakings of a legally binding award or commitment entered into prior to the date of enactment of this Act.

SEC. 7403. TERMINATION OF THE CORPORATION.

(a) Within 60 days of the date of enactment of this Act, the Directors of the Corporation shall terminate their duties under the Energy Security Act and be discharged.

(b) Within 120 days of the date of enactment of this Act, the Corporation shall terminate, except as otherwise provided in this subtitle, in accordance with subtitle J of part B of title I of the Energy Security Act.

SEC. 7404. DUTIES OF SECRETARY OF THE TREASURY.

(a) Within 60 days of the date of enactment of this Act (or earlier, in the event of absence of a Chairman of the Board of Directors of

the Corporation), the Secretary of the Treasury shall assume the duties of the Chairman of the Board of Directors of the Corporation.

(b) Notwithstanding any other provision of law, the duties and responsibilities of the Secretary of the Treasury under subtitle J of part B of title I of the Energy Security Act or this Act may not be transferred to any other Federal department or agency.

(c) Notwithstanding such termination of the Corporation, the Advisory Committee established under section 123 of the Energy Security Act (42 U.S.C 8719) shall remain in effect to advise the Secretary of the Treasury regarding the administration of any contract or obligation of the Corporation pursuant to subtitle D of part B of title I of such Act.

(d) To the extent that the Secretary of the Treasury may be required to take an action under section 131(q) of the Energy Security Act in connection with an award or commitment of financial assistance under such Act, the Secretary shall complete such action within 30 days of the date of enactment of this Act.

SEC. 7405. SALARIES AND COMPENSATION RIGHTS.

(a) The Director of the Office of Personnel Management shall, before February 1, 1986, determine the amount of compensation or benefits which each Director, officer, or employee of the Corporation shall be legally entitled to under any contract as of the date of enactment of this Act.

(b) Effective on the date of enactment of this Act, no change in any Director, officer, or employee compensation or benefits shall be allowed or permitted, unless the Director of the Office of Personnel Management agrees that such change is reasonable.

(c) Effective on the date of enactment of this Act—

(1) no officer or employee of the Corporation shall receive a salary in excess of the rate of basic pay payable for level IV of the Executive Schedule under title 5 of the United States Code; and

(2) the Corporation shall not waive any requirements in its By-Laws which are necessary for a Director, officer, or employee to qualify for pension or termination benefits under the By-Laws and written personnel policies and procedures in effect on the date of enactment of this Act.

SEC. 7406. REPORT TO THE CONGRESS.

The Corporation shall, within 60 days of the date of enactment of this Act, transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Energy and Commerce and Committee on Banking, Housing and Urban Affairs of the House of Representatives a report—

(1) containing a review of implementation of its Phase I Business Plan dated February 19, 1985; and

(2) fulfilling the requirements of section 126(b)(3) of the Energy Security Act (42 U.S.C. 8722(b)(3)).

Subtitle F—Uranium Enrichment

SEC. 7501. AUTHORIZATION OF APPROPRIATIONS.

In accordance with section 660 of the Department of Energy Organization Act (42 U.S.C. 7270), there is authorized to be appropriated

to the Department of Energy for each of the fiscal years 1986, 1987, and 1988 to carry out uranium enrichment service activities an amount equal to the difference between—

(1) the revenues to be received during each such fiscal year by the Department of Energy in providing uranium enrichment service activities, as estimated in the budget submitted by the President to the Congress for each such fiscal year; and

(2) the amount determined by the Secretary of Energy under section 7502(c)(1) for each such fiscal year.

SEC. 7502. REPAYMENTS TO UNITED STATES TREASURY.

(a) PARTIAL REPAYMENT OF UNRECOVERED COSTS.—

(1) IN GENERAL.—The Secretary of Energy shall deposit in the general fund of the Treasury of the United States, in partial repayment of unrecovered Federal Government costs for uranium enrichment service activities, an amount determined by the Secretary under subsection (c) for each of the fiscal years 1986, 1987, and 1988.

(2) REVENUES IN EXCESS OF EXPENDITURES.—In addition to the payments required under paragraph (1), the Secretary of Energy shall deposit in the general fund of the Treasury of the United States, in partial repayment of amounts identified by the Secretary under subsection (c)(4)(B), any revenues in excess of expenditures received for the provision of such activities during the 3-year period referred to in paragraph (1).

(b) REPAYMENT SCHEDULE.—The Secretary of Energy may make the repayments required in subsection (a) for any fiscal year on a quarterly basis.

(c) DETERMINATION OF SECRETARY.—

(1) IN GENERAL.—The Secretary of Energy shall determine, in his or her discretion, the amount of partial repayment to be made under subsection (a)(1) for each of the fiscal years 1986, 1987, and 1988, consistent with the financial integrity of the uranium enrichment service activities program during a period of not less than 10 years. The amount of such repayment shall not adversely affect the reliability of the supply of uranium enrichment services at competitive prices for existing and potential customers. The determinations under this paragraph shall be made after notice and opportunity for public comment.

(2) REPAYMENT GOALS.—The Secretary of Energy shall seek to achieve the following repayment amounts under subsection (a)(1):

(A) $110,000,000 for fiscal year 1986;

(B) $150,000,000 for fiscal year 1987; and

(C) $150,000,000 for fiscal year 1988.

(3) SCHEDULE FOR DETERMINATION.—The Secretary of Energy shall make the determination required in paragraph (1) for any fiscal year before the President submits to the Congress the budget for such fiscal year, except that the Secretary may make subsequent revisions in such determination.

(4) SUBMISSION TO CONGRESS.—

(A) IN GENERAL.—The Secretary of Energy shall submit to the Congress any determination made under paragraph

(1), together with the reasons underlying such determination.

(B) INITIAL SUBMISSION.—The Secretary shall include in the initial submission under this paragraph an estimate of the amount of prior investment in the uranium enrichment service activities program that remains unrecovered.

SEC. 7503. URANIUM ENRICHMENT REPORT.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Energy shall submit to the Committee on Energy and Natural Resources of the Senate and the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives a report regarding the effects of the September 19, 1985, decision of the United States District Court for the District of Colorado holding that the utility services uranium enrichment contracts of the Department of Energy are null and void (Western Nuclear Inc. v. F. Clark Huffman, Civil No. 84-C-2315). To the extent that it will not compromise the appeals process or the competitive position of the Department of Energy with regard to uranium enrichment, the report shall identify—

(1) the effects of the decision on—

(A) the operation of the uranium enrichment facilities of the Department of Energy; and

(B) the revenues of the uranium enrichment program; and

(2) how the response of the Department of Energy may mitigate such effects.

Subtitle G—Nuclear Regulatory Commission Annual Charges

SEC. 7601. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) SUBMISSION OF REPORT.—Within 90 days after the date of the enactment of this Act, the Nuclear Regulatory Commission shall submit to the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate a report evaluating the feasibility and necessity of establishing a system for the assessment and collection of annual charges from persons licensed by the Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to fund all or part of the activities conducted by the Commission pursuant to such Act. Such report shall include an analysis of—

(1) the extent to which the Commission's existing statutory or regulatory authority to assess and collect annual charges, including the authority of the Commission to assess and collect fees pursuant to title V of the Independent Offices Appropriation Act of 1952, is adequate to enable the Commission to assess and collect fees commensurate with the value of the benefit rendered to the licensee and the cost to the Commission of rendering such benefit;

(2) the amounts currently assessed and collected by the Commission pursuant to existing statutory or regulatory authority, and the purposes for which such fees are assessed and collected; and

(3) any recommendations of the Commission for expanding the existing statutory authority to assess and collect fees, including the Commission's justification for such expansion.

(b) ASSESSMENT AND COLLECTION.—

(1) IN GENERAL.—Upon the expiration of a period of 45 calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than 3 calendar days to a day certain or an adjournment sine die) following receipt by the Congress of the report required pursuant to subsection (a), the Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, except that—

(A) the maximum amount of the aggregate charges assessed pursuant to this paragraph in any fiscal year may not exceed an amount that, when added to other amounts collected by the Commission for such fiscal year under other provisions of law, is estimated to be equal to 33 percent of the costs incurred by the Commission with respect to such fiscal year; and

(B) any such charge assessed pursuant to this paragraph shall be reasonably related to the regulatory service provided by the Commission and shall fairly reflect the cost to the Commission of providing such service.

(2) ESTABLISHMENT OF AMOUNT BY RULE.—The amount of the charges assessed pursuant to this paragraph shall be established by rule.

TITLE VIII—OUTER CONTINENTAL SHELF AND RELATED PROGRAMS

Subtitle A—Amendments to the Outer Continental Shelf Lands Act

SEC. 8001. SHORT TITLE.

This subtitle may be referred to as the "Outer Continental Shelf Lands Act Amendments of 1985".

SEC. 8002. NATIONAL POLICY FOR THE OUTER CONTINENTAL SHELF.

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended in paragraph (4) of section 3 by deleting the word "and" at the end of subparagraph (A); deleting the semicolon at the end of subparagraph (B) and inserting in lieu thereof a period; designating subparagraph (B) as subparagraph (C); and inserting after subparagraph (A) the following new subparagraph (B):

"(B) the distribution of a portion of the receipts from the leasing of mineral resources of the outer Continental Shelf adjacent to State lands, as provided under section 8(g), will provide affected coastal States and localities with funds which may be used for the mitigation of adverse economic and environmental effects related to the development of such resources; and".

SEC. 8003. REVISION OF SECTION 8(g).

Section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)) is amended to read as follows:

"(g)(1) At the time of soliciting nominations for the leasing of lands containing tracts wholly or partially within three nautical

miles of the seaward boundary of any coastal State, and subsequently as new information is obtained or developed by the Secretary, the Secretary shall, in addition to the information required by section 26 of this Act, provide the Governor of such State—

"(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

"(B) at the request of the Governor of such State, all information from all sources concerning the geographical, geological, and ecological characteristics of such tracts;

"(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

"(D) at the request of the Governor of such State, an identification of any field, geological structure, or trap located wholly or partially within three nautical miles of the seaward boundary of such coastal State, including all information relating to the entire field, geological structure, or trap.

The provisions of the first sentence of subsection (c) and the provisions of subsections (e)–(h) of section 26 of this Act shall be applicable to the release by the Secretary of any information to any coastal State under this paragraph. In addition, the provisions of subsections (c) and (e)–(h) of section 26 of this Act shall apply in their entirety to the release by the Secretary to any coastal State of any information relating to Federal lands beyond three nautical miles of the seaward boundary of such coastal State.

"(2) Notwithstanding any other provision of this Act, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary of any coastal State. Except as provided in paragraph (5) of this subsection, not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the United States Treasury.

"(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenues received by the United

States under such an agreement shall be subject to the requirements of paragraph (2).

"(4) The deposits in the Treasury account described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

"(5)(A) When there is a boundary dispute between the United States and a State under section 7 of this Act, the Secretary shall credit to the account referred to in section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985 revenues from oil and gas lease sales in the area within three nautical miles of the boundary asserted by the State, if that money has not otherwise been deposited in the separate account established under section 7. Proceeds of the account established under section 7, and the account referred to in section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed as follows:

"(i) If a State is wholly successful in its claim under section 7, such claim shall be satisfied by the money deposited in the escrow account established by section 7. Any excess monies in the section 7 account attributable to such State shall be transferred to the 8(g) account, and any monies due that State, both retrospectively and prospectively, as a result of the 8(g) zone created by the newly established boundary shall be distributed to the State in accordance with the terms of section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985.

"(ii) If the United States is wholly successful in its claim under section 7, the amount of money that is necessary to satisfy the State's share as set forth under section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed from the revenues deposited in the section 7 escrow account. The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(iii) If the United States or the affected State is partially successful in its claim under section 7, after the distribution under that result, the amount of money that is necessary to satisfy the State as set forth under section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be distributed first from the remaining monies in the section 7 escrow account, and then from the amounts deposited or credited in the account referred to in section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985. For amounts credited, the distribution shall be in accordance with clause (iv). The amounts remaining after the distributions described in this subparagraph shall be paid to the United States pursuant to this section.

"(iv) If there is insufficient money from the applicable oil and gas lease sales deposited in either the account established by section 7 or the account referred to in section 8004 of the Outer Continental Shelf Lands Act Amendments of 1985, the recoupment provisions of section 8006 of the Outer Continental Shelf Lands Act Amendments of 1985 shall be applicable.

"(B) This paragraph applies to all Federal oil and gas lease sales, under this Act, including joint lease sales, occurring after September 18, 1978.

"(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the States' shares described in paragraph (2).

"(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.".

SEC. 8004. DISTRIBUTION OF 8(g) ACCOUNT.

(a) Prior to January 1, 1986, the Secretary shall distribute to the designated coastal States the sum of:

(1) The amounts due and payable to each such State under paragraph (2) of section 8(g) of the Outer Continental Shelf Lands Act, as amended by this title, for the period between October 1, 1985, and the date of such distribution, and

(2) The amounts due each such State under subsection (b) of this section for the period prior to October 1, 1985.

(b)(1) The funds which were deposited in the separate account in the Treasury of the United States under section 8(g)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(4)) which was in effect prior to the date of enactment of section 8003 of this title shall be distributed in the following manner as a fair and equitable disposition of such funds derived from bonuses and rents and accrued interest thereon through September 30, 1985:

	($ million)
Louisiana	635
Texas	424
California	375
Alabama	73
Alaska	56
Mississippi	15
Florida	0.03

(2) The Secretary shall distribute to each coastal State 27 percent of the royalties derived from any lease of Federal lands within 3 miles of the seaward boundary of such coastal State and accrued interest thereon which have been deposited through September 30, 1985, in the separate account described in paragraph (1) of this subsection, as a fair and equitable disposition of such royalties.

(3) The amounts derived from bonuses, rents and royalties, and accrued interest thereon through September 30, 1985, remaining in the account after distribution to the States under this subsection shall be transmitted to the miscellaneous receipts account of the United States Treasury.

(4) The acceptance of payment under this section shall satisfy and release any and all claims against the United States arising under, or related to, section 8(g) of the Outer Continental Shelf Lands Act, as it was in effect prior to the date of enactment of section 8003 of this title.

SEC. 8005. IMMOBILIZATION OF BOUNDARIES.

Section 2(b) of the Submerged Lands Act (43 U.S.C. 1301(b)) is amended by inserting before the semicolon at the end a comma and the following: "except that any boundary between a State and the United States under this Act which has been or is hereafter fixed by coordinates under a final decree of the United States Supreme Court shall remain immobilized at the coordinates provided under such decree and shall not be ambulatory".

SEC. 8006. RECOUPMENT.

(a) As a fair and equitable disposition of revenues derived between September 18, 1978 and September 30, 1985 from all bonuses, royalties, and other revenues, and accrued interest through September 30, 1985, from any Federal leases within three miles of the seaward boundary of any coastal State, including all such revenues which should have been, but which were not, deposited in the separate account in the Treasury of the United States under section 8(g)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(4)) which was in effect prior to the date of enactment of section 8003 of this title, such coastal State shall be entitled to an additional amount equal to:

(1) 27 percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under section 8(a)(1) of the Outer Continental Shelf Lands Act), excluding Federal income and windfall profits taxes, and accrued interest through September 30, 1985, derived from any lease of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary of such coastal State, less

(2) the amounts paid to such coastal State under section 8004(b) of this title.

(b) The additional amount due each State under subsection (a) of this section shall be paid from a separate Treasury account which is constituted as set forth in subsection (c) of this section. The total amount contained in such account on the last business day of each month shall be paid to each State in an amount proportional to that State's share of the total additional amounts due to all States under subsection (a) of this section.

(c) Beginning on October 1, 1986, the Secretary shall deposit into the account described in subsection (b) of this section from the separate account described in section 8(g)(2) of the Outer Continental Shelf Lands Act, as amended by this title, 10 percent of all revenues deposited after October 1, 1986, into the account described in such section 8(g)(2) until such time as the amount due to all coastal States under subsection (a) of this section has been paid.

Subtitle B—Coordination and Consultation With Affected States and Local Governments

SEC. 8101. REVISION OF SECTION 19(c).

(a) Section 19(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1345(c)) is amended to read as follows:

"(c) The Secretary shall accept recommendations of the Governor and may accept recommendations of the executive of any affected local government if he determines, after having provided the oppor-

tunity for consultation, that acceptance of such recommendations would provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. In determining the national interest, the Secretary shall equally weigh the need for exploration, development, and production of oil and gas from the area either proposed to be leased or leased and the need to protect other resources and uses of the coastal zone and the marine environment, including living marine resources, affected by such exploration, development and production activities. The Secretary shall inform the Governor in writing of his decision together with supporting reasons and information to accept or reject a recommendation or to implement any alternative means to protect the national interest identified in consultation with the Governor. The Secretary's decision shall address each specific point contained in the Governor's recommendation. Should the Secretary reject a recommendation, he shall, no less than thirty days prior to proceeding with the proposed action, provide the Governor with the findings on which his decision is based. The scope of judicial review of the Secretary's decision shall be that set out in section 706(2)(A) of title 5, United States Code.

(b)(1) Section 19(d) of such Act is repealed.

(2) Subsection (e) of section 19 of such Act is redesignated as subsection (d).

Subtitle C—Use of American-Built Rigs For OCS Drilling

SEC. 8201. USE OF AMERICAN-BUILT RIGS FOR OCS DRILLING.

Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following new subsection:

"(j)(1) Any vessel, rig, platform, or other structure used for the purpose of exploration or production of oil and gas on the Outer Continental Shelf south of 49 degrees North latitude shall be built—

"(A) in the United States; and

"(B) from articles, materials, or supplies at least 50 percent of which, by cost, shall have been mined, produced, or manufactured, as the case may be, in the United States.

"(2) The requirements of paragraph (1) shall not apply to any vessel, rig, platform, or other structure which was built, which is being built, or for which a building contract has been executed, on or before October 1, 1985.

"(3) The Secretary may waive—

"(A) the requirement in paragraph (1)(B) whenever the Secretary determines that 50 percent of the articles, materials, or supplies for a vessel, rig, platform, or other structure cannot be mined, produced, or manufactured, as the case may be, in the United States, and

"(B) the requirement in paragraph (1)(A) upon application, with respect to any classification of vessels, rigs, platforms, or other structures on a specific lease, when the Secretary determines that at least 50 percent of such classification, as calculated by number and by weight, which are to be built for exploration or production activities under such lease will be built in

the United States in compliance with the requirements of paragraph (1)(A).".

TITLE IX—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH PROGRAMS

SEC. 9100. SHORT TITLE; TABLE OF CONTENTS OF TITLE.

This title may be cited as the "Medicare and Medicaid Budget Reconciliation Amendments of 1985".

TABLE OF CONTENTS OF TITLE

Subtitle A—Medicare

PART 1—PROVISIONS RELATING TO PART A OF MEDICARE

Subpart A—Hospital Reimbursement

SEC. 9101. RATE OF INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) EXTENSION OF CURRENT FREEZE ON PAYMENT RATES THROUGH FEBRUARY 28, 1986.—Section 5(c) of the Emergency Extension Act of 1985 (Public Law 99-107) is amended to read as follows:

"(c) EXTENSION PERIOD DEFINED.—

"(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term 'extension period' means the period beginning on October 1, 1985, and ending on February 28, 1986.".

(b) APPLICABLE PERCENTAGE INCREASE.—Section 1886(b)(3)(B) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)) is amended to read as follows:

"(B)(i) For purposes of subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of subsection (d) for discharges occurring during a fiscal year, the 'applicable percentage increase' shall be—

"(I) for fiscal year 1986, 1 percent,

"(II) for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4), but not to exceed the market basket percentage increase (as defined in clause (ii)), and

"(III) for fiscal year 1989 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4).

"(ii) For purposes of clause (i), the term 'market basket percentage increase' means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will

exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.".

(c) CONFORMING AMENDMENTS.—(1) Section 1886(d)(3)(A) of such Act (42 U.S.C. 1395ww(d)(3)(A)) is amended by striking out "for fiscal year 1985" and inserting in lieu thereof "for each of fiscal years 1985 and 1986".

(2) Section 1886(e)(3) of such Act is amended by striking out "(instead of the applicable percentage increase described in subsection (b)(3)(B))".

(3) Section 1886(e)(4) of such Act is amended by striking out "1986" and inserting in lieu thereof "1987".

(d) EFFECTIVE DATE OF FREEZE EXTENSION.—The amendments made by subsection (a) shall take effect on December 19, 1985, and the amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

(e) EFFECTIVE DATE FOR INCREASE.—

(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

(A) the amendments made by subsection (b) shall apply to payments made under section 1886(d)(1)(A) of such Act made on the basis of discharges occurring on or after March 1, 1986; and

(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B)) for discharges occurring during fiscal year 1986 shall be deemed to have been 1 percent.

(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

(A) the amendments made by subsection (b) shall apply to payments under section 1886(d)(1)(A) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act) for the—

(i) first 5 months of the cost reporting period shall be 0 percent, and

(ii) for the remaining 7 months of the cost reporting period shall be 1 percent; and

(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been 1 percent.

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

(A) the amendments made by subsection (b) shall apply to cost reporting periods beginning on or after October 1, 1985;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase de-

scribed in section 1886(b)(3)(B) were equal to 7/12 of 1 percent; and

(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been 1 percent.

(4) DEFINITION.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act.

SEC. 9102. ONE-YEAR EXTENSION OF PPS TRANSITION.

(a) ONE-YEAR DELAY OF FULL IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM.—Section 1886(d)(1)(A) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(A)) is amended by striking out "1986" in clauses (ii) and (iii) and inserting in lieu thereof "1987".

(b) NEW TARGET AND DRG PERCENTAGES FOR REMAINDER OF FISCAL YEAR 1986.—Section 1886(d)(1)(C) of such Act is amended—

(1) by striking out ", or discharges occurring",

(2) by striking out "and" at the end of clause (ii),

(3) by striking out "(iii) on or after October 1, 1985, and before October 1, 1986" in clause (iii) and inserting in lieu thereof "(iv) on or after October 1, 1986, and before October 1, 1987", and

(4) by inserting after clause (ii) the following new clause:

"(iii) on or after October 1, 1985, and before October 1, 1986, the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent; and".

(c) NEW BLENDED NATIONAL-REGIONAL DRG RATE FOR REMAINDER OF FISCAL YEAR 1986.—Section 1886(d)(1)(D) of such Act is amended—

(1) by striking out "cost reporting periods beginning, or", and

(2) by striking out "1985" and "1986" and inserting in lieu thereof "1986" and "1987", respectively, each place it appears.

(d) EFFECTIVE DATES.—

(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) shall apply—

(A) to cost reporting periods beginning on or after October 1, 1985, but

(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act—

(i) during the first 5 months of the period the "target percentage" is 50 percent and the "DRG percentage" is 50 percent, and

(ii) during the remaining 7 months of the period the "target percentage" is 45 percent and the "DRG percentage" is 55 percent.

(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) shall apply to discharges occurring on or after March 1, 1986.

SEC. 9103. APPLICATION OF REVISED HOSPITAL WAGE INDEX.

(a) APPLICATION OF REVISED INDEX PROSPECTIVELY.—(1) Section 2316(b) of the Deficit Reduction Act of 1984 (98 Stat. 1081) is amended to read as follows:

"(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring after March 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.".

(2) The amendment made by paragraph (1) shall be effective as if it had been included in the Deficit Reduction Act of 1984.

(b) STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES.—(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act, in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than March 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies.

SEC. 9104. PAYMENTS TO HOSPITALS FOR INDIRECT COSTS OF MEDICAL EDUCATION.

(a) PAYMENT FOR INDIRECT COSTS OF MEDICAL EDUCATION.—Section 1886(d)(5)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)) is amended to read as follows:

"(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2), except as follows:

"(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

"(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring—

"(I) on or after March 1, 1986, and before October 1, 1988, is equal to $2\times((1+r).^{405}-1)$, or

"(II) on or after October 1, 1988, is equal to $1.5\times((1+r).^{5795}-1)$,

where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds.

"(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

"(iv) In determining such adjustment, the Secretary shall continue to count interns and residents assigned to outpatient services of the hospital as part of the calculation of the full-time-equivalent number of interns and residents.".

(b) ADJUSTMENT OF PAYMENT AMOUNTS.—

(1) RESTANDARDIZING DRG PAYMENT AMOUNTS TO REFLECT CHANGE IN FORMULA.—Section 1886(d)(2)(C)(i) of such Act is amended by inserting "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)" after "medical education costs".

(2) PROVIDING FOR SYSTEM SAVINGS FROM CHANGE IN FORMULA.—Subparagraph (C) of section 1886(d)(3) of such Act is amended—

(A) by inserting "(i)" after "(C)",

(B) by inserting "FOR FISCAL YEAR 1985" after "NEUTRALITY",

(C) by striking out "The Secretary" and inserting in lieu thereof "For discharges occurring in fiscal year 1985, the Secretary", and

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

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into account the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring—

"(I) on or after October 1, 1986, and before October 1, 1988, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

"(II) on or after October 1, 1988, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985.".

(3) CONFORMING AMENDMENT.—Clauses (i)(I) and (ii)(I) of section 1886(d)(3)(D) of such Act are each amended by inserting "or reduced" after "(B), and adjusted".

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall apply to discharges occurring on or after March 1, 1986.

(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 are also being applied.

SEC. 9105. PAYMENTS FOR HOSPITALS WHICH SERVE A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.

(a) PAYMENT FOR HOSPITALS WHICH SERVE A DISPROPORTIONATE SHARE OF LOW-INCOME PATIENTS.—Section 1886(d)(5) of the Social Security Act (42 U.S.C. 1395ww(d)(5)) is amended by adding at the end the following new subparagraph:

"(F)(i) For discharges occurring on or after March 1, 1986, and before October 1, 1988, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

"(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

"(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this title or State plans approved under title XIX), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such revenues during the period.

"(ii) The amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for the cost reporting period in which the discharge occurs.

"(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 15 percent.

"(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—

"(I) is located in an urban area and has 100 or more beds, is equal to the lesser of 15 percent, or the percent determined in accordance with the following formula: (P-15)(.5) + 2.5, where 'P' is the hospital's disproportionate patent percentage (as defined in clause (vi));

"(II) is located in an urban area and has less than 100 beds, is equal to 5 percent; or

"(III) is located in a rural area, is equal to 4 percent.

"(v) In this subparagraph, a hospital 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals, or exceeds—

"(I) 15 percent, if the hospital is located in an urban area and has 100 or more beds,

"(II) 40 percent, if the hospital is located in an urban area and has less than 100 beds, or

"(III) 45 percent, if the hospital is located in a rural area.

"(vi) In this subparagraph, the term 'disproportionate patient percentage' means, with respect to a cost reporting period of a hospital, the sum of—

"(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of this title and were entitled to supplementary security income benefits (excluding any State supplementation) under title XVI of this Act, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this title, and

"(II) the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX, but who were not entitled to benefits under part A of this title, and the denominator of which is the total number of the hospital's patient days for such period.".

(b) RESTANDARDIZING DRG PAYMENT AMOUNTS TO REFLECT DISPROPORTIONATE SHARE PAYMENTS.—Section 1886(d)(2)(C) of such Act is amended—

(1) by striking out "and" at the end of clause (ii),

(2) by striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and

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

"(iv) for discharges occurring on or after October 1, 1986, and before October 1, 1988, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F).".

(c) CONFORMING AMENDMENT.—Section 1886(d)(5)(C)(i) of such Act is amended by striking out ", and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this title".

(d) CBO REPORT.—The Congressional Budget Office shall study, and report to Congress not later than January 1, 1987, on the impact of the implementation of this section on hospitals, including the appropriateness of the factors used in determining which hospitals are eligible for additional payments under section 1886(d)(5)(F) of the Social Security Act and the amount of the additional payments made to those hospitals.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges occurring on or after March 1, 1986.

SEC. 9106. TREATMENT OF CERTAIN RURAL OSTEOPATHIC HOSPITALS AS RURAL REFERRAL CENTERS.

(a) IN GENERAL.—Section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)) is amended by inserting before the period at the end of the second sentence the following: "and which

shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after January 1, 1986.

SEC. 9107. RETURN ON EQUITY CAPITAL FOR INPATIENT HOSPITAL SERVICES AND OTHER SERVICES.

(a) INPATIENT HOSPITAL SERVICES.—

(1) PHASE-DOWN IN PAYMENT FOR RETURN ON EQUITY CAPITAL.—Section 1886(g)(2) of the Social Security Act (42 U.S.C. 1395ww(g)(2)) is amended—

(A) by inserting "the applicable percentage (described in subparagraph (B)) of" before "the average of the rates of interest",

(B) by inserting "(A)" after "(2)", and

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

"(B) In this paragraph, the 'applicable percentage' is—

"(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,

"(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,

"(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and

"(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.".

(2) EXCLUSION FROM PROSPECTIVE PAYMENT.—The second sentence of section 1886(a)(4) of such Act is amended—

(A) by inserting "a return on equity capital," after "anesthetist,", and

(B) by inserting "other" before "capital-related costs".

(b) OTHER SERVICES.—

(1) LIMITATION ON RATE.—Section 1861(v)(1) of such Act (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:

"(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.".

(2) CONFORMING AMENDMENTS.—Section 1861(v)(1)(B) of such Act is amended—

(A) by striking out "any fiscal period" and "such fiscal period" and inserting in lieu thereof "any cost reporting period" and "the period", respectively, and

(B) by striking out "not exceed one and one-half times" in the second sentence and inserting in lieu thereof "be equal to".

(c) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply to hospital cost reporting periods beginning on or after October 1, 1986.

(2) The amendments made by subsection (b) shall apply to cost reporting periods beginning on or after October 1, 1985.

SEC. 9108. CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS.

(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972, or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972), shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act if such system applies—

(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

(2) to the review of at least 75 percent of—

(A) all revenues or expenses in such geographic area for inpatient hospital services, and

(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX.

(b) APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

SEC. 9109. FOUR-YEAR TEST FOR STATE WAIVERS FOR CERTAIN STATES.

(a) IN GENERAL.—Section 1886(c) of the Social Security Act (42 U.S.C. 1395ww(c)) is amended by adding at the end the following new paragraph:

"(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

"(A) in applying paragraphs (1)(C) and (6), a reference to a '36-month period' is deemed a reference to a '48-month period', and

"(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason to believe that such assurances are not being (or will not be) met, before July 1, 1986.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 9110. ASSET VALUATION FOR DONATIONS OF STATE PROPERTY TO NONPROFIT CORPORATIONS.

(a) GENERAL RULE.—Section 1861(v)(1)(O) of the Social Security Act (42 U.S.C. 1395x(v)(1)(O)) is amended—

(1) by inserting ", except as provided in clause (iv)," in clause (i) after "such regulations shall provide", and

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

"(iv) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be applied as though they were originally included in the Deficit Reduction Act of 1984.

SEC. 9111. PAYMENTS TO SOLE COMMUNITY HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNT.—Section 1886(d)(5)(C)(ii) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(ii)) is amended by inserting after the second sentence thereof the following: "In the case of a sole community hospital which experiences, in any cost reporting period after the cost reporting period which was used as the base for determining the target amount for payments to such hospital under paragraph (1)(A)(i)(I), a significant increase in operating costs attributable to the addition of new inpatient facilities or services at such hospital (including the opening of a special care unit), the Secretary shall provide for such adjustment to the payment amounts under this subsection for such cost reporting period and subsequent cost reporting periods as may be necessary to reasonably compensate such hospital for such increased costs.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1989.

(c) STUDY.—The Secretary of Health and Human Services shall conduct a study of the effects of the amendment made by subsection (a). The Secretary shall report the results of such study, including recommendations for a permanent mechanism to take into account needed expansions of services by sole community hospitals and the hospital-specific medicare payment rates thereof, to the Congress prior to January 1, 1987.

SEC. 9112. INDIRECT TEACHING ADJUSTMENT FOR CERTAIN CLINICS.

(a) IN GENERAL—Section 602(k) of the Social Security Amendments of 1983 (97 Stat. 165) is amended by inserting "(1)" after "(k)" and by adding at the end the following new paragraphs:

"(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

"(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

"(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

"(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.".

(b) EFFECTIVE DATES.—(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by subsection (a)) shall apply to cost reporting periods beginning on or after January 1, 1986.

(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a)) shall apply to items and services furnished after the end of the 10-day period beginning on the date of the enactment of this Act.

SEC. 9113. REPORT ON IMPACT OF OUTLIER AND TRANSFER POLICY ON RURAL HOSPITALS.

(a) REVIEW.—The Secretary of Health and Human Services shall review the impact of policies respecting outliers and patient transfers on payments under section 1886(d) of the Social Security Act to rural hospitals (particularly on rural hospitals with less than 100 beds).

(b) REPORT.—The Secretary shall report to Congress on the findings of the review not later than January 1, 1987, and shall include in the report recommendations on changes in policies respecting outliers and patient transfers to the extent they adversely affect rural hospitals.

SEC. 9114. INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS.

(a) DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

(b) CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.

SEC. 9115. SPECIAL RULES FOR IMPLEMENTATION OF SUBPART.

(a) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart.

(b) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.

Subpart B—Miscellaneous Provisions

SEC. 9121. RESPONSIBILITIES OF MEDICARE HOSPITALS IN EMERGENCY CASES.

(a) REQUIREMENT OF MEDICARE HOSPITAL PROVIDER AGREEMENTS.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and", and

(3) by inserting after subparagraph (H) the following new subparagraph:

"(I) in the case of a hospital, to comply with the requirements of section 1867 to the extent applicable.".

(b) REQUIREMENTS.—Title XVIII of such Act is amended by inserting after section 1866 the following new section:

"EXAMINATION AND TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND WOMEN IN ACTIVE LABOR

"SEC. 1867. (a) MEDICAL SCREENING REQUIREMENT.—In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists or to determine if the individual is in active labor (within the meaning of subsection (e)(2)).

"(b) NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND ACTIVE LABOR.—

"(1) IN GENERAL.—If any individual (whether or not eligible for benefits under this title) comes to a hospital and the hospital determines that the individual has an emergency medical condition or is in active labor, the hospital must provide either—

"(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition or to provide for treatment of the labor, or

"(B) for transfer of the individual to another medical facility in accordance with subsection (c).

"(2) REFUSAL TO CONSENT TO TREATMENT.—A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph but the individual (or a legally responsible person acting on the individual's behalf) refuses to consent to the examination or treatment.

"(3) REFUSAL TO CONSENT TO TRANSFER.—A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) but

the individual (or a legally responsible person acting on the individual's behalf) refuses to consent to the transfer.

"(c) RESTRICTING TRANSFERS UNTIL PATIENT STABILIZED.—

"(1) RULE.—If a patient at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(4)(B)) or is in active labor, the hospital may not transfer the patient unless—

"(A)(i) the patient (or a legally responsible person acting on the patient's behalf) requests that the transfer be effected, or

"(ii) a physician (within the meaning of section 1861(r)(1)), or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual's medical condition from effecting the transfer; and

"(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

"(2) APPROPRIATE TRANSFER.—An appropriate transfer to a medical facility is a transfer—

"(A) in which the receiving facility—

"(i) has available space and qualified personnel for the treatment of the patient, and

"(ii) has agreed to accept transfer of the patient and to provide appropriate medical treatment;

"(B) in which the transferring hospital provides the receiving facility with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital;

"(C) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

"(D) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of patients transferred.

"(d) ENFORCEMENT.—

"(1) AS REQUIREMENT OF MEDICARE PROVIDER AGREEMENT.—If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

"(A) termination of its provider agreement under this title in accordance with section 1866(b), or

"(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.

"(2) CIVIL MONETARY PENALTIES.—In addition to the other grounds for imposition of a civil money penalty under section 1128A(a), a participating hospital that knowingly violates a re-

quirement of this section and the responsible physician in the hospital with respect to such a violation are each subject, under that section, to a civil money penalty of not more than $25,000 for each such violation. As used in the previous sentence, the term 'responsible physician' means, with respect to a hospital's violation of a requirement of this section, a physician who—

"(A) is employed by, or under contract with, the participating hospital, and

"(B) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.

"(3) CIVIL ENFORCEMENT.—

"(A) PERSONAL HARM.—Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

"(B) FINANCIAL LOSS TO OTHER MEDICAL FACILITY.—Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

"(C) LIMITATIONS ON ACTIONS.—No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

"(e) DEFINITIONS.—In this section:

"(1) The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(A) placing the patient's health in serious jeopardy,

"(B) serious impairment to bodily functions, or

"(C) serious dysfunction of any bodily organ or part.

"(2) The term 'active labor' means labor at a time at which—

"(A) delivery is imminent,

"(B) there is inadequate time to effect safe transfer to another hospital prior to delivery, or

"(C) a transfer may pose a threat of the health and safety of the patient or the unborn child.

"(3) The term 'participating hospital' means hospital that has entered into a provider agreement under section 1866 and has, under the agreement, obligated itself to comply with the requirements of this section.

"(4)(A) The term 'to stabilize' means, with respect to an emergency medical condition, to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condi-

tion is likely to result from the transfer of the individual from a facility.

"(B) The term 'stabilized' means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result from the transfer of the individual from a facility.

"(5) The term 'transfer' means the movement (including the discharge) of a patient outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of a patient who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

"(f) PREEMPTION.—The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act.

(d) REPORT.—The Secretary of Health and Human Services shall, not later than 6 months after the effective date described in subsection (c), report to Congress on the methods to be used for monitoring and enforcing compliance with section 1867 of the Social Security Act.

SEC. 9122. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN CHAMPUS AND CHAMPVA PROGRAMS.

(a) IN GENERAL.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) by striking out "and" at the end of subparagraph (G),

(2) by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and", and

(3) by inserting after subparagraph (H) the following new subparagraph:

"(I) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 613 of title 38, United States Code, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10, United States Code.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to agreements entered into or renewed on or after the date of the enactment of this Act, but shall apply only to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.

(c) REFERENCE TO STUDY REQUIRED.—For a study of the use by CHAMPUS of the medicare prospective payment system, see section 634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525), the deadline for which is extended under section 2002 of this Act.

(d) REPORT.—The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

SEC. 9123. EXTENSION AND PAYMENT FOR HOSPICE CARE.

(a) ELIMINATION OF SUNSET.—Section 122(h)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248, 96 Stat. 362), relating to the end of the effective date for hospice care, is amended—

(1) in subparagraph (A)—

(A) by striking out "(h)(1)(A) Subject to subparagraph (B), the" and inserting in lieu thereof "(h)(1) The", and

(B) by striking out ", and before October 1, 1986", and

(2) by striking out subparagraph (B).

(b) INCREASE IN PAYMENT OF DAILY RATES FOR HOSPICE CARE.—(1) Subparagraph (B) of section 1814(i)(1) of the Social Security Act (42 U.S.C. 1395f(i)(1)) is amended to read as follows:

"(B) Notwithstanding subparagraph (A), for hospice care furnished on or after January 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.".

(2) Subparagraph (C) of such section is amended by striking out "1985" and inserting in lieu thereof "1986".

SEC. 9124. LIMITING THE PENALTY FOR LATE ENROLLMENT IN PART A.

(a) LIMITING PENALTY TO 10 PERCENT AND TWICE THE PERIOD DURING WHICH NOT ENROLLED.—Section 1818(c) of the Social Security Act (42 U.S.C. 1395i-2(c)) is amended—

(1) by striking out "and" at the end of paragraph (5),

(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and

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

"(7) any percent increase effected under section 1839(b) in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(3) shall apply to premiums paid for months beginning with April 1986.

(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended.

SEC. 9125. PROMULGATION OF INPATIENT HOSPITAL DEDUCTIBLE.

(a) CHANGE IN DEADLINE.—Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2)) is amended by striking out "October 1" and inserting in lieu thereof "September 15".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years after 1985.

SEC. 9126. ACCESS TO SKILLED NURSING FACILITIES.

(a) OPTIONAL PROSPECTIVE RATES FOR CERTAIN SKILLED NURSING FACILITIES.—Section 1888 of the Social Security Act (42 U.S.C. 1395yy) is amended by adding at the end the following new subsection:

"(d)(1) Any skilled nursing facility may choose to be paid under this subsection on the basis of a prospective payment for all routine service costs (and capital-related costs) of extended care services provided in a fiscal year if such facility had, in the preceding fiscal year, fewer than 1,500 patient days with respect to which payments were made under this title. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1861(v) and subsections (a) through (c) of this section and capital-related costs pursuant to section 1861(v). This subsection shall not apply to a facility for any fiscal year immediately following a fiscal year in which such facility had 1,500 or more patient days with respect to which payments were made under this title, without regard to whether payments were made under this subsection during such preceding fiscal year.

"(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

"(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

"(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) and adjusted for different area wage levels, and

"(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) and adjusted for different area wage levels.

"(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

"(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a), and the term 'region' shall have the same meaning as under section 1886(d)(2)(D).

"(4) The Secretary shall establish the prospective payment amounts for each fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year.

"(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining

prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

"(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.".

(b) PUBLICATION OF DATA RELATING TO ADJUSTMENTS TO SNF LIMITS.—Section 1888(c) of such Act is amended by adding at the end thereof the following: "The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.".

(c) REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the 30-month period beginning with the first month beginning after the date of the enactment of this Act.

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall apply to fiscal years beginning on or after October 1, 1986.

(2) The amendment made by subsection (b) shall become effective on the date of the enactment of this Act.

SEC. 9127. ADDITIONAL MEMBERS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.

(a) EXPANSION OF MEMBERSHIP.—Section 1886(e)(6)(A) of the Social Security Act (42 U.S.C. 1395ww(e)(6)(A)) is amended by striking out "15 individuals" and inserting in lieu thereof "17 individuals".

(b) APPOINTMENTS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of three years.

SEC. 9128. SENSE OF THE SENATE WITH RESPECT TO INPATIENT HOSPITAL DEDUCTIBLE.

In view of the $92 Medicare hospital deductible increase that will go into effect January 1, 1986, it is the sense of the Senate that the Committee on Finance should report legislation which will reform calculation of the annual increase in such deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

SEC. 9129. MEDICARE COVERAGE OF STATE AND LOCAL EMPLOYEES.

For provision providing for medicare coverage of certain State and local employees, see section 13205 of this Act.

PART 2—PROVISIONS RELATING TO PARTS A AND B OF MEDICARE

Subpart A—Payment-related Provisions

SEC. 9201. EXTENSION OF WORKING AGED PROVISION.

(a) EXTENSION OF SECONDARY PAYOR STATUS BEYOND AGE 69.—Section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)) is amended—

(1) in clause (i), by striking out "who is under 70 years of age during any part of such month" and ", if the spouse is under 70 years of age during any part of such month", and

(2) in clause (iii), by striking out "and ending with the month before the month in which such individual attains the age of 70".

(b) EXTENSION OF AGE DISCRIMINATION PROVISIONS.—

(1) Section 4(g)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)) is amended by striking out "through 69" and inserting in lieu thereof "or older" each place it appears.

(2) Section 12(a) of such Act (29 U.S.C. 631(a)) is amended by inserting "(except the provisions of section 4(g))" after "Act".

(3) Section 4 of such Act (29 U.S.C. 623) is amended by redesignating the second subsection (g), added by section 802 of the Older Americans Act Amendments of 1984, as subsection (h).

(c) CONFORMING AMENDMENTS.—

(1) SPECIAL ENROLLMENT PERIOD.—Paragraph (3) of section 1837(i) of the Social Security Act (42 U.S.C. 1395p(i)(3)) is amended to read as follows:

"(3) The special enrollment period referred to in paragraphs (1) and (2) is the period beginning with the first day of the first month in which the individual is no longer enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of current employment and ending seven months later.".

(2) EFFECTIVE DATE OF ENROLLMENT.—Subsection (e) of section 1838 of the Social Security Act (42 U.S.C. 1395q) is amended to read as follows:

"(e) Notwithstanding subsection (a), in the case of an individual who enrolls during a special enrollment period pursuant to section 1837(i)(3)—

"(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

"(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls."

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply with respect to items and services furnished on or after March 1, 1986.

(2) The amendments made by subsections (b) and (c) shall become effective on March 1, 1986.

SEC. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

(a) MEDICARE PAYMENT METHODOLOGY.—Section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

"(h) PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—

"(1) SUBSTITUTION OF SPECIAL PAYMENT RULES.—Notwithstanding section 1861(v), instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

"(2) DETERMINATION OF HOSPITAL-SPECIFIC APPROVED FTE RESIDENT AMOUNTS.—The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

"(A) DETERMINING ALLOWABLE AVERAGE COST PER FTE RESIDENT IN A HOSPITAL'S BASE PERIOD.—The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this title for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

"(B) UPDATING TO THE FIRST COST REPORTING PERIOD.—

"(i) IN GENERAL.—The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

"(ii) EXCEPTION.—The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

"(C) AMOUNT FOR FIRST COST REPORTING PERIOD.—For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under paragraph (B) increased by 1 percent.

"(D) AMOUNT FOR SUBSEQUENT COST REPORTING PERIODS.—For each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at

that midpoint, with appropriate adjustments to reflect previous under- or over-estimations under this subparagraph in the projected percentage change in the consumer price index.

"(E) TREATMENT OF CERTAIN HOSPITALS.—In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this title for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this title, provide for such approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

"(3) HOSPITAL PAYMENT AMOUNT PER RESIDENT.—

"(A) IN GENERAL.—The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

"(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

"(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

"(B) AGGREGATE APPROVED AMOUNT.—As used in subparagraph (A), the term 'aggregate approved amount' means, for a hospital cost reporting period, the product of—

"(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

"(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

"(C) MEDICARE PATIENT LOAD.—As used in subparagraph (A), the term 'medicare patient load' means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A.

"(4) DETERMINATION OF FULL-TIME-EQUIVALENT RESIDENTS.—

"(A) RULES.—The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

"(B) ADJUSTMENT FOR PART-YEAR OR PART-TIME RESIDENTS.—Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

"(C) WEIGHTING FACTORS FOR CERTAIN RESIDENTS.—Subject to subparagraph (E), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

"(i) before July 1, 1986, for each resident the weighting factor is 1.00,

"(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

"(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

"(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

"(E) FOREIGN MEDICAL GRADUATES REQUIRED TO PASS FMGEMS EXAMINATION.—

"(i) IN GENERAL.—Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

"(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)) before July 1, 1986, or

"(II) the individual is unable to take that examination because the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

"(ii) TRANSITION FOR CURRENT FMGS.—On or after July 1, 1986, in the case of a foreign medical graduate who—

"(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

"(II) has not passed the FMGEMS examination before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

"(5) DEFINITIONS AND SPECIAL RULES.—As used in this subsection:

"(A) APPROVED MEDICAL RESIDENCY TRAINING PROGRAM.—The term 'approved medical residency training program' means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

"(B) CONSUMER PRICE INDEX.—As used in this paragraph, the term 'consumer price index' refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

"(C) DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The term 'direct graduate medical education costs' means direct costs of approved educational activities for approved medical residency training programs.

"(D) FOREIGN MEDICAL GRADUATE.—The term 'foreign medical graduate' means a resident who is not a graduate of—

"(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

"(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

"(iii) a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose.

"(E) FMGEMS EXAMINATION.—The term 'FMGEMS examination' means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences recognized by the Secretary for this purpose.

"(F) INITIAL RESIDENCY PERIOD.—The term 'initial residency period' means the period of board eligibility plus one year, except that—

"(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

"(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

The initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

"(G) PERIOD OF BOARD ELIGIBILITY.—

"(i) GENERAL RULE.—Subject to clauses (ii) and (iii), the term 'period of board eligibility' means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

"(ii) APPLICATION OF 1985–1986 DIRECTORY.—Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

"(iii) CHANGES IN PERIOD OF BOARD ELIGIBILITY.—On or after July 1, 1989, if the Accreditation Council on

Graduate Medical Education, in its Directory of Residency Training Programs—

"(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985-1986 Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

"(II) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985-1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

"(H) RESIDENT.—The term 'resident' includes an intern or other participant in an approved medical residency training program.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to hospital cost reporting periods beginning on or after July 1, 1985.

(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act. The study shall address—

(A) the types and numbers of such programs, and number of students supported or trained under each program;

(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committes described in paragraph (1) prior to July 1, 1990.

(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act with respect to patients in different

teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984.

(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

(1) the types of services provided;

(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

(g) ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM.—The Secretary of Health and Human Services shall establish a system, for implementation not later than July 1, 1987, which provides for a unique identifier for each physician who furnishes services for which payment may be made under title XVIII of the Social Security Act.

(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

(i) PROHIBITING A LIMIT ON INCREASES ON DIRECT MEDICAL EDUCATION COSTS.—(1) Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)), as amended by section 9107(b) of this title, is further amended by adding at the end the following new subparagraph:

"(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs of approved medical educational activities.".

(2) The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after July 1, 1985.

(j) SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act, for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

SEC. 9203. PAYMENT FOR HOME HEALTH SERVICES.

(a) LIMITATIONS ON PAYMENT FOR HOME HEALTH SERVICES.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended by striking out "the 75th percentile" and all that follows through "as the Secretary may determine." and inserting in lieu thereof "for cost reporting periods beginning on or after—

"(i) July 1, 1985, and before July 1, 1986, 120 percent,

"(ii) July 1, 1986, and before July 1, 1987, 115 percent, or

"(iii) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies. Such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline-specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.".

(b) GAO REPORT.—The Comptroller General shall study and report to Congress, not later than September 1, 1986, on the appropriateness of applying the per visit cost limits for home health services under the medicare program on a discipline-specific basis, rather than on an aggregate basis for all home health services furnished by an agency.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after July 1, 1985.

SEC. 9204. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

(a) MORATORIUM.—Prior to January 1, 1987, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

SEC. 9205. HOME HEALTH WAIVER OF LIABILITY.

The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until 12 months after the date on which ten regional intermediaries have commenced operations to service home health agencies, as required under section 1816(e)(4) of the Social Security Act.

Subpart B—Other Provisions

SEC. 9211. PROVISIONS RELATING TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) FINANCIAL RESPONSIBILITY FOR PATIENTS HOSPITALIZED ON THE EFFECTIVE DATE OF AN ENROLLMENT OR DISENROLLMENT.—(1) Subsection (c) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new paragraph:

"(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1886(d)(1)(B)) as of the effective date of the individual's—

"(A) enrollment with an eligible organization under this section—

"(i) payment for such services until the date of the individual's discharge shall be made under this title as if the individual were not enrolled with the organization,

"(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

"(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this section; or

"(B) termination of enrollment with an eligible organization under this section—

"(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

"(ii) payment for such services during the stay shall not be made under section 1886(d), and

"(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.".

(2) Subsection (a)(3) of such section is amended by striking out "Payments" and inserting in lieu thereof "Subject to subsection (c)(7), payments".

(3) Subsection (a)(6) of such section is amended by striking out "If" and inserting in lieu thereof "Subject to subsection (c)(7), if".

(b) DISENROLLMENTS.—

(1) EFFECTIVE DATE.—Subsection (c)(3)(B) of such section is amended by striking out "a full calendar month after" and inserting in lieu thereof "the date on which".

(2) INFORMATION.—Such subsection is further amended by adding at the end the following: "In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this title other than through the organization.".

(c) REVIEW OF MARKETING MATERIAL.—Subsection (c)(3)(C) of such section is amended by adding at the end the following: "No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (i) at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.".

(d) PROMPT PUBLICATION OF AAPCC.—Subsection (a)(1)(A) of such section is amended by inserting after "The Secretary shall annually determine" the following: ", and shall publish not later than September 7 before the calendar year concerned".

(e) EFFECTIVE DATES.—

(1) FINANCIAL RESPONSIBILITY.—The amendments made by subsection (a) shall apply to enrollments and disenrollments that become effective on or after the date of the enactment of this Act.

(2) DISENROLLMENTS.—The amendments made by subsection (b) shall apply to requests for termination of enrollment submitted on or after February 1, 1986.

(3) MATERIAL REVIEW.—(A) The amendment made by subsection (c) shall not apply to material which has been distributed before April 1, 1986.

(B) Such amendment also shall not apply so as to require the submission of material which is distributed before April 1, 1986.

(C) Such amendment shall also not apply to material which the Secretary determines has been prepared before the date of the enactment of this Act and for which a commitment for distribution has been made, if the application of such amendment would constitute a hardship for the organization involved.

(4) PUBLICATION.—The amendment made by subsection (d) shall apply to determinations of per capita rates of payment for 1987 and subsequent years.

(5) NECESSARY MODIFICATION OF CONTRACTS.—The Secretary of Health and Human Services shall provide for such changes in the risk-sharing contracts which have been entered into under section 1876 of the Social Security Act as may be necessary to conform to the requirements imposed by the amendments made by this section on a timely basis.

SEC. 9212. CHANGING MEDICARE APPEAL RIGHTS.

(a) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following new sentence: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item.".

(b) REVIEW OF PART B DETERMINATIONS.—(1) Section 1869 of such Act (42 U.S.C. 1395ff) is further amended—

(A) by inserting "or part B" in subsection (a) after "amount of benefits under part A",

(B) by inserting "or part B" in subsection (b)(1)(C) after "part A",

(C) by amending paragraph (2) of subsection (b) to read as follows:

"(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

"(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

"(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.", and

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

"(3) Paragraph (1) shall not be construed as authorizing any administrative law or other judge to review any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title.".

(2) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking out "$100 or more" and inserting in lieu thereof "at least $100, but not more than $500".

(3) Section 1879(d) of such Act (42 U.S.C. 1395pp(d)) is amended by striking out "section 1869(b)" and all that follows through "part B)" and inserting in lieu thereof "sections 1869(b) and 1842(b)(3)(C) (as may be applicable)".

(c) EFFECTIVE DATES.—(1) The amendment made by subsection (a) takes effect on the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to items and services furnished on or after January 1, 1986.

SEC. 9213. REMOVAL OF PROHIBITION ON COMMENTS BY MEDICARE AND SOCIAL SECURITY ACTUARIES RELATING TO ECONOMIC ASSUMPTIONS.

(a) FEDERAL OLD-AGE AND DISABILITY INSURANCE TRUST FUND.—Section 201(c) of the Social Security Act (42 U.S.C. 401(c)) is amended by striking out "; Provided, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall" and inserting in lieu thereof ". Such report shall".

(b) MEDICARE TRUST FUNDS.—Sections 1817(b) and 1841(b) of such Act (42 U.S.C. 1395i(b), 1395t(b)) are each amended by striking out ": Provided, That the certification shall not refer to economic assumptions underlying the Trustee's report".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9214. LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS.

The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act, and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.

SEC. 9215. EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

The Secretary of Health and Human Services shall extend, for a period of three additional years, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967.

SEC. 9216. AUDIT AND MEDICAL CLAIMS REVIEW.

(a) INCREASE IN ACTIVITIES FOR FISCAL YEARS 1986, 1987, AND 1988.—Section 118 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 355) is amended—

(1) by striking out "for fiscal years 1983, 1984, and 1985",

(2) by striking out "such fiscal years" and inserting in lieu thereof "fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988", and

(3) by striking out "the purpose of carrying out provider cost audits and reviews of medical necessity" and inserting in lieu thereof "purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning with fiscal year 1986.

SEC. 9217. LIVER TRANSPLANTS.

(a) The Senate finds that:

(1) There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

(2) There are 4,000 to 4,700 potential candidates in the United States each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

(3) There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

(4) After extensive review and consideration of all the available data, a National Institutes of Health expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

(5) National Institutes of Health further recommended that liver transplants be done in individuals under 18 years of age.

(6) The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

(7) The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) Based upon the above findings, it is the sense of the Senate that:

(1) For the purposes of title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

(2) A liver transplant shall be covered under such title when reasonable and medically necessary.

(3) The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to

ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

SEC. 9218. STUDIES RELATING TO PHYSICAL THERAPISTS AND OTHER PROFESSIONALS.

(a) SUPERVISION OF HOME HEALTH SERVICES.—The Secretary of Health and Human Services shall conduct a study of the advisability of changing the requirements of title XVIII of the Social Security Act to allow home health services to be provided under the supervision of a physical therapist or other health care professional, rather than requiring the supervision of a physician or registered nurse.

(b) OFFICE REQUIREMENT.—The Secretary of Health and Human Services shall conduct a study on the advisability of deleting the requirement under such title that a physical therapist must have an office equipped with specified equipment, even if such therapist provides all such services in patients' homes.

(c) REPORTS.—The Secretary shall report the results of the studies to the Congress prior to October 1, 1986.

SEC. 9219. TECHNICAL CORRECTIONS.

(a) WORKING AGED TECHNICAL CORRECTIONS.—

(1) PREMIUM PENALTY.—The second sentence of section 1839(b) of the Social Security Act (42 U.S.C. 1395r(b)), as amended by section 2338(a) of the Deficit Reduction Act of 1984, is amended by striking out "months in which" and all that follows through "clause (iv) of such section" and inserting in lieu thereof "months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1862(b)(3)(A)(iv)".

(2) SPECIAL ENROLLMENT PERIODS.—Section 1837(i) of the Social Security Act (42 U.S.C. 1395p), as added by section 2338(b) of the Deficit Reduction Act of 1984, is amended—

(A) in paragraph (1), by amending subparagraph (A) to read as follows:

"(A) has attained the age of 65,"; and

(B) in paragraph (2), by redesignating subparagraph (C) as subparagraph (D) and by amending subparagraphs (A) and (B) to read as follows:

"(A) has attained the age of 65;

"(B)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(B);

"(C) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1862(b)(3)(A)(iv) by reason of the individual's (or individual's spouse's) current employment; and".

(3) EFFECTIVE DATES.—

(A) The amendment made by paragraph (1) shall apply to months beginning with January 1983 for premiums for months beginning with the first month that begins more than 30 days after the date of the enactment of this Act.

(B)(i) The amendments made by paragraph (2) shall apply to enrollments in months beginning with the first effective month (as defined in clause (ii)), except that in the case of any individual who would have a special enrollment period under section 1837(i) of the Social Security Act that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

(ii) For purposes of clause (i), the term "first effective month" means the first month that begins more than 90 days after the date of the enactment of this Act.

(b) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1)(A) Subclause (III) of section 1842(b)(7)(B)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(7)(B)(ii)), as added by section 2307(a)(2)(G) of the Deficit Reduction Act of 1984, is amended by indenting it two additionals ems to the right so as to align its left margin with the left margins of subclauses (I) and (II) of that section.

(B) Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)), as inserted by section 2321(e)(3) of the Deficit Reduction Act of 1984, is amended by striking out "at his home" and inserting in lieu thereof "as his home".

(C) Section 1888(b) of the Social Security Act (42 U.S.C. 1395yy(b)), as added by section 2319(b) of the Deficit Reduction Act of 1984, is amended by striking out "nothwithstanding" and inserting in lieu thereof "notwithstanding".

(D) The amendments made by this paragraph shall be effective as if they had been originally included in the Deficit Reduction Act of 1984.

(2)(A) Clause (iii) of section 1842(b)(7)(B) of the Social Security Act (42 U.S.C. 1395u(b)(7)(B)), as added by section 3(b)(6) of Public Law 98-617, is amended by moving its alignment two additionals ems to the left so as to align its left margin with the left margins of clauses (i) and (ii) of that section.

(B) The amendment made by subparagraph (A) shall be effective as if it had been originally included in Public Law 98-617.

(3)(A) Section 1861(v)(1)(G)(i) of the Social Security Act (42 U.S.C. 1395x(b)(1)(G)(i)), as amended by section 602(d)(1) of the Social Security Amendments of 1983, is amended by inserting, in the matter after subclause (III), "on the basis of" after "(during such period)".

(B) The amendment made by subparagraph (A) shall be effective as if it had been originally included in the Social Security Amendments of 1983.

SEC. 9220. EXTENSION OF ON LOK WAIVER.

(a) CONTINUED APPROVAL.—

(1) MEDICARE WAIVERS.—Notwithstanding any limitations contained in section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services shall continue approval of the risk-sharing application (described in section 603(c)(1) of Public Law 98-21) for waivers of certain require-

ments of title XVIII of the Social Security Act after the end of the period described in that section.

(2) MEDICAID WAIVERS.—Notwithstanding any limitations contained in section 1115 of the Social Security Act, the Secretary shall approve any application of the Department of Health Services, State of California, for a waiver of requirements of title XIX of such Act in order to continue carrying out the demonstration project referred to in section 603(c)(2) of Public Law 98-21 after the end of the period described in that section.

(b) TERMS, CONDITIONS, AND PERIOD OF APPROVAL.—The Secretary's approval of an application (or renewal of an application) under this section—

(1) shall be on the same terms and conditions as applied with respect to the corresponding application under section 603(c) of Public Law 98-21 as of July 1, 1985, except that requirements relating to collection and evaluation of information for demonstration purposes (and not for operational purposes) shall not apply; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with the terms and conditions described in paragraph (1).

SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through September 30, 1986, of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project as in effect on August 31, 1985.

PART 3—PROVISIONS RELATING TO PART B OF MEDICARE

Subpart A—Payment-Related Provisions

SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

(a) EXTENSION OF CURRENT FREEZE ON PAYMENT RATES THROUGH JANUARY 31, 1986.—Section 5(c) of the Emergency Extension Act of 1985 (Public Law 99-107), as amended by section 9101(a) of this title, is further amended by adding at the end the following new paragraph:

"(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term 'extension period' means the period beginning on October 1, 1985, and ending on January 31, 1986."

(b) EXTENSION OF CERTAIN PROVISIONS THROUGH DECEMBER 31, 1986.—

(1) EXTENSION.—Section 1842(b)(4) of the Social Security Act (42 U.S.C. 1395u(b)(4)) is amended—

(A) in subparagraph (A)—

(i) by inserting "(i)" after "(4)(A)", and

(ii) by adding at the end the following new clauses:

"(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 11-month period beginning February 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

"(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 11-month period beginning February 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

"(iii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.";

(B) in subparagraph (B)—

(i) by inserting "(i)" after "(B)", and

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

"(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 11-month period beginning February 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1)) at the time of furnishing the services—

"(I) if the physician was not a participating physician at any time during the 12-month period beginning on October 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983, and

"(II) if the physician was a participating physician at any time during the 12-month period beginning on October 1, 1984, the physician's customary charges shall be determined based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985.";

(C) in subparagraph (C)—

(i) by inserting "(i)" after "(C)",

(ii) by striking out "(A)" and inserting in lieu thereof "(A)(i)" each place it appears, and

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

"(ii) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a

physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).''; and

(D) in subparagraph (D)—

(i) by striking out ''In determining'' and all that follows through ''subsection (h)(1))'' and insert in lieu thereof ''(i) In determining the customary charges for physicians' services furnished during the 11-month period beginning February 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1)) on September 30, 1985'', and

(ii) by adding at the end the following new clauses:

''(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1)) on January 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 4-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

''(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1)) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 11-month period beginning on February 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.''.

(2) CONTINUED ENFORCEMENT.—The first sentence of section 1842(j)(1) of such Act (42 U.S.C. 1395u(j)(1)) is amended to read as follows: ''In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period.''.

(3) PERIOD FOR ENTERING PARTICIPATION AGREEMENTS.—The Secretary of Health and Human Services shall provide, during the month of January 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act for the 11-month period beginning February 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 11-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 11-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act, as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after February 1, 1986.

(c) INCENTIVES FOR PARTICIPATING PHYSICIAN PROGRAM.—

(1) 15-MONTH EXTENSION OF TRANSFER OF FUNDS FOR CARRIERS.—Section 2306(e) of the Deficit Reduction Act of 1984 (Public Law 98-369; 98 Stat. 1073) is amended—

(A) by striking out "and 1985" and inserting in lieu thereof ", 1985, and 1986",

(B) by striking out "the amendments made by this section" and inserting in lieu thereof "subsections (b)(4), (h), and (j) of section 1842 of the Social Security Act",

(C) by striking out "and" before "not less",

(D) by inserting before the period at the end the following: ", and not less than $18,000,000 for fiscal year 1986", and

(E) by adding at the end the following new sentences: "A significant proportion of such funds shall be used for the expansion of the participating physician and supplier program and for the development of professional relations staffs dedicated to addressing the billing and other problems of physicians and suppliers participating in that program. Such funds for fiscal year 1986 are available for obligation until December 31, 1986.".

(2) IMPROVEMENT OF PARTICIPATING PHYSICIAN DIRECTORIES.—Section 1842(i) of the Social Security Act (42 U.S.C. 1395u(i)) is amended—

(A) in the first sentence of paragraph (2)—

(i) by striking out "a directory" and inserting in lieu thereof "directories (for appropriate local geographic areas)", and

(ii) by inserting "for that area" before "for that fiscal year";

(B) in the second sentence of paragraph (2), by striking out "The directory" and inserting in lieu thereof "Each directory";

(C) in paragraph (3)—

(i) by striking out "directory" the first place it appears and inserting in lieu thereof "the directories", and

(ii) by striking out "directory" the second place it appears and inserting in lieu thereof "the appropriate area directory or directories"; and

(D) in paragraph (4)—

(i) by striking out "directory" and inserting in lieu thereof "the directories", and

(ii) by adding at the end the following: "The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area.".

(3) ELIMINATION OF PHYSICIAN ASSIGNMENT RATE LIST.—Section 1842(i) of such Act is further amended—

(A) by striking out "(i)(1)" and all that follows through the end of paragraph (1),

(B) by striking out "subsection (h)(1)" in paragraph (2) and inserting in lieu thereof "paragraph (1)",

(C) by striking out "list and" each place it appears in paragraphs (3) and (4), and

(D) by redesignating paragraphs (2) through (4) as paragraphs (4) through (6) of subsection (h), respectively.

(4) INFORMATION ON THE PARTICIPATING PHYSICIAN AND SUPPLIER PROGRAM IN EXPLANATIONS OF MEDICARE BENEFITS FOR UNASSIGNED CLAIMS.—Section 1842(h) of such Act, as previously amended by this subsection, is further amended by adding at the end the following new paragraphs:

"(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1833(a)(1) (made other than on an assignment-related basis, described in paragraph (8)), shall include—

"(A) a reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers), and

"(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers.

"(8) For purposes of this title, a claim is considered to be paid on an 'assignment-related basis' if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii), in accordance with subsection (b)(6)(B), or under the procedure described in section 1870(f)(1).".

(5) EFFECTIVE DATE.—Section 1842(b)(7) of the Social Security Act, as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than July 1, 1986) as the Secretary of Health and Human Services shall specify.

(d) CHANGING CUSTOMARY AND PREVAILING CHARGE UPDATES FOR PHYSICIAN SERVICES AND OTHER PART B SERVICES FROM OCTOBER TO JANUARY.—

(1) PAYMENT UPDATES.—Section 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3)) is amended—

(A) in subparagraph (F), by striking out "(ending on September 30)";

(B) in the third sentence by striking out "March 31" and all that follows through "of each year)" and inserting in lieu thereof "June 30 last preceding the start of the calendar year"; and

(C) in the eighth sentence, by striking out "the twelve-month period beginning on October 1 in".

(2) PARTICIPATION AGREEMENTS.—Section 1842(h)(1) of such Act is amended—

(A) in the second sentence—

(i) by striking out "before October 1" and inserting in lieu thereof "before the beginning",

(ii) by striking out "on the basis of an assignment" and all that follows through "1870(f)(1)" and inserting in lieu thereof "on an assignment-related basis", and

(iii) by striking out "the 12-month period beginning on October 1 of"; and

(B) in the third sentence—

(i) by striking out "after October 1" and inserting in lieu thereof "after the beginning", and

(ii) by striking out "12-month period beginning on such October 1" and inserting in lieu thereof "year".

(3) DIRECTORIES.—The first sentence of section 1842(i)(2) of such Act, (which is redesignated as section 1842(h)(4) by subsection (c)(3)(D)), is further amended by striking out "fiscal" each place it appears.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall (2) apply to items and services furnished on or after October 1, 1986.

(5) TRANSITION.—Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act, customary and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1986, shall be determined on the same basis as for items and services furnished on September 30, 1986.

SEC. 9302. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, OXYGEN, AND OTHER HEALTH SERVICES.

(a) TEMPORARY PAYMENT FREEZE.—Section 1842(b)(4) of the Social Security Act is amended by adding at the end thereof the following new subparagraphs:

"(E) In the case of medical and other health services (as defined in section 1861(s)) furnished during the period beginning on October 1, 1985, and ending on January 31, 1986, for which payment is based on reasonable charge, other than physicians' services and clinical laboratory services, the customary and prevailing charges under paragraph (3), and the lowest charge referred to in the sixth sentence of such paragraph may not exceed such charges recognized under this section for the 15-month period beginning on July 1, 1984.

"(F) Except as otherwise explicitly authorized under this section, the Secretary is not authorized to limit the rate of increase of charges.".

(b) LIMITATION ON CUSTOMARY AND PREVAILING CHARGES FOR RENTAL DURABLE MEDICAL EQUIPMENT AND OXYGEN.—Section 1842 of such Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(k)(1) In determining the customary and prevailing charge levels under the third and fourth sentences of subsection (b)(3) for durable medical equipment furnished on a rental basis (other than under a lease-purchase agreement), and for oxygen furnished during the 11-month period beginning on February 1, 1986, the Secretary shall not set any such level higher than the same level as was set for the 15-month period beginning July 1, 1984.".

(c) REQUIRING ACCEPTING PAYMENT OF REASONABLE CHARGE AS PAYMENT IN FULL FOR DURABLE MEDICAL EQUIPMENT FURNISHED ON A RENTAL BASIS AND FOR OXYGEN.—Section 1842(k) of such Act, as added by subsection (b), is amended by adding at the end the following new paragraph:

"(2) Payment under this part for durable medical equipment furnished on a rental basis (other than under a lease-purchase agreement) and for oxygen may only be made on a basis described in subsection (h)(8) or to a provider of services with an agreement in effect under section 1866.".

(d) LIMITING INCREASE IN PREVAILING CHARGES FOR DURABLE MEDICAL EQUIPMENT AND OXYGEN TO CONSUMER PRICE INDEX.—Section 1842(k) of such Act, as previously amended, is further amended by adding at the end the following new paragraph:

"(3) In the case of durable medical equipment and oxygen, the prevailing charge levels determined for purposes of clause (ii) of the third sentence of subsection (b) for any year may not exceed (in the aggregate) the levels determined under such clause (taking into account paragraph (1), if applicable) for the preceding 12-month period by a percentage which exceeds the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average), as published by the Secretary of Labor, for the 12-month period ending in June of the preceding year.".

(e) CLARIFICATION OF PREVIOUS EFFECTIVE DATE.—Section 2306(b)(2) of the Deficit Reduction Act of 1984 is amended by striking out "to items and services furnished on or after October 1, 1985" and inserting in lieu thereof "to medical and other health services, for which payment is made on a reasonable charge basis, furnished on or after July 1, 1985".

(f) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to items and services furnished on or after October 1, 1985, and before February 1, 1986.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to durable medical equipment and oxygen furnished on or after February 1, 1986.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to durable medical equipment and oxygen furnished on or after April 1, 1986.

(4) SUBSECTION (d).—(A) The amendments made by subsection (d) shall apply to durable medical equipment and oxygen furnished on or after January 1, 1987, except that such amendments shall not apply to durable medical equipment which is furnished on a purchase (or lease-purchase) basis before January 1, 1988.

(B) In applying section 1842(k)(3) of the Social Security Act (as added by subsection (d)) with respect to durable medical equipment and oxygen furnished during 1987—

(i) any reference to "the preceding 12-month period" shall be deemed a reference to "the preceding 11-month period", and

(ii) any reference to "the 12-month period" shall be deemed a reference to "the 15-month period".

(5) SUBSECTION (e).—The amendment made by subsection (e) shall take effect as though it were included in the enactment of the Deficit Reduction Act of 1984.

(f) CROSS REFERENCE.—For provision changing the period of update for certain services from October to January, see section 9301(d) of this part.

SEC. 9303. PAYMENT FOR CLINICAL LABORATORY SERVICES.

(a) CHANGING MONTH OF ANNUAL UPDATE FROM JULY TO JANUARY.—

(1) IN GENERAL.—Section 1833(h) of the Social Security Act (42 U.S.C. 1395l(h)) is amended—

(A) by striking out "June 30, 1987" and "July 1, 1987" and inserting in lieu thereof "December 31, 1987" and "January 1, 1988", respectively, each place either appears, and

(B) in paragraph (2), by inserting "(to become effective on January 1 of each year)" after "adjusted annually".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to clinical laboratory diagnostic tests performed on or after July 1, 1986.

(3) TRANSITION.—The Secretary of Health and Human Service shall provide that the annual adjustment under section 1833(h) of the Social Security Act for 1986—

(A) shall take effect on January 1, 1987,

(B) shall apply for the 12-month period beginning on that date, and

(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.

(b) PROVIDING CEILING ON RATES.—

(1) CEILING ON PAYMENTS.—Paragraphs (1)(D)(i) and (2)(D)(i) of section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) are each amended by inserting after "lesser of the amount determined under such fee schedule" the following: ", the limitation amount for that test determined under subsection (h)(4)(B),".

(2) ESTABLISHMENT OF LIMITATION AMOUNT.—Section 1833(h)(4) of such Act is amended by inserting "(A)" after "(4)" and by adding at the end the following new subparagraph:

"(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i), the limitation amount for a clinical diagnostic laboratory test performed—

"(i) on or after April 1, 1986, and before January 1, 1987, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1), or

"(ii) after December 31, 1986, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(3) METHOD OF PAYMENT FOR NON-INDEPENDENT LABORATORIES.—Section 1833(h)(5)(C) of such Act is amended by striking out "which is independent of a physician's office or" and inserting in lieu thereof "other than".

(4) EXTENDING MEDICARE PROFICIENCY EXAMINATION AUTHORITY.—Section 1123(a) of such Act (42 U.S.C. 1320a-2(a)) is amended by striking out "September 30, 1983" and inserting in lieu thereof "September 30, 1987".

(5) EFFECTIVE DATES.—(A) The amendments made by paragraphs (1) and (2) shall apply to clinical diagnostic laboratory tests performed on or after April 1, 1986.

(B) The amendment made by paragraph (3) shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

(C) The amendment made by paragraph (4) shall take effect on the date of the enactment of this Act.

(c) REPORT ON MINIMUM STANDARDS FOR CLINICAL LABORATORIES THAT ARE PART OF, OR ASSOCIATED WITH, PHYSICIANS' OFFICES.—The Secretary of Health and Human Services shall report to Congress, not later than 12 months after the date of the enactment of this Act, on the standards that might be established under the medicare program for clinical laboratories which are part of or associated with a physician's office to assure the health and safety of individuals with respect to whom the laboratories perform clinical diagnostic laboratory tests for which payment may be made under the program. In recommending standards, the Secretary shall consider the differences in the scope, type, and complexity of tests performed by such laboratories and such other factors as may indicate a need for different standards for laboratories with different characteristics.

SEC. 9304. DETERMINATIONS OF INHERENT REASONABLENESS OF CHARGES AND CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.

(a) REGULATIONS RELATING TO INHERENT REASONABLENESS OF CHARGES.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(8) The Secretary by regulation shall—

"(A) describe the factors to be used in determining the cases (of particular items or services) in which the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

"(B) provide in those cases for the factors that will be considered in establishing a reasonable charge that is realistic and equitable.".

(b) COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.—(1) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 11-month period beginning February 1, 1986, in the case of a physician who during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

(B) in the case of a physician who is not a participating physician (as defined in section 1842(h)(1) of the Social Security Act) either on September 30, 1985, or on February 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

(2) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 11-month period beginning February 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

(3) In this subsection, the term "hospital-compensated physician" means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.

SEC. 9305. PHYSICIAN PAYMENT REVIEW COMMISSION AND DEVELOPMENT OF RELATIVE VALUE SCALE.

(a) ESTABLISHMENT OF COMMISSION.—Part B of title XVIII of the Social Security Act is amended by adding at the end the following new section:

"PHYSICIAN PAYMENT REVIEW COMMISSION

"SEC. 1845. (a)(1) The Director of the Congressional Office of Technology Assessment (hereinafter in this section referred to the the 'Director' and the 'Office', respectively) shall provide for the appointment of a Physician Payment Review Commission (hereinafter in this section referred to as the 'Commission'), to be composed of individuals with expertise in the provision and financing of physicians' services appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service).

"(2) The Commission shall consist of 11 individuals. Members of the Commission shall first be appointed no later than May 1, 1986, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than four members expire in any one year.

"(3) The membership of the Commission shall include physicians, other health professionals, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and representatives of consumers and the elderly. The Director shall seek nominations from a wide range of groups, including—

"(A) national organizations representing physicians, including medical specialty organizations,

"(B) organizations representing the elderly and consumers,

"(C) national organizations representing medical schools,

"(D) national organizations representing hospitals, including teaching hospitals, and

"(E) national organizations representing health benefits programs.

"(b)(1) The Commission shall make recommendations to the Congress, not later than March 1 of each year (beginning with 1987), regarding adjustments to the reasonable charge levels for physicians' services recognized under section 1842(b) and changes in the methodology for determining the rates of payment, and for making payment, for physicians' services under this title and other items and services under this part.

"(2) In making its recommendations, the Commission shall—

"(A) consider, and make recommendations on the feasibility and desirability of reducing, the differences in payment amounts for physicians' services under this part which are based on differences in geographic location or specialty;

"(B) review the input costs (including time, professional skills, and risks) associated with the provision of different physicians' services;

"(C) identify those charges recognized as reasonable under section 1842(b) which are significantly out-of-line, based on the considerations of subparagraphs (A) and (B);

"(D) assess the likely impact of different adjustments in payment rates, particularly their impact on physician participation in the participation program established under section 1842(h) and on beneficiary access to necessary physicians' services;

"(E) make recommendations on ways to increase physician participation in that participation program and the acceptance of payment under this part on an assignment-related basis;

"(F) make recommendations respecting the advisability and feasibility of making changes in the payment system for physicians' services under this part based on (i) the Secretary's study under section 603(b)(2) of the Social Security Amendments of 1983 (relating to payments for physicians' services furnished to hospital inpatients on the basis of diagnosis-related groups) and (ii) the Office's report under section 2309 of the Deficit Reduction Act of 1984 (relating to physician reimbursement under this part);

"(G) identify those procedures, involving the use of assistants at surgery, for which payment for those assistants should not be made under this title without prior approval; and

"(H) identify those procedures for which an opinion of a second physician should be required before payment is made under this title.

"(3) The Commission also shall advise and make recommendations to the Secretary respecting the development of the relative value scale under subsection (e).

"(c)(1) The following provisions of section 1886(e)(6) shall apply to the Commission in the same manner as they apply to the Prospective Payment Assessment Commission:

"(A) Subparagraph (C) (relating to staffing and administration generally).

"(B) Subparagraph (D) (relating to compensation of members).

"(C) Subparagraph (F) (relating to access to information).

"(D) Subparagraph (G) (relating to reports and use of funds).

"(E) Subparagraph (H) (relating to periodic GAO audits).

"(F) Subparagraph (J) (relating to requests for appropriations).

"(2) In order to carry out its functions, the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice. In collecting and assessing information, the Commission shall—

"(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

"(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate for the development of useful and valid guidelines by the Commission, and

"(C) adopt procedures allowing any interested party to submit information with respect to physicians' services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums shall be payable from the Federal Supplementary Medical Insurance Trust Fund.".

(b) DEVELOPMENT OF RELATIVE VALUE SCALE FOR PHYSICIANS' SERVICES.—Section 1845 of the Social Security Act, as added by subsection (a), is further amended by adding at the end the following new subsection:

"(e)(1) The Secretary shall develop a relative value scale that establishes a numerical relationship among the various physicians' services for which payment may be made under this part or under State plans approved under title XIX.

"(2) In developing the scale, the Secretary shall consider among other items—

"(A) the report of the Office of Technology Assessment under section 2309 of the Deficit Reduction Act of 1984,

"(B) the recommendations of the Physician Payment Review Commission under subsection (b)(3), and

"(C) factors with respect to the input costs for furnishing particular physicians' services, such as—

"(i) the differences in costs of furnishing services in different settings,

"(ii) the differences in skill levels and training required to perform the services, and

"(iii) the time required, and risk involved, in furnishing different services.

"(3) The Secretary shall complete the development of the relative value scale under this section, and report to Congress on the development, not later than July 1, 1987. The report shall include recommendations for the application of the scale to payment for physicians' services furnished under this part on or after January 1, 1988.".

SEC. 9306. LIMITATION ON MEDICARE PAYMENT FOR POST-CATARACT SURGERY PATIENTS.

(a) DETERMINATION OF SEPARATE PAYMENT AMOUNTS FOR PROSTHETIC LENSES AND PROFESSIONAL SERVICES.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)) is amended by adding after paragraph (8), added by section 9304(a) of this title, the following new paragraph:

"(9) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

"(A) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1861(r)), and

"(B) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after April 1, 1986.

SEC. 9307. PAYMENT FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS AND OTHER OPERATIONS.

(a) LIMITATION ON PAYMENT.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)) is amended—

(1) by striking out "or" at the end of paragraph (13),

(2) by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; or", and

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

"(15) which are for services of an assistant at surgery in a cataract operation unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of title XI) or a carrier under section 1842 has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition.".

(b) ADDITIONAL PRO FUNCTIONS.—Section 1154(a)(8) of such Act (42 U.S.C. 1320c-3(a)(8)) is amended by inserting before the period at the end the following: "or as may be required to carry out section 1862(a)(15)".

(c) PROHIBITION FOR SUBMITTING BILL FOR WHICH PAYMENT MAY NOT BE MADE.—Section 1842 of such Act (42 U.S.C. 1395u) is amended—

(1) in subsection (j)(2), by inserting "or subsection (l)" after "paragraph (1)", and

(2) by adding after subsection (k), added by section 146(a) of this title, the following new subsection:

"(l)(1) If a physician knowingly and willfully bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(2) If a physician knowingly and willfully bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of

section 1862(a)(15), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(d) EXTENSION OF PROHIBITION TO OTHER PROCEDURES.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery is generally not medically necessary and the circumstances under which the use of an assistant at surgery is generally appropriate but should be subject to prior approval of an appropriate entity. The Secretary shall report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed on or after April 1, 1986.

Subpart B—Benefits and Other Provisions

SEC. 9311. OCCUPATIONAL THERAPY SERVICES.

(a) COVERAGE.—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

> *"(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));".*

(b) LIMITATION ON PAYMENTS.—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking out "next to last sentence" and inserting in lieu thereof "second sentence", and

(2) by adding at the end thereof the following new sentence: "In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).".

(c) CERTIFICATION STANDARD.—(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.—(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"Outpatient Occupational Therapy Services

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein.".

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1986.

SEC. 9312. VISION CARE.

(a) DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: "(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after July 1, 1986.

SEC. 9313. PART B PREMIUM.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking out "1988" and inserting in lieu thereof "1989" each place it appears;

(2) in subsection (f)(1), by striking out "or 1986" and inserting in lieu thereof ", 1986, or 1987"; and

(3) in subsection (f)(2), by striking out "or 1987" and inserting in lieu thereof ", 1987, or 1988".

SEC. 9314. DEMONSTRATION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act (hereinafter in this section referred to as "medicare beneficiaries").

(b) PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

(1) health screenings,

(2) health risk appraisals,

(3) immunizations, and

(4) counseling on and instruction in—

(A) diet and nutrition,

(B) reduction of stress,

(C) exercise and exercise programs,

(D) sleep regulation,

(E) injury prevention,

(F) prevention of alcohol and drug abuse,

(G) prevention of mental health disorders,

(H) self-care, including use of medication, and

(I) reduction or cessation of smoking.

(c) CONDUCT OF PROGRAM.—The demonstration program shall—

(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

(2) be conducted in no fewer than five sites, which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

(4) be designed—

(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

(C) to facilitate evaluation under subsection (d).

(d) EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act.

(e) REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

(2) Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report—

(A) the evaluation described in subsection (d), and

(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

(f) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the demonstration program shall not exceed $4,000,000 over the duration of the program.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 9315. EXTENSION OF GAO REPORTING DATE.

(a) EXTENSION.—Section 2326(e)(2) of the Deficit Reduction Act of 1984 (98 Stat. 1088) is amended by striking out "12 months after the date of the enactment of this Act" and inserting in lieu thereof "May 1, 1986".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as though it were included in the Deficit Reduction Act of 1984 as originally enacted.

PART 4—PEER REVIEW ORGANIZATIONS

SEC. 9401. 100 PERCENT PEER REVIEW OF CERTAIN SURGICAL PROCEDURES.

(a) REQUIREMENT.—Section 1154(a) of the Social Security Act (42 U.S.C. 1395c-3(a)) is amended by adding at the end thereof the following new paragraph:

"(12) The organization shall perform the review, referral, and other functions required under section 1164.".

(b) ADDITIONAL PEER REVIEW FUNCTIONS.—Part B of title XI of the Social Security Act is amended by adding at the end the following new section:

"100 PERCENT PEER REVIEW FOR CERTAIN SURGICAL PROCEDURES

"SEC. 1164. (a) 100 PERCENT REVIEW FUNCTION.—

"(1) IN GENERAL.—Each utilization and quality control peer review organization shall perform the review described in section 1154(a)(1) for 100 percent of the surgical procedures specified pursuant to subsection (b).

"(2) TIMING OF REVIEW.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the review required under paragraph (1) shall be performed—

"(i) before the performance of the procedure, in the case of an outpatient procedure, or

"(ii) before admission to the hospital for the provision of services in connection with the procedure, in the case of a procedure performed on an inpatient basis.

"(B) EXCEPTION.—The review with respect to a procedure need not be performed by the time specified in subpara-

graph (A) in cases of a medical emergency and under such other circumstances as the Secretary may specify.

"(b) SPECIFICATION OF SURGICAL PROCEDURES AND QUALIFIED REVIEWERS.—

"(1) IN CONTRACT.—The contract with each organization under this part shall specify at least 10 surgical procedures to be covered under this section.

"(2) SELECTION GUIDELINES.—

"(A) IN GENERAL.—The specification of procedures shall be consistent with selection guidelines established by the Secretary under paragraph (3). The procedures specified shall be included among the surgical procedures which the Secretary has identified as reasonably being able to meet such guidelines.

"(B) EXCEPTION.—The Secretary may permit an organization to include among the procedures specified under paragraph (1) procedures not identified by the Secretary under paragraph (2)(A) if to do so would be cost effective and consistent with the criteria described in paragraph (3).

"(3) CRITERIA.—The Secretary shall establish such guidelines and identify such surgical procedures consistent with the following criteria:

"(A) The procedure is one which generally can be postponed without undue risk to the patient.

"(B) The procedure is a high volume procedure among patients who are covered under the programs established under title XVIII or is a high cost procedure.

"(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why pre-procedure review for 100 percent of the procedures would be cost effective.

"(4) QUALIFICATIONS FOR PHYSICIANS PROVIDING SECOND OPINIONS.—

"(A) IN GENERAL.—The Secretary shall specify, for each procedure identified under paragraphs (2) and (3), the type or types of board certified or board eligible specialists who may conduct a second opinion, required under subsection (c), based upon the nature of the procedure.

"(B) FREEDOM OF CHOICE OF PATIENT TO CHOOSE PHYSICIAN.—Subject to paragraphs (C) and (D), the patient may choose any physician of the proper specialty under subparagraph (A) to provide the second opinion.

"(C) PHYSICIANS PROHIBITED FROM PROVIDING SECOND OPINIONS.—For purposes of this section, a second opinion may not be provided by a physician who is affiliated with, or has a common financial interest with, the physician who rendered the first opinion that the procedure was necessary.

"(D) RESTRICTED LIST.—In accordance with guidelines of the Secretary, an organization may disqualify a physician from providing a second opinion under this section because of the gross unreliability of the second opinions provided.

"(c) REQUIRING A SECOND OPINION IN CERTAIN CASES.—

"(1) DETERMINATIONS BY ORGANIZATION.—In the case of a review performed pursuant to subsection (a), the organization shall determine, based on such review, that the surgical procedure—

"(A) is reasonable and medically necessary,

"(B) is not reasonable and medically necessary, or

"(C) may be considered reasonable and necessary, but, because of questions as to the medical appropriateness of performing the procedure, it is appropriate to require the patient to seek a second opinion as to the necessity and appropriateness of performing the procedure before the performance of the procedure.

The Secretary shall develop appropriate measures to ensure that second opinions are only required in situations where a second opinion is needed to resolve outstanding uncertainties as to the medical necessity of the procedure. The organization shall notify, in accordance with section 1154(a)(3), the physician, patient, and hospital or other entity furnishing the service, in the event of a determination under subparagraph (B) or (C) of this paragraph.

"(2) PROHIBITION OF PAYMENT IF REQUIRED SECOND OPINION NOT PROVIDED.—No payment may be made under part A or part B of title XVIII with respect to items or services furnished in connection with a surgical procedure for which there is a determination described in paragraph (1)(C), unless the individual undergoing the procedure obtains the second opinion required under that paragraph. The second opinion need not necessarily agree with the first opinion in order for payment to be made.

"(3) EXCEPTIONS FOR ELECTIVE SECOND OPINIONS.—Paragraphs (1)(C) and (2) shall not apply to a surgical procedure if—

"(A) a delay in providing the procedure would result in a risk to the patient;

"(B) no physician is available (within such reasonable limits as the Secretary shall specify) who is (i) qualified to provide the second opinion, and (ii) a participating physician or a physician who has agreed to accept assignment for the second opinion; or

"(C) the procedure is to be performed on a patient who is a member of a health maintenance organization or competitive medical plan having a risk-sharing contract with the Secretary under section 1876.

"(d) REFERRAL MECHANISM FOR SECOND OPINIONS.—

"(1) ACTING AS REFERRAL CENTER.—Each organization shall serve as a referral center for second opinions required under this section.

"(2) REFERRAL OF PATIENT.—The organization shall maintain a list of physicians qualified to provide a second opinion and shall advise the patient as to which physicians are participating physicians (within the meaning of section 1842(h)) and which physicians have agreed to accept assignment to perform second opinions. The organization shall assist patients in referral to a qualified physician of the appropriate specialty for purposes of providing the opinion.

"(3) FORWARDING OF RELEVANT MEDICAL RECORDS.—Each peer review organization shall, if the patient seeking the second opinion so requests, obtain the relevant medical records from the physician who rendered the first opinion that the procedure was necessary, and provide the relevant information to the physician selected by the patient to render the second opinion.

"(e) NOTICE TO PHYSICIANS, HOSPITALS, AND BENEFICIARIES.—The Secretary shall assure that notice is provided to physicians, hospitals, ambulatory surgical centers, and beneficiaries respecting the activities under this section, including the applicable list of surgical procedures specified under this section.".

(b) WAIVER OF DEDUCTIBLE AND COPAYMENTS.—

(1) DEDUCTIBLE.—Section 1833(b) of the Social Security Act (42 U.S.C. 1395l(b)) is amended by striking out "and" before "(4)", and by inserting before the period at the end of the first sentence the following: ", and (5) such deductible shall not apply with respect to items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)".

(2) COPAYMENTS.—(A) Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking out "and" before "(F)", and by adding at the end thereof the following: "and (G) with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services;".

(B) Section 1833(a)(1)(D) of such Act is amended by striking out "or under the procedure described in section 1870(f)(1)" and inserting in lieu thereof ", under the procedure described in section 1870(f)(1), or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)".

(C) Section 1833(a)(2)(A) of such Act is amended by inserting ", to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)," after "(other than durable medical equipment)".

(D) Section 1833(a)(2)(D) of such Act is amended by striking out "or to a provider having an agreement under section 1866" and inserting in lieu thereof "to a provider having an agreement under section 1866, or for tests furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion)".

(E) Section 1833(a)(3) of such Act is amended by inserting after "1861(s)(10)(A)" the following: "and for items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2), or a third opinion, if the second opinion was in disagreement with the first opinion".

(F) The last sentence of section 1866(a)(2)(A) of such Act (42 U.S.C. 1395cc(a)(2)(A)) is amended by inserting after "1861(s)(10)(A)" the following: ", with respect to items and services furnished in connection with obtaining a second opinion required under section 1164(c)(2) (or a third opinion, if the second opinion was in disagreement with the first opinion),".

(c) CONFORMING AMENDMENTS.—

(1) EXCLUSIONS FROM COVERAGE.—Section 1862(a) of the Social Security Act (42 U.S.C. 1395g(a)), as amended by section 9307(a) of this title, is amended—

(A) by striking out "or" at the end of paragraph (14);

(B) by striking out the period at the end of paragraph (15) and inserting in lieu thereof "; or"; and

(C) by adding at the end thereof the following new paragraph:

"(16) furnished in connection with a surgical procedure for which a second opinion is required under section 1164(c)(2) and has not been obtained.".

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act that are in effect on that date as may be necessary to effect these amendments on a timely basis.

(e) STUDY.—The Secretary of Health and Human Services shall conduct a study of the results of the amendments made by this section, and shall report the results of the study to the Congress within 36 months after the date of the enactment of this Act.

SEC. 9402. PEER REVIEW ORGANIZATION REIMBURSEMENT.

(a) REIMBURSEMENT AMOUNTS.—Section 1866(a)(1)(F) of the Social Security Act (42 U.S.C. 1395cc(a)(1)(F)) is amended—

(1) by striking out clause (iii),

(2) by inserting "and" at the end of clause (ii),

(3) by redesignating clause (iv) as clause (iii), and

(4) by striking out "1982" in clause (iii) as so redesignated and inserting in lieu thereof "1986".

(b) MONTHLY PAYMENTS.—Section 1153(c)(8) of such Act (42 U.S.C. 1320c-2(c)(8)) is amended to read as follows:

"(8) 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.".

(c) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

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

SEC. 9403. DENIAL OF PAYMENT FOR SUBSTANDARD CARE.

(a) DENIAL AUTHORITY FOR PRO.—Section 1154(a)(2) of the Social Security Act (42 U.S.C. 1320c-3(a)(2)) is amended—

(1) by striking out "subparagraphs (A) and (C)" and inserting in lieu thereof "subparagraphs (A), (B), and (C)"; and

(2) by adding at the end thereof (after and below subparagraph (D)) the following:

"Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.".

(b) WAIVER OF LIABILITY.—Section 1866(a)(1) of such Act (42 U.S.C. 1395cc(a)(1)) is amended by striking out "and" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof ", and", and by inserting after subparagraph (H) the following new subparagraph:

"(I) not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B).".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the date of the enactment of this Act.

SEC. 9404. HEALTH MAINTENANCE ORGANIZATION MEMBERSHIP ON PEER REVIEW ORGANIZATION BOARDS.

(a) REMOVAL OF ONE-MEMBER LIMITATION.—Section 1153(b)(2)(A) of the Social Security Act (42 U.S.C. 1320c-2(b)(2)(A)) is amended by striking out "consists only of one individual member of the governing board" and inserting in lieu thereof "consists only of members of the governing board".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

SEC. 9405. PEER REVIEW ORGANIZATION REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS.

(a) COMPARABLE REVIEW FOR HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1154(a)(1) of the Social Security Act (42 U.S.C. 1320c-3(a)(1)) is amended by inserting "(including where payment is made for such services to eligible organizations pursuant to contracts under section 1876)" after "title XVIII".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to items and services furnished on or after January 1, 1987.

SEC. 9406. SUBSTITUTE REVIEW PENDING TERMINATION OF A PEER REVIEW ORGANIZATION CONTRACT.

(a) SUBSTITUTE REVIEW.—Section 1153(d) of the Social Security Act (42 U.S.C. 1320c-2(d)) is amended by adding at the end thereof the following new paragraph:

"(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1816 or a contract under section 1842.".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective on the date of the enactment of this Act.

Subtitle B—Medicaid and Maternal and Child Health

SEC. 9501. SERVICES FOR PREGNANT WOMEN.

(a) EXPANDED COVERAGE.—Section 1905(n)(1) of the Social Security Act (42 U.S.C. 1396d(n)(1)) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out "and" at the end of subparagraph (B) and inserting in lieu thereof "or"; and

(3) by adding after subparagraph (B) the following new subparagraph:

"(C) otherwise meets the income and resources requirements of a State plan under part A of title IV; and".

(b) OPTIONAL EXPANSION OF PREGNANCY-RELATED SERVICES.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter after subparagraph (D) thereof—

(1) by striking out "and" before "(IV)" and inserting in lieu thereof a comma; and

(2) by inserting before the semicolon at the end thereof the following: ", and (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not , by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan".

(c) POSTPARTUM ELIGIBILITY FOR PREGNANT WOMEN.—Section 1902(e) of such Act (42 U.S.C. 1396b(e)) is amended by adding at the end the following new paragraph:

"(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, until the end of the 60-day period beginning on the last day of her pregnancy.".

(d) EFFECTIVE DATES.—

(1) EXPANDED COVERAGE.—(A) The amendments made by subsection (a) apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the April 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State

legislature that begins after the date of the enactment of this Act.

(2) OPTIONAL SERVICES.—The amendments made by subsection (b) shall become effective on the date of the enactment of this Act.

(3) CONTINUED COVERAGE.—The amendment made by subsection (c) shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act.

SEC. 9502. MODIFICATIONS OF WAIVER PROVISIONS FOR HOME AND COMMUNITY-BASED SERVICES.

(a) EXPLICIT INCLUSION OF CERTAIN PREVOCATIONAL AND EDUCATIONAL SERVICES.—Section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) is amended by adding at the end thereof the following new paragraph:

"(5) For purposes of paragraph (4)(B), the term 'habilitation services', with respect to individuals who receive such services after discharge from a skilled nursing facility or intermediate care facility—

"(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

"(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

"(C) does not include—

"(i) special education and related services (as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16), (17)) which otherwise are available to the individual through a local educational agency; and

"(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).".

(b) PERMITTING HOSPITAL LEVEL OF CARE FOR CERTAIN PARTICIPANTS.—(1) Section 1915(c)(1) of such Act (42 U.S.C. 1396n(c)(1)) is amended by inserting "or but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan" before the period at the end thereof.

(2) Section 1915(c)(2)(C) of such Act (42 U.S.C. 1396n(c)(2)(C)) is amended—

(A) by inserting "hospital or" after "provided in a"; and

(B) by inserting "inpatient hospital services or" after "the provision of".

(c) PROHIBITING IMPOSITION OF CERTAIN REGULATORY LIMITS.—Section 1915(c) of such Act (42 U.S.C. 1396n(c)) as amended by subsection (a), is further amended—

(1) in paragraph (2)(D), by inserting "100 percent of" after "does not exceed"; and

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

"(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.".

(d) COMPUTATION OF EXPENDITURES FOR CERTAIN DISABLED PATIENTS.—Section 1915(c) of such Act (42 U.S.C. 1396n(c)), as amended by subsection (c), is further amended by adding at the end thereof the following new paragraph:

"(7) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those facilities.".

(e) PERMITTING FLEXIBILITY IN ESTABLISHING MAINTENANCE INCOME STANDARDS.—Section 1915(c)(3) of such Act (42 U.S.C. 1396n(c)(3)) is amended by adding at the end the following new sentence: "A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.".

(f) WAIVER EXTENSIONS.—The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.

(g) WAIVER RENEWALS.—Section 1915(c)(3) of the Social Security Act (42 U.S.C. 1396n(c)(3)) is amended—

(1) by striking out "additional three-year periods" and inserting in lieu thereof "additional five-year periods"; and

(2) by striking out "previous three-year period" and inserting in lieu thereof "previous waiver period".

(h) COORDINATED SERVICES BETWEEN MCH PROGRAM AND HOME AND COMMUNITY-BASED SERVICE PROGRAMS.—Section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as amended by subsection (d) of this section, is further amended by adding at the end thereof the following new paragraph:

"(8) The State agency administering the plan under this title may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under title V in order to assure improved access to coordinated services to meet the needs of such children.".

(i) SUBSTITUTION OF PARTICIPANTS.—(1) Section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)), as amended by subsection

(h) of this section, is further amended by adding at the end thereof the following new paragraph:

"(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.".

(j) EFFECTIVE DATES.—

(1) HABILITATION SERVICES.— The amendment made by subsection (a) shall be effective for services furnished on or after the date of the enactment of this Act.

(2) HOSPITALIZED PATIENTS.—The amendments made by subsection (b) shall be effective for services furnished on or after October 1, 1985.

(3) PROHIBITION OF REGULATORY LIMITS AND TREATMENT OF CERTAIN PHYSICALLY DISABLED INDIVIDUALS.—The amendments made by subsections (c) and (d) shall apply to applications for waivers (or renewals thereof) filed before, on, or after, the date of the enactment of this Act and for services furnished on or after August 13, 1981.

(4) INCOME STANDARDS.—The amendment made by subsection (e) shall apply to waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

(5) WAIVER EXTENSIONS.—Subsection (f) shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

(6) WAIVER RENEWALS.—The amendments made by subsection (g) shall become effective on September 30, 1986.

(7) COORDINATED SERVICES AND SUBSTITUTION OF PARTICIPANTS.—The amendments made by subsections (h) and (i) shall become effective on the date of the enactment of this Act.

SEC. 9503. THIRD-PARTY LIABILITY.

(a) AMENDMENTS TO STATE PLAN REQUIREMENTS.—(1) Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended to read as follows:

"(25) provide—

"(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers) to pay for care and services available under the plan, including—

"(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

"(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall—

"(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mecha-

nized claims processing and information retrieval system under section 1903(r), and

"(II) be subject to the provisions of section 1903(r)(4) relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;

"(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

"(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1916), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under section 1916, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1916) exceeds the total of the amount of the liabilities of third parties for that service;

"(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

"(E) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1905(a)(4)(B)) covered under the State plan, the State shall—

"(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

"(ii) seek reimbursement from such third party in accordance with subparagraph (B); and

"(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of title IV of this Act, the State shall—

"(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party li-

ability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

"(ii) seek reimbursement from such third party in accordance with subparagraph (B);".

(2) Section 1902 of such Act (42 U.S.C. 1396a) is amended by inserting after subsection (f) the following new subsection:

"(g) In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C).".

(b) PERFORMANCE STANDARDS AND REVIEW FOR MECHANIZED CLAIMS PROCESSING AND INFORMATION RETRIEVAL SYSTEMS.—(1) Section 1903(r)(6)(J) of such Act (42 U.S.C. 1396b(r)(6)(J)) is amended to read as follows:

"(J) develop and disseminate performance standards for assessing the State's third party collection efforts in accordance with section 1902(a)(25)(A)(ii).".

(2) Section 1903(r)(4)(A) of such Act (42 U.S.C. 1396b(r)(4)(A)) is amended—

(A) by striking out "once each fiscal year" and inserting in lieu thereof "once every three years"; and

(B) by adding at the end thereof the following: "Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.".

(c) REGULATIONS.—The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act within 6 months after the date of the enactment of this Act.

(d) ERISA AMENDMENT.—(1) Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144) is amended by adding at the end thereof the following new paragraph:

"(8) Subsection (a) of this section shall not apply to any State law mandating that an employee benefit plan not include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan, because that individual is provided, or is eligible for, benefits or services pursuant to a plan under title XIX of the Social Security Act, to the extent such law is necessary for the State to be eligible to receive reimbursement under title XIX of that Act.".

(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall become effective on October 1, 1986.

(B) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before the date of the enactment of this Act, the amendment made by paragraph (1) shall become effective on the later of—

(i) October 1, 1986; or

(ii) the earlier of—

(I) the date on which the last of the collective bargaining agreements under which the plan is maintained, which were in effect on the date of the enactment of this Act, terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

(II) three years after the date of the enactment of this Act.

(e) CONDITION OF ELIGIBILITY.—Section 1912(a)(1) of the Social Security Act (42 U.S.C. 1396k(a)(1)) is amended by striking out "and" at the end of subparagraph (A), and by adding at the end thereof the following new subparagraph:

"(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and".

(f) DISREGARD FROM ERRONEOUS PAYMENTS.—Section 1903(u)(1)(D) of such Act (42 U.S.C. 1396b(u)(1)(D)) is amended by adding at the end thereof the following new clause:

"(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1912(a)(1)(C) or 402(a)(26)(C).".

(g) EFFECTIVE DATES.—(1) Except as otherwise provided, the amendments made by this section shall apply to calendar quarters beginning on or after the date of the enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State Legislature that begins after the date of the enactment of this Act.

(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act occurring prior to the effective date of the amendments made by this section.

(4) The amendment made by subsection (c) shall become effective on the date of the enactment of this Act.

SEC. 9504. RESPIRATORY CARE SERVICES FOR VENTILATOR-DEPENDENT INDIVIDUALS.

(a) OPTIONAL SERVICES.—Section 1902(e) of the Social Security Act (42 U.S.C. 1396b(e)), as amended by section 9501 of this Act, is fur-

ther amended by adding at the end thereof the following new paragraph:

"(6)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

"(i) is medically dependent on a ventilator for life support at least six hours per day;

"(ii) has been so dependent for at least 30 consecutive days or the maximum number of days authorized under the State plan, whichever is less, as an inpatient in one or more hospitals, skilled nursing facilities, or intermediate care facilities;

"(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, skilled nursing facility, or intermediate care facility, and would be eligible to have payment made for such inpatient care under the State plan;

"(iv) has adequate social support services to be cared for at home; and

"(v) wishes to be cared for at home.

"(B) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.".

(b) WAIVER OF COMPARABILITY.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by section 9501 of this Act, is further amended, in the matter following subparagraph (D)—

(1) by striking out "and" before "(V)" and inserting in lieu thereof a comma; and

(2) by inserting before the semicolon at the end thereof the following: ", and (VI) the making available of respiratory care services in accordance with subsection (e)(6) shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(6)(A), provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after April 1, 1986.

SEC. 9505. OPTIONAL HOSPICE BENEFITS.

(a) COVERAGE OF HOSPICE CARE AS AN OPTIONAL MEDICAID BENEFIT.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (17);

(B) by redesignating paragraph (18) as paragraph (19); and

(C) by inserting after paragraph (17) the following new paragraph:

"(18) hospice care (as defined in subsection (o)); and"; and

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

"(o)(1) The term 'hospice care' means the care described in section 1861(dd)(1) furnished by a hospice program (as defined in section 1861(dd)(2)) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1812(d)(2)(A) and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

"(2) An individual's voluntary election under this subsection—

"(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1812(d)(2);

"(B) shall be for such a period or periods (which need not be the same periods described in section 1812(d)(1)) as the State may establish; and

"(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.".

(b) ELIGIBILITY.—

(1) LIMITATION TO TERMINALLY ILL INDIVIDUALS.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 9501 and 9504 of this Act, is further amended, in the matter following subparagraph (D), by striking out "and" before "(VI)" and by inserting before the semicolon at the end thereof the following: ", and (VII) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1905(o) to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under title XVIII, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals".

(2) HIGHER INCOME STANDARD PERMITTED.—Section 1902(a)(10)(A)(ii) of such Act (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(A) by striking out "or" at the end of subclause (V);

(B) by striking out the semicolon at the end of subclause (VI) and inserting in lieu thereof ", or"; and

(C) by adding at the end the following new subclause:

"(VII) who would be eligible under the State plan under this title if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1905(o);".

(c) PAYMENT FOR HOSPICE CARE.—

(1) USE OF MEDICARE RATES.—Section 1902(a)(13) of such Act (42 U.S.C. 1396a(a)(13)) is amended—

(A) by striking out "and" at the end of subparagraph (B);

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

(C) by inserting after subparagraph (B) the following new subparagraph:

"(C) for payment for hospice care in the same amounts, and using the same methodology, as used under part A of title XVIII; except that a separate rate may be paid for hospice care which is furnished to an individual who is a resident of a skilled nursing facility or intermediate care facility, and who would be eligible under the plan for skilled nursing facility services or intermediate care facility services if he had not elected to receive hospice care, to take into account the room and board furnished by such facility; and".

(2) LIMITATION ON COPAYMENTS.—Subsections (a)(2) and (b)(2) of section 1916 of the Social Security Act (42 U.S.C. 1396o) are each amended—

(A) by striking out "or" at the end of subparagraph (C);

(B) by striking out "; and" at the end of subparagraph (D) and inserting in lieu thereof ", or"; and

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

"(E) services furnished to an individual who is receiving hospice care (as defined in section 1905(o)); and".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(j) of such Act (42 U.S.C. 1396a(j)) is amended by striking out "(18)" and inserting in lieu thereof "(19)".

(2) Section 1902(a)(10)(C)(iv) of such Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking out "through (17)" and inserting in lieu thereof "through (18)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided for hospice care furnished on or after the date of the enactment of this Act.

SEC. 9506. TREATMENT OF POTENTIAL PAYMENTS FROM MEDICAID QUALIFYING TRUSTS.

(a) AMOUNTS TREATED AS BEING AVAILABLE FROM GRANTOR TRUSTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396a) is amended by adding at the end thereof the following new subsection:

"(k)(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amounts from the trust deemed available to a grantor, for purposes of subsection (a)(17), is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term 'grantor' means the individual referred to in paragraph (2).

"(2) For purposes of this subsection, a 'medicaid qualifying trust' is a trust, or similar legal device, established by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

"(3) This subsection shall apply without regard to—

"(A) whether or not the medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under this title; or

"(B) whether or not the discretion described in paragraph (2) is actually exercised.

"(4) The State may waive the application of this subsection with respect to an individual where the State determines that such application would work an undue hardship.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to medical assistance furnished on or after the first day of the second month beginning after the date of the enactment of this Act.

SEC. 9507. WRITTEN STANDARDS FOR PROVISION OF ORGAN TRANSPLANTS.

(a) DENIAL OF FEDERAL PAYMENTS FOR ORGAN TRANSPLANTS UNLESS PROVIDED UNDER WRITTEN STANDARDS.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended by inserting before paragraph (2) the following new paragraph:

"(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

"(A) similarly situated individuals are treated alike; and

"(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance furnished on or after January 1, 1987.

SEC. 9508. OPTIONAL TARGETED CASE MANAGEMENT SERVICES.

(a) EXEMPTION FROM CERTAIN REQUIREMENTS.—(1) Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end thereof the following new subsection:

"(g)(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1902(a)(1) and section 1902(a)(10)(B). The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1902(a)(23).

"(2) For purposes of this subsection, the term 'case management services' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.".

(2) Section 1915(b) of such Act (42 U.S.C. 1396n(b)) is amended by adding at the end thereof (after and below paragraph (4)) the following: "No waiver under this subsection may restrict the choice of the individual in receiving services under section 1905(a)(4)(C).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

SEC. 9509. REVALUATION OF ASSETS.

(a) REVALUATION OF ASSETS.—Section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13)), as amended by section 9505 of this Act, is further amended—

(1) in subparagraph (B), by striking out "hospitals, skilled nursing facilities, and intermediate care facilities" and inserting in lieu thereof "hospitals";

(2) by striking out "and" at the end of subparagraph (C);

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); and

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for skilled nursing facilities and intermediate care facilities, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

"(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

"(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements imposed by the amendments made by this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

(c) GAO STUDY.—The Comptroller General shall conduct a study of the effects of the amendments made by this section, and shall report the results of such study to the Congress two years after the date of the enactment of this Act.

SEC. 9510. BEGINNING DATE OF OPTIONAL COVERAGE FOR INDIVIDUALS IN MEDICAL INSTITUTIONS.

(a) COVERAGE. — Section 1902(a)(10)(A)(ii)(V) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)(V)) is amended by inserting "for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)" after "are in a medical institution".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to payment for services furnished on or after October 1, 1985.

SEC. 9511. OPTIONAL COVERAGE OF CHILDREN.

(a) STATE OPTION.—Section 1905(n)(2) of the Social Security Act (42 U.S.C. 1396d(h)(2)) is amended by inserting "(or such earlier date as the State may designate)" after "September 30, 1983".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to services furnished on or after January 1, 1986.

SEC. 9512. OVERPAYMENT RECOVERY RULES.

(a) OVERPAYMENT RECOVERY.—Section 1903(d)(2) of the Social Security Act (42 U.S.C. 1396b(d)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by designating the second sentence as subparagraph (B), properly indented and aligned below subparagraph (A); and

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

"(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

"(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to overpayments identified for quarters beginning on or after October 1, 1985.

SEC. 9513. HOME AND COMMUNITY-BASED SERVICES DEMONSTRATIONS.

(a) DEMONSTRATION PROJECTS.—(1) The Secretary of Health and Human Services shall allow four States (to be selected by the Secretary) to conduct demonstration projects to determine whether, and to what extent, State controlled home and community-based service programs for elderly, disabled, and developmentally disabled individuals, who are eligible under the State's plan approved under title XIX of the Social Security Act, can reduce expenditures for the society as a whole, for the Federal Government, and for the States.

(2) At least one of such demonstration projects shall include the provision of home and community-based services for a significant number of individuals with Alzheimer's disease or related disor-

ders, and at least one of such demonstration projects shall include the provision of home and community-based services for a significant number of individuals who are mentally retarded or developmentally disabled.

(3) The Secretary shall approve any application for a project under this section only after determining that the conduct of such project will not lower, restrict, or delay the medical assistance available under the State plan approved under title XIX of the Social Security Act to the individuals participating in the demonstration project, and will not lower or restrict the income or resource standards or methodologies used under such State plan.

(b) DURATION.—Each demonstration project shall be for a period of three years.

(c) MEDICAID EXPENDITURE LEVELS.—Federal expenditures under the demonstration projects shall exceed the amounts which would otherwise be expended under title XIX of the Social Security Act for services provided to the same individuals by not less than $85,000,000 nor more than $88,000,000 for all four projects over the 3-year period of the projects. Such additional amounts may be used to provide additional services such as habilitative services not otherwise covered under the State plan, or care provided in small facilities not otherwise eligible for payments under such plan, but all standards for quality of care otherwise applicable under the State plan shall apply.

(d) STATES SELECTED.—In selecting the four States to carry out the demonstration projects, the Secretary shall select programmatically and demographically disparate States.

(e) EVALUATION.—The Secretary shall evaluate the demonstration projects and submit a preliminary report during the third year of the projects. There are authorized to be appropriated not less than $1,500,000 nor more than $2,000,000 for purposes of such evaluation.

SEC. 9514. REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act within 60 days after the date of the enactment of this Act.

SEC. 9515. LIFE SAFETY CODE RECOGNITION.

For purposes of section 1905(c) of the Social Security Act, an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.

SEC. 9516. CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

(a) CORRECTION AND REDUCTION PLANS.—Title XIX of the Social Security Act is amended by adding at the end thereof the following new subsection:

"CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

"SEC. 1919. (a) If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents, the State may elect, subject to the limitations in this section, to—

"(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey, and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

"(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereafter in this section referred to as a 'reduction plan').

"(b) As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2), the State must—

"(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents' families, and the general public;

"(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

"(3) provide assurances that the requirements of subsection (c) shall be met with respect to the reduction plan.

"(c) The reduction plan must—

"(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36-month period;

"(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

"(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

"(4) provide that residents of the affected facility who are eligible for medical assistance while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

"(5) specify the actions which will be taken to protect the health and safety of the residents who remain in the affected facility while the reduction plan is in effect;

"(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

"(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

"(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a)) was made; and

"(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—

"(A) arrangements to preserve employee rights and benefits;

"(B) training and retraining of such employees where necessary;

"(C) redeployment of such employees to community settings under the reduction plan; and

"(D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

"(d)(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

"(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a)) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

"(e)(1) If the Secretary, at the conclusion of the 6-month plan of correction described in subsection (a)(1), determines that the State has substantially failed to correct the deficiencies described in subsection (a), the Secretary may terminate the facility's provider agreement in accordance with the provisions of section 1910(c).

"(2) In the case of a reduction plan described in subsection (a)(2), if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c), the Secretary shall—

"(A) terminate the facility's provider agreement in accordance with the provisions of section 1910(c); or

"(B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care

for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

"(f) The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary within 3 years after the effective date of final regulations implementing this section.".

(b) EFFECTIVE DATE.—(1) The amendment made by this section shall become effective on the date of the enactment of this Act.

(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.

(c) REPORT.—The Secretary of Health and Human Services shall submit a report to the Congress on the implementation and results of section 1919 of the Social Security Act. Such report shall be submitted not later than 30 months after the effective date of final regulations promulgated to implement such section.

SEC. 9517. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

(a) WAIVING APPLICATION OF 75 PERCENT RULE AND CERTAIN ORGANIZATIONAL REQUIREMENTS.—Section 1903(m)(2) of the Social Security Act (42 U.S.C. 1396b(m)(2)) is amended—

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

(2) in subparagraph (F)—

(A) by striking out "(F)(i) In the case of a contract with a health maintenance organization described in clause (ii)" and inserting in lieu thereof "(F) in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) which meets the requirement of subparagraph (A)(ii)";

(B) by striking out "such organization" and inserting in lieu thereof "such entity or organization"; and

(C) by striking out clause (ii); and

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

"(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, clauses (i) and (ii) of subparagraph (A) shall not apply.".

(b) PERMITTING 6-MONTH CONTINUATION OF BENEFITS.—Section 1902(e)(2) of such Act (42 U.S.C. 1396a(e)(2)) is amended—

(1) in subparagraph (A)—

(A) by inserting "or with an entity described in section 1903(m)(2)(G)" after "Public Health Service Act)"; and

(B) by inserting "or entity" before the period; and

(2) in subparagraph (B)—

(A) by striking out "a health maintenance organization" and inserting in lieu thereof "an organization or entity"; and

(B) by inserting "or entity" after "the organization".

(c) HEALTH INSURING ORGANIZATIONS.—(1) Section 1903(m)(2)(A) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)) is amended, in the matter before clause (i)—

(1) by inserting "(including a health insuring organization)" after "any entity"; and

(2) by inserting "(directly or through arrangements with providers of services)" after "responsible for the provision".

(2) The amendments made by paragraph (1) shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986.

SEC. 9518. EXTENSION OF MMIS DEADLINE.

(a) NEW DEADLINE.—Section 1903(r)(1)(B) of the Social Security Act (42 U.S.C. 1396b(r)(1)(B)) is amended by striking out "the earlier of" and all that follows through the end of subparagraph (B) and inserting in lieu thereof "September 30, 1985.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payment under section 1903(a) of the Social Security Act for calendar quarters beginning on or after October 1, 1982.

SEC. 9519. REPORT ON ADJUSTMENT IN MEDICAID PAYMENTS FOR HOSPITALS SERVING DISPROPORTIONATE NUMBERS OF LOW INCOME PATIENTS.

The Secretary of Health and Human shall transmit to Congress, not later than October 1, 1986, a report that—

(1) describes the methodology used by States under section 1902(a)(13)(A) of the Social Security Act, in their making payments to hospitals, in taking into account the situation of hospitals that serve a disproportionate number of low income patients with special needs;

(2) identifies each of those hospitals that have had the amount of their payments under that title adjusted under that section; and

(3) for each of those hospitals, describes the proportion of total inpatient-days attributable to low income patients and the proportion of total inpatient-days attributable to patients entitled to medical assistance under that title.

SEC. 9520. TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN.

(a) APPOINTMENT OF TASK FORCE.—The Secretary of Health and Human Services, within six months after the date of the enactment of this Act, shall establish a task force concerning alternatives to institutional care for technology-dependent children (as defined in subsection (e)).

(b) MEMBERSHIP.—The task force shall include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children.

(c) FUNCTIONS OF TASK FORCE.—The task force shall—

(1) identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children; and

(2) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

(d) REPORT.—The task force shall make a final report to the Secretary and to the Congress on its activities not later than two years after the date of the enactment of this Act.

(e) DEFINITION.—In this section, the term "technology-dependent child" means a child who has a chronic illness which makes the child dependent upon the continuing use of medical care technology (such as a ventilator).

SEC. 9521. CLARIFICATION OF MEDICAID MORATORIUM PROVISIONS OF DEFICIT REDUCTION ACT OF 1984.

(a) CLARIFICATION.—Section 2373(c) of the Deficit Reduction Act of 1984 is amended—

(1) in paragraph (1)—

(A) by inserting "(whether or not approved)" after "such State's plan",

(B) by inserting "(including any part of the plan operating pursuant to section 1902(f) of that Act), or the operation thereunder," after "Social Security Act", and

(C) by inserting "(or its operation's)" after "such plan's"; and

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

"(5) In this subsection, a State plan is considered to include any amendment or other change in the plan which is submitted by a State, or for which the Secretary otherwise has notice, whether before or after the date of enactment of the Deficit Reduction Act of 1984 and whether or not the amendment or change was approved, disapproved, acted upon, or not acted upon by the Secretary.".

(b) SALE OF HOME.—Section 2373(c) of the Deficit Reduction Act of 1984 is further amended by adding at the end thereof the following new paragraph:

"(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

"(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

"(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply as though they were included in the Deficit Reduction Act of 1984 as originally enacted.

SEC. 9522. EXPANSION OF SERVICES UNDER DEMONSTRATION WAIVERS.

In the case of waivers granted to the State of Oregon under section 1915(b) of the Social Security Act, the Secretary of Health and Human Services may waive the requirements of section 1903(m)(2)(A) of such Act with respect to any entity providing services under any such waiver if such entity does not provide more than 5 of the services listed in section 1903(m)(2)(A) of such Act, and does not provide inpatient hospital services.

SEC. 9523. EXTENSION OF TEXAS WAIVER PROJECT.

(a) CONTINUED APPROVAL.—Notwithstanding any limitations contained in section 1115 of the Social Security Act but subject to subsection (b) of this section, the Secretary of Health and Human Services, upon application, shall continue approval of demonstration project number 11-P-97473/6-06 ("Modifications under the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged"), previously approved under that section, until January 1, 1989.

(b) TERMS AND CONDITIONS.—The Secretary's continued approval of the project under subsection (a)—

(1) shall be on the same terms and conditions as applied to the project as of the date of the enactment of this Act; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with such terms and conditions.

SEC. 9524. WISCONSIN HEALTH MAINTENANCE ORGANIZATION WAIVER.

The waiver granted to the State of Wisconsin pursuant to section 1915(b) of the Social Security Act relating to the requirements of section 1903(m) of such Act in conjunction with a waiver of the requirements of section 1902(a)(23) of such Act shall, upon request by the State, be reinstated, and shall be renewable for terms of 2 years, subject to the showings required generally under section 1915(b) of such Act.

SEC. 9525. NEW JERSEY DEMONSTRATION PROJECT RELATING TO TRAINING OF AFDC RECIPIENTS AS HOME HEALTH AIDES.

The Secretary of Health and Human Services shall continue for one additional year the demonstration project conducted by the State of New Jersey pursuant to section 966 of the Omnibus Reconciliation Act of 1980. Federal matching for such demonstration project shall be 50 percent.

SEC. 9526. REFERENCE TO PROVISIONS OF LAW PROVIDING COVERAGE UNDER, OR DIRECTLY AFFECTING, THE MEDICAID PROGRAM.

Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"REFERENCES TO LAWS DIRECTLY AFFECTING MEDICAID PROGRAM

"SEC. 1920. (a) AUTHORITY OR REQUIREMENTS TO COVER ADDITIONAL INDIVIDUALS.—For provisions of law which make additional individuals eligible for medical assistance under this title, see the following:

"(1) AFDC.—(A) Section 402(a)(37) of this Act (relating to individuals who lose AFDC eligibility due to increased earnings).

"(B) Section 406(h) of this Act (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

"(C) Section 414(g) of this Act (relating to certain individuals participating in work supplementation programs).

"(2) SSI.—Section 1619 of this Act (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

"(3) FOSTER CARE AND ADOPTION ASSISTANCE.—Section 473(b) of this Act (relating to medical assistance for children in foster care and for adopted children).

"(4) REFUGEE ASSISTANCE.—Section 412(e)(5) of the Immigration and Nationality Act (relating to medical assistance for certain refugees).

"(5) MISCELLANEOUS.—(A) Section 230 of Public Law 93-66 (relating to deeming eligible for medical assistance certain essential persons).

"(B) Section 231 of Public Law 93-66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

"(C) Section 232 of Public Law 93-66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

"(D) Section 13(c) of Public Law 93-233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

"(E) Section 503 of Public Law 94-566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

"(b) ADDITIONAL STATE PLAN REQUIREMENTS.—For other provisions of law that establish additional requirements for State plans to be approved under this title, see the following:

"(1) Section 1618 of this Act (relating to requirement for operation of certain State supplementation programs).

"(2) Section 212(a) of Public Law 93-66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).".

SEC. 9527. CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

(a) Section 501(a)(4) of the Social Security Act (42 U.S.C. 701(a)(4)) is amended by striking out "children who are crippled or who are suffering from conditions leading to crippling" and inserting in lieu thereof "children who are 'children with special health care needs' or who are suffering from conditions leading to such status".

(b) Section 501(a) of such Act is amended by striking out "crippled children" in the matter following paragraph (4) and inserting in lieu thereof "children with special health care needs".

(c) Section 501(b)(1)(A) of such Act is amended by striking out "crippled children's services" and inserting in lieu thereof "services for children with special health care needs".

(d) Section 502(a)(2)(B) of such Act is amended—

(1) by striking out "crippled children's programs" and inserting in lieu thereof "programs for children with special health care needs"; and

(2) by striking out "crippled children's services" and inserting in lieu thereof "services for children with special health care needs".

(e) Sections 504(b)(1) and 509(b) of such Act are each amended by striking out "crippled children" and inserting in lieu thereof "children with special health care needs".

Subtitle C—Task Force on Long-Term Health Care Policies

SEC. 9601. RECOMMENDATIONS FOR LONG-TERM HEALTH CARE POLICIES.

(a) ESTABLISHMENT OF TASK FORCE.—(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a Task Force on Long-Term Health Care Policies (hereinafter in this section referred to as the "Task Force"). The Task Force shall be established not later than 60 days after the date of the enactment of this Act and in consultation with the National Association of Insurance Commissioners.

(b) COMPOSITION OF TASK FORCE.—The Task Force shall be composed of 18 members, which shall include—

(1) two members representing the National Association of Insurance Commissioners,

(2) three members representing Federal and State agencies with responsibilities relating to health or the elderly,

(3) three members representing private insurers,

(4) three members from organizations representing consumers or the elderly, and

(5) three members from organizations representing providers of long-term health care services.

The Secretary shall designate a member of the Task Force as chair.

(c) DEVELOPMENT OF RECOMMENDATIONS.—The Task Force shall develop recommendations for long-term health care policies, including recommendations designed—

(1) to limit marketing and agent abuse for those policies,

(2) to assure the dissemination of such information to consumers as is necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage,

(3) to assure that benefits provided under the policies are reasonable in relationship to premiums charged, and

(4) to promote the development and availability of long-term health care policies which meet these recommendations.

(d) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Task Force shall report to the Secretary, to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate respecting—

(1) the recommendations developed under subsection (c), including an explanation of the reasons for their selection, and

(2) such recommendations for additional activities respecting long-term health care policies as the Task Force finds appropriate.

The Secretary, in cooperation with the National Association of Insurance Commissioners, shall provide for the dissemination of the report to each of the States.

(e) TERMINATION OF TASK FORCE.—The Task Force shall terminate 90 days after the date of submission of the report required under subsection (d).

(f) REPORTS OF SECRETARY.—The Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate two reports on—

(1) actions taken by the States to implement the recommendations developed under this section and to recommend additional action; and

(2) recommendations for legislative and administrative action, if any, needed to respond to issues raised by the Task Force or to improve consumer protection with respect to long-term health care policies.

The first report shall be transmitted 18 months after the date the report is made under subsection (d), and the second report shall be transmitted 18 months later.

(g) LONG-TERM HEALTH CARE POLICY DEFINED.—In this section, the term "long-term health care policy" means an insurance policy, or similar health benefits plan, which is designed for or marketed as providing (or making payments for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

(h) ASSURANCE OF STATES' JURISDICTION.—Nothing in this section shall be construed as recommending Federal preemption of the States in overseeing the operation and regulation of insurance carriers in their respective jurisdictions.

SEC. 9528. ANNUAL CALCULATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) ANNUAL CALCULATION.—Section 1101(a)(8)(P) of the Social Security Act is amended—

(1) by striking out "even-numbered"; and

(2) by striking out "eight quarters" and inserting in lieu thereof "four quarters".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act.

SEC. 9529. MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AND FOSTER CARE.

(a) STATE OF RESIDENCE.—(1) Section 1902(b) of the Social Security Act (42 U.S.C. 1396a(b)) is amended by adding at the end thereof the following:

"For purposes of this title, any individual receiving aid or assistance under any plan of a State approved under part E of title IV shall be deemed to be receiving such aid or assistance from the State in which the individual actually resides.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of the enactment of this Act.

(b) ELIGIBILITY OF CERTAIN ADOPTED CHILDREN.—(1) Section 1902(a)(10)(A)(ii) of the Social Security Act, as amended by section 9505 of this Act, is amended—

(A) by striking out "or" at the end of subclause (VI);

(B) by striking out the semicolon at the end of subclause (VII) and inserting in lieu thereof ", or"; and

(C) by adding after subclause (VII) the following new subclause:

"(VIII) who is a child described in section 1905(a)(i)—

"(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of title IV) between the State and an adoptive parent or parents,

"(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

"(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of title IV were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of title IV;".

(2) In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act) entered into before the date of the enactment of this Act—

(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to the eligible for medical assistance prior to such agreement being entered into.

(3) This subsection, and the amendments made by this subsection, shall apply to adoption assistance agreements entered into before, on, or after the date of the enactment of this Act.

TITLE X—PRIVATE HEALTH INSURANCE COVERAGE

SEC. 10001. EMPLOYERS REQUIRED TO PROVIDE CERTAIN EMPLOYEES AND FAMILY MEMBERS WITH CONTINUED HEALTH INSURANCE COVERAGE AT GROUP RATES (INTERNAL REVENUE CODE AMENDMENTS).

(a) DENIAL OF DEDUCTION FOR EMPLOYER CONTRIBUTION TO PLAN.—Subsection (i) of section 162 of the Internal Revenue Code of 1954 (relating to deduction for trade or business expenses with respect to group health plans) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) PLANS MUST PROVIDE CONTINUATION COVERAGE TO CERTAIN INDIVIDUALS.—

"(A) IN GENERAL.—No deduction shall be allowed under this section for expenses paid or incurred by an employer for any group health plan maintained by such employer unless all such plans maintained by such employer meet the continuing coverage requirements of subsection (k).

"(B) EXCEPTION FOR CERTAIN SMALL EMPLOYERS, ETC.—Subparagraph (A) shall not apply to any plan described in section 106(b)(2).".

(b) DENIAL OF EXCLUSION FOR HIGHLY COMPENSATED INDIVIDUALS.—Section 106 of the Internal Revenue Code of 1954 (relating to contributions by employer to accident and health plans) is amended by inserting "(a) IN GENERAL.—" before "Gross" and by inserting at the end thereof the following new subsection:

"(b) EXCEPTION FOR HIGHLY COMPENSATED INDIVIDUALS WHERE PLAN FAILS TO PROVIDE CERTAIN CONTINUATION COVERAGE.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any amount contributed by an employer on behalf of a highly compensated individual (within the meaning of section 105(h)(5)) to a group health plan maintained by such employer unless all such plans maintained by such employer meet the continuing coverage requirements of section 162(k).

"(2) EXCEPTION FOR CERTAIN PLANS.—Paragraph (1) shall not apply to any—

"(A) group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year,

"(B) governmental plan (within the meaning of section 414(d)), or

"(C) church plan (within the meaning of section 414(e)).

Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 (relating to employers under common control) shall apply for purposes of subparagraph (A).

"(3) GROUP HEALTH PLAN.—For purposes of this subsection, the term 'group health plan' has the meaning given such term by section 162(i)(3).".

(c) CONTINUATION COVERAGE REQUIREMENTS.—Section 162 of the Internal Revenue Code of 1954 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) CONTINUATION COVERAGE REQUIREMENTS OF GROUP HEALTH PLANS.—

"(1) IN GENERAL.—For purposes of subsection (i)(2) and section 106(b)(1), a group health plan meets the requirements of this subsection only if each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled to elect, within the election period, continuation coverage under the plan.

"(2) CONTINUATION COVERAGE.—For purposes of paragraph (1), the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(A) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred.

"(B) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(i) MAXIMUM PERIOD.—In the case of—

"(I) a qualifying event described in paragraph (3)(B) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

"(II) any qualifying event not described in subclause (I), the date which is 36 months after the date of the qualifying event.

"(ii) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

"(iii) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary.

"(iv) REEMPLOYMENT OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

"(I) a covered employee under any other group health plan, or

"(II) entitled to benefits under title XVIII of the Social Security Act.

"(v) REMARRIAGE OF SPOUSE.—In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.

"(C) PREMIUM REQUIREMENTS.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

"(i) shall not exceed 102 percent of the applicable premium for such period, and

"(ii) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

"(D) NO REQUIREMENT OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(E) CONVERSION OPTION.—In the case of a qualified beneficiary whose period of continuation coverage expires under subparagraph (B)(i), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

"(3) QUALIFYING EVENT.—For purposes of this subsection, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subsection, would result in the loss of coverage of a qualified beneficiary:

"(A) The death of the covered employee.

"(B) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(C) The divorce or legal separation of the covered employee from the employee's spouse.

"(D) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(E) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"(4) APPLICABLE PREMIUM.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable premium' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(B) SPECIAL RULE FOR SELF-INSURED PLANS.—To the extent that a plan is a self-insured plan—

"(i) IN GENERAL.—Except as provided in clause (ii), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

"(I) is determined on an actuarial basis, and

"(II) takes into account such factors as the Secretary may prescribe in regulations.

"(ii) DETERMINATION ON BASIS OF PAST COST.—If a plan administrator elects to have this clause apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

"(I) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under subparagraph (C), adjusted by

"(II) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

"(iii) CLAUSE (ii) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—A plan administrator may not elect to have clause (ii) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under subparagraph (C).

"(C) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

"(5) ELECTION.—For purposes of this subsection—

"(A) ELECTION PERIOD.—The term 'election period' means the period which—

"(i) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

"(ii) is of at least 60 days' duration, and

"(iii) ends not earlier than 60 days after the later of—

"(I) the date described in clause (i), or

"(II) in the case of any qualified beneficiary who receives notice under paragraph (6)(D), the date of such notice.

"(B) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election by a qualified beneficiary described in clause (i)(I) or (ii) of paragraph (7)(B) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event.

"(6) NOTICE REQUIREMENTS.—In accordance with regulations prescribed by the Secretary—

"(A) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to

each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

"(B) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in subparagraph (A), (B), or (D) of paragraph (3) with respect to such employee within 30 days of the date of the qualifying event,

"(C) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in subparagraph (C) or (E) of paragraph (3), and

"(D) the plan administrator shall notify—

"(i) in the case of a qualifying event described in subparagraph (A), (B), or (D) of paragraph (3), any qualified beneficiary with respect to such event, and

"(ii) in the case of a qualifying event described in subparagraph (C) or (E) of paragraph (3) where the covered employee notifies the plan administrator under subparagraph (C), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection. For purposes of subparagraph (D), any notification shall be made within 14 days of the date on which the plan administrator is notified under subparagraph (B) or (C), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

"(7) DEFINITIONS.—For purposes of this subsection—

"(A) COVERED EMPLOYEE.—The term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

"(B) QUALIFIED BENEFICIARY.—

"(i) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(I) as the spouse of the covered employee, or

"(II) as the dependent child of the employee.

"(ii) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in paragraph (3)(B), the term 'qualified beneficiary' includes the covered employee.

"(C) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given the term 'administrator' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974.".

(d) CONFORMING AMENDMENT.—Paragraph (1) of section 162(i) is amended by striking out "GENERAL RULE" in the heading thereof and inserting in lieu thereof "COVERAGE RELATING TO END STAGE RENAL DISEASE".

(e) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall apply to plan years beginning on or after July 1, 1986.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

SEC. 10002. TEMPORARY EXTENSION OF COVERAGE AT GROUP RATES FOR CERTAIN EMPLOYEES AND FAMILY MEMBERS (ERISA AMENDMENTS).

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new part:

"PART 6—CONTINUATION COVERAGE UNDER GROUP HEALTH PLANS

"SEC. 601. PLANS MUST PROVIDE CONTINUATION COVERAGE TO CERTAIN INDIVIDUALS.

"(a) IN GENERAL.—The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

"(b) EXCEPTION FOR CERTAIN PLANS.—Subsection (a) shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of the Internal Revenue Code of 1954 (relating to employers under common control) shall apply for purposes of this subsection.

"SEC. 602. CONTINUATION COVERAGE.

"For purposes of section 601, the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(1) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred.

"(2) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(A) MAXIMUM PERIOD.—In the case of—

"(i) a qualifying event described in section 603(2) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

"(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.

"(B) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

"(C) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary.

"(D) REEMPLOYMENT OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

"(i) a covered employee under any other group health plan, or

"(ii) entitled to benefits under title XVIII of the Social Security Act.

"(E) REMARRIAGE OF SPOUSE.—In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.

"(3) PREMIUM REQUIREMENTS.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

"(A) shall not exceed 102 percent of the applicable premium for such period, and

"(B) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

"(4) NO REQUIREMENT OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(5) CONVERSION OPTION.—In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

"SEC. 603. QUALIFYING EVENT.

"For purposes of this part, the term 'qualifying event' means, with respect to any covered employee, any of the following events which,

but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

"(1) The death of the covered employee.

"(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(3) The divorce or legal separation of the covered employee from the employee's spouse.

"(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"SEC. 604. APPLICABLE PREMIUM.

"For purposes of this part—

"(1) IN GENERAL.—The term 'applicable premium' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(2) SPECIAL RULE FOR SELF-INSURED PLANS.—To the extent that a plan is a self-insured plan—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

"(i) is determined on an actuarial basis, and

"(ii) takes into account such factors as the Secretary may prescribe in regulations.

"(B) DETERMINATION ON BASIS OF PAST COST.—If an administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

"(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

"(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

"(C) SUBPARAGRAPH (B) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—An administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

"(3) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

"SEC. 605. ELECTION.

"For purposes of this part—

"(1) ELECTION PERIOD.—The term 'election period' means the period which—

"(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

"(B) is of at least 60 days' duration, and

"(C) ends not earlier than 60 days after the later of—

"(i) the date described in subparagraph (A), or

"(ii) in the case of any qualified beneficiary who receives notice under section 606(4), the date of such notice.

"(2) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 607(3) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event.

"SEC. 606. NOTICE REQUIREMENTS.

"In accordance with regulations prescribed by the Secretary—

"(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

"(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), or (4) of section 603 within 30 days of the date of the qualifying event,

"(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 603, and

"(4) the administrator shall notify—

"(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 603, any qualified beneficiary with respect to such event, and

"(B) in the case of a qualifying event described in paragraph (3) or (5) of section 603 where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of paragraph (4), any notification shall be made within 14 days of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

"SEC. 607. DEFINITIONS.

"For purposes of this part—

"(1) GROUP HEALTH PLAN.—The term 'group health plan' means an employee welfare benefit plan that is a group health plan (within the meaning of section 162(i)(3) of the Internal Revenue Code of 1954).

"(2) COVERED EMPLOYEE.—The term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

"(3) QUALIFIED BENEFICIARY.—

"(A) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(i) as the spouse of the covered employee, or

"(ii) as the dependent child of the employee.

"(B) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in section 603(2), the term 'qualified beneficiary' includes the covered employee.".

"SEC. 609. REGULATIONS.

"The Secretary may prescribe regulations to carry out the provisions of this part.".

(b) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended by inserting after "Any administrator" the following: "(1) who fails to meet the requirements of paragraph (1) or (4) of section 606 with respect to a participant or beneficiary, or (2)".

(c) CLERICAL AMENDMENTS.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 514 the following new items:

"PART 6—CONTINUATION COVERAGE UNDER GROUP HEALTH PLANS

"Sec. 601. Plans must provide continuation coverage to certain individuals.
"Sec. 602. Continuation coverage.
"Sec. 603. Qualifying event.
"Sec. 604. Applicable premium.
"Sec. 605. Election.
"Sec. 606. Notice requirements.
"Sec. 607. Definitions.
"Sec. 608. Regulations.".

(d) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall apply to plan years beginning on or after July 1, 1986.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined

without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

(e) NOTIFICATION TO COVERED EMPLOYEES.—At the time that the amendments made by this section apply to a group health plan (within the meaning of section 607(1) of the Employee Retirement Income Security Act of 1974), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under part 6 of subtitle B of title I of such Act. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 606(1) of such Act with respect to such individuals.

SEC. 10003. CONTINUATION OF HEALTH INSURANCE FOR STATE AND LOCAL EMPLOYEES WHO LOST EMPLOYMENT-RELATED COVERAGE (PUBLIC HEALTH SERVICE ACT AMENDMENTS).

(a) IN GENERAL.—The Public Health Service Act is amended by adding at the end the following new title:

"TITLE XXII—REQUIREMENTS FOR CERTAIN GROUP HEALTH PLANS FOR CERTAIN STATE AND LOCAL EMPLOYEES

"SEC. 2201. STATE AND LOCAL GOVERNMENTAL GROUP HEALTH PLANS MUST PROVIDE CONTINUATION COVERAGE TO CERTAIN INDIVIDUALS.

"(a) IN GENERAL.—In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this Act, by any political subdivision of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with this title, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

"(b) EXCEPTION FOR CERTAIN PLANS.—Subsection (a) shall not apply to—

"(1) any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year, or

"(2) any group health plan maintained for employees by the government of the District of Columbia or any territory or possession of the United States or any agency or instrumentality.

Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of the Internal Revenue Code of 1954 (relating to employers under common control) shall apply for purposes of paragraph (1).

"SEC. 2202. CONTINUATION COVERAGE.

"For purposes of section 2201, the term 'continuation coverage' means coverage under the plan which meets the following requirements:

"(1) TYPE OF BENEFIT COVERAGE.—The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred.

"(2) PERIOD OF COVERAGE.—The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

"(A) MAXIMUM PERIOD.—In the case of—

"(i) a qualifying event described in section 2203(2) (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

"(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.

"(B) END OF PLAN.—The date on which the employer ceases to provide any group health plan to any employee.

"(C) FAILURE TO PAY PREMIUM.—The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary.

"(D) REEMPLOYMENT OR MEDICARE ELIGIBILITY.—The date on which the qualified beneficiary first becomes, after the date of the election—

"(i) a covered employee under any other group health plan, or

"(ii) entitled to benefits under title XVIII of the Social Security Act.

"(E) REMARRIAGE OF SPOUSE.—In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.

"(3) PREMIUM REQUIREMENTS.—The plan may require payment of a premium for any period of continuation coverage, except that such premium—

"(A) shall not exceed 102 percent of the applicable premium for such period, and

"(B) may, at the election of the payor, be made in monthly installments.

If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.

"(4) NO REQUIREMENT OF INSURABILITY.—The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

"(5) CONVERSION OPTION.—In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

"SEC. 2203. QUALIFYING EVENT.

"For purposes of this title, the term 'qualifying event' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this title, would result in the loss of coverage of a qualified beneficiary:

"(1) The death of the covered employee.

"(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

"(3) The divorce or legal separation of the covered employee from the employee's spouse.

"(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.

"(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

"SEC. 2204. APPLICABLE PREMIUM.

"For purposes of this title—

"(1) IN GENERAL.—The term 'applicable premium' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

"(2) SPECIAL RULE FOR SELF-INSURED PLANS.—To the extent that a plan is a self-insured plan—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

"(i) is determined on an actuarial basis, and

"(ii) takes into account such factors as the Secretary may prescribe in regulations.

"(B) DETERMINATION ON BASIS OF PAST COST.—If a plan administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

"(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

"(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

"(C) SUBPARAGRAPH (B) NOT TO APPLY WHERE SIGNIFICANT CHANGE.—A plan administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

"(3) DETERMINATION PERIOD.—The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

"SEC. 2205. ELECTION.

"For purposes of this title—

"(1) ELECTION PERIOD.—The term 'election period' means the period which—

"(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

"(B) is of at least 60 days' duration, and

"(C) ends not earlier than 60 days after the later of—

"(i) the date described in subparagraph (A), or

"(ii) in the case of any qualified beneficiary who receives notice under section 2206(4), the date of such notice.

"(2) EFFECT OF ELECTION ON OTHER BENEFICIARIES.—Except as otherwise specified in an election, any election by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 2208(3) shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event.

"SEC. 2206. NOTICE REQUIREMENTS.

"In accordance with regulations prescribed by the Secretary—

"(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

"(2) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in paragraph (1), (2), or (4) of section 2203 within 30 days of the date of the qualifying event,

"(3) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 2203, and

"(4) the plan administrator shall notify—

"(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 2203, any qualified beneficiary with respect to such event, and

"(B) in the case of a qualifying event described in paragraph (3) or (5) of section 2203 where the covered employee notifies the plan administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

For purposes of paragraph (4), any notification shall be made within 14 days of the date on which the plan administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

"SEC. 2207. ENFORCEMENT.

"Any individual who is aggrieved by the failure of a State, political subdivision, or agency or instrumentality thereof, to comply with the requirements of this title may bring an action for appropriate equitable relief.

"SEC. 2208. DEFINITIONS.

"For purposes of this title—

"(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term in section 162(i)(3) of the Internal Revenue Code of 1954.

"(2) COVERED EMPLOYEE.—The term 'covered employee' means an individual who is (or was) provided coverage under a group health plan by virtue of the individual's employment or previous employment with an employer.

"(3) QUALIFIED BENEFICIARY.—

"(A) IN GENERAL.—The term 'qualified beneficiary' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

"(i) as the spouse of the covered employee, or

"(ii) as the dependent child of the employee.

"(B) SPECIAL RULE FOR TERMINATIONS AND REDUCED EMPLOYMENT.—In the case of a qualifying event described in section 2203(2), the term 'qualified beneficiary' includes the covered employee.

"(4) PLAN ADMINISTRATOR.—The term 'plan administrator' has the meaning given the term 'administrator' by section 3(16)(A) of the Employee Retirement Income Security Act of 1974."

(b) EFFECTIVE DATES.—

(1) GENERAL RULE.—The amendments made by this section shall apply to plan years beginning on or after July 1, 1986.

(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the later of—

(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

(c) NOTIFICATION TO COVERED EMPLOYEES.—At the time that the amendments made by this section apply to a group health plan (covered under section 2201 of the Public Health Service Act), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under title XXII of such Act. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 2206(1) of such Act with respect to such individuals.

TITLE XI—SINGLE-EMPLOYER PLAN TERMINATION INSURANCE SYSTEM AMENDMENTS

SEC. 11001. SHORT TITLE AND TABLE OF CONTENTS.

This title may be cited as "Single-Employer Pension Plan Amendments Act of 1985".

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SEC. 11002. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) ADDITIONAL FINDINGS.—The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;

(3) is necessary to maintain the premium costs of such system at a reasonable level; and

(4) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) DECLARATION OF POLICY.—It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans,

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits,

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship,

(5) to maintain the premium costs of such system at a reasonable level; and

(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

SEC. 11003. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974, unless otherwise specified.

SEC. 11004. DEFINITIONS.

(a) IN GENERAL.—Section 4001(a) (29 U.S.C. 1301(a)) is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) 'substantial employer', for any plan year of a single-employer plan, means one or more persons—

"(A) who are contributing sponsors of the plan in such plan year,

"(B) who, at any time during such plan year, are members of the same affiliated group (within the meaning of subsection (a) of section 1563 of the Internal Revenue Code

of 1954, determined without regard to subsections (a)(4) and (e)(3)(C) of such section), and

"(C) whose required contributions to the plan for each plan year constituting one of—

"(i) the two immediately preceding plan years, or

"(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under the plan for such plan year;";

(2) in paragraph (11), by striking out "and";

(3) in paragraph (12), by striking out "corporation." and inserting in lieu thereof "corporation;" and

(4) by adding after paragraph (12) the following new paragraphs:

"(13) 'contributing sponsor', of a single-employer plan, means a person—

"(A) who is responsible for meeting the funding requirements under section 302 of this Act or section 412 of the Internal Revenue Code of 1954, or

"(B) who is a member of the controlled group of a person described in subparagraph (A), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined in regulations of the corporation) of participants under such plan while such person was so responsible;

"(14) in the case of a single-employer plan—

"(A) 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person; and

"(B) the determination of whether two or more persons are under 'common control' shall be made under regulations of the corporation which are consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of the Internal Revenue Code of 1954;

"(15) 'single-employer plan' means, except as otherwise specifically provided in this title, any defined benefit plan (as defined in section 3(35)) which is not a multiemployer plan;

"(16) 'benefit commitments', to a participant or beneficiary as of any date under a single-employer plan, means all benefits provided by the plan with respect to the participant or beneficiary which—

"(A) are guaranteed under section 4022,

"(B) would be guaranteed under section 4022, but for the operation of subsection 4022(b), or

"(C) constitute—

"(i) early retirement supplements or subsidies, or

"(ii) plant closing benefits,

irrespective of whether any such supplements, subsidies, or benefits are benefits guaranteed under section 4022, if the participant or beneficiary has satisfied, as of such date, all of the conditions required of him or her under the provi-

sions of the plan to establish entitlement to the benefits, except for the submission of a formal application, retirement, completion of a required waiting period subsequent to application for benefits, or designation of a beneficiary;

"(17) 'amount of unfunded guaranteed benefits', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 4022, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to those benefits under section 4044;

"(18) 'amount of unfunded benefit commitments', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit commitments of the participant or beneficiary under the plan, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to those benefit commitments under section 4044;

"(19) 'outstanding amount of benefit commitments', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

"(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit commitments of such participant or beneficiary under the plan, over

"(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of such participant or beneficiary which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;

"(20) 'person' has the meaning set forth in section 3(9);

"(21) 'affected party' means, with respect to a plan—

"(A) each participant in the plan,

"(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

"(C) each employee organization representing participants in the plan, and

"(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected

party, any reference to the affected party shall be construed to refer to such person.".

(b) TECHNICAL CORRECTION OF ERROR IN MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.—Section 4001 is further amended by striking out the amendments made by section 402(a)(1)(F) of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1297) (adding new paragraphs after a subsection (c)(1)), and, in lieu thereof, in subsection (b), by inserting "(1)" after "(b)" and by adding at the end of such subsection the following new paragraphs:

"(2) For purposes of this title, except as otherwise provided in this title, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of the Internal Revenue Code of 1954 (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date).

"(3) For purposes of subtitle E, 'Secretary of the Treasury' means the Secretary of the Treasury or such Secretary's delegate.".

SEC. 11005. SINGLE-EMPLOYER PLAN TERMINATION INSURANCE PREMIUMS.

(a) PREMIUM INCREASE.—

(1) GENERAL RULE.—Section 4006(a)(3)(A)(i) (29 U.S.C. 1306(a)(3)(A)(i)) is amended by striking out "for plan years beginning after December 31, 1977, an amount equal to $2.60" and inserting in lieu thereof "for plan years beginning after December 31, 1985, an amount equal to $8.50".

(2) CONFORMING AMENDMENT WITH RESPECT TO PLAN YEARS AFTER 1977.—Section 4006(c)(1) (29 U.S.C. 1306(c)(1)) is amended by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) in the case of each plan which was not a multiemployer plan in a plan year—

"(i) with respect to each plan year beginning before January 1, 1978, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and

"(ii) with respect to each plan year beginning after December 31, 1977, an amount equal to $2.60 for each individual who was a participant in such plan during the plan year, and".

(b) INCORPORATION OF CERTAIN FORMER PROVISIONS IN LIEU OF CROSS REFERENCE THERETO.—Section 4006(a) (29 U.S.C. 1306(a)) is amended—

(1) in paragraph (1), by striking out the last sentence; and

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

"(6)(A) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of this paragraph.

"(B) The corporation may establish annual premiums for single-employer plans composed of the sum of—

"(i) a charge based on a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are

guaranteed over the value of the assets of the plan, not in excess of 0.1 percent, and

"(ii) an additional charge based on a rate applicable to the present value of the basic benefits of the plan which are guaranteed.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the charges referred to in clause (i) of this subparagraph.

"(C) The corporation may establish annual premiums for single-employer plans based on—

"(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

"(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable to charges referred to in subparagraph (B)(i), or

"(iii) total guaranteed basic benefits, but such premium rates shall not exceed the rates for additional charges referred to in subparagraph (B)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

"(D) For purposes of this paragraph, the corporation shall by regulation define the terms 'value of assets' and 'present value of the benefits of the plan which are guaranteed' in a manner consistent with the purposes of this title and the provisions of this section.".

(c) APPROVAL BY JOINT RESOLUTION OF RECOMMENDATIONS OF THE PENSION BENEFIT GUARANTY CORPORATION.—Title IV is amended as follows:

(1) The last sentence of subsection (a)(2) of section 4006 (29 U.S.C. 1306(a)(2)) is amended by striking out "the Congress approves such revised schedule by a concurrent resolution" and inserting in lieu thereof "a joint resolution approving such revised schedule is enacted".

(2) Subsection (a)(4) of section 4006 (29 U.S.C. 1306(a)(4)) is amended by striking out "approval by the Congress" and inserting in lieu thereof "the enactment of a joint resolution".

(3) Subsection (b)(3) of section 4006 (29 U.S.C. 1306(b)(3)) is amended by striking out "concurrent" and inserting in lieu thereof "joint", by striking out "That the Congress favors the" and inserting in lieu thereof "The", and by inserting "is hereby approved" before the period preceding the quotation marks.

(4) Subsection (f)(2)(B) of section 4022A (29 U.S.C. 1322a(f)(2)(B)) is amended by striking out "Congress by concurrent resolution" and inserting in lieu thereof "the enactment of a joint resolution".

(5) Subsection (f)(2)(C) of section 4022A (29 U.S.C. 1322a(f)(2)(C)) is amended by striking out "approved" and inserting in lieu thereof "so enacted".

(6) Subsection (f)(3)(B) of section 4022A (29 U.S.C. 1322a(f)(3)(A)) is amended by striking out "Congress by a con-

current resolution" and inserting in lieu thereof "enactment of a joint resolution".

(7) Subsection (f)(4)(A) of section 4022A (29 U.S.C. 1322a(f)(4)(A)) is amended by striking out "concurrent" and inserting in lieu thereof "joint".

(8) Subsection (f)(4)(B) of section 4022A (29 U.S.C. 1322a(f)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in lieu thereof "joint", by striking out "That the Congress favors the" and inserting in lieu thereof "The", and by inserting "is hereby approved" immediately before the period preceding the quotation marks.

(9) Subsection (g)(4)(A)(ii) of section 4022A (29 U.S.C. 1322a(g)(4)(A)(ii)) is amended by striking out "concurrent" and inserting in lieu thereof "joint", and by striking out "adopted" and inserting in lieu thereof "enacted".

(10) Subsection (g)(4)(B) of section 4022A (29 U.S.C. 1322a(g)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in lieu thereof "joint", by striking out "That the Congress disapproves the" and inserting in lieu thereof "The", and by inserting "is hereby disapproved" immediately before the period preceding the quotation marks.

(d) EFFECTIVE DATES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section shall be effective for plan years commencing after December 31, 1985.

(2) SPECIAL RULE.—The amendments made by subsection (b) shall be effective as of the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980.

SEC. 11006. NOTICE OF SIGNIFICANT REDUCTION IN BENEFIT ACCRUALS.

(a) IN GENERAL.—Section 204 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) A single-employer plan may not be amended on or after the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985 so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

"(1) each participant in the plan,

"(2) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

"(3) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in paragraph (1), (2), or (3).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to plan amendments adopted on or after the date described in section 11019(a).

SEC. 11007. GENERAL REQUIREMENTS RELATING TO TERMINATION OF SINGLE-EMPLOYER PLANS BY PLAN ADMINISTRATORS.

(a) IN GENERAL.—Section 4041 (29 U.S.C. 1341) is amended by striking out subsections (a) through (c) and inserting in lieu thereof the following:

"SEC. 4041. (a) GENERAL RULES GOVERNING SINGLE-EMPLOYER PLAN TERMINATIONS.—

"(1) EXCLUSIVE MEANS OF PLAN TERMINATION.—Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 4042, a single-employer plan may be terminated only in a standard termination under subsection (b) or a distress termination under subsection (c).

"(2) 60-DAY NOTICE OF INTENT TO TERMINATE.—Not less than 60 days before the proposed termination date of a plan termination under subsection (b) or (c), the plan administrator shall provide to each affected party (other than the corporation in the case a standard termination) a written notice of intent to terminate stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

"(3) ADHERENCE TO COLLECTIVE BARGAINING AGREEMENTS.—The corporation shall not proceed with a termination of a plan under this section if the termination would violate the terms and conditions of an existing collective bargaining agreement. Nothing in the preceding sentence shall be construed as limiting the authority of the corporation to institute proceedings to involuntarily terminate a plan under section 4042.".

(b) DEFINITIONS RELATING TO SUFFICIENCY.—Section 4041(d) (29 U.S.C. 1341(d)) is amended to read as follows:

"(d) SUFFICIENCY.—For purposes of this section—

"(1) SUFFICIENCY FOR BENEFIT COMMITMENTS.—A single-employer plan is sufficient for benefit commitments if there is no amount of unfunded benefit commitments under the plan.

"(2) SUFFICIENCY FOR GUARANTEED BENEFITS.—A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.".

SEC. 11008. STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 4041 (as amended by section 11007 of this Act) is further amended by inserting after subsection (a) the following new subsection:

"(b) STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) GENERAL REQUIREMENTS.—A single-employer plan may terminate under a standard termination only if—

"(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2),

"(B) the requirements of subparagraphs (A) and (B) of paragraph (2) are met,

"(C) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2), and

"(D) when the final distribution of assets occurs, the plan is sufficient for benefit commitments (determined as of the termination date).

"(2) TERMINATION PROCEDURE.—

"(A) NOTICE TO THE CORPORATION.—As soon as practicable after the termination date proposed in the notice provided pursuant to subsection (a)(2), the plan administrator shall send a notice to the corporation setting forth—

"(i) certification by an enrolled actuary—

"(I) of the projected amount of the assets of the plan (as of a proposed date of final distribution of assets),

"(II) of the actuarial present value (as of such date) of the benefit commitments (determined as of the proposed termination date) under the plan, and

"(III) that the plan is projected to be sufficient (as of such proposed date of final distribution) for such benefit commitments,

"(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

"(iii) certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) is accurate and complete.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES OF BENEFIT COMMITMENTS.—At the time a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan—

"(i) specifying the amount of such person's benefit commitments (if any) as of the proposed termination date, expressed in terms of the normal form of benefits under the plan, and

"(ii) including the following information used in determining such benefit commitments:

"(I) the length of service,

"(II) the age of the participant or beneficiary,

"(III) wages,

"(IV) the assumptions, including the interest rate, and

"(V) such other information as the corporation may require.

Such notice shall be written in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

"(C) NOTICE FROM THE CORPORATION OF NONCOMPLIANCE.—

"(i) IN GENERAL.—Within 60 days after receipt of the notice under subparagraph (A), the corporation shall provide the plan administrator with a notice of noncompliance if—

"(I) it has reason to believe that the requirements of subsection (a)(2) and subparagraphs (A) and (B) have not been met, or

"(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit commitments.

"(ii) EXTENSION.—The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

"(D) FINAL DISTRIBUTION OF ASSETS IN ABSENCE OF NOTICE OF NONCOMPLIANCE.—The plan administrator shall commence the final distribution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if—

"(i) the plan administrator has not received during such period a notice of noncompliance from the corporation under subparagraph (C), and

"(ii) when such final distribution occurs, the plan is sufficient for benefit commitments (determined as of the termination date).

"(3) METHODS OF FINAL DISTRIBUTION OF ASSETS.—

"(A) IN GENERAL.—In connection with any final distribution of assets pursuant to the termination of the plan, the plan administrator shall distribute the assets in accordance with section 4044. In distributing such assets, the plan administrator shall—

"(i) purchase irrevocable commitments from an insurer to provide the benefit commitments under the plan and all other benefits (if any) under the plan to which assets are allocated under section 4044, or

"(ii) in accordance with the provisions of the plan and any applicable regulations of the corporation, otherwise fully provide the benefit commitments under the

plan and all other benefits (if any) under the plan to which assets are allocated under section 4044.

"(B) CERTIFICATION TO THE CORPORATION OF FINAL DISTRIBUTION OF ASSETS.—Within 30 days after the final distribution of assets is completed pursuant to the termination of the plan, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay the benefit commitments under the plan and all other benefits under the plan to which assets are allocated under section 4044.

"(4) CONTINUING AUTHORITY.—Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 4003 with respect to matters relating to the termination. A certification under paragraph (3)(B) shall not affect the corporation's obligations under section 4022.".

(b) CONFORMING AMENDMENTS.—Section 4041(f) (29 U.S.C. 1341(f)) is amended—

(1) by inserting after "(f)" the following: "CONVERSION OF A DEFINED BENEFIT PLAN TO A DEFINED CONTRIBUTION PLAN TREATED AS A STANDARD TERMINATION.—";

(2) by striking out "subsection (a)" and inserting in lieu thereof "this section"; and

(3) by inserting "in a standard termination" after "terminated".

(c) AUTHORITY FOR 60-DAY EXTENSION.—In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this section) with respect to which a notice of intent to terminate is filed before May 1, 1986, the Pension Benefit Guaranty Corporation may, without the consent of the plan administrator, extend the 60-day period under section 4041(b)(2)(C)(i) of such Act (as so amended) for a period not to exceed 60 days.

(d) SPECIAL TEMPORARY RULE.—

(1) REQUIREMENTS TO BE MET BEFORE FINAL DISTRIBUTION OF ASSETS.—In the case of the termination of a single-employer plan described in paragraph (2) with respect to which the amount described in section 4044(d) exceeds $1,000,000, the final distribution of assets pursuant to such termination may not occur until the Pension Benefit Guaranty Corporation—

(A) determines that the assets of the plan are sufficient to provide all benefit commitments (within the meaning of section 4001(a)(16) of such Act (as amended by section 11004)) under the plan,

(B) determines that there is no amount of unfunded guaranteed benefits (within the meaning of section 4001(a)(17) of such Act (as amended by section 11004)) under the plan, and

(C) issues to the plan administrator a written notice setting forth the determinations described in subparagraphs (A) and (B).

(2) PLANS TO WHICH SUBSECTION APPLIES.—A single-employer plan is described in this paragraph if—

(A) the plan has filed a notice of intent to terminate with the Pension Benefit Guaranty Corporation—

(i) before the effective date of the amendments made by this section and for which the Corporation has not issued a notice of sufficiency before such date under section 4041 of such Act (as in effect immediately before such date), or

(ii) in a standard termination under section 4041(b) of such Act (as amended by this section) on or after the effective date of the amendments made by this section and before March 1, 1986, and

(B) the lesser of 200 participants in the plan or 10 percent of the participants in the plan have filed complaints with the Corporation regarding such termination—

(i) in the case of plans described in subparagraph (A)(i), within 15 days after the effective date of the amendments made by this section, or

(ii) in any other case, within 45 days after the date of the filing of such notice.

(3) CONSIDERATION OF COMPLAINTS.—The Corporation shall consider and respond to such complaints not later than 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A). The Corporation may hold informal hearings to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of title 5, United States Code.

(4) DELAY ON ISSUANCE OF NOTICE.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the Corporation shall not issue any notice described in paragraph (1)(C) until 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A).

(B) EXCEPTION IN CASES OF SUBSTANTIAL BUSINESS HARDSHIP.—The preceding provisions of this subsection shall not apply (except in the case of an acquisition, takeover, or leveraged buyout) if the contributing sponsor demonstrates to the satisfaction of the Corporation that the contributing sponsor is experiencing substantial business hardship. For purposes of this subparagraph, a contributing sponsor shall be considered as experiencing substantial business hardship if the contributing sponsor has been operating, and can demonstrate that it will continue to operate, at an economic loss.

SEC. 11009. DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.

(a) IN GENERAL.—Section 4041 (as amended by sections 11007 and 11008 of this title) is further amended by inserting after subsection (b) the following new subsection:

"(c) DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) IN GENERAL.—A single-employer plan may terminate under a distress termination only if—

"(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2),

"(B) the requirements of subparagraph (A) of paragraph (2) are met, and

"(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are met.

"(2) TERMINATION REQUIREMENTS.—

"(A) INFORMATION SUBMITTED TO THE CORPORATION.—As soon as practicable after the termination date proposed in the notice of intent to terminate provided pursuant to subsection (a)(2), the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

"(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

"(ii) certification by an enrolled actuary of—

"(I) the amount (as of the proposed termination date) of the current value of the assets of the plan,

"(II) the actuarial present value (as of such date) of the benefit commitments under the plan,

"(III) whether the plan is sufficient for benefit commitments as of such date,

"(IV) the actuarial present value (as of such date) of benefits under the plan guaranteed under section 4022, and

"(V) whether the plan is sufficient for guaranteed benefits as of such date;

"(iii) in any case in which the plan is not sufficient for benefit commitments as of such date—

"(I) the name and address of each participant and beneficiary under the plan as of such date, and

"(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the corporation (or its designee under section 4049(b)) to be able to make payments to participants and beneficiaries as required under section 4049; and

"(iv) certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

"(B) DETERMINATION BY THE CORPORATION OF NECESSARY DISTRESS CRITERIA.—Upon receipt of the notice of intent to terminate required under subsection (a)(2) and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is a contributing sponsor of such plan or a substantial member

of such sponsor's controlled group meets the requirements of any of the following clauses:

"(i) LIQUIDATION IN BANKRUPTCY OR INSOLVENCY PROCEEDINGS.—The requirements of this clause are met by a person if—

"(I) such person has filed or has had filed against it, as of the termination date, a petition seeking liquidation in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State, and

"(II) such case has not, as of the termination date, been dismissed.

"(ii) REORGANIZATION IN BANKRUPTCY OR INSOLVENCY PROCEEDINGS.—The requirements of this clause are met by a person if—

"(I) such person has filed, or has had filed against it, as of the termination date, a petition seeking reorganization in a case under title 11, United States Code, or under any similar law of a State or political subdivision of a State (or a case described in clause (i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought),

"(II) such case has not, as of the termination date, been dismissed, and

"(III) the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) approves the termination.

"(iii) TERMINATION REQUIRED TO ENABLE PAYMENT OF DEBTS WHILE STAYING IN BUSINESS OR TO AVOID UNREASONABLY BURDENSOME PENSION COSTS CAUSED BY DECLINING WORKFORCE.—The requirements of this clause are met by a person if such person demonstrates to the satisfaction of the corporation that—

"(I) unless a distress termination occurs, such person will be unable to pay such person's debts when due and will be unable to continue in business, or

"(II) the costs of providing pension coverage have become unreasonably burdensome, solely as a result of a decline of such person's workforce covered as participants under all single-employer plans of which such person is a contributing sponsor.

"(C) SUBSTANTIAL MEMBER.—For purposes of subparagraph (B), the term 'substantial member' of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole. For purposes of clauses (i) and (ii) of subparagraph (B), such term includes any member of the controlled group who does not meet the requirements of the preceding sentence but did meet such requirements as of the date of the filing of the petition referred to therein.

"(D) NOTIFICATION OF DETERMINATIONS BY THE CORPORATION.—The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

"(3) TERMINATION PROCEDURE.—

"(A) DETERMINATIONS BY THE CORPORATION RELATING TO PLAN SUFFICIENCY FOR GUARANTEED BENEFITS AND FOR BENEFIT COMMITMENTS.—If the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

"(i) determine whether the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

"(ii) determine whether the plan is sufficient for benefit commitments (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

"(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

"(B) IMPLEMENTATION OF TERMINATION.—After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as soon as practicable, as provided in clause (i), (ii), or (iii).

"(i) CASES OF SUFFICIENCY FOR BENEFIT COMMITMENTS.—In any case in which the corporation determines that the plan is sufficient for benefit commitments, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3), and take such other actions as may be appropriate to carry out the termination of the plan.

"(ii) CASES OF SUFFICIENCY FOR GUARANTEED BENEFITS WITHOUT A FINDING OF SUFFICIENCY FOR BENEFIT COMMITMENTS.—In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that the plan is not sufficient for benefit commitments (or that it is unable to determine whether the plan is sufficient for benefit commitments on the basis of the information made available to it)—

"(I) the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3), and

"(II) the corporation shall establish a separate trust in connection with the plan for purposes of section 4049.

"(iii) CASES WITHOUT ANY FINDING OF SUFFICIENCY.—In any case in which the corporation determines that the plan is not sufficient for guaranteed benefits (or that it is unable to determine whether the plan is suffi-

cient for guaranteed benefits on the basis of the information made available to it)—

"(I) the corporation shall commence proceedings in accordance with section 4042, and

"(II) the corporation shall establish a separate trust in connection with the plan for purposes of section 4049 unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 4022.

"(C) FINDING AFTER AUTHORIZED COMMENCEMENT OF TERMINATION THAT PLAN IS UNABLE TO PAY BENEFITS.—

"(i) FINDING WITH RESPECT TO GUARANTEED BENEFITS ONLY.—If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay all benefits under the plan which are guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042.

"(ii) FINDING WITH RESPECT TO BENEFIT COMMITMENTS WHICH ARE NOT GUARANTEED BENEFITS.—If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay benefit commitments which are not benefits guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall take the actions set forth in subparagraph (B)(ii)(II) relating to the trust established for purposes of section 4049.

"(D) ADMINISTRATION OF THE PLAN DURING INTERIM PERIOD.—During the period commencing on the date on which the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) and ending on the date on which the plan administrator receives notification from the corporation of its determinations under subparagraph (A), the plan administrator—

"(i) shall refrain from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

"(ii) shall pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

"(iii) shall not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

"(iv) shall continue to pay all benefit commitments under the plan, except that, commencing on the proposed termination date, the plan administrator shall limit the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 4022 or to which assets are required to be allocated under section 4044.

In the event the plan is later determined not to have met the requirements for distress termination, any benefits which are not paid solely by reason of clause (iv) shall be due and payable immediately (together with interest).".

(b) CONFORMING AMENDMENTS.—Section 4041 (as amended by the preceding provisions of this Act) is further amended—

(1) by striking out subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

SEC. 11010. TERMINATION PROCEEDINGS; DUTIES OF THE CORPORATION.

(a) MANDATORY COMMENCEMENT OF PROCEEDINGS UPON INABILITY OF SINGLE-EMPLOYER PLAN TO PAY BENEFITS THAT ARE CURRENTLY DUE.—

(1) IN GENERAL.—Section 4042(a) (29 U.S.C. 1342(a)) is amended—

(A) in paragraph (2), by striking out "is" and inserting in lieu thereof "will be"; and

(B) in the matter following paragraph (4), by striking out in the second sentence "The corporation" and inserting in lieu thereof the following: "The corporation shall as soon as practicable institute court proceedings under this section to terminate a single-employer plan whenever it determines that the plan does not have assets available to pay benefits that are currently due under the terms of the plan. The corporation".

(2) CONFORMING AMENDMENTS.—

(A) Section 4042(b)(1) (29 U.S.C. 1342(b)(1)) is amended, in the first sentence, by inserting "or is required under subsection (a) to institute court proceedings under this section," after "to a plan".

(B) Section 4042(c) (29 U.S.C. 1342(c)) is amended in the first sentence by striking out "If the corporation" and all that follows down through "it may," and inserting in lieu thereof the following: "If the corporation is required under subsection (a) of this section to commence court proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined (whether or not a trustee has been appointed under subsection (b)) that the plan should be terminated under this section, it shall,".

(c) CONFORMING AMENDMENT.—The heading for section 4042 is amended to read as follows:

"INSTITUTION OF TERMINATION PROCEEDINGS BY THE CORPORATION".

SEC. 11011. AMENDMENTS TO LIABILITY PROVISIONS; LIABILITIES RELATING TO BENEFIT COMMITMENTS IN EXCESS OF BENEFITS GUARANTEED BY THE CORPORATION.

(a) LIABILITY FOR DISTRESS TERMINATIONS AND TERMINATIONS BY THE CORPORATION.—Section 4062 (29 U.S.C. 1362) is amended by striking out so much as precedes subsection (e) and inserting in lieu thereof the following:

"LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS UNDER A DISTRESS TERMINATION OR A TERMINATION BY THE CORPORATION

"SEC. 4062. (a) IN GENERAL.—In any case in which a single-employer plan is terminated in a distress termination under section 4041(c) or a termination otherwise instituted by the corporation under section 4042, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

"(1) liability to the corporation to the extent provided in subsection (b),

"(2) liability to the trust established pursuant to section 4041(c)(3)(B) (ii) or (iii) to the extent provided in subsection (c), and

"(3) liability to the trustee referred to in section 4042(d)(1)(B) to the extent provided in subsection (d).

"(b) LIABILITY TO THE CORPORATION.—

"(1) IN GENERAL.—The liability to the corporation of a person described in subsection (a) shall consist of the sum of—

"(A) the lesser of—

"(i) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, or

"(ii) 30 percent of the collective net worth of all persons described in subsection (a), and

"(B) the excess (if any) of—

"(i) 75 percent of the amount described in subparagraph (A)(i), over

"(ii) the amount described in subparagraph (A)(ii),

together with interest calculated from the termination date. Except as provided in paragraph (2), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

"(2) PAYMENT OF LIABILITY.—Payment of the liability under paragraph (1)(B) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to reach agreement on such commercially reasonable terms. Any such terms prescribed by the corporation shall provide for deferral of 50 percent of any amount of liability otherwise payable for any year under this paragraph if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability

has any individual pre-tax profits for such person's fiscal year ending during such year.

"(3) ALTERNATIVE ARRANGEMENTS.—The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

"(c) LIABILITY TO SECTION 4049 TRUST.—

"(1) IN GENERAL.—In any case in which there is an outstanding amount of benefit commitments under a plan terminated under section 4041(c) or 4042, a person described in subsection (a) shall be subject to liability under this subsection to the trust established under section 4041(c)(3)(B)(ii) or (iii) in connection with the terminated plan. The liability of such person under this subsection shall consist of the lesser of—

"(A) 75 percent of the total outstanding amount of benefit commitments under the plan, or

"(B) 15 percent of the total amount of benefit commitments under the plan.

"(2) PAYMENT OF LIABILITY.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, payment of a person's liability under this subsection shall be made for liability payment years under commercially reasonable terms prescribed by the fiduciary designated by the corporation pursuant to section 4049(b). Such fiduciary and the liable persons assessed liability under this subsection shall make a reasonable effort to reach agreement on such commercially reasonable terms.

"(B) SPECIAL RULE FOR PLANS WITH LOW AMOUNTS OF OUTSTANDING BENEFIT COMMITMENTS.—In any case in which the amount described in paragraph (1)(A) is less than $100,000, the requirements of subparagraph (A) may be satisfied by payment of such liability over 10 liability payment years in equal annual installments (with interest at the rate determined under section 6621(b) of the Internal Revenue Code of 1954). The corporation may, by regulation, increase the dollar amount referred to in this subparagraph as it determines appropriate, taking into account reasonable administrative costs of trusts established under section 4041(c)(3)(B)(ii) or (iii).

"(C) DEFERRAL OF PAYMENTS.—The terms for payment provided for under subparagraph (A) or (B) shall also provide for deferral of 75 percent of any amount of liability otherwise payable for any liability payment year if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability has any individual pre-tax profits for such person's fiscal year ending during such year. The amount of liability so deferred is payable only after payment in full of any amount of liability under subsection (b) in connection with the termination of the same plan which has been deferred pursuant to terms provided for under subsection (b)(2).

"(d) LIABILITY TO SECTION 4042 Trustee.—A person described in subsection (a) shall be subject to liability under this subsection to

the trustee referred to in section 4042(d)(1)(B). The liability of such person under this subsection shall consist of—

"(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1954) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 303 of this Act or section 412(d) of such Code and for extensions of the amortization period under section 304 of this Act or section 412(e) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

"(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 303 of this Act or section 412(d) of such Code (if any), and

"(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304 of this Act or section 412(e) of such Code (if any),

together with interest. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

"(e) DEFINITIONS.—

"(1) COLLECTIVE NET WORTH OF PERSONS SUBJECT TO LIABILITY.—

"(A) IN GENERAL.—The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

"(i) have individual net worths which are greater than zero, and

"(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

"(B) DETERMINATION OF NET WORTH.—For purposes of this paragraph, the net worth of a person is—

"(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

"(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11, United States Code, if the person were a debtor in a case under chapter 7 of such title.

"(C) TIMING OF DETERMINATION.—For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period

ending with the termination date) and shall be computed without regard to any liability under this section.

"(2) PRE-TAX PROFITS.—The term 'pre-tax profits' means—

"(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

"(B) for any fiscal year of an organization described in section 501(c) of the Internal Revenue Code of 1954, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pre-tax profits.

"(3) LIABILITY PAYMENT YEARS.—The liability payment years in connection with a terminated plan consist of the consecutive one-year periods following the last plan year preceding the termination date, excluding the first such year in any case in which the first such year begins less than 180 days after the termination date.".

(b) CLERICAL AMENDMENT.—Subsection (e) of section 4062 is amended by inserting "TREATMENT OF SUBSTANTIAL CESSATION OF OPERATIONS.—" after "(e)".

(c) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954.—

(1) TIME FOR DEDUCTION OF CERTAIN EMPLOYER LIABILITY PAYMENTS.—Paragraph (3) of section 404(g) of the Internal Revenue Code of 1954 (relating to certain employer liability payments considered as contributions) is amended to read as follows:

"(3) TIMING OF DEDUCTION OF CONTRIBUTIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

"(B) CONTRIBUTIONS UNDER STANDARD TERMINATIONS.—Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

"(C) CONTRIBUTIONS TO CERTAIN TRUSTS.—Subparagraph (A) shall not apply to any payment described in paragraph (1) which is made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).".

(2) REFERENCES TO ERISA.—Subsection (g) of section 404 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new paragraph:

"(4) REFERENCES TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date described in section 11019(a) of the Single-Employer Pension Plan Amendments Act of 1985.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments made after the date described in section 11019(a) in taxable years ending after such date.

SEC. 11012. DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUST.

(a) IN GENERAL.—Subtitle C of title IV is amended by adding at the end thereof the following new section:

"DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUST

"SEC. 4049. (a) TRUST REQUIREMENTS.—The requirements of this section apply to a trust established by the corporation in connection with a terminated plan pursuant to section 4041(c)(3)(B)(ii) or (iii). The trust shall be used exclusively for—

"(1) receiving liability payments under section 4062(c) from the persons who were (as of the termination date) contributing sponsors of the terminated plan and members of their controlled groups,

"(2) making distributions as provided in this section to the persons who were (as of the termination date) participants and beneficiaries under the terminated plan, and

"(3) defraying the reasonable administrative expenses incurred in carrying out responsibilities under this section.

The corporation, or its designee under subsection (b), shall serve as trustee of the trust and maintain such trust with respect to the terminated plan for such period of time as is necessary to receive all liability payments required to be made to the trust under section 4062(c) with respect to the terminated plan and to make all distributions required to be made to participants and beneficiaries under this section with respect to the terminated plan.

"(b) DESIGNATION OF FIDUCIARY BY THE CORPORATION.—

"(1) IN GENERAL.—The corporation shall designate a fiduciary (within the meaning of section 3(21)) to serve as trustee of the trust—

"(A) to the extent required under section 4062(c), for purposes of conducting negotiations and assessing and collecting liability, and

"(B) to the extent determined by the corporation to be cost-effective, for purposes of administering the trust.

"(2) FIDUCIARY REQUIREMENTS.—A fiduciary designated under paragraph (1) shall be—

"(A) independent of each contributing sponsor of the plan and the members of such sponsor's controlled group, and

"(B) subject to the requirements of part 4 of subtitle B of title I (other than section 406(a)) as if such trust were a plan subject to such part.

"(c) DISTRIBUTIONS FROM TRUST.—

"(1) IN GENERAL.—Not later than 30 days after the end of each liability payment year (described in section 4062(e)(3)) with respect to a terminated single-employer plan, the corporation, or its designee under subsection (b), shall distribute from the trust maintained pursuant to subsection (a) to each person who was (as of the termination date) a participant or beneficiary under the plan—

"(A) in any case not described in subparagraph (B), an amount equal to the outstanding amount of benefit commitments of such person under the plan (including interest calculated from the termination date), to the extent not previously paid under this paragraph, or

"(B) in any case in which the balance in the trust at the end of such year which is in cash or may be prudently converted to cash (after taking into account liability payments received under subsection (a)(1) and administrative expenses paid under subsection (a)(3)) is less than the total of all amounts described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan, the product derived by multiplying—

"(i) the amount described in subparagraph (A) in connection with each such person, by

"(ii) a fraction—

"(I) the numerator of which is such balance in the trust, and

"(II) the denominator of which is equal to the total of all amounts described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan.

"(2) CARRY-OVER OF MINIMAL PAYMENT AMOUNTS.—The corporation, or its designee under subsection (b), may withhold a payment to any person under this subsection in connection with any liability payment year (other than the last liability payment year with respect to which payments under paragraph (1) are payable) if such payment does not exceed $100. In any case in which such a payment is so withheld, the payment to such person in connection with the next following liability payment year shall be increased by the amount of such withheld payment.

"(c) REGULATIONS.—The corporation may issue such regulations as it considers necessary to carry out the purposes of this section.".

(b) TAX-EXEMPT STATUS FOR TRUSTS DESCRIBED IN SECTION 4049 OF ERISA.—Subsection (c) of section 501 of the Internal Revenue Code of 1954 (relating to list of tax-exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985).".

(c) ROLLOVERS OF PAYMENTS FROM TRUST ALLOWED.—Paragraph (6) of section 402(a) (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(G) PAYMENTS FROM CERTAIN PENSION PLAN TERMINATION TRUSTS.—If—

"(i) any amount is paid or distributed to a recipient from a trust described in section 501(c)(24),

"(ii) the recipient transfers any portion of the property received in such distribution to an eligible retirement plan described in subclause (I) or (II) of paragraph (5)(E)(iv), and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then the portion of the distribution so transferred shall be treated as a distribution described in paragraph (5)(A).".

(d) SPECIAL DELAYED PAYMENT RULE.—In the case of a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability incurred under section 4062(c)(2)(B) of such Act (as amended by this section) shall be required to be made before January 1, 1989.

SEC. 11013. TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION.

(a) IN GENERAL.—Subtitle D of title IV is amended by adding at the end thereof the following new section:

"TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION

"SEC. 4069. (a) TREATMENT OF TRANSACTIONS TO EVADE LIABILITY.—If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person's controlled group (determined as of the termination date) shall be subject to liability under this subtitle in connection with such termination as if such person were a contributing sponsor of the terminated plan as of the termination date. This subsection shall not cause any person to be liable under this subtitle in connection with such plan termination for any increases or improvements in the benefits provided under the plan which are adopted after the date on which the transaction referred to in the preceding sentence becomes effective.

"(b) EFFECT OF CORPORATE REORGANIZATION.—For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

"(1) CHANGE OF IDENTITY, FORM, ETC.—If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

"(2) LIQUIDATION INTO PARENT CORPORATION.—If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

"(3) MERGER, CONSOLIDATION, OR DIVISION.—If a person ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.".

(b) EFFECTIVE DATE.—Section 4069(a) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) shall apply with respect to transactions becoming effective on or after the date described in section 11019(a).

SEC. 11014. ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS.

(a) PRIVATE RIGHTS OF ACTION.—Subtitle D of title IV (as amended by section 11013) is further amended by adding at the end thereof the following new section:

"ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS

"SEC. 4070. (a) IN GENERAL.—A person who is with respect to a single-employer plan a fiduciary, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and who is adversely affected by an act or practice of any party (other than the corporation) in violation of any provision of section 4041, 4042, 4049, 4062, 4063, 4064, or 4069, or an employee organization which represents such a participant or beneficiary for purposes of collective bargaining with respect to such plan, may bring an action—

"(1) to enjoin such act or practice, or

"(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

"(b) STATUS OF PLAN AS PARTY TO ACTION AND WITH RESPECT TO LEGAL PROCESS.—A single-employer plan may be sued under this section as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon any contributing sponsor of the plan shall constitute such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable

against any other person unless liability against such person is established in such person's individual capacity.

"(c) JURISDICTION AND VENUE.—The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) in any action.

"(d) RIGHT OF CORPORATION TO INTERVENE.—A copy of the complaint or notice of appeal in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

"(e) AWARDS OF COSTS AND EXPENSES.—

"(1) GENERAL RULE.—In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

"(2) EXEMPTION FOR PLANS.—Notwithstanding the preceding provisions of this subsection, no plan shall be required in any action to pay any costs and expenses (including attorney's fees).

"(f) LIMITATION ON ACTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), an action under this section may not be brought after the later of—

"(A) 6 years after the date on which the cause of action arose, or

"(B) 3 years after the applicable date specified in paragraph (2).

"(2) APPLICABLE DATE.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), the applicable date specified in this paragraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

"(B) SPECIAL RULE FOR PLAINTIFFS WHO ARE FIDUCIARIES.—In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this paragraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date described in subparagraph (A).

"(3) CASES OF FRAUD OR CONCEALMENT.—In the case of fraud or concealment, the period described in paragraph (1)(B) shall be extended to 6 years after the applicable date specified in paragraph (2).".

(b) CIVIL ACTIONS INVOLVING THE PENSION BENEFIT GUARANTY CORPORATION.—

(1) ACTIONS AGAINST THE CORPORATION.—Section 4003(f) (29 U.S.C. 1303(f)) is amended to read as follows:

"(f)(1) Except with respect to withdrawal liability disputes under part 1 of subtitle E, any person who is a fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled

group, participant, or beneficiary, and who is adversely affected by any action of the corporation with respect to a plan in which such person has an interest and any employee organization which represents such a participant or beneficiary for purposes of collective bargaining with respect to such plan, may bring an action against the corporation for appropriate equitable relief in the appropriate court.

"(2) For purposes of this subsection, the term 'appropriate court' means—

"(A) the United States district court before which proceedings under section 4041 or 4042 are being conducted,

"(B) if no such proceedings are being conducted, the United States district court in which the plan has its principal office, or

"(C) the United States District Court for the District of Columbia.

"(3) In any action brought under this subsection, the court may award all or a portion of the costs and expenses incurred in connection with such action to any party who prevails or substantially prevails in such action.

"(4) This subsection shall be the exclusive means for bringing actions against the corporation under this title, including actions against the corporation in its capacity as a trustee under section 4042 or 4049.

"(5)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

"(i) 6 years after the date on which the cause of action arose, or

"(ii) 3 years after the applicable date specified in subparagraph (B).

"(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

"(ii) In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this subparagraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date specified in clause (i).

"(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

"(6) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"(7) In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 4301, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the state court to the United States district court for the district or division in which such suit, action, or proceeding is pending by following any procedure for removal now or hereafter in effect.".

(2) LIMITATION ON ACTIONS BY THE CORPORATION.—Section 4003(e) (29 U.S.C. 1303(e)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

"(i) 6 years after the date on which the cause of action arose, or

"(ii) 3 years after the applicable date specified in subparagraph (B).

"(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the corporation acquired or should have acquired actual knowledge of the existence of such cause of action.

"(ii) If the corporation brings the action as a trustee, the applicable date specified in this subparagraph is the date on which the corporation became a trustee with respect to the plan if such date is later than the date described in clause (i).

"(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B) if such date is later than the date described in clause (i).".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to actions filed after the date of the enactment of this Act.

SEC. 11015. PROVISIONS RELATING TO WAIVERS OF MINIMUM FUNDING STANDARD AND EXTENSIONS OF AMORTIZATION PERIOD.

(a) SECURITY FOR WAIVERS.—

(1) ERISA AMENDMENT.—

(A) IN GENERAL.—Part 3 of subtitle B of title I is amended—

(i) by redesignating section 306 (29 U.S.C. 1086) as section 307; and

(ii) by inserting after section 305 (29 U.S.C. 1085) the following new section:

"SECURITY FOR WAIVERS OF MINIMUM FUNDING STANDARD AND EXTENSIONS OF AMORTIZATION PERIOD

"SEC. 306. (a) SECURITY MAY BE REQUIRED.—

"(1) IN GENERAL.—Except as provided in subsection (c), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under section 303 or an extension under section 304.

"(2) SPECIAL RULES.—Any security provided under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation or, at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)) or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

"(b) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subsection (c), the Secretary of the Treasury shall, before granting or modifying a waiver under section 303 or an extension under section 304 with respect to a plan described in subsection (a)(1)—

"(1) provide the Pension Benefit Guaranty Corporation with—

"(A) notice of the completed application for any waiver, extension, or modification, and

"(B) an opportunity to comment on such application within 30 days after receipt of such notice, and

"(2) consider—

"(A) any comments of the Corporation under paragraph (1)(B), and

"(B) any views of any employee organization representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the corporation under this subsection shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1954.

"(c) EXCEPTION FOR CERTAIN WAIVERS AND EXTENSIONS.—

"(1) IN GENERAL.—The preceding provisions of this section shall not apply to any plan with respect to which the sum of—

"(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1954) of the plan,

"(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived under section 303 of this Act or section 412(d) of such Code, and

"(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed under section 304 of this Act or section 412(e) of such Code,

is less than $2,000,000.

"(2) ACCUMULATED FUNDING DEFICIENCIES.—For purposes of paragraph (1)(A), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1954 and for extensions of the amortization period under section 304 of this Act or section 412(e) of such Code which are pending with respect to such plan were denied.".

(B) CONFORMING AMENDMENT.—Section 211(c)(1) is amended by striking out "306(c)" and inserting in lieu thereof "307(c)".

(C) CLERICAL AMENDMENT.—The table of sections in section 1 is amended by striking out the item relating to section 306 and inserting in lieu thereof the following new items:

"Sec. 306. Security for waivers of minimum funding standard and extensions of amortization period.

"Sec. 307. Effective dates.".

(2) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954.—

(A) IN GENERAL.—Subsection (f) of section 412 of the Internal Revenue Code of 1954 (relating to requirement that benefits may not be increased during waiver or extension period) is amended by adding at the end thereof the following new paragraph:

"(3) SECURITY FOR WAIVERS AND EXTENSIONS; CONSULTATIONS.—

"(A) SECURITY MAY BE REQUIRED.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under subsection (d) or an extension under subsection (e).

"(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of such Act), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

"(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under subsection (d) or an extension under subsection (e) with respect to a plan described in subparagraph (A)(i)—

"(i) provide the Pension Benefit Guaranty Corporation with—

"(I) notice of the completed application for any waiver, extension, or modification, and

"(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

"(ii) consider—

"(I) any comments of the Corporation under clause (i)(II), and

"(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

"(C) EXCEPTION FOR CERTAIN WAIVERS AND EXTENSIONS.—

"(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

"(I) the outstanding balance of the accumulated funding deficiencies (within the meaning of subsection (a) and section 302(a) of such Act) of the plan,

"(II) the outstanding balance of the amount of waived funding deficiencies of the plan waived under subsection (d) or section 303 of such Act, and

"(III) the outstanding balance of the amount of decreases in the minimum funding standard allowed under subsection (d) or section 304 of such Act,

is less than $2,000,000.

"(ii) ACCUMULATED FUNDING DEFICIENCIES.—For purposes of clause (i)(I), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under subsection (d) or section 303 of such Act and for extensions of the amortization period under subsection (e) of section 304 of such Act which are pending with respect to such plan were denied.".

(B) CONFORMING AMENDMENTS.—Section 412(f) of the Internal Revenue Code of 1954 is amended—

(i) by striking out the heading thereof and inserting in lieu thereof;

"(f) REQUIREMENTS RELATING TO WAIVERS AND EXTENSIONS.—", and

(ii) by striking out the heading of paragraph (1) thereof and inserting in lieu thereof:

"(1) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—".

(3) EFFECTIVE DATES.—The amendments made by this subsection shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date described in section 11019(a).

(b) APPLICABLE INTEREST RATE UNDER ARRANGEMENTS PROVIDING FOR WAIVERS AND EXTENSIONS.—

(1) AMENDMENTS TO ERISA.—

(A) VARIANCES FROM THE MINIMUM FUNDING STANDARD.—Section 303(a) (29 U.S.C. 1083(a)) is amended by adding at the end thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in section 302(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b) of the Internal Revenue Code of 1954.".

(B) EXTENSIONS OF THE AMORTIZATION PERIOD.—Section 304(a) (29 U.S.C. 1084(a)) is amended by adding after and below paragraph (2) the following new sentence:

"The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b) of the Internal Revenue Code of 1954.".

(2) AMENDMENTS TO INTERNAL REVENUE CODE.—

(A) VARIANCES FROM THE MINIMUM FUNDING STANDARD.—Paragraph (1) of section 412(d) of the Internal Revenue Code of 1954 (relating to waivers in case of substantial business hardship) is amended by adding at the end thereof the following new sentence: "The interest rate used for purposes of computing the amortization charge described in

section 412(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b).".

(B) EXTENSIONS OF THE AMORTIZATION PERIOD.—Subsection (e) of section 412 of such Code (relating to extension of amortization period) is amended by adding after and below paragraph (2) the following new sentence:

"The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b).".

SEC. 11016. CONFORMING, CLARIFYING, TECHNICAL, AND MISCELLANEOUS AMENDMENTS.

(a) CONFORMING AMENDMENTS RELATING TO PLAN TERMINATIONS.—

(1) CREDITS TO PENSION BENEFIT GUARANTY FUNDS.—Section 4005(b)(1)(C) (29 U.S.C. 1305(b)(1)(C)) is amended by inserting "terminated under section 4041(c) or" after "a plan".

(2) ESTIMATED BENEFITS FOR CERTAIN SINGLE-EMPLOYER PLANS.—Section 4005(b)(2) (29 U.S.C. 1305(b)(2)) is amended—

(A) by striking out "and" at the end of subparagraph (C);

(B) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and"; and

(C) by adding at the end thereof the following:

"(E) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this title and the estimated amount of other benefits to which plan assets are allocated under section 4044, under single-employer plans which are unable to pay benefits when due or which are abandoned.".

(3) CREDITS TO REVOLVING FUND.—Section 4005(b)(1) (29 U.S.C. 1305(b)(1)) is amended—

(A) by striking out "and" at the end of subparagraph (E);

(B) by redesignating subparagraph (F) as subparagraph (G); and

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) attorney's fees awarded to the corporation, and".

(4) APPLICABILITY OF ASSET ALLOCATION RULES.—Section 4044(c) (29 U.S.C. 1344(c)) is amended—

(A) in the first sentence, by striking out "Any" and inserting in lieu thereof "In the case of a distress termination under section 4041(c) or a termination by the corporation under section 4042, any", and by striking out "the period beginning" and all that follows down through "is to be allocated" and inserting in lieu thereof the following: "the period beginning on the date a trustee is appointed under section 4042(b) and ending on the termination date is to be allocated"; and

(B) in the second sentence, by inserting "in such a termination under section 4041(c) or 4042" after "terminated".

(5) TERMINATION DATE.—Section 4048(a) (29 U.S.C. 1348(a)) is amended—

(A) by striking out "date of termination" and inserting in lieu thereof "termination date";

(B) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(C) in paragraph (2) (as redesignated), by inserting "in a distress termination" after "terminated" and by striking out "section 4041" and inserting in lieu thereof "section 4041(c)";

(D) by inserting before paragraph (2) (as redesignated) the following new paragraph:

"(1) in the case of a plan terminated in a standard termination in accordance with the provisions of section 4041(b), the termination date proposed in the notice provided under section 4041(a)(2),";

and

(E) in paragraph (4) (as redesignated), by striking out "in accordance with the provisions of either section" and inserting in lieu thereof "under section 4041(c) or 4042".

(6) CONFORMING AMENDMENTS TO SPECIAL LIABILITY RULES RELATING TO CERTAIN SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS.—

(A) LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL.—

(i) Section 4063(a) (29 U.S.C. 1363(a)) is amended—

(I) by striking out "plan under which more than one employer makes contributions (other than a multiemployer plan)" and inserting in lieu thereof "single-employer plan which has two or more contributing sponsors at least two of whom are not under common control";

(II) in paragraph (1), by striking out "withdrawal of a substantial employer" and inserting in lieu thereof "withdrawal during a plan year of a substantial employer for such plan year";

(III) in paragraph (2), by striking out "of such employer" and all that follows and inserting in lieu thereof "of all persons with respect to the withdrawal of the substantial employer.";

(IV) by striking out "whether such employer is liable for any amount under this subtitle with respect to the withdrawal" and inserting in lieu thereof "whether there is liability resulting from the withdrawal of the substantial employer"; and

(V) by striking out "notify such employer" and inserting in lieu thereof "notify the liable persons".

(ii) Section 4063(b) (29 U.S.C. 1363(b)) is amended—

(I) by striking out "an employer" and all that follows down through "shall be liable" and inserting in lieu thereof "any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan, to which section 4021 applies and which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provid-

ed by subsection (a), be liable, together with the members of their controlled groups,";

(II) by striking out "such employer's";

(III) by striking out "the employer's withdrawal" and inserting in lieu thereof "the withdrawal referred to in subsection (a)(1)";

(IV) in paragraph (1), by striking out "such employer" and inserting in lieu thereof "such contributing sponsors";

(V) in paragraph (2), by striking out "all employers" and inserting in lieu thereof "all contributing sponsors"; and

(VI) by striking out "the liability of each such employer" and inserting in lieu thereof "such liability".

(iii) Section 4063(c) (29 U.S.C. 1363(c)) is amended—

(I) in paragraph (1), by striking out "In lieu of payment of his liability under this section the employer" and inserting in lieu thereof "In lieu of payment of a contributing sponsor's liability under this section the contributing sponsor";

(II) in paragraph (2), by inserting "under section 4041(c) or 4042" after "terminated", by striking out "of such employer", and by striking out "to the employer (or his bond cancelled)" and inserting in lieu thereof "(or the bond cancelled)"; and

(III) in paragraph (3), by inserting "under section 4041(c) or 4042" after "terminates".

(iv) Section 4063(d) (29 U.S.C. 1363(d)) is amended—

(I) by striking out "Upon a showing by the plan administrator of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers has resulted" and inserted in lieu thereof "Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted";

(II) by striking out "by employers"; and

(III) in paragraph (1), by striking out "their employer's" and inserting in lieu thereof "the".

(v) Section 4063(e) (29 U.S.C. 1363(e)) is amended—

(I) by striking out "to any employer or plan administrator"; and

(II) by striking out "all other employers" and inserting in lieu thereof "contributing sponsors".

(vi) The heading for section 4063 is amended by adding at the end thereof the following "FROM SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS.".

(B) ALLOCATION OF LIABILITY UPON TERMINATION OF CERTAIN SINGLE-EMPLOYER PLANS.—

(i) Section 4064(a) (29 U.S.C. 1364(a)) is amended—

(I) by striking out "all employers who maintain a plan under which more than one employer makes

contributions (other than a multiemployer plan)" and inserting in lieu thereof "all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control"; and

(II) by inserting "under section 4041(c) or 4042" after "terminated".

(ii) Section 4064(b) (29 U.S.C. 1364(b)) is amended—

(I) by striking out "liability of each such employer" and inserting in lieu thereof "liability with respect to each contributing sponsor and each member of its controlled group";

(II) by striking out "under section 4062(b)(1)";

(III) by striking out "each employer" the first place it appears and inserting in lieu thereof "each contributing sponsor and member of its controlled group";

(IV) in paragraph (1), by striking out "each employer" and inserting in lieu thereof "members of such controlled group";

(V) in paragraph (2), by striking out "such employers" and inserting in lieu thereof "contributing sponsors";

(VI) by striking out "5 years," in paragraph (2) and all that follows down through "employer." and inserting in lieu thereof "5 years.";

(VII) by striking out "4062(b)(1)" and inserting in lieu thereof "4062(b)(1)(A)(ii)"; and

(VIII) in the last sentence, by striking out "of each such employer" and inserting in lieu thereof "of each such contributing sponsor and member of its controlled group".

(iii) The heading for section 4064 is amended to read as follows:

"LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS".

(C) ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS.—Section 4066 (29 U.S.C. 1366) is amended—

(i) by striking out "each plan under which contributions are made by more than one employer (other than a multiemployer plan)" and inserting in lieu thereof "each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control";

(ii) by striking out "any employer making contributions under that plan" and inserting in lieu thereof "any contributing sponsor of the plan"; and

(iii) by striking out "that he is a substantial employer" and inserting in lieu thereof "that such contributing sponsor comprises with others a substantial employer".

(7) ADDITIONAL AMENDMENTS RELATING TO RECOVERY OF AMOUNTS OF LIABILITY.—

(A) Section 4067 (29 U.S.C. 1367) is amended—

(i) in the heading, by striking out "EMPLOYER";

(ii) by striking out "employer or employers" and inserting in lieu thereof "contributing sponsors and members of their controlled groups"; and

(iii) by inserting "of amounts of liability to the corporation accruing as of the termination date" after "deferred payment".

(B) Section 4068 (29 U.S.C. 1368) is amended—

(i) in the heading, by striking out "OF EMPLOYER";

(ii) in subsection (a), by striking out "employer or employers" the first place it appears and inserting in lieu thereof "person", by striking out "neglect or refuse" and inserting in lieu thereof "neglects or refuses", by inserting "to the extent of an amount equal to the unpaid amount described in section 4062(b)(1)(A)" after "liability" and after "corporation" the second place it appears, and by striking out "employer or employers" and inserting in lieu thereof "person";

(iii) in subsection (d)(1), by striking out "employer" and inserting in lieu thereof "liable person";

(iv) in subsection (d)(2), by striking out "employer" each place it appears and inserting in lieu thereof "liable person";

(v) in subsection (e), by striking out "employer or employers" and inserting in lieu thereof "liable person"; and

(vi) by striking out subsection (c)(1) (29 U.S.C. 1368(c)(1)) and inserting in lieu thereof the following:

"(c)(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985). Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

"(A) 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

"(B) 'the corporation' for 'the Secretary' in subsections (a) and (b)(9)(C);

"(C) 'the payment of the amount on which the section 4068(a) lien is based' for 'the collection of any tax under this title' in subsection (b)(3);

"(D) 'a person whose property is subject to the lien' for 'the taxpayer' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

"(E) 'such person' for 'the taxpayer' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

"(F) 'payment of the loan value of the amount on which the lien is based is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)' in subsection (b)(9)(C);

"(G) 'section 4068(a) lien' for 'tax lien' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

"(H) 'the date on which the lien is first filed' for 'the date of the assessment of the tax' in subsection (g)(3)(A).".

(b) CLARIFICATION OF DESCRIPTION OF CERTAIN INFORMATION REQUIRED TO BE FILED IN ANNUAL REPORT.—

(1) IN GENERAL.—Section 103(d)(6) (29 U.S.C. 1023(d)(6)) is amended to read as follows:

"(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

"(A) the current value of the assets of the plan,

"(B) the present value of all nonforfeitable benefits for participants and beneficiaries receiving payments under the plan,

"(C) the present value of all nonforfeitable benefits for all other participants and beneficiaries,

"(D) the present value of all accrued benefits which are not nonforfeitable (including a separate accounting of such benefits which are benefit commitments, as defined in section 4001(a)(16)), and

"(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).".

(2) CONFORMING AMENDMENT.—Section 104(a)(2)(A) (29 U.S.C. 1024(a)(2)(A)) is amended by striking out the second sentence.

(3) TRANSITION RULES.—Any regulations, modifications, or waivers which have been issued by the Secretary of Labor with respect to section 103(d)(6) of the Employee Retirement Income Security Act of 1974 (as in effect immediately before the date of the enactment of this Act) shall remain in full force and effect until modified by any regulations with respect to such section 103(d)(6) prescribed by the Pension Benefit Guaranty Corporation.

(c) ADDITIONAL AMENDMENTS.—

(1) DEFINITION FOR TITLE I.—Section 3(37)(A) (29 U.S.C. 1002(37)(A)) is amended by inserting "pension" before "plan".

(2) NOTICE OF REQUEST FOR WAIVERS OF MINIMUM FUNDING STANDARDS AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section 303 (29 U.S.C. 1083) is amended by inserting after subsection (d) the following new subsection:

"(e)(1) The Secretary of the Treasury shall, before granting a waiver under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by such application.

"(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).".

(3) NOTICE OF REQUEST FOR EXTENSIONS OF AMORTIZATION PERIOD AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section

304 (29 U.S.C. 1084) is amended by adding at the end thereof the following new subsection:

"(c)(1) The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by such application.

"(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).".

(4) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1954.—Subsection (f) of section 412 of the Internal Revenue Code of 1954 (relating to benefits may not be increased during waiver or extension period), as amended by the preceding provisions of this Act, is further amended by adding at the end thereof the following new paragraph:

"(4) ADDITIONAL REQUIREMENTS.—

"(A) ADVANCE NOTICE.—The Secretary shall, before granting a waiver under subsection (d) or an extension under subsection (e), require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver or extension to each employee organization representing employees covered by such application.

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).".

(5) AUDIT OF PLANS TERMINATED IN STANDARD TERMINATION.—Section 4003(a) (29 U.S.C. 1303(a)) is amended by adding at the end thereof the following new sentence: "The corporation shall annually audit a statistically significant number of plans terminating under section 4041(b) to determine whether participants and beneficiaries have received their benefit commitments. Each audit shall include a statistically significant number of participants and beneficiaries.".

(6) REPEAL OF EXPIRED AUTHORITY.—Section 4004 (29 U.S.C. 1304) is repealed.

(7) VOTING BY CORPORATION OF STOCK PAID AS LIABILITY.—Section 4005 (29 U.S.C. 1305) is amended by adding at the end thereof the following new subsection:

"(g) Any stock in a person liable to the corporation under this title which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this title may be voted only by the custodial trustees or outside money managers of the corporation or fiduciaries with respect to trusts to which the requirements of section 4049 apply.".

(8) EFFECTIVE YEARS.—Section 4022(b)(7) (29 U.S.C. 1322(b)(7)) is amended by striking out "following" and inserting in lieu thereof "beginning with".

(9) TREATMENT OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITIES.—Section 4022 (29 U.S.C. 1322) is amended by adding at the end thereof the following new subsection:

"(d) For purposes of subsection (a), a qualified preretirement survivor annuity (as defined in section 205(e)(1)) with respect to a participant under a terminated single-employer plan shall not be treated as forfeitable solely because the participant has not died as of the termination date.".

(10) CLARIFICATION OF POWER TO COLLECT AMOUNTS DUE THE CORPORATION.—Section 4042(d)(1)(B)(ii) (29 U.S.C. 1342(d)(1)(B)(ii)) is amended by inserting after "amounts due the plan" the following: ", including but not limited to the power to collect from the persons obligated to meet the requirements of section 302 or the terms of the plan".

(11) CONFORMING AMENDMENT.—Section 4042(d)(3) (29 U.S.C. 1342(d)(3)) is amended by striking out "same duties as a trustee appointed under section 47 of the Bankruptcy Act" and inserting in lieu thereof "same duties as those of a trustee under section 704 of title 11, United States Code".

(12) CLERICAL CORRECTIONS.—Section 4044(a)(4) (29 U.S.C. 1344(a)(4)(A)) is amended—

(A) in subparagraph (A), by striking out "section 4022(b)(5)" and inserting in lieu thereof "section 4022B(a)"; and

(B) in subparagraph (B), by striking out "section 4022(b)(6)" and inserting in lieu thereof "section 4022(b)(5)".

(13) RELEASE OF LIEN.—Section 4068(e) (29 U.S.C. 1368(e)) is amended by striking out ", with the consent of the board of directors,".

(d) STUDIES BY COMPTROLLER GENERAL.—

(1) IN GENERAL.—The Comptroller General of the United States may, pursuant to the request of any Member of Congress, study employee benefit plans, including the effects of such plans on employees, participants, and their beneficiaries.

(2) ACCESS TO BOOKS, DOCUMENTS, ETC.—For the purpose of conducting studies under this subsection, the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine and copy any books, documents, papers, records, or other recorded information—

(A) within the possession or control of the administrator, sponsor, or employer of and persons providing services to any employee benefit plan, and

(B) which the Comptroller General or his representative finds, in his own judgment, pertinent to such study.

The Comptroller General shall not disclose the identity of any individual or employer in making any information obtained under this subsection available to the public.

(3) DEFINITIONS.—For purposes of this subsection, the terms "employee benefit plan," "participant," "administrator," "beneficiary," "plan sponsor," "employee," and "employer" are defined in section 3 of the Employee Retirement Income Security Act of 1974.

(4) EFFECTIVE DATE.—The preceding provisions of this subsection shall be effective on the date of enactment of this Act.

(e) AMENDMENTS TO THE TABLE OF CONTENTS OF ERISA.—The table of contents in section 1 is amended—

(1) by striking out the item relating to section 4004;

(2) by striking out the item relating to section 4042 and inserting in lieu thereof the following new item:

"Sec. 4042. Institution of termination proceedings by the corporation.";

(3) by inserting after the item relating to section 4048 the following new item:

"Sec. 4049. Distribution to participants and beneficiaries of liability payments to section 4049 trust.";

and

(4) by striking out the items relating to subtitle D of title IV and inserting in lieu thereof the following new items:

"Subtitle D—Liability

"Sec. 4061. Amounts payable by the corporation.
"Sec. 4062. Liability for termination of single-employer plans under a distress termination or a termination by the corporation.
"Sec. 4063. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups.
"Sec. 4064. Liability on termination of single-employer plans under multiple controlled groups.
"Sec. 4065. Annual report of plan administrator.
"Sec. 4066. Annual notification of substantial employers.
"Sec. 4067. Recovery of liability for plan termination.
"Sec. 4068. Lien for liability.
"Sec. 4069. Treatment of transactions to evade liability; effect of corporate reorganization.
"Sec. 4070. Enforcement authority relating to terminations of single-employer plans.".

SEC. 11017. STUDIES.

(a) SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE PREMIUM STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Pension Benefit Guaranty Corporation shall conduct a study of the premiums established under the single-employer pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974.

(2) MATTERS TO BE STUDIED.—The Corporation shall specifically consider in its study the following matters:

(A) the effect of the amendments made by this Act on the long-term stability of the single-employer pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974;

(B) alternatives to the current statutory mechanism with respect to proposals for changes in the premium levels under such program;

(C) the methods currently used by the Corporation in projecting future program costs of the single-employer pension plan termination insurance program,

(D) alternative methods of projecting such future program costs and an evaluation of each such alternative method,

(E) the methods currently used by the Corporation in determining premiums needed to allocate and adequately fund such future program costs,

(F) alternative methods of making such premium determinations and an evaluation of each such alternative method, and

(G) alternative premium bases upon which some or all of such projected future program costs would be allocated on a exposure-related or risk-related computation, which may take into account the different exposures or risks imposed on the Corporation by plan sponsors with different histories and under different circumstances.

(3) SUBMISSION OF CORPORATION'S REPORT.—Not later than one year after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for statutory changes, to an advisory council, to be appointed by the chairmen of the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Finance of the Senate. The advisory council shall be composed of representatives of single-employer plan sponsors, employee organizations representing single-employer plan participants, and members of the general public who are experts in the matters to be considered in the study. The members of the advisory council shall serve without compensation.

(4) SUBMISSION OF COUNCIL'S REPORT TO CONGRESS.—Not later than 180 days after the date of the submission of the Corporation's report to the advisory council under paragraph (3), the advisory council shall submit the results of the Corporation's study and the Corporation's recommendations, together with the recommendations of the council, to the Speaker of the House of Representatives and the President pro tempore of the Senate.

(5) COOPERATION BY THE PENSION BENEFIT GUARANTY CORPORATION AND OTHER FEDERAL AGENCIES.—The Corporation shall cooperate with the advisory council in reviewing the results of the Corporation's study and recommendations. In order to avoid unnecessary expense and duplication, to the extent not otherwise prohibited by law, the Corporation and any other Federal agency shall provide to the advisory council any data, analyses, or other relevant information related to the matters under review.

(b) OVERFUNDED PENSION PLAN STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Labor shall conduct a study of terminations resulting in residual assets under section 4044(d) of the Employee Retirement Income Security Act of 1974.

(2) REPORT.—No later than February 1, 1986, the Secretary of Labor shall submit a report on the study conducted under paragraph (1), together with any recommendations for statutory changes, to the chairmen of the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Finance of the Senate.

SEC. 11018. LIMITATION ON REGULATIONS.

(a) REGULATORY TREATMENT OF ASSETS OF REAL ESTATE ENTITIES.—

(1) IN GENERAL.—Except as a defense, no rule or regulation adopted pursuant to the Secretary's proposed regulation defining "plan assets" for purposes of the Employee Retirement Income Security Act of 1974 (50 Fed. Reg. 961, January 8, 1985, as modified by 50 Fed. Reg. 6361, February 15, 1985), or any reproposal thereof prior to the adoption of the regulations required to be issued in accordance with subsection (d), shall apply to any asset of a real estate entity in which a plan, account, or arrangement subject to such Act invests if—

(A) any interest in the entity is first offered to a plan, account, or arrangement subject to such Act investing in the entity (hereinafter in this section referred to as a "plan investor") on or before the date which is 120 days after the date of publication of such rule or regulation as a final rule or regulation;

(B) no plan investor acquires an interest in the entity from an issuer or underwriter at any time on or after the date which is 270 days after the date of publication of such rule or regulation as a final rule or regulation (except pursuant to a contract or subscription binding on the plan investor and entered into, or tendered, before the expiration of such 270-day period, or pursuant to the exercise, on or before December 31, 1990, of a warrant which was the subject of an effective registration under the Securities Act of 1933 (15 U.S.C. 77q et seq.) prior to the date of the enactment of this section); and

(C) every interest in the entity acquired by a plan investor (or contracted for or subscribed to by a plan investor) before the expiration of such 270-day period is a security—

(i) which is part of an issue or class of securities which upon such acquisition or at any time during the offering period is held by 100 or more persons;

(ii) the economic rights of ownership in respect of which are freely transferable;

(iii) which is registered under the Securities Act of 1933; and

(iv) which is part of an issue or class of securities which is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (or is so registered within three years of the effective date of the registration statement of such securities for purposes of the Securities Act of 1933, provided that the issuer provides plan investors with such reports with respect to the offering period as are required with respect to such period by the Securities and Exchange Commission under such acts and the rules and regulations promulgated thereunder).

In the case of partnerships organized prior to enactment of this section, the requirements of subparagraphs (iii) and (iv) shall not apply to initial limited partnership interests in an entity otherwise described above provided such entity was the subject of an effective registration under the Securities Act of 1933 prior to the date of the enactment of this section, such interests were issued solely for partnership or-

ganizational purposes in compliance with State limited partnership laws, and such interest has a value as of the date of issue of less than $20,000 and represents less than one percent of the total interests outstanding as of the completion of the offering period.

(2) MAINTENANCE OF CURRENT REGULATORY TREATMENT.—No asset of any real estate entity described in paragraph (1) shall be treated as an asset of any plan investor for any purpose of the Employee Retirement Income Security Act of 1974 if the assets of such entity would not have been assets of such plan investor under the provisions of—

(A) Interpretive Bulletin 75-2 (29 CFR 2509.750-2); or

(B) the regulations proposed by the Secretary of Labor and published—

(i) on August 28, 1979, at 44 Fed. Reg. 50363;

(ii) on June 6, 1980, at 45 Fed. Reg. 38084;

(iii) on January 8, 1985, at 50 Fed. Reg. 961; or

(iv) on February 15, 1985, at 50 Fed. Reg. 6361,

without regard to any limitation of any effective date proposed therein.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) The term 'real estate entity' means an entity which, at any time within two years after the closing of its offering period has invested or has contracted to invest at least 75 percent of the value of its net assets available for investment in direct or indirect ownership of 'real estate assets' or 'interests in real property'.

(2) The term 'real estate asset' means real property (including an interest in real property) and any share of stock or beneficial interest, partnership interest, depository receipt, or any other interest in any other real estate entity.

(3) The term 'interest in real property' includes, directly or indirectly, the following:

(A) the ownership or co-ownership of land or improvements thereon;

(B) any mortgage (including an interest in or co-ownership of any mortgage, leasehold mortgage, pool of mortgages, deed of trust, or similar instrument) on land or improvements thereon;

(C) any leasehold of land or improvements thereon; and

(D) any option to acquire any of the foregoing, but does not include any mineral, oil, or gas royalty interest.

(4) Whether the economic rights of ownership with respect to a security are 'freely transferable' shall be determined based upon all the facts and circumstances, but ordinarily none of the following, alone or in any combination, shall cause the economic rights of ownership to be considered not freely transferable—

(A) any requirement that not less than a minimum number of shares or units of such security be transferred or assigned by any investor, provided that such requirement does not prevent transfer of all of the then remaining shares or units held by an investor;

(B) any prohibition against transfer or assignment of such security or rights in respect thereof to an ineligible or unsuitable investor;

(C) any restriction on or prohibition against any transfer or assignment which would either result in a termination or reclassification of the entity for Federal or State tax purposes or which would violate any State or Federal statute, regulation, court order, judicial decree, or rule of law;

(D) any requirement that reasonable transfer or administrative fees be paid in connection with a transfer or assignment;

(E) any requirement that advance notice of a transfer or assignment be given to the entity and any requirement regarding execution of documentation evidencing such transfer or assignment (including documentation setting forth representations from either or both of the transferor or transferee as to compliance with any restriction or requirement described in this section or requiring compliance with the entity's governing instruments);

(F) any restriction on substitution of an assignee as a limited partner of a partnership, including a general partner consent requirement, provided that the economic benefits of ownership of the assignor may be transferred or assigned without regard to such restriction or consent (other than compliance with any other restriction described in this section);

(G) any administrative procedure which establishes an effective date, or an event such as the completion of the offering, prior to which a transfer or assignment will not be effective; and

(H) any limitation or restriction on transfer or assignment which is not created or imposed by the issuer or any person acting for or on behalf of such issuer.

(c) NO EFFECT ON SECRETARY'S AUTHORITY OTHER THAN AS PROVIDED.—Except as provided in subsection (a), nothing in this section shall limit the authority of the Secretary of Labor to issue regulations or otherwise interpret section 3(21) of the Employee Retirement Income Security Act of 1974.

(d) TIME LIMIT FOR FINAL REGULATIONS.—The Secretary of Labor shall adopt final regulations defining "plan assets" by December 31, 1986.

(e) EFFECTIVE DATE.—The preceding provisions of this section shall take effect on the date of the enactment of this Act.

SEC. 11019. EFFECTIVE DATE OF TITLE; TEMPORARY PROCEDURES.

(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall apply with respect to terminations pursuant to notices of intent to terminate filed with the Pension Benefit Guaranty Corporation on or after the earlier of—

(1) the date of the enactment of this Act, or

(2) January 1, 1986.

(b) AUTHORITY TO PRESCRIBE TEMPORARY PROCEDURES.—The Pension Benefit Guaranty Corporation may prescribe temporary procedures for purposes of carrying out the amendments made by this

title during the 180-day period beginning on the date described in subsection (a).

TITLE XII—INCOME SECURITY AND RELATED PROGRAMS

Subtitle A—Old-Age, Survivors, and Disability Insurance Program

SEC. 12101. DEMONSTRATION PROJECTS INVOLVING THE DISABILITY INSURANCE PROGRAM.

(a) EXTENSION OF WAIVER AUTHORITY.—Section 505(a)(3) of the Social Security Disability Amendments of 1980 is amended by inserting "which is initiated before June 10, 1990" after "demonstration project under paragraph (1)".

(b) INTERIM REPORTS.—Section 505(a)(4) of such Amendments is amended to read as follows:

"(4) On or before June 9 in each of the years 1986, 1987, 1988, and 1989, the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.".

(c) FINAL REPORT.—Section 505(c) of such Amendments is amended by striking out "under this section no later than five years after the date of the enactment of this Act" and inserting in lieu thereof "under subsection (a) no later than June 9, 1990".

(d) INCORPORATION OF CERTAIN REPORTS INTO SECRETARY'S ANNUAL REPORT TO CONGRESS.—Section 1110(b) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(3) All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 704.".

SEC. 12102. DISABILITY ADVISORY COUNCIL.

(a) APPOINTMENT OF COUNCIL.—Within ninety days after the date of the enactment of this Act, the Secretary of Health and Human Services shall appoint a special Disability Advisory Council.

(b) MEMBERSHIP OF COUNCIL.—The Disability Advisory Council shall consist of a Chairman and not more than twelve other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers, medical and vocational experts from the public or private sector (or from both such sectors), organizations representing disabled people, and the public. The Council shall meet as often as may be necessary for the performance of its duties under this section, but not less often than quarterly.

(c) DUTIES OF COUNCIL.—(1) The Advisory Council shall conduct studies and make recommendations with respect to the medical and vocational aspects of disability under both title II and title XVI of the Social Security Act, including studies and recommendations relating to—

(A) the effectiveness of vocational rehabilitation programs for recipients of disability insurance benefits or supplemental security income benefits;

(B) the question of using specialists for completing medical and vocational evaluations at the State agency level in the disability determination process, including the question of requiring, in cases involving impairments other than mental impairments, that the medical portion of each case review (as well as any applicable assessment of residual functional capacity) be completed by an appropriate medical specialist employed by the appropriate State agency before any determination can be made with respect to the impairment involved;

(C) alternative approaches to work evaluation in the case of applicants for benefits based on disability and recipients of such benefits undergoing reviews of their cases, including immediate referral of any such applicant or recipient to a vocational rehabilitation agency for services at the same time he or she is referred to the appropriate State agency for a disability determination;

(D) the feasibility and appropriateness of providing work evaluation stipends for applicants for and recipients of benefits based on disability in cases where extended work evaluation is needed prior to the final determination of their eligibility for such benefits or for further rehabilitation and related services;

(E) the standards, policies, and procedures which are applied or used by the Secretary of Health and Human Services with respect to work evaluations in order to determine whether such standards, policies, and procedures will provide appropriate screening criteria for work evaluation referrals in the case of applicants for and recipients of benefits based on disability; and

(F) possible criteria for assessing the probability that an applicant for or recipient of benefits based on disability will benefit from rehabilitation services, taking into consideration not only whether the individual involved will be able after rehabilitation to engage in substantial gainful activity but also whether rehabilitation services can reasonably be expected to improve the individual's functioning so that he or she will be able to live independently or work in a sheltered environment.

(2) For purposes of this subsection, "work evaluation" includes (with respect to any individual) a determination of—

(A) such individual's skills,

(B) the work activities or types of work activity for which such individual's skills are insufficient or inadequate,

(C) the work activities or types of work activity for which such individual might potentially be trained or rehabilitated,

(D) the length of time for which such individual is capable of sustaining work (including, in the case of the mentally impaired, the ability to cope with the stress of competitive work), and

(E) any modifications which may be necessary, in work activities for which such individual might be trained or rehabilitated, in order to enable him or her to perform such activities.

(d) PROVISION OF ASSISTANCE TO COUNCIL; COMPENSATION OF MEMBERS.—(1) The Disability Advisory Council is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary of

Health and Human Services shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health and Human Services as the Council may require to carry out such functions.

(2) Appointed members of the Council, while serving on business of the Council (inclusive of traveltime), shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(e) REPORTS.—The Disability Advisory Council shall submit a report (including any interim reports the Council may have issued) of its findings and recommendations to the Secretary of Health and Human Services not later than December 31, 1986; and such report and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of the Federal Disability Insurance Trust Fund.

(f) TERMINATION.—After the date of the transmittal to the Congress of the report required by subsection (e), the Disability Advisory Council shall cease to exist.

(g) CONFORMING AMENDMENTS.—(1) Section 706 of the Social Security Act is amended—

(A) by inserting "except as provided in subsection (e)," immediately before "the Secretary shall appoint" in subsection (a); and

(B) by adding at the end thereof the following new subsection:

"(e) No Advisory Council on Social Security shall be appointed under subsection (a) in 1985 (or in any subsequent year prior to 1989).".

(2) Section 12 of the Social Security Disability Benefits Reform Act of 1984 is repealed.

SEC. 12103. TAXATION OF SOCIAL SECURITY BENEFITS RECEIVED BY CERTAIN CITIZENS OF POSSESSIONS OF THE UNITED STATES.

(a) GENERAL RULE.—Section 932 of the Internal Revenue Code of 1954 (relating to citizens of possessions of the United States) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAXATION OF SOCIAL SECURITY BENEFITS.—If, for purposes of an income tax imposed in the possession, any social security benefit (as defined in section 86(d)) received by an individual described in subsection (a) is treated in a manner equivalent to that provided by section 86, then—

"(1) such benefit shall be exempt from the tax imposed by section 871, and

"(2) no amount shall be deducted and withheld from such benefit under section 1441.

Any income tax imposed in a possession which treats social security benefits (as defined in section 86(d)) in a manner equivalent to section 86, and which first becomes effective within 15 months after the date of the enactment of this subsection, shall, for purposes of

this section, be deemed to have been in effect as of January 1, 1984.".

(b) CROSS REFERENCE.—Paragraph (3) of section 871(a) of such Code is amended by adding at the end thereof (after and below subparagraph (B)) the following new sentence:

> ***"For treatment of certain citizens of possessions of the United States, see section 932(c)."***

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

SEC. 12104. APPLICATION OF DEPENDENCY TEST TO ADOPTED GREAT-GRANDCHILDREN FOR PURPOSES OF CHILD'S INSURANCE BENEFITS.

(a) TREATMENT OF GRANDCHILDREN AND GREAT-GRANDCHILDREN ALIKE.—Section 202(d)(8)(D)(ii)(III) of the Social Security Act is amended by inserting "or great-grandchild" after "grandchild".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for which application is filed after the date of the enactment of this Act.

SEC. 12105. ELIMINATION OF REQUIREMENT FOR PUBLICATION OF REVISIONS IN PRE-1979 BENEFIT TABLE.

Section 215(i)(4) of the Social Security Act is amended by striking out "the Secretary shall publish" and all that follows in the last sentence and inserting in lieu thereof the following: "the Secretary shall revise the table of benefits contained in subsection (a), as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply.".

SEC. 12106. FORMULA CLARIFICATION.

Section 709(b)(1) of the Social Security Act is amended to read as follows:

> *"(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 201(a) on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), to".*

SEC. 12107. EXTENSION OF 15-MONTH REENTITLEMENT PERIOD TO CHILDHOOD DISABILITY BENEFICIARIES SUBSEQUENTLY ENTITLED.

(a) IN GENERAL.—Section 202(d)(6)(E) of the Social Security Act is amended by striking out "the third month following the month in which he ceases to be under such disability" and inserting in lieu thereof "the termination month (as defined in paragraph (1)(G)(i)), subject to section 223(e),".

(b) CONFORMING AMENDMENT.—Section 223(e) of such Act is amended by inserting "(d)(6)(A)(ii), (d)(6)(B)," after "(d)(1)(B)(ii),".

(c) EFFECTIVE DATE.—The amendments made by this section are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act) on or after that date.

SEC. 12108. CHARGING OF WORK DEDUCTIONS AGAINST AUXILIARY BENEFITS IN DISABILITY CASES.

(a) IN GENERAL.—(1) Section 203(a)(4) of the Social Security Act is amended by striking out "preceding" in the first sentence.

(2) Section 203(a)(6) of such Act is amended—

(A) by striking out "and (5)" and inserting in lieu thereof "(4), and (5)"; and

(B) by striking out ", whether or not" and all that follows down through "further reduced" and inserting in lieu thereof "shall be reduced".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after December 1985.

SEC. 12109. PERFECTING AMENDMENTS TO DISABILITY OFFSET PROVISION.

(a) IN GENERAL.—(1) Section 224(a)(2) of the Social Security Act is amended to read as follows:

"(2) such individual is entitled for such month to—

"(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

"(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)), other than (i) benefits payable under title 38, United States Code, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Secretary under section 218, and (iv) benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,".

(2) Section 224(a)(2)(B) of such Act (as amended by paragraph (1) of this subsection) is further amended by striking out "all or part of which" in clause (iv) and inserting in lieu thereof "all or substantially all of which".

(b) EFFECTIVE DATES.—(1) The amendment made by subsection (a)(1) shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981.

(2) The amendment made by subsection (a)(2) shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act) after the month in which this Act is enacted.

SEC. 12110. STATE COVERAGE AGREEMENTS.

(a) MAXIMUM PERIOD OF RETROACTIVE COVERAGE.—Section 218(f)(1) of the Social Security Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(b) POSITIONS COMPENSATED SOLELY ON FEE BASIS.—Section 218(u)(3) of such Act is amended by striking out "is agreed to by the Secretary and the State" and inserting in lieu thereof "is mailed or delivered by other means to the Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act) on or after the date of the enactment of this Act.

SEC. 12111. EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.

(a) FOR OASDI PURPOSES.—Section 708 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) For purposes of computing the 'OASDI trust fund ratio' under section 201(l), the 'OASDI fund ratio' under section 215(i), and the 'balance ratio' under section 709(b), benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.".

(b) FOR INCOME TAX PURPOSES.—Section 86(d) of the Internal Revenue Code of 1954 (relating to taxation of social security and tier 1 railroad retirement benefits) is amended by adding at the end thereof the following new paragraph:

> *"(5) EFFECT OF EARLY DELIVERY OF BENEFIT CHECKS.—For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.".*

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act.

SEC. 12112. EXEMPTION FROM SOCIAL SECURITY COVERAGE FOR RETIRED FEDERAL JUDGES ON ACTIVE DUTY.

(a) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209 of the Social Security Act is amended in the third to the last paragraph thereof (added by section 101(c)(1) of the Social Security Amendments of 1983) by striking out "shall, subject to the provisions of subsection (a) of this section, include" and inserting in lieu thereof "shall not include".

(b) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(i)(5) of the Internal Revenue Code of 1954 is amended by striking out "shall, subject to the provisions of subsection (a)(1) of this section, include" and inserting in lieu thereof "shall not include".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to service performed after December 31, 1983.

SEC. 12113. RECOVERY OF OVERPAYMENTS.

(a) OASDI PAYMENTS.—Section 204(a) of the Social Security Act is amended—

> *(1) by inserting "(1)" after "204(a)";*
>
> *(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and*

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

"(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

"(A) is made by direct deposit to a financial institution;

"(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

"(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.".

(b) SSI PAYMENTS.—Section 1631(b) of the Social Security Act is amended by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), and by inserting after paragraph (1) the following new paragraph:

"(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

"(A) is made by direct deposit to a financial institution;

"(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

"(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this title (including any State supplementation payment paid by the Secretary) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act.

SEC. 12114. COVERAGE OF CONNECTICUT STATE POLICE.

Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

SEC. 12115. GENERAL EFFECTIVE DATE OF SUBTITLE.

Except as otherwise specifically provided, the preceding provisions of this subtitle, including the amendments made thereby, shall take effect on the first day of the month following the month in which this Act is enacted.

Subtitle B—Supplemental Security Income Program

SEC. 12201. AMENDMENTS RELATING TO STATE SUPPLEMENTATION UNDER SSI.

(a) PASSTHROUGH RELATING TO OPTIONAL STATE SUPPLEMENTATION.—Section 1618 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(f) The Secretary shall not find that a State has failed to meet the requirements imposed by subsection (a) with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1611(e)(1)(B)) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1611(b) of this Act and section 211(a)(1)(A) of Public Law 93-66 have been increased as a result of all adjustments under section 1617(a) and (c) which have occurred after December 1976 and before February 1986.".

(b) FEDERAL ADMINISTRATION OF STATE SUPPLEMENTATION.—Section 1616(b) of such Act is amended by adding at the end thereof (after and below paragraph (2)) the following new sentence:

"At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Secretary and such State entered into under subsection (a) shall be modified to provide that the Secretary will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1611(e)(1)(B).".

SEC. 12202. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.

(a) IN GENERAL.—Section 1634 of the Social Security Act is amended—

(1) by inserting "(a)" after "SEC. 1634.", and

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

"(b)(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 202 (e) or (f) but is not eligible for benefits under this title in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of title XIX to be an individual with respect to whom benefits under this title are paid in that month if he or she—

"(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

"(B) would be eligible for benefits under this title in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 215(i), were disregarded.

"(2) For purposes of paragraph (1), the term 'eligible disabled widow or widower' means an individual who—

"(A) was entitled to a monthly insurance benefit under title II for December 1983,

"(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 202 (e) or (f) for January 1984 and with respect to whom a benefit under this title was paid in that month, and

"(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98-21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this title in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

"(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Secretary may prescribe, during the 15-month period beginning with the month in which this subsection is enacted.

"(4) For purposes of this subsection, the term 'benefits under this title' includes payments of the type described in section 1616(a) or of the type described in section 212(a) of Public Law 93-66.".

(b) IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.

(2) Each State shall—

(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

(B) solicit their applications for such assistance, and

(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.

(c) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act.

Subtitle C—AFDC, Adoption Assistance, and Foster Care Programs

SEC. 12301. AFDC QUALITY CONTROL STUDIES AND PENALTY MORATORIUM.

(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act and for the Medicaid Program under title XIX of such Act.

The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date of the enactment of this Act.

(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act (hereafter in this section referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) or 1903(u) of the Social Security Act (or prior regulations), or pursuant to any comparable provision of law relating to the programs under titles IV-A and XIX of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under titles IV-A and XIX of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 18 months after the date of the enactment of this Act, the Secretary shall publish regulations which shall—

(A) restructure the quality control systems under titles IV-A and XIX of the Social Security Act to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems, and shall reduce payments to States—

(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

and 1982.

SEC. 12302. MANDATORY PROVISION OF AID WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) REQUIREMENT THAT AID BE PROVIDED.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act is amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence:

"No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1988.

SEC. 12303. AFDC AUTOMATION REQUIREMENTS.

(a) IN GENERAL.—Section 402(e)(2) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(C) If the Secretary determines that such a system has not been implemented by the State by the date specified for implementation in the State's advance automatic data processing planning document, then the Secretary shall reduce payments to such State, in accordance with section 403(b), in an amount equal to 40 percent of the expenditures referred to in section 403(a)(3)(B) with respect to which payments were made to the State under section 403(a)(3)(B). The Secretary may extend the deadline for implementation if the State demonstrates to the satisfaction of the Secretary that the State cannot implement such system by the date specified in such planning document due to circumstances beyond the State's control.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of the enactment of this Act, but shall apply only with respect to sums expended by the States for the purposes described in section 403(a)(3)(B) of the Social Security Act on or after the date of the enactment of this Act.

SEC. 12304. THIRD-PARTY LIABILITY.

(a) IN GENERAL.—Section 402(a)(26) of the Social Security Act is amended—

(1) by striking out the comma at the end of subparagraph (A) and inserting in lieu thereof a semicolon;

(2) by adding "and" after the semicolon at the end of subparagraph (B); and

(3) by adding after subparagraph (B) the following new subparagraph:

"(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to calendar quarters beginning on or after the date of the enactment of this Act.

SEC. 12305. PROVISIONS RELATING TO MEDICAID COVERAGE UNDER THE ADOPTION ASSISTANCE AND FOSTER CARE PROGRAMS.

(a) IN GENERAL.—Section 473(b) of the Social Security Act is amended to read as follows:

"(b) For purposes of titles XIX and XX, any child—

"(1)(A) who is a child described in subsection (a)(1), and

"(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

"(2) with respect to whom foster care maintenance payments are being made under section 472,

shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title in the State where such child resides.".

(b) CONFORMING AMENDMENTS.—(1) Section 473(c)(2) of such Act is amended—

(A) by striking out "without providing adoption assistance" in clause (A) and inserting in lieu thereof "without providing adoption assistance under this section or medical assistance under title XIX"; and

(B) by inserting "or medical assistance under title XIX" before the period at the end thereof.

(2) Section 475(3) of such Act is amended by striking out "the adoption assistance payments and any additional services and assistance" in clause (A) of the first sentence and inserting in lieu thereof "any adoption assistance payments and any other services and assistance".

(3) Section 1902(a)(10)(A)(i)(I) of such Act is amended by striking out "or 406(h)" and inserting in lieu thereof ", 406(h), or 473(b)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act.

SEC. 12306. EXTENSION OF VOLUNTARY PLACEMENT, AND CEILING AND TRIGGER PROVISIONS, RELATING TO FOSTER CARE.

(a) Section 474(b) of the Social Security Act is amended—

(1) in paragraphs (1), (2)(B), and (4)(B), by striking out "1985" and inserting in lieu thereof "1987";

(2) in paragraph (2)(A)—

(A) by inserting "and" at the end of clause (ii), and

(B) by striking out clauses (iii), (iv), and (v) and inserting in lieu thereof the following:

"(iii) with respect to each of the fiscal years 1983 through 1987, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000."; and

(3) in paragraph (5)(A)—

(A) by striking out "October 1, 1985" and inserting in lieu thereof "October 1, 1987", and

(B) in clause (ii), by striking out "1984 and 1985" and inserting in lieu thereof "1984 through 1987".

(b) Paragraphs (1) and (2) of section 474(c) of such Act are each amended by striking out "1985" and inserting in lieu thereof "1987".

(c)(1) Section 102(a)(1) of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) is amended by striking out "1985" and inserting in lieu thereof "1987".

(2) Section 102(c) of such Act is amended by striking out "1985" each place it appears and inserting in lieu thereof "1987".

SEC. 12307. INDEPENDENT LIVING INITIATIVES.

(a) INDEPENDENT LIVING INITIATIVES.—Part E of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"INDEPENDENT LIVING INITIATIVES

"SEC. 477. (a) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16, in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e). Such payments shall be made only for the fiscal years 1987 and 1988.

"(b) The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a). Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private nonprofit organizations) the activities and services required to carry out the program or programs involved.

"(c) In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i), and in the case of payments for fiscal year 1988, such description and assurances must be submitted prior to January 1, 1988.

"(d) In carrying out the purpose described in subsection (a), it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to—

"(1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;

"(2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;

"(3) provide for individual and group counseling;

"(4) integrate and coordinate services otherwise available to participants;

"(5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;

"(6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 475(1); and

"(7) provide participants with other services and assistance designed to improve their transition to independent living.

"(e)(1) The amount to which a State shall be entitled under section 474(a)(4) for each of the fiscal years 1987 and 1988 shall be an amount which bears the same ratio to $45,000,000 as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

"(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c), the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

"(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 474, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved.

"(f) Payments made to a State under this section for any fiscal year—

"(1) shall be used only for the specific purposes described in this section;

"(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

"(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

"(g)(1) Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out with the amounts received under this section. Such report—

"(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a); and

"(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

"(2) Not later than July 1, 1988, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal year 1987, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services

provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

"(h) Notwithstanding any other provision of this title, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 402 or 471, or for purposes of determining the level of such aid.

"(i) The Secretary shall promulgate final regulations for implementing this section within 60 days after the date of the enactment of this section.".

(b) CASE PLANS.—Section 475(1) of such Act is amended by adding at the end thereof the following: "Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.".

(c) PAYMENTS TO STATES.—Section 474(a) of such Act is amended—

(1) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; plus"; and

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

"(4) an amount for transitional independent living programs as provided in section 477.".

(d) CONFORMING AMENDMENT.—Section 470 of such Act is amended by striking out "foster care and adoption assistance" and inserting in lieu thereof "foster care, adoption assistance, and transitional independent living programs".

Subtitle D—Provisions Relating to Unemployment Compensation

SEC. 12401. RECOVERY OF UNEMPLOYMENT BENEFIT OVERPAYMENTS.

(a) IN GENERAL.—(1) Section 303(a)(5) of the Social Security Act is amended by inserting before "; and" at the end thereof the following: ": Provided further, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g)".

(2) Section 303 of such Act is amended by adding at the end thereof the following new subsection:

"(g)(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

"(2) Any State may enter into an agreement with the Secretary of Labor under which—

"(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

"(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

"(3) For purposes of this subsection, 'unemployment benefits' means unemployment compensation, trade adjustment allowances, and other unemployment assistance.".

(b) CONFORMING AMENDMENTS.—(1) Section 3304(a)(4) of the Internal Revenue Code of 1954 is amended—

(A) by striking out "and" at the end of subparagraph (B);

(B) by adding "and" at the end of subparagraph (C); and

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

"(D) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act;".

(2) Section 3306(f) of such Code is amended—

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(3) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303(g) of the Social Security Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to recoveries made on or after the date of the enactment of this Act and shall apply with respect to overpayments made before, on, or after such date.

SEC. 12402. SUPPLEMENTAL UNEMPLOYMENT COMPENSATION FOR CERTAIN INDIVIDUALS.

(a) IN GENERAL.—If—

(1) an individual was receiving Federal supplemental compensation for the week which includes March 31, 1985, or a series of consecutive weeks which began with such week, and

(2) such individual did not meet the consecutive-week eligibility requirements of the Federal Supplemental Compensation Act of 1982 during any period of 1 or more subsequent weeks by reason of performing temporary disaster services described in subsection (e),

weeks in such period shall be disregarded for purposes of the consecutive-week requirement of section 602(f)(2)(B) of such Act, and, not-

withstanding the requirements of State law relating to the availability for work, the active search for work, or the refusal to accept work, such individual shall be entitled to payment of Federal supplemental compensation for each week of unemployment which is described in subsection (b) and for which a certification of unemployment is made by such individual in accordance with subsection (c).

(b) WEEKS FOR WHICH PAYMENT SHALL BE MADE.—A week of unemployment for which payment shall be made under subsection (a) is a week which occurred during the period which commences with the first week beginning after the close of the period described in subsection (a)(2) and ends with the beginning of the first week in which the individual was employed after the close of such period.

(c) CERTIFICATION.—The certification of unemployment referred to in subsection (a) shall be a certification—

(1) that is made on a form provided by the State agency concerned and signed by the individual; and

(2) that identifies the weeks of unemployment for which the individual is making the certification.

(d) LIMITATION ON AMOUNT OF PAYMENT.—In no case may the total amount paid to an individual under subsection (a) exceed the amount remaining in the account established for such individual under section 602(e) of the Federal Supplemental Compensation Act of 1982 after payments were made from such account for weeks of unemployment beginning before the period described in subsection (a)(2).

(e) DEFINITION.—For purposes of subsection (a), the term "temporary disaster services" means services performed as a member of the National Guard after being called up by the Governor of a State to perform services related to a major disaster that was declared on June 3, 1985, by the President of the United States under the Disaster Relief Act of 1974.

(f) MODIFICATION OF AGREEMENT.—(1) The Secretary of Labor shall, at the earliest possible date after the date of the enactment of this Act, propose to any State concerned a modification of the agreement that the Secretary has with such State under section 602 of the Federal Supplemental Compensation Act of 1982 in order to carry out this section.

(2) Pending modification of the agreement, the State may make payment in accordance with the provisions of this section and shall be reimbursed in accordance with the provisions of section 604(a) of the Federal Supplemental Compensation Act of 1982. For purposes of carrying out this paragraph, the term "this subtitle" in such section 604(a) shall include this section.

(g) EFFECTIVE DATE.—The provisions of this section shall apply to weeks beginning after March 31, 1985.

Subtitle E—Restoration of Civil Service Retirement and Disability Fund

SEC. 12501. APPROPRIATION TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND OF INTEREST LOST FROM NONINVESTMENT IN SEPTEMBER 1984.

On December 31, 1985, the Secretary of the Treasury shall pay to the Civil Service Retirement and Disability Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by the Secretary to be equal to the sum of—

(1) the excess of (A) the amount of interest which would have been earned by such fund, during the period beginning with September 28, 1984, and ending with December 31, 1984, on all monies transferred to such fund on September 28, 1984, if all such monies had been invested on September 28, 1984, over (B) the amount of interest actually earned by such fund on such monies during such period;

(2) interest that would have been earned on the amount described in paragraph (1) during the period beginning with January 1, 1985, and ending with June 30, 1985;

(3) the excess of (A) the amount of interest which would have been earned by such fund, during the period beginning on January 1, 1985, and ending on June 30, 1985, on all monies transferred to such fund on September 28, 1984, if all such monies had been invested on September 28, 1984, over (B) the amount of interest actually earned by such fund on such monies during such period; and

(4) the interest that would have been earned on the amounts described in paragraphs (1), (2), and (3) during the period beginning with July 1, 1985, and ending with December 31, 1985.

TITLE XIII—REVENUES, TRADE, AND RELATED PROGRAMS

Subtitle A—Trade and Customs Provisions

Part 1—Trade Adjustment Assistance

SEC. 13001. SHORT TITLE.

This part may be cited as the "Trade Adjustment Assistance Reform and Extension Act of 1985".

SEC. 13002. ELIGIBILITY OF WORKERS AND FIRMS FOR TRADE ADJUSTMENT ASSISTANCE.

(a) WORKERS.—

(1) Sections 221(a) and 222 of the Trade Act of 1974 (19 U.S.C. 2271(a); 2272) are each amended by inserting "(including workers in any agricultural firm or subdivision of an agricultural firm)" after "group of workers".

(2) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272), as amended by paragraph (1) of this subsection, is amended to read as follows:

"SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

"(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(1) a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(2) sales or production, or both, of such firm or subdivision have decreased absolutely, and

"(3) increases of imports of articles like or directly competitive with articles—

"(A) which are produced by such workers' firm or appropriate subdivision thereof, or

"(B) to which such workers' firm, or appropriate subdivision thereof, provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(b) For purposes of subsection (a)(3), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

(b) FIRMS.—

(1) Subsections (a) and (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341) are each amended by inserting "(including any agricultural firm)" after "a firm".

(2) Paragraph (2) of section 251(c) of the Trade Act of 1974 (19 U.S.C. 2341(c)(2)) is amended to read as follows:

"(2) that—

"(A) sales or production, or both, of the firm have decreased absolutely, or

"(B) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and".

(3) Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)), as amended by paragraphs (1) and (2) of this subsection, is amended to read as follows:

"(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines—

"(A) that a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(B) that—

"(i) sales or production, or both, of such firm have decreased absolutely, or

"(ii) sales or production, or both, of an article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely, and

"(C) increases of imports of articles like or directly competitive with articles—

"(i) which are produced by such firm, or

"(ii) to which such firm provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"(2) For purposes of paragraph (1)(C), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.".

SEC. 13003. CASH ASSISTANCE FOR WORKERS.

(a) PARTICIPATION IN TRAINING PROGRAM REQUIRED.—

(1) Subsection (a) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(a)) is amended by adding at the end thereof the following new paragraph:

"(5) Such worker—

"(A) is enrolled in a training program approved by the Secretary under section 236(a),

"(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

"(C) has received a written statement certified under subsection (c) after the date described in subparagraph (B).".

(2) Subsection (b) of section 231 of the Trade Act of 1974 (19 U.S.C. 2291(b)) is amended to read as follows:

"(b) If the Secretary determines that—

"(1) the adversely affected worker—

"(A) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

"(B) has ceased to participate in such training program before completing such training program, and

"(2) there is no justifiable cause for such failure or cessation, no trade adjustment allowance may be paid to the adversely affected worker under this part on or after the date of such determination until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).".

(3) Section 231 of the Trade Act of 1974 (19 U.S.C. 2291) is amended by adding at the end thereof the following new subsection:

"(c)(1) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

"(2) If a State or State agency has entered into an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

"(A) submit to such worker a written statement certifying such finding, and

"(B) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

"(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under this subsection during the preceding year.".

(4) Subsection (a) of section 239 of the Trade Act of 1974 (19 U.S.C. 2311(a)) is amended by striking out "and (3)" and inserting in lieu thereof "(3) will make any certifications required under section 231(c)(2), and (4)".

(b) QUALIFYING WEEKS OF EMPLOYMENT.—The last sentence of section 231(a)(2) of the Trade Act of 1974 (19 U.S.C. 2291(a)(2)) is amended by striking out all that follows after subparagraph (C) and inserting in lieu thereof "shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.".

(c) WEEKLY AMOUNTS OF READJUSTMENT ALLOWANCES.—Section 232 of the Trade Act of 1974 (19 U.S.C. 2292) is amended—

(1) by striking out "under any Federal law," in subsection (c) and inserting in lieu thereof "under any Federal law other than this Act",

(2) by striking out "under section 236(c)" in subsection (c) and inserting in lieu thereof "under section 231(b)", and

(3) by striking out "If the training allowance" in subsection (c) and inserting in lieu thereof "If such training allowance".

(d) LIMITATIONS.—

(1) Paragraph (1) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(1)) is amended by striking out "52" and inserting in lieu thereof "78".

(2) Paragraph (2) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(2)) is amended by striking out "52-week period" and inserting in lieu thereof "104-week period".

(3) Paragraph (3) of section 233(a) of the Trade Act of 1974 (19 U.S.C. 2293(a)(3)) is amended to read as follows:

"(3) If the adversely affected worker has received a written statement certified under section 231(c) after the date the worker became totally separated, or partially separated, from adversely affected employment, paragraph (1) shall be applied with respect to such worker by substituting '52' for '78'.".

(4) Subsection (b) of section 233 of the Trade Act of 1974 (19 U.S.C. 2293(b)) is amended to read as follows:

"(b) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.".

SEC. 13004. JOB TRAINING FOR WORKERS.

(a) IN GENERAL.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296) is amended—

(1) by striking out "for a worker" in subsection (a)(1)(A) and inserting in lieu thereof "for an adversely affected worker",

(2) by striking out "is available" in subsection (a)(1)(D) and inserting in lieu thereof "is reasonably available",

(3) by striking out "under paragraph (1)" in subsection (a)(2) and inserting in lieu thereof "under subsection (a)",

(4) by striking out "this subsection" in subsection (a)(3) and inserting in lieu thereof "this section",

(5) by redesignating paragraphs (2) and (3) of subsection (a) as subsections (e) and (f), respectively,

(6) by inserting at the end of subsection (a) the following new paragraphs:

"(2) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

"(3) The training programs that may be approved under paragraph (1) include, but are not limited to—

"(A) on-the-job training,

"(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

"(C) any training program approved by a private industry council established under section 102 of such Act, and

"(D) any other training program approved by the Secretary.", and

(7) by inserting after subsection (c) the following new subsection:

"(d) Notwithstanding any provision of subsection (a)(1), the Secretary may pay the costs of on-the-job training of an adversely affected worker under subsection (a)(1) only if—

"(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

"(2) such training does not impair existing contracts for services or collective bargaining agreements,

"(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

"(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

"(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

"(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

"(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

"(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

"(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

"(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).".

(b) APPROVAL REQUIRED; LIMITATION ON COSTS.—Section 236 of the Trade Act of 1974 (19 U.S.C. 2296), as amended by subsection (a) of this section, is further amended—

(1) by striking out "may approve" in the first sentence of subsection (a)(1) and inserting in lieu thereof "shall approve";

(2) by inserting "directly or through a voucher system" after "by the Secretary" in the second sentence of subsection (a)(1),

(3) by redesignating paragraphs (2) and (3) of subsection (a) as paragraphs (4) and (5), respectively, of subsection (a),

(4) by inserting after paragraph (1) of subsection (a) the following new paragraphs:

"(2)(A) The aggregate amount of payments that may be made under paragraph (1) for any worker shall not exceed $4,000 for each partial separation or total separation.

"(B) The Secretary may issue more than one voucher under paragraph (1) to a worker with respect to any partial separation or total separation, but the aggregate value of such vouchers shall not exceed the amount of the limitation imposed by subparagraph (A) with respect to such separation.

"(3)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

"(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

"(i) have already been paid under any other provision of Federal law, or

"(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

"(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.",

(5) by striking out subsection (c), and

(6) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(c) ON-THE-JOB TRAINING DEFINED.—Section 247 of the Trade Act of 1974 (19 U.S.C. 2319) is amended by adding at the end thereof the following new paragraph:

"(16) The term 'on-the-job training' means training provided by an employer to an individual who is employed by the employer.".

(d) AGREEMENTS WITH THE STATES.—

(1) Section 239 of the Trade Act of 1974 (19 U.S.C. 2311(a),' is amended—

(A) by inserting "but in accordance with subsection (f)," after "where appropriate," in subsection (a)(2), and

(B) by adding at the end thereof the following new subsections:

"(e) Agreements entered into under this section may be made with one or more State or local agencies including—

"(1) the employment service agency of such State,

"(2) any State agency carrying out title III of the Job Training Partnership Act, or

"(3) any other State or local agency administering job training or related programs.

"(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

"(1) advise each adversely affected worker to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances (but failure of the worker to do so may not be treated as cause for denial of those allowances), and

"(2) within 60 days after application for training is made by the worker, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.".

(2) Subsection (f) of section 239 of the Trade Act of 1974 (19 U.S.C. 2311), as added by paragraph (1) of this subsection, is amended to read as follows:

"(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

"(1) advise each adversely affected worker to apply for training under section 236(a) at the time the worker makes application for trade readjustment allowances, and

"(2) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.".

SEC. 13005. JOB SEARCH ALLOWANCES.

Section 237 of the Trade Act of 1974 (19 U.S.C. 2297) is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

"(2) For purposes of this subsection—

"(A) The term 'job search program' means a job search workshop or job finding club.

"(B) The term 'job search workshop' means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

"(C) The term 'job finding club' means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised application in which participants attempt to obtain jobs.".

SEC. 13006. ADJUSTMENT ASSISTANCE FOR FIRMS.

(a) TECHNICAL ASSISTANCE.—

(1) Paragraph (1) of section 252(b) of the Trade Act of 1974 (19 U.S.C. 2342(b)(1)) is amended to read as follows:

"(1) Adjustment assistance under this chapter consists of technical assistance. The Secretary shall approve a firm's application for adjustment assistance only if the Secretary determines that the firm's adjustment proposal—

"(A) is reasonably calculated to materially contribute to the economic adjustment of the firm,

"(B) gives adequate consideration to the interests of the workers of such firm, and

"(C) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.".

(2) Section 252 of the Trade Act of 1974 (19 U.S.C. 2342) is amended by striking out subsection (c) and redesignating subsection (d) as subsection (c).

(3) Paragraph (2) of section 253(b) of the Trade Act of 1974 (19 U.S.C. 2343(b)(2)) is amended by striking out "such cost" and inserting in lieu thereof "such cost for assistance described in paragraph (2) or (3) of subsection (a)".

(b) NO NEW LOANS OR GUARANTEES.—Section 254 of the Trade Act of 1974 (19 U.S.C. 2344) is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding any other provision of this chapter, no direct loans or guarantees of loans may be made under this chapter after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1985.".

SEC. 13007. TERMINATION OF TRADE ADJUSTMENT ASSISTANCE.

(a) IN GENERAL.—Section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended—

(1) by striking out the first sentence thereof and inserting in lieu thereof "(a)",

*(2) by striking out the section heading and inserting in lieu thereof "**SEC. 285. TERMINATION.**", and*

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

"(b) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, no technical assistance may be provided under chapter 3, and no duty shall be imposed under section 287, after the date that is 6 years after the date of enactment of the Trade Adjustment Assistance Reform and Extension Act of 1985.".

(b) CONFORMING AMENDMENT.—The table of contents of the Trade Act of 1974 is amended by striking out the item relating to section 285 and inserting in lieu thereof the following:

"Sec. 285. Termination.".

SEC. 13008. FUNDING OF TRADE ADJUSTMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking out "1982 through 1985" and inserting in lieu thereof "1986, 1987, 1988, and 1989".

(2) Subsection (b) of section 256 of the Trade Act of 1974 (19 U.S.C. 2346(b)) is amended—

(A) by inserting "for fiscal years 1986, 1987, 1988, and 1989" after "to the Secretary",

(B) by striking out "from time to time", and

(C) by striking out the last sentence thereof.

(b) ESTABLISHMENT OF TRUST FUND.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.) is amended by inserting after section 285 the following new section:

"SEC. 286. TRADE ADJUSTMENT ASSISTANCE TRUST FUND.

"(a) There is hereby established within the Treasury of the United States a trust fund to be known as the Trade Adjustment Assistance Trust Fund (hereinafter in this section referred to as the 'Trust Fund'), consisting of such amounts as may be transferred or credited to the Trust Fund as provided in this section or otherwise appropriated to the Trust Fund.

"(b)(1) The Secretary of the Treasury shall transfer to the Trust Fund out of the general fund of the Treasury of the United States amounts determined by the Secretary of the Treasury to be equivalent to the amounts received into such general fund that are attributable to the duty imposed by section 287.

"(2) The amounts which are required to be transferred under paragraph (1) shall be transferred at least quarterly from the general fund of the Treasury of the United States to the Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in paragraph (1) that are received into the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

"(c)(1) The Secretary of the Treasury shall be the trustee of the Trust Fund, and shall submit an annual report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the financial condition and the results of the operations of the Trust Fund during the fiscal year preceding the fiscal year in which such report is submitted and on the expected condition and operations of the Trust Fund during the fiscal year in which such report is submitted and the 5 fiscal years succeeding such fiscal year. Such report shall be printed as a House document of the session of the Congress to which the report is made.

"(2)(A) The Secretary of the Treasury shall invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired—

"(i) on original issue at the issue price, or

"(ii) by purchase of outstanding obligations at the market price.

"(B) Any obligation acquired by the Trust Fund may be sold by the Secretary of the Treasury at the market price.

"(C) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(d) Amounts in the Trust Fund shall only be available—

"(1) for the payment of drawbacks and refunds of the duty imposed by section 287 that are allowable under any provision of Federal law, and

"(2) to the extent and in such amounts as may be provided by appropriation Acts, for making expenditures to carry out the provisions of chapters 2 and 3.

None of the amounts in the Trust Fund shall be available for the payment of loans guaranteed under chapter 3 or for any other expenses relating to financial assistance provided under chapter 3.".

(c) CONFORMING AMENDMENTS.—The table of contents for the Trade Act of 1974 is amended by inserting, after the item relating to section 285, the following new items:

"Sec. 286. Trade Adjustment Trust Fund.

"Sec. 287. Imposition of additional duty.".

SEC. 13009. IMPOSITION OF SMALL UNIFORM DUTY ON ALL IMPORTS.

(a) NEGOTIATIONS.—

(1) The President shall undertake negotiations necessary to achieve changes in the General Agreement on Tariffs and Trade that would allow any country to impose a small uniform duty on all imports to such country for the purpose of using the revenue from such duty to fund any program which assists adjustment to import competition.

(2) On the date that is 6 months after the date of enactment of this Act, the President shall submit to the Congress a report on the progress of negotiations conducted under paragraph (1).

(3) On the first day after the date of enactment of this Act on which the General Agreement on Tariffs and Trade allows any country to impose a duty described in paragraph (1), the President shall submit to the Congress a written statement certifying that the General Agreement on Tariffs and Trade allows such a duty.

(b) IMPOSITION OF DUTY.—Chapter 5 of title II of the Trade Act of 1974 (19 U.S.C. 2391, et seq.), as amended by section 13008(b) of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 287. IMPOSITION OF ADDITIONAL DUTY.

"(a) In addition to any other duty imposed by law, there is hereby imposed a duty on all articles entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

"(b)(1) The rate of the duty imposed by subsection (a) shall be a uniform ad valorem rate proclaimed by the President at least 30 days prior to the date such rate takes effect which is equal to the lesser of—

"(A) 1 percent, or

"(B) a percentage that is sufficient to provide the funding necessary to carry out the provisions of chapters 2 and 3.

"(c)(1) Except as otherwise provided in this subsection, duty-free treatment provided with respect to any article under any other pro-

vision of law shall not prevent the imposition of duty with respect to such article by subsection (a).

"(2) No duty shall be imposed by subsection (a) with respect to—

"(A) any article (other than an article provided for in item 870.40, 870.45, 870.50, 870.55, or 870.60 of the Tariff Schedules of the United States) that is treated as duty free under schedule 8 of the Tariff Schedules of the United States, or

"(B) any entry which has a value of less than $1,000.".

SEC. 13010. TAXATION OF TRADE READJUSTMENT ASSISTANCE.

Section 85(c) of the Internal Revenue Code of 1954 is amended by inserting ", but not including payments of training costs, or training vouchers, provided under section 236 of the Trade Act of 1974 (19 U.S.C. 2296)" after "nature of unemployment compensation".

SEC. 13011. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by section 13002(a)(1), by paragraphs (1) and (2) of section 13002(b), by section 13003(d)(2), by subsections (a), (c), and (d)(1) of section 13004, and by sections 13006, 13007, and 13008(a), and the provisions of section 13009(a), shall take effect on the date of enactment of this Act.

(b) ADDITIONAL DUTY AND TRUST FUND.—

(1) The amendment made by section 13009(b) shall apply to any article entered, or withdrawn from warehouse, for consumption after the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date that is 30 days after the date on which the President submits to the Congress the written statement described in section 13009(a)(3).

(2) The amendments made by subsections (b) and (c) of section 13008 shall take effect on the earlier of—

(A) the date that is 2 years after the date of enactment of this Act, or

(B) the date described in paragraph (1)(B).

(c) OTHER PROGRAM CHANGES.—The amendments made by subsections (a)(2) and (b)(3) of section 13002, by section 13003 (other than section 13003(d)(2)), by subsections (b) and (d)(2) of section 13004, and by section 13005 shall take effect on the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is 1 year after the date described in subsection (b)(1)(B).

(d) INCOME TAX AMENDMENT.—The amendment made by section 13010 shall apply to taxable years ending on or after the earlier of—

(1) the date that is 3 years after the date of enactment of this Act, or

(2) the date that is 1 year after the date described in subsection (b)(1)(B).

PART 2—AUTHORIZATION OF APPROPRIATIONS FOR TRADE AND CUSTOMS AGENCIES

SEC. 13021. UNITED STATES INTERNATIONAL TRADE COMMISSION.

The first sentence of paragraph (2) of section 330(e) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended to read as follows: "There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year 1986 not to exceed $28,901,000; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.".

SEC. 13022. UNITED STATES CUSTOMS SERVICE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended as follows:

(1) Subsection (b) is amended to read as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $772,141,000 for the salaries and expenses of the United States Customs Service for fiscal year 1986; of which—

"(A) $27,900,000 is for the addition of 500 inspectors, 150 import specialists, 100 customs patrol officers, and 50 special agents;

"(B) $53,500,000 is for the operation and maintenance of the air interdiction program of the Service; and

"(C) not to exceed $14,000,000 is for the implementation of the 'Operation EXODUS' program and any related program designed to enforce or monitor export controls under the Export Administration Act of 1979.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1985—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than $1,500,000 in customs revenues were assessed.

"(3)(A) No part of any sum that is appropriated under the authority of paragraph (1) may be used for further research and development or acquisition of F-15 avionics for the P-3 aircraft and related equipment until 60 days after the Committee on Ways and Means and the Committee on Finance have received from the Secretary of the Treasury a written comparative assessment of the suitability of the P-3, E-2, or other appropriate aircraft for use by the Customs Service in its air drug interdiction program. Such assessment, which the Secretary may not submit to the Committees until the General Accounting Office study required under paragraph (7) is completed, shall include life cycle costs.

"(B) Acquisition of additional aircraft for use by the Customs Service for its air drug interdiction program after completion of the assessment required under subparagraph (A) shall be subject to competitive bidding through the use of the normal 'request for proposal' process.

"(4) No part of any sum that is appropriated under the authority of paragraph (1) may be used to consolidate the drawback liquidation centers within the Customs Service to less than 4 such centers. If a consolidation is undertaken, the Commissioner of Customs shall select the location of the centers after taking into account the drawback volume at, and the geographic dispersion of, the respective centers being considered for consolidation.

"(5) In addition to any sum authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Department of the Treasury for fiscal year 1986 not to exceed $8,000,000 from the Customs Forfeiture Fund for the making of payments under section 613A of the Tariff Act of 1930 (19 U.S.C. 1613b), of which not to exceed $5,000,000 may be used for the modification of aircraft (whether or not aircraft described in subsection (a)(5) of that section) for drug interdiction.

"(6) In addition to any other amounts authorized to be appropriated for the Customs Service for fiscal years 1987 and 1988, there are authorized to be appropriated $27,900,000 for each of such fiscal years to fund the additional personnel referred to in paragraph (1)(A).

"(7) As soon as possible after the date of the enactment of this paragraph, but not later than 12 months after that date, the General Accounting Office shall complete, and submit to the Committee on Ways and Means and the Committee on Finance, a study that evaluates the air detection and interdiction capability of the Customs Service, including assets, geographic dispersal, costs of operation, procurement practices, and the services and equipment provided by other Federal agencies. Within 6 months after commencing the study, the General Accounting Office shall consult with the Committees on the progress of the study."; and

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

"(f) USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

"(g) ALLOCATION OF RESOURCES.—The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shalll continue to be provided by Customs personnel assigned to the headquarters office of any Customs district designated by statute before the date of enactment of this subsection. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.".

(b) ELIMINATION OF SURETIES ON CUSTOMS BONDS.—(1) The Commissioner of Customs may not publish, nor take any other action to give force and effect to, any final rule that would revise any provision in 19 CFR part 113 or section 142.4 (as in effect on March 1, 1984) relating to the requirement for sureties on customs bonds—

(A) unless the Commissioner submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on the same day, a report containing—

(i) the text of the draft final rule;

(ii) an analysis of the revenue impact of the rule;

(iii) a regulatory impact analysis;

(iv) the estimated cost benefit of the rule to the Customs Service and to the importing community, and an explanation in support of those estimates; and

(v) a justification for each revision to be effected by the rule; and

(B) until the close of the first period of 90 calendar days of continuous session of Congress occurring after the date on which the report is submitted under subparagraph (A).

SEC. 13023. UNITED STATES TRADE REPRESENTATIVE.

Section 141 of the Trade Act of 1974 (19 U.S.C. 2171) is amended—

(1) by inserting before the semicolon at the end of subsection (d)(1) the following: ", except that not more than 20 individuals may be employed without regard to any provision of law regulating the employment or compensation at rates not to exceed the rate of pay for level IV of the Executive Schedule in section 5314 of title 5, United States Code"; and

(2) by amending subsection (f)(1) by striking out "$14,179,000 for fiscal year 1985" and inserting in lieu thereof "$13,582,000 for fiscal year 1986".

SEC. 13024. NOTIFICATION OF CERTAIN ACTIONS.

Section 237 of the Trade and Tariff Act of 1984 (98 Stat. 2993) is amended—

(1) by striking out "1985" in subsection (b) and inserting in lieu thereof "1986";

(2) by striking out subsection (c);

(3) by redesignating subsection (b) as subsection (c); and

(4) by inserting after subsection (a) the following new subsection:

"(b) The notice required under subsection (a) shall include—

"(1) a statement which sets forth in detail the factors taken into account in making the decision to take the action described in subsection (a) and the reasons for such action; and

"(2) an analysis of the impact such action will have on the commerce and community served by each office affected by such action.".

PART 3—CUSTOMS FEES

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) Subject to the limitation in subsection (b)(2), for the arrival of a commercial truck, $5.

(3) Subject to the limitations in subsection (b)(1)(B) and (3), for the arrival of each railroad car, whether passenger or freight, $5.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5) For the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)), $5.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(b) LIMITATIONS ON FEES.—(1) No fee may be charged under subsection (a) for customs services provided in connection with—

(A) the arrival of any passenger whose journey originated in—

(i) Canada,

(ii) Mexico,

(iii) a territory or possession of the United States, or

(iv) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)); or

(B) the arrival of any railroad car that is part of a train which originates and terminates in the same country, but only if—

(i) such car is part of such train when such train departs from the United States, and

(ii) no passengers board or disembark from such train, and no cargo is loaded or unloaded from such train, while such train is within any country other than the country in which such train originates and terminates.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "vessel" does not include any ferry.

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(e) PROVISION OF CUSTOMS SERVICES.—(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States on scheduled airline flights at customs serviced airports shall be adequately provided when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers.

(2) This subsection shall not apply with respect to any airport to which section 236(c) of the Trade and Tariff Act of 1984 (19 U.S.C. 58b(c)) applies.

(f) DISPOSITION OF FEES.—(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).

(g) REGULATIONS.—The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.

(h) CONFORMING AMENDMENTS.—(1) Subsection (i) of section 305 of the Rail Passenger Service Act (45 U.S.C. 545(i)) is amended by striking out the last sentence thereof.

(2) Subsection (e) of section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741(e)) is repealed.

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a), nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

SEC. 13032. USER FEES FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

Section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) is amended—

(1) by striking out "4 airports" in subsection (c) and inserting in lieu thereof "20 airports"; and

(2) by striking out the last sentence in subsection (e) and inserting in lieu thereof the following new sentences: "The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in providing customs services at such airport (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.".

SEC. 13033. ADVISORY COMMITTEE.

In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of the Treasury shall establish an advisory committee, whose membership shall consist of representatives from the airline, shipping, and other transportation industries, the general public, and others who may be subject to any fee or charge (1) authorized by law, or (2) proposed by the United States Customs

Service for the purpose of covering expenses incurred by the Customs Service. The advisory committee shall meet on a periodic basis and shall advise the Secretary on issues related to the performance of the customs services. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Secretary shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

Subtitle B—Superfund and Its Revenue Sources

SEC. 13100. SPENDING OF ADDITIONAL REVENUE CONTINGENT ON ENACTMENT OF FURTHER LEGISLATION; AMENDMENT OF 1954 CODE.

(a) IN GENERAL.—Notwithstanding any other provision of law, any amount transferred to any trust fund pursuant to any amendment made by this subtitle may be obligated or expended only pursuant to legislation authorizing such obligation or expenditure hereafter enacted by the Congress.

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

Part I—Superfund and its Revenue Sources

SEC. 13101. EXTENSION OF ENVIRONMENTAL TAXES.

(a) 5-YEAR EXTENSION; TERMINATION IF FUNDS UNSPENT OR $10,000,000,000 COLLECTED.—Subsection (d) of section 4611 (relating to termination) is amended to read as follows:

"(d) APPLICATION OF TAXES.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the taxes imposed by this section shall apply after December 31, 1985, and before October 1, 1990.

"(2) NO TAX IF UNOBLIGATED BALANCE IN FUND IS MORE THAN CERTAIN AMOUNT.—If, on September 30, 1988, or September 30, 1989—

"(A) the unobligated balance in the Hazardous Substance Superfund exceeds $3,000,000,000 or $4,000,000,000, respectively, and

"(B) the Secretary, after consultation with the Administrator of the Environmental Protection Agency, determines that such unobligated balance will exceed $3,000,000,000, or $4,000,000,000 on September 30, 1989, or September 30, 1990, respectively, if no tax is imposed under this section at the Hazardous Substance Superfund financing rate under subsection (c) or under section 4661, 4671, or 4681 during calender year 1989 or 1990, respectively,

then no tax shall be imposed under this section during calendar year 1989 or 1990, as the case may be.

"(3) NO TAX IF AMOUNTS COLLECTED EXCEED $10,000,000,000.—

"(A) ESTIMATES BY SECRETARY.—The Secretary as of the close of each calendar quarter (and at such other times as the Secretary determines appropriate) shall make an estimate of—

"(i) the amount of taxes which will be collected under this section at the Hazardous Substance Superfund financing rate under subsection (c) and sections 4661, 4671, and 4681 and credited to the Hazardous Substance Superfund, and

"(ii) the amount of interest which will be credited to such Fund under section 9602(b)(3),

during the period beginning October 1, 1985, and ending September 30, 1990.

"(B) Termination if $10,000,000,000 credited before September 30, 1990.—If the Secretary estimates under subparagraph (A) that more than $10,000,000,000 will be credited to the Fund before September 30, 1990, no tax shall be imposed under this section at the Superfund financing rate under subsection (c) after the date on which the Secretary estimates $10,000,000,000 will be so credited to the Fund.

"(4) PROCEDURES FOR TERMINATION.—The Secretary shall by regulation provide procedures for the termination under paragraph (2) or (3) of the tax under this section, section 4661, and section 4671.".

(b) CONFORMING AMENDMENT.—Section 303 of the Comprehensive Enivronmental Response, Compensation, and Liability Act of 1980 (relating to expiration of revenue provisions) is repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 13102. INCREASE IN TAX ON PETROLEUM.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4611 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "3.85 cents".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 13103. TAX ON CERTAIN CHEMICALS.

(a) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—Section 4661 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) INFLATION ADJUSTMENTS IN AMOUNT OF TAX.—

"(1) IN GENERAL.—In the case of any taxable chemical sold in a calendar year after 1986, the amount of the tax imposed by subsection (a) shall be the amount determined under subsection (b) increased by the applicable inflation adjustment for such calendar year.

"(2) APPLICABLE INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of a taxable chemical, the applicable inflation adjustment for the calendar year is the percentage (if any) by which—

"(i) the applicable price index for the preceding calendar year, exceeds

"(ii) the applicable price index for 1985.

"(B) APPLICABLE PRICE INDEX.—For purposes of subparagraph (A), the applicable price index for any calendar year is the average for the months in the 12-month period ending on September 30 of such calendar year of—

"(i) in the case of organic substances, the producer price index for basic organic chemcials as published by the Secretary of Labor, or

"(ii) in the case of inorganic substances, the producer price index for basic inorganic chemicals as published by the Secretary of Labor.

"(3) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of 1 cent, such increase shall be rounded to the nearest multiple of 1 cent (or, if the increase determined under paragraph (1) is a multiple of ½ of 1 cent, such increase shall be increased to the next higher multiple of 1 cent)."

(b) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

(1) Section 4662 (relating to definitions and special rules) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) EXEMPTION FOR EXPORTS OF TAXABLE CHEMICALS.—

"(1) TAX-FREE SALES.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661 on the sale by the manufacturer or producer of any taxable chemical for export, or for resale by the purchaser to a second purchaser for export.

"(B) PROOF OF EXPORT REQUIRED.—Rules similar to the rules of section 4221(b) shall apply for purposes of subparagraph (A).

"(2) CREDIT OR REFUND WHERE TAX PAID.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if—

"(i) tax under section 4661 was paid with respect to any taxable chemical, and

"(ii) such chemical, or any taxable substance (as defined in section 4672(a)) derived from such chemical, was exported by any person,

credit or refund (without interest) of such tax shall be allowed or made to the person who paid such tax.

"(B) CONDITION TO ALLOWANCE.—No credit or refund shall be allowed or made under subparagraph (A) unless the person who paid the tax establishes that he—

"(i) has repaid or agreed to repay the amount of the tax to the person who exported the taxable chemical or taxable substance (as so defined), or

"(ii) has obtained the written consent of such exporter to the allowance of the credit or the making of the refund.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

"(2) Paragraph (1) of section 4662(d) (relating to refund or credit for certain uses) is amended—

(A) by striking out "the sale of which by such person would be taxable under such section and inserting" in lieu thereof "which is a taxable chemical", and

(B) by striking out "imposed by such section on the other substance manufactured or produced" and inserting in lieu thereof "imposed by such section on the other substance manufactured or produced (or which would have been imposed by such section on such other substance but for subsection (b) or (e) of this section)".

(c) SPECIAL RULES FOR CERTAIN CHEMICALS.—

(1) REPEAL OF EXEMPTION FOR CHEMICALS DERIVED FROM COAL.—

(A) Section 4662(b) (relating to exemptions; other special rules) is amended by striking out paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(B) Paragraph (3) of section 4662(d) is amended by striking out "subsection (b)(5)" each place it appears and inserting in lieu thereof "subsection (b)(4)".

(2) SPECIAL RULES FOR XYLENE.—

(A) Subsection (b) of section 4662 (relating to exceptions; other special rules) is amended by adding after paragraph (5) the following new paragraph:

"(6) SPECIAL RULE FOR XYLENE.—Except in the case of any substance imported into the United States or exported from the United States, the term 'xylene' does not include any separated isomer of xylene."

(B) The item relating to xylene in the table contained in section 4661(b) is amended by striking out "$4.87" and inserting in lieu thereof "$9.81".

(3) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—Subsection (b) of section 4662 (relating to exceptions; other special rules) is amended by adding after paragraph (6) the following new paragraph:

"(7) SPECIAL RULE FOR NITRIC ACID USED IN PRODUCTION OF NITROCELLULOSE.—The tax imposed under section 4661 on nitric acid used by the producer of such acid in the production of nitrocellulose shall not exceed $0.24 per ton."

(d) EXEMPTION FOR CERTAIN RECYCLED CHEMICALS.—Subsection (b) of section 4662 (relating to exceptions; other special rules) is amended by adding after paragraph (7) the following new paragraph:

"(8) RECYCLED CHROMIUM, COBALT, NICKEL, AND LEAD.—

"(A) IN GENERAL.—No tax shall be imposed under section 4661(a) on any chromium, cobalt, nickel, or lead which is diverted or recovered in the United States from any solid waste as part of a recycling process (and not as part of the original manufacturing or production process).

"(B) EXEMPTION NOT TO APPLY WHILE CORRECTIVE ACTION UNCOMPLETED.—Subparagraph (A) shall not apply during any period that required corrective action by the taxpayer is uncompleted.

"(C) REQUIRED CORRECTIVE ACTION.—For purposes of subparagraph (B), required corrective action shall be treated as uncompleted during the period—

"(i) beginning on the date that the corrective action is required by the Administrator or an authorized State pursuant to—

"(I) a final permit under section 3005 of the Solid Waste Disposal Act or a final order under section 3004 or 3008 of such Act, or

"(II) a final order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

"(ii) ending on the date the Administrator or such State (as the case may be) certifies to the Secretary that such corrective action has been completed.

"(D) SOLID WASTE.—For purposes of this paragraph, the term 'solid waste' has the meaning given such term by section 1004 of the Solid Waste Disposal Act, except that such term shall not include any byproduct, coproduct, or other waste from any process of smelting, refining, or otherwise extracting any metal."

(e) EXEMPTION FOR ANIMAL FEED SUBSTANCES.—

(1) IN GENERAL.—Subsection (b) of section 4662 (relating to exceptions; other special rules) is amended by adding after paragraph (8) the following new paragraph:

"(9) SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—

"(A) IN GENERAL.—In the case of—

"(i) nitric acid,

"(ii) sulfuric acid,

"(iii) ammonia, or

"(iv) methane used to produce ammonia,

which is qualified animal feed substance, no tax shall be imposed under section 4661(a).

"(B) QUALIFIED ANIMAL FEED SUBSTANCE.—For purposes of this section, the term 'qualified animal feed substance' means any substance—

"(i) used in a qualified animal feed use by the manufacturer, producer, or importer,

"(ii) sold for use by any purchaser in a qualified animal feed use, or

"(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified animal feed use.

"(C) QUALIFIED ANIMAL FEED USE.—The term 'qualified animal feed use' means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements.

"(D) TAXATION OF NONQUALIFIED SALE OR USE.—For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical."

(2) REFUND OR CREDIT FOR SUBSTANCES USED IN THE PRODUCTION OF ANIMAL FEED.—Subsection (d) of section 4662 (relating to refunds and credits with respect to the tax on certain chemicals) is amended by adding at the end thereof the following new paragraph:

"(4) USE IN THE PRODUCTION OF ANIMAL FEED.—Under regulations prescribed by the Secretary, if—

"(A) a tax under section 4661 was paid with respect to nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, without regard to subsection (b)(9), and

"(B) any person uses such substance as a qualified animal feed substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(9) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(f) CERTAIN EXCHANGES BY TAXPAYERS NOT TREATED AS SALES.—Subsection (c) of section 4662 (relating to use by manufacturers) is amended to read as follows:

"(c) USE AND CERTAIN EXCHANGES BY MANUFACTURER, ETC.—

"(1) USE TREATED AS SALE.—Except as provided in subsections (b) and (e), if any person manufacturers, produces, or imports any taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemcial were sold by such person.

"(2) SPECIAL RULES FOR INVENTORY EXCHANGES.—

"(A) IN GENERAL.—Except as provided in this paragraph, in any case in which a manufacturer, producer, or importer of a taxable chemical exchanges such chemical as part of an inventory exchange with another person—

"(i) such exchange shall not be treated as a sale, and

"(ii) such other person shall, for purposes of section 4661, be treated as the manufacturer, producer, or importer of such chemical.

"(B) REGISTRATION REQUIREMENT.—Subparagraph (A) shall not apply to any inventory exchange unless—

"(i) both parties are registered with the Secretary as manufacturers, producers, or importers of taxable chemicals, and

"(ii) the person receiving the taxable chemical has, at such time as the Secretary may prescribe, notified the manufacturer, producer, or importer of such person's registration number and the internal revenue district in which such person is registered.

"(C) INVENTORY EXCHANGE.—For purposes of this paragraph, the term 'inventory exchange' means any exchange in which 2 persons exchange property which is, in the hands of each person, property described in section 1221(1)."

(g) Effective Dates.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1986.

(2) REPEAL OF TAX ON XYLENE FOR PERIODS BEFORE JANUARY 1, 1986.—

(A) REFUND OF TAX PREVIOUSLY IMPOSED.—In the case of any tax imposed by section 4661 of the Internal Revenue Code of 1954 on the sale or use of xylene before January 1, 1986, such tax (including interest, additions to tax, and additional amounts) shall not be assessed, and if assessed, the assessment shall be abated, and if collected shall be credited or refunded (with interest) as an overpayment.

(B) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of subparagraph (A) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

(C) XYLENE TO INCLUDE ISOMERS.—For purposes of this paragraph, the term "xylene" shall include any isomer of xylene whether or not separated.

(3) INVENTORY EXCHANGES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendment made by subsection (f) shall apply as if included in the amendments made by section 211 of the Hazardous Substance Response Revenue Act of 1980.

(B) RECIPIENT MUST AGREE TO TREATMENT AS MANUFACTURER.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (f) shall apply only if the person receiving the chemical from the manufacturer, producer, or importer in the exchange agrees to be treated as the manufacturer, producer, or importer of such chemical for purposes of subchapter B of chapter 38 of the Internal Revenue Code of 1954.

(C) EXCEPTION WHERE MANUFACTURER PAID TAX.—In the case of any inventory exchange before January 1, 1986, the amendment made by subsection (f) shall not apply if the manufacturer, producer, or importer treated such exchange as a sale for purposes of section 4661 of such Code and paid the tax imposed by such section.

(D) REGISTRATION REQUIREMENTS.—Section 4662(c)(2)(B) of such Code (as added by subsection (f)) shall apply to exchanges made after December 31, 1985.

(4) EXPORTS OF TAXABLE SUBSTANCES.—Clause (ii) of section 4662(e)(2)(A) of such Code (as added by this section) shall not apply to the export of any taxable substance (as defined in section 4672(a) of such Code) before January 1, 1987.

SEC. 13104. REPEAL OF POST-CLOSURE TAX AND TRUST FUND.

(a) REPEAL OF TAX.—

(1) Subchapter C of chapter 38 (relating to tax on hazardous wastes) is hereby repealed.

(2) The table of subchapters for such chapter 38 is amended by striking out the item relating to subchapter C.

(b) REPEAL OF TRUST FUND.—Section 232 of the Hazardous Substance Reponse Revenue Act of 1980 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1983.

SEC. 13105. TAX ON CERTAIN IMPORTED SUBSTANCES DERIVED FROM TAXABLE CHEMICALS.

(a) GENERAL RULE.—Chapter 38 is amended by adding after subchapter B the following new subchapter:

"SUBCHAPTER C—TAX ON CERTAIN IMPORTED SUBSTANCES

"SEC. 4671. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any taxable substance sold or used by the importer thereof.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the tax imposed by subsection (a) with respect to any taxable substance shall be the amount of the tax which would have been imposed by section 4661 on the taxable chemicals or petroleum used as materials or process fuel in the manufacture or production of such substance if such taxable chemicals or petroleum had been sold in the United States for use in the manufacture or production of such taxable substance.

"(2) RATE WHERE IMPORTER DOES NOT FURNISH INFORMATION TO SECRETARY.—If the importer does not furnish to the Secretary (at such time and in such manner as the Secretary shall prescribe) sufficient information to determine under paragraph (1) the amount of the tax imposed by subsection (a) on any taxable substance, the amount of the tax imposed on such taxable substance shall be 5 percent of the appraised value of such substance as of the time such substance was entered into the United States for consumption, use, or warehousing.

"(c) EXEMPTIONS FOR SUBSTANCES TAXED UNDER SECTIONS 4611 AND 4661.—No tax shall be imposed by this section on the sale or use of any substance if tax is imposed on such sale or use under section 4611 or 4661.

"(d) TERMINATION.—No tax shall be imposed under this section during any period during which no tax is imposed under section 4611(a) at the Hazardous Substance Superfund financing rate under section 4611(c).

"SEC. 4672. DEFINITIONS AND SPECIAL RULES.

"(a) TAXABLE SUBSTANCE.—For purposes of this subchapter—

"(1) IN GENERAL.—The term 'taxable substance' means any substance which, at the time of sale or use by the importer, is listed as a taxable substance by the Secretary for purposes of this subchapter.

"(2) DETERMINATION OF SUBSTANCES ON LIST.—A substance shall be listed under paragraph (1) if—

"(A) the substance is contained in the list under paragraph (3), or

"(B) the Secretary determines, in consultation with the Administrator of the Environmental Protection Agency and the Commissioner of Customs, that such substance generally has more than 50 percent of its value derived (as materials or as process fuel) from taxable chemicals or petroleum (determined on the basis of the predominant method of production).

"(3) INITIAL LIST OF TAXABLE SUBSTANCES.—

Cumene
Styrene
Ammonium nitrate
Nickel oxide
Isopropyl alcohol
Ethylene glycol
Vinyl chloride
Polyethylene resins, total
Polybutadiene
Styrene-butadiene, latex
Styrene-butadiene, snpf
Synthetic rubber, not containing fillers
Urea
Ferronickel
Ferrochromium nov 3 pct
Ferrochrome ov 3 pct carbon
Unwrought nickel
Nickel waste and scrap
Wrought nickel rods and wire
Nickel powders
Phenolic resins
Polyvinylchloride resins
Polystyrene resins and copolymers
Ethyl alcohol for nonbeverage use
Methylene chloride
Polypropylene
Propylene glycol
Formaldehyde
Acetone
Propylene oxide
Polypropylene resins
Ethylene oxide
Ethylene dichloride
Cyclohexane
Isophthalic acid
Maleic anhydride
Phthalic anhydride
Ethyl methyl ketone
Chloroform
Carbon tetrachloride
Chromic acid
Hydrogen peroxide
Polystyrene homopolymer resins
Melamine
Acrylic and methacrylic acid resins
Vinyl resins

Vinyl resins, NSPF.

"(4) MODIFICATIONS TO LIST.—The Secretary may add or remove substances from the list under paragraph (2) (including items listed by reason of paragraph (3)) as necessary to carry out the purposes of this subchapter.

"(b) Other Definitions.—For purposes of this subchapter—

"(1) IMPORTER.—The term 'importer' means the person entering the taxable substance for consumption, use, or warehousing.

"(2) TAXABLE CHEMICALS; UNITED STATES.—The terms 'taxable chemical' and 'United States' have the respective meanings given such terms by section 4662(a).

"(c) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4671."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 is amended by adding after the item relating to subchapter B the following new item:

"Subchapter C. Tax on certain imported substances."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 13106. IMPOSITION OF SUPERFUND EXCISE TAX.

(a) IN GENERAL.—Chapter 38 is amended by adding after subchapter C the following new subchapter:

"Subchapter D—Superfund Excise Tax
"Part I. Imposition of tax.
"Part II. Taxable transaction.
"Part III. Taxable amount; exempt transactions; credit against tax.
"Part IV. Administration.
"Part V. Definitions; special rules.

"PART I—IMPOSITION OF TAX

"Sec. 4681. Imposition of tax.
"Sec. 4682. Termination.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—A tax is hereby imposed on each taxable transaction.

"(b) AMOUNT OF TAX.—Except as otherwise provided in this subchapter, the amount of the tax shall be 0.1 percent of the taxable amount.

"SEC. 4682. TERMINATION.

"(a) IN GENERAL.—No tax shall be imposed under section 4681 after March 31, 1991.

"(b) TERMINATION IF FUNDS UNSPENT OR $10,000,000,000 OF SUPERFUND TAXES COLLECTED.—No tax shall be imposed under subsection (a) during any period during which no tax is imposed under section 4611(a) by reason of paragraph (2) or (3) of section 4611(d), except that section 4611(d)(3) shall, for purposes of this subsection, be applied by substituting 'March 31, 1991' for 'September 30, 1990' each place it appears.

"(c) PROCEDURES FOR TERMINATION.—

"(1) PRORATION OVER TAXABLE PERIOD.—In the case of any taxable period during any portion of which the tax imposed by section 4681 does not apply, the tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) (and the

credit allowable under section 4687) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax applied for the entire period) as—

"(A) the number of days in such taxable period during which such tax applies, bears to

"(B) the number of days in such taxable period.

"(2) TAX ON IMPORTS.—The tax imposed by section 4681 on taxable transactions described in paragraph (2) of section 4683(a) shall not apply to property imported during the period during which no tax applies under section 4681.

"(3) OTHER PROCEDURES.—The Secretary shall by regulation provide such procedures for a termination under this section as the Secretary determines necessary.

"PART II—TAXABLE TRANSACTION

"SEC. 4683. TAXABLE TRANSACTION.

"(a) IN GENERAL.—For purposes of this subchapter except as otherwise provided in this subchapter, the term 'taxable transaction' means—

"(1) the sale or leasing of tangible personal property by a taxable person in connection with a trade or business, or

"(2) the importing of tangible personal property into the United States by a taxable person.

"(b) EXEMPT TRANSACTIONS.—

"For exempt transactions, see section 4686.

"SEC. 4684. TAXABLE PERSON.

"(a) GENERAL RULE.—Except as otherwise provided in this subchapter, for purposes of this subchapter, the term 'taxable person' means—

"(1) in the case of a taxable transaction described in paragraph (1) of section 4683(a)—

"(A) the manufacturer of the tangible personal property, or

"(B) any person who included the costs of the tangible personal property in such person's qualified inventory costs, and

"(2) in the case of a taxable transaction described in paragraph (2) of section 4683(a), the importer of the tangible personal property.

"(b) GOVERNMENT ENTITIES AND EXEMPT ORGANIZATIONS NOT TAXABLE PERSONS.—For purposes of this subchapter, the term 'taxable person' shall not include—

"(1) the United States, any State or political subdivision thereof, the District of Columbia, a Commonwealth or possession of the United States, or any agency or instrumentality of the foregoing, and

"(2) any organization which is exempt from taxation under chapter 1 by reason of section 501(a); except that this paragraph shall not apply with respect to any transaction which is part of

an unrelated trade or business (within the meaning of section 513) of such organization.

"PART III—TAXABLE AMOUNT; EXEMPT TRANSACTIONS; CREDIT AGAINST TAX

"SEC. 4685. TAXABLE AMOUNT.

"(a) SALE.—For purposes of this subchapter, the taxable amount for any sale shall be the price (in money or fair market value of other consideration) charged the purchaser of the property by the seller thereof—

"(1) including items payable to the seller with respect to such transaction, but

"(2) excluding the tax imposed by section 4681 or chapter 32 with respect to such transaction.

"(b) IMPORTS.—For purposes of this subchapter, the taxable amount in the case of any import shall be the sum of—

"(1) the customs value, plus

"(2) customs duties and any other duties which may be imposed.

If there is no such customs value, fair market value (determined in a manner similar to the determination of customs value) shall be substituted for customs value in paragraph (1).

"(c) LEASES.—For purposes of this subchapter, the taxable amount in the case of any lease shall be the gross payments under the lease.

"(d) CONTAINERS, PACKING, AND TRANSPORTAION CHARGES; CONSTRUCTIVE SALES PRICE.—Under regulations, rules similar to the rules of subsections (a) and (b) of section 4216 (relating to containers, packing, and transportation charges, etc., and constructive sales prices) shall apply in computing the taxable amount.

"(e) SPECIAL RULE WHERE SALE OR LEASE PAYMENTS RECEIVED IN MORE THAN 1 TAXABLE PERIOD.—

"(1) SALES.—In the case of a sale of any tangible personal property where the consideration is received by the seller in more than 1 taxable period—

"(A) in the case of the seller, the taxable amount for each such taxable period shall be the portion of the taxable amount received during such period, and

"(B) in the case of the buyer, the cost of such property shall be taken into account for purposes of determining qualified inventory costs only when paid.

"(2) LEASES.—In th case of a lease with a term which includes more than 1 taxable period, the taxable amount for each taxable period shall include the gross lease payments received by the taxable person during such taxable period.

"SEC. 4686. EXEMPT TRANSACTIONS.

"(a) IMPORTS OF $10,000 OR LESS.—No tax shall be imposed under section 4681 on any tangible personal property imported into the United States as part of a shipment (within the meaning of section 498(a0(1) of the Tariff Act of 1930; 19 U.S.C. 1498(a)(1)) the aggregate taxable amount of which is $10,000 or less.

"(b) EXPORTS.—Under regulations, no tax shall be imposed under section 4681 on the sale of any property which is to be exported from the United States.

"(c) CERTAIN EXEMPT PRODUCTS.—

"(1) IN GENERAL.—In the case of any exempt product—

"(A) no tax shall be imposed by section 4681 with respect to such product, and

"(B) any qualified inventory costs allocable to such product shall not be taken into account under section 4687.

"(2) EXEMPT PRODUCT.—For purposes of this section—

"(A) IN GENERAL.—The term 'exempt product' means—

"(i) any food product,

"(ii) any unprocessed agricultural or fishery product,

"(iii) any unprocessed timber, and

"(iv) any fertilizer product.

"(B) FOOD PRODUCT.—The term 'food product' means—

"(i) any food or nonalcoholic drink for humans or animals, and

"(ii) any material, component, or packaging of such a food or drink.

"(C) FERTILIZER PRODUCT.—The term 'fertilizer product' means—

"(i) any product to be used as a fertilizer, and

"(ii) any material, component, or packaging of such product.

"SEC. 4687. CREDIT AGAINST TAX ON SALES AND LEASES.

"(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 4681 for any taxable period on taxable transactions described in paragraph (1) of section 4683(a) an amount equal to the greater of—

"(1) 0.1 percent of the qualified inventory costs of the taxable person for the taxable period, or

"(2) $10,000.

"(b) LIMITATION BASED ON TAX LIABILITY; CARRYFORWARD OF EXCESS CREDIT.—

"(1) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) for any taxable period shall not exceed the liability for tax imposed by section 4681 on taxable transactions described in paragraph (1) of section 4683(a) for such period.

"(2) CARRYFORWARD OF EXCESS CREDIT.—If the credit allowable under subsection (a)(1) for any taxable period exceeds the limitation imposed by paragraph (1), such credit shall be carried to the succeeding taxable period and added to the credit allowable under subsection (a)(1) for such succeeding taxable period.

"(C) QUALIFIED INVENTORY COSTS.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'qualified inventory costs' means, with respect to any taxable period, the costs of tangible personal property which—

"(A) are allocable to the inventory of a manufacturer under the full absorption method of accounting under section 471, and

"(B) are paid or incurred by the taxable person during such taxable period.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) EXPENSING RATHER THAN DEPRECIATION OR AMORTIZATION.—If any portion of an allowance for depreciation or amortization with respect to any property would be allocable to the inventory of a manufacturer under the full absorption method of accounting, a like portion of the cost of such property shall be included in the qualified inventory costs of the taxpayer for the taxable period in which such property is placed in service. Treatment under the preceding sentence shall be in lieu of any allowance for depreciation or amortization.

"(B) PROPERTY MANUFACTURED FOR LEASE BY MANUFACTURER.—For purposes of computing qualified inventory costs, any tangible personal property which is manufactured for lease by the manufacturer shall be treated in the same manner as property which is manufactured for sale by the manufacturer.

"(d) CARRYFORWARD NOT ALLOWED FOR COSTS DURING PERIODS FOR WHICH RETURN NOT FILED.—

"(1) IN GENERAL.—In determining the amount allowable as a carryforward under subsection (b)(2), the qualified inventory costs of the taxable person during any taxable period shall be taken into account only if such person files a timely return (determined with regard to extensions) of the tax imposed by section 4681 for such period.

"(2) BASIS ADJUSTMENT FOR INCOME TAX PURPOSES.—For purposes of subtitle A, if the cost of any property of a character subject to the allowance for depreciation is taken into account in determining the amount of the qualified inventory costs of the taxable person for any taxable period, the adjusted basis of such property shall be reduced by an amount equal to 0.1 percent of the qualified inventory costs of the taxpayer attributable to such property.

"PART IV—ADMINISTRATION

"SEC. 4688. LIABILITY FOR TAX.

"The taxable person shall be liable for the tax imposed by section 4681.

"SEC. 4689. RETURN REQUIREMENT; TAXABLE PERIOD; DEPOSITORY REQUIREMENTS.

"(a) RETURN REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in this subsection, each taxable person shall file a return of the tax imposed by section 4681 for any taxable period not later than—

"(A) the due date (including extensions) for filing the taxpayer's return of tax under chapter 1, or

"(B) if no return of tax is required under chapter 1—

"(i) April 15 is the case of a taxpayer other than a corporation, and

"(ii) March 15 in the case of a corporation,

including extensions granted for purposes of this subchapter.

"(2) EXCEPTION FOR TAXABLE TRANSACTIONS OF $10,000,000 OR LESS.—A taxable person shall not be required to file a return for any taxable period for taxable transactions described in paragraph (1) of section 4683(a) if the aggregate taxable amount for such transactions is $10,000,000 or less. For purposes of the preceding sentence, there shall not be taken into account any transaction exempt from the tax imposed by section 4681 by reason of section 4686(c).

"(3) OTHER EXCEPTIONS.—The Secretary may by regulation exempt any taxable person from the requirement of paragraph (1).

"(b) TAXABLE PERIOD.—For purposes of this subchapter, the term 'taxable period' means—

"(1) The taxable person's taxable year for purposes of chapter 1, or

"(2) if there is no taxable year for purposes of chapter 1, the calendar year.

"(c) DEPOSITARY REQUIREMENTS.—

"(1) IN GENERAL.—In the case of any person with respect to whom a tax is imposed under section 4681 for any taxable period on any taxable transaction described in paragraph (1) of section 4683(a), such person shall make quarterly deposits of the estimated amount of such tax for the succeeding taxable period.

"(2) SPECIAL RULE FOR 1ST TAXABLE PERIOD.—Notwithstanding paragraph (1), a deposit shall be required for the 1st taxable period of any taxable person to which this subchapter applies if the gross receipts of such person during the 1st taxable year ending before such taxable period from the sale or leasing of tangible personal property manufactured by such person exceed $50,000,000.

"SEC. 4690. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter.

"PART V—DEFINITIONS; SPECIAL RULES

"Sec. 4691. Definitions; special rules.

"SEC. 4691. DEFINITIONS; SPECIAL RULES.

"(a) MANUFACTURER.—FOR PURPOSES OF THIS SUBCHAPTER—

"(1) IN GENERAL.—The term 'manufacturer' includes any producer of tangible personal property (including raw materials).

"(2) CERTAIN ACTIVITIES NOT TAKEN INTO ACCOUNT.—A person shall not be treated as a manufacturer with respect to any property merely by reason of—

"(A) furnishing services incidental to the storage or transportation of such property, or

"(B) incidental preparation of property by a retailer or wholesaler (including routine assemblage).

"(b) Special Rule for Taxpayers Under Common Control.—

"(1) IN GENERAL.—All persons which are—

"(A) members of the same controlled group of corporations (within the meaning of section 52(a)), or

"(B) under common control (within the meaning of section 52(b)),

shall be treated as 1 person for purposes of the $10,000 amount specified in section 4687(a)(2), the $10,000,000 amount specified in section 4689(a)(2), and the $50,000,000 amount specified in section 4689(c)(2).

"(2) ALLOCATION OF AMOUNTS.—The amounts specified in paragraph (1) shall be alloacted among persons described in paragraph (1) in such manner as the Secretary may prescribe by regulations.

"(c) PERSON.—For purposes of this subchapter, the term 'person' includes any governmental entity.

"(d) UNITED STATES.—For purposes of this subchapter, the term 'United States' has the meaning given such term by section 4612(a)(4).

"(e) TANGIBLE PERSONAL PROPERTY.—For purposes of this subchapter, the term 'tangile personal property' includes gases.

"(f) IMPORT.—Except as otherwise provided in regulations, for purposes of this subchapter, the term 'import' means the entering, or withdrawal from warehouse, for consumption.

"(g) TAX ON IMPORT IN ADDITION TO DUTY.—The tax imposed by section 4681 on the importing of any tangible personal property shall be in addition to any imposed on such importation.

"(h) DISPOSITION OF REVENUES FROM PUERTO RICO AND THE VIRGIN ISLANDS.—The provisions of subsections (a)(3) and (b)(3) of section 7652 shall not apply to any tax imposed by section 4681.

"(i) SPECIAL RULE FOR SHORT TAXABLE PERIODS.—In the case of a taxable period which is less than 12 months, there shall be substituted for the dollar amounts otherwise applicable under sections 4687(a)(2) and 4689(a)(2) (determined after the application of subsection (b)) an amount which bears the same ratio to such amounts as the number of days in the taxable period bears to 365.

"(j) SALE TO INCLUDE CERTAIN EXCHANGES AND TRANSFERS.—For purposes of this subchapter, except as provided in regulations, the term 'sale' includes any exchange or other transfer, other than a gift (within the meaning of section 102 or section 170)."

(b) APPLICATION OF CERTAIN PENALTIES.—

(1) FAILURE TO FILE RETURN OR PAY TAX.—Paragraph (1) of section 6651(a) (relating to addition to tax) is amended by inserting "section 4689 (relating to Superfund excise tax)," before "subchapter A of chapter 51".

(2) FAILURE TO MAKE DEPOSITS.—Section 6656 (relating to failure to make deposit of taxes or overstatement of deposits) is amended by adding at the end thereof the following new subsection.

"(c) SPECIAL RULE FOR SUPERFUND EXCISE TAX.—For purposes of subsection (a), in the case of the tax imposed by section 4681, the tax required to be deposited shall be equal to the lesser of—

"(1) 90 percent of the tax imposed by section 4681 during the taxable period on taxable transactions described in paragraph (1) of section 4683(a), or

"(2) the amount of such tax imposed during the preceding taxable period (determined on an annual basis).

Paragraph (2) shall not apply if no tax was imposed during the preceding taxable period.".

(c) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—Paragraph (2) of section 7871(a) (relating to Indian tribal governments treated as States for certain purposes) is amended by redesignating subparagraphs (A), (B), (C), and (D) as subparagraphs (B), (C), (D), and (E), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) Subchapter D of chapter 38 (relating to Superfund excise tax),".

(d) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 is amended by inserting after the item relating to subchapter C the following new item:

"SUBCHAPTER D. SUPERFUND EXCISE TAX."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply with respect to taxable amounts received in taxable periods ending after March 31, 1986.

(2) SPECIAL RULE FOR IMPORTS.—In the case of imports, the amendments made by this section shall apply to articles imported after March 31, 1986.

(3) SPECIAL RULE FOR TAXABLE PERIOD INCLUDING APRIL 1, 1986.—In the case of any taxable period which begins before April 1, 1986, and ends on or after April 1, 1986, the tax imposed by section 4681 of the Internal Revenue Code of 1954 on taxable transactions described in paragraph (1) of section 4683(a) of such Code (and the credit allowable under section 4687 of such Code) for such taxable period shall be equal to an amount which bears the same ratio to the amount of such tax (and credit) for such taxable period (determined as if such tax and credit had been in effect for the entire taxable period) as—

(A) the number of days in such taxable period after April 1, 1986, bears to

(B) the number of days in such taxable period.

SEC. 13107. HAZARDOUS SUBSTANCE SUPERFUND.

(a) In general.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. HAZARDOUS SUBSTANCE SUPERFUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Hazardous Substance Superfund' (hereinafter in this section referred to as the 'Superfund'), consisting of such amounts as may be—

"(1) appropriated to the Superfund as provided in this section, and

"(2) credited to the Superfund as provided in section 9602(b).

"(b) Transfers to Superfund.—There are hereby appropriated to the Superfund amounts equivalent to—

"(1) the taxes received in the Treasury under section 4611, 4661, 4671, or 4681 (relating to environmental taxes),

"(2) amounts recovered on behalf of the Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this section referred to as 'CERCLA'),

"(3) all moneys recovered or collected under section 311(b)(6)(B) of the Clean Water Act,

"(4) penalties assessed under title I of CERCLA, and

"(5) punitive damages under section 107(c)(3) of CERCLA.

"(c) Expenditures From Superfund.—

"(1) In general.—Amounts in the Superfund shall be available, as provided in appropriation Acts, only for purposes of making expenditures—

"(A) to carry out the purposes of paragraphs (1), (2), (4), and (5) of section 111(a) of CERCLA as in effect on the date of the enactment of the Hazardous Substance Response Revenue Act of 1980, or

"(B) hereafter authorized by a law which authorizes the expenditure out of the Superfund for a general purpose covered by paragraphs (1), (2), (4), and (5) of such section 111(a) (as so in effect).

"(2) EXCEPTION FOR CERTAIN TRANSFERS, ETC., OF HAZARDOUS SUBSTANCES.—No amount in the Superfund or derived from the Superfund shall be available or used for the transfer or disposal of hazardous waste carried out pursuant to a cooperative agreement between the Administrator and the State if the following conditions apply—

"(A) the transfer or disposal, if made on December 13, 1985, would not comply with a State or local requirement, and

"(B) the transfer is to a facility for which a final permit under section 3005(a) of the Solid Waste Disposal Act was issued after January 1, 1983, and before November 1, 1984.

"(d) Authority to Borrow.—

"(1) In general.—There are authorized to be appropriated to the Superfund, as repayable advances, such sums as may be necessary to carry out the purposes of the Superfund.

"(2) Repayment of advances.—

"(A) In general.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Superfund.

"(B) Final repayment.—No advance shall be made to the Superfund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(C) Rate of interest.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstand-

ing marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) Liability of United States Limited to Amount in Trust Fund.—

"(1) General rule.—Any claim filed against the Superfund may be paid only out of the Superfund.

"(2) Coordination with other provisions.—Nothing in CERCLA or the Superfund Amendments of 1985 (or in any amendment made by either of such Acts) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Superfund.

"(3) Order in which unpaid claims are to be paid.—If at any time the Superfund has insufficient funds to pay all of the claims payable out of the Superfund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full in the order in which they were finally determined."

(b) Conforming Amendments.—

(1) Subtitle B of the Hazardous Substance Response Revenue Act of 1980 (relating to establishment of Hazardous Substance Response Trust Fund) is hereby repealed.

(2) Paragraph (11) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended to read as follows:

"(11) 'Fund' or 'Trust Fund' means the Hazardous Substance Superfund established by section 9505 of the Internal Revenue Code of 1954;".

(c) Clerical Amendment.—The table of sections for subchapter A of chapter 98 is amended by adding after the item relating to section 9504 the following new item: "Sec. 9505. Hazardous Substance Superfund."

(d) Effective Date.—

(1) In general.—The amendments made by this section shall take effect on January 1, 1986.

(2) Superfund treated as continuation of old trust fund.—The Hazardous Substance Superfund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Hazardous Substance Response Trust Fund established by section 221 of the Hazardous Substance Response Revenue Act of 1980. Any reference in any law to the Hazardous Substance Response Trust Fund established by such section 221 shall be deemed to include (wherever appropriate) a reference to the Hazardous Substance Superfund established by the amendments made by this section.

SEC. 13108. INDUSTRIAL DEVELOPMENT BONDS FOR HAZARDOUS WASTE TREATMENT FACILITIES.

(a) IN GENERAL.—Paragraph (4) of section 103(b) (relating to certain exempt activities) is amended—

(1) by inserting ", facilities subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal

Act for the treatment of hazardous waste," after "solid waste disposal facilities" in subparagraph (E), and

(2) by adding at the end thereof the following new sentence: "For purposes of subparagraph (E), the terms 'treatment' and 'hazardous waste' have the meanings given to such terms by section 1004 of the Solid Waste Disposal Act.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

Part II—Leaking Underground Storage Tank Trust Fund and Its Revenue Sources

SEC. 3121. ADDITIONAL TAXES ON GASOLINE DIESEL FUEL, SPECIAL MOTOR FUELS, FUELS USED IN AVIATION, AND FUELS USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) GENERAL RULE.—

(1) GASOLINE.—Section 4081 (relating to imposition of tax on gasoline) is amended by striking out subsections (a) and (b) and inserting in lieu thereof the following:

"(a) TAX TO FUND HIGHWAY PROGRAM.—

(1) IN GENERAL.—There is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 9 cents a gallon.

(2) TERMINATION.—On and after October 1, 1988, the tax imposed by paragraph (1) shall not apply.

"(b) ADDITIONAL TAX TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) IN GENERAL.—In addition to the tax imposed by subsection (a), there is hereby imposed on gasoline sold by the producer or importer thereof, or by any producer of gasoline, a tax of 0.2 cents a gallon.

(2) TERMINATION.—

(A) IN GENERAL.—The tax imposed by paragraph (1) shall not apply after the earlier of—

(i) September 30, 1990, or

(ii) the last day of the termination month.

(B) TERMINATION MONTH.—For purposes of subparagraph (A), the termination month is the 1st month as of the close of which the Secretary estimates that the net revenues from the taxes imposed by paragraph (1) and section 4041(d) are at least $850,000,000.

(C) NET REVENUES.—For purposes of subparagraph (B), the term 'net revenues' means the excess of gross revenues over amounts payable by reason of section 950(c)(2) (relating to transfer from leaking Underground Storage Tank Trust Fund for certain repayments and credits)."

(2) DIESEL AND SPECIAL MOTOR FUELS; FUELS USED IN AVIATION.—Section 4041 (relating to tax on special fuels) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

"(1) LIQUIDS OTHER THAN GASOLINE USED IN MOTOR VEHICLES, MOTORBOATS, OR TRAINS.—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.2 cents a gallon on benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or train for use as a fuel in such motor vehicle, motorboat, or train, or

"(B) used by any person as a fuel in a motor vehicle, motorboat, or train unless there was a taxable sale of such liquid under subparagraph (A).

"(2) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c) and section 4081, there is hereby imposed a tax of 0.2 cents a gallon on any liquid—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

The tax imposed by this paragraph shall not apply to any product taxable under section 4081 which is used as a fuel in an aircraft other than in noncommercial aviation.

"(3) TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which no tax is imposed by section 4081(b)."

(3) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—Subsection (b) of section 4042 (relating to amount of tax on fuel used in commercial transportation on inland waterways) is amended to read as follows:

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

"(A) the Inland Waterways Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Inland Waterways Trust Fund financing rate is 10 cents a gallon, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate is 0.2 cents a gallon.

"(3) EXCEPTION FOR FUEL TAXED UNDER SECTION 4041(d).—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply to the use of any fuel if tax under section 4041(d) was imposed on the sale of such fuel or is imposed on such use.

"(4) TERMINATION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under paragraph (2)(B) shall not apply during any period during which no tax is imposed by section 4081(b)."

(b) ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND, AIRPORT, AND AIRWAY TRUST FUND, AND INLAND WATERWAYS TRUST FUND.—

(1) HIGHWAY TRUST FUND.—

(A) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by adding at the end thereof the following new paragraph:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2), the taxes imposed by sections 4041(d) and 4081(b) shall not be taken into account."

(B) CONFORMING AMENDMENT.—Subparagraph (D) of section 9503(c)(4) (defining motorboat fuel taxes) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(2) AIRPORT AND AIRWAY TRUST FUND.—Subsection (b) of section 9502 (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended—

(A) by striking out "subsections (c) and (d) of section 4041" in paragraph (1) and inserting in lieu thereof "subsections (c) and (e) of section 4041", and

(B) by striking out "section 4081" in paragraph (2) and inserting in lieu thereof "section 4081(a)".

(3) INLAND WATERWAYS TRUST FUND.—Paragraph (1) of section 203(b) of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall apply only to so much of such taxes as are attributable to the Inland Waterways Trust Fund financing rate under section 4042(b)."

(c) REPAYMENTS FOR GASOLINE USED ON FARMS, ETC.—

(1) GASOLINE USED ON FARMS.—Subsection (h) of section 6420 (relating to termination) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(2) GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS.—

(A) TERMINATION NOT TO APPLY TO ADDITIONAL 0.2 CENT TAX.—Subsection (h) of section 6421 (relating to effective date) is amended by striking out "This section" and inserting in lieu thereof "Except with respect to taxes imposed by section 4081(b), this section".

(B) REPAYMENT OF ADDITIONAL TAX FOR OFF-HIGHWAY BUSINESS USE TO APPLY ONLY TO CERTAIN VESSELS.—Subsection (e) of section 6421 is amended by adding at the end thereof the following new paragraph:

"(4) SECTION NOT TO APPLY TO CERTAIN OFF-HIGHWAY BUSINESS USES WITH RESPECT TO THE TAX IMPOSED BY SECTION 4081(b).—This section shall not apply with respect to the tax imposed by section 4081(b) on gasoline used in any off-highway business use other than use in a vessel employed in the fisheries or in the whaling business."

(3) FUELS USED FOR NONTAXABLE PURPOSES.—

(A) Subsection (m) of section 6427 (relating to termination) is amended by striking out "Subsections" and inserting in lieu thereof "Except with respect to taxes imposed by sections 4041(d) and 4081(b), subsections".

(B) Section 6427 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a)."

(C) Paragraph (1) of section 6427(f) (relating to gasoline used to produce certain alcohol fuels) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081(a)".

(d) CONTINUATION OF CERTAIN EXEMPTIONS FROM ADDITIONAL TAXES, ETC.—

(1) Subsection (b) of section 4041 (relating to exemption for off-highway business use; exemption for qualified methanol and ethanol fuel) is amended by adding at the end thereof the following new paragraph:

"(3) COORDINATION WITH TAXES IMPOSED BY SUBSECTION (d).—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, rules similar to the rules of paragraphs (1) and (2) shall apply with respect to the taxes imposed by subsection (d).

"(B) LIMITATION ON EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—For purposes of subparagraph (A), paragraph (1) shall apply only with respect to off-highway business use in a vessel employed in the fisheries or in the whaling business.

"(C) TERMINATION NOT TO APPLY.—Subparagraph (C) of paragraph (2) shall not apply with respect to the taxes imposed by subsection (d)."

(2) Paragraph (3) of section 4041(f) (relating to exemption for farm use) is amended by striking out "On and after" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), on and after".

(3) The last sentence of section 4041(g) (relating to other exemptions) is amended by striking out "Paragraphs" and inserting in lieu thereof "Except with respect to the taxes imposed by subsection (d), paragraphs".

(4) The last sentence of section 4221(a) (relating to certain tax-free sales) is amended by striking out "4081" and inserting in lieu thereof "4081(a)".

(5) Paragraph (2) of section 6416(b) is amended by inserting "or under paragraph (1)(A) or (2)(A) of section 4041(d)" after "section 4041(a)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 13122. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. LEAKING UNDERGROUND STORAGE TANK TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Leaking Underground Storage Tank Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Leaking Underground Storage Tank Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under sections 4041(d) and 4081(b) (relating to additional taxes on motor fuels and gasoline),

"(2) taxes received in the Treasury under section 4042 to the extent attributable to the Leaking Underground Storage Tank Trust Fund financing rate under section 4042(b), and

"(3) amounts collected under section 9003(h)(6) of the Solid Waste Disposal Act.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Leaking Underground Storage Tank Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures to carry out section 9003(h) of the Solid Waste Disposal Act as in effect on the date of the enactment of this section.

"(2) TRANSFERS FROM TRUST FUND FOR CERTAIN REPAYMENTS AND CREDITS.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Leaking Underground Storage Tank Trust Fund into the general fund of the Treasury amounts equivalent to—

"(i) amounts paid under—

"(I) section 6420 (relating to amounts paid in respect of gasoline used on farms),

"(II) section 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems), and

"(III) section 6427 (relating to fuels not used for taxable purposes), and

"(ii) credits allowed under section 34, with respect to the taxes imposed by sections 4041(d) and 4081(b).

"(B) TRANSFERS BASED ON ESTIMATES.—Transfers under subparagraph (A) shall be made on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(d) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Leaking Underground Storage Tank Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (or in any amendment made by such Act)

shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Leaking Underground Storage Tank Trust Fund.

"(3) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Leaking Underground Storage Tank Trust Fund has insufficient funds to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under paragraph (1), be paid in full the in order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding after the item relating to section 9505 the following new item:

"Sec. 9506. Leaking Underground Storage Tank Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

PART III—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 13141. INCREASE IN ENVIRONMENTAL TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 (relating to environmental tax on petroleum), as amended by this Act, are each amended by striking out "of 3.85 cents a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 3.85 cents a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the oil spill rate for any period the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 4661 (relating to termination of tax on certain chemicals) is amended to read as follows:

"(d) APPLICATION OF TAXES.—No tax imposed under this section during any period during which no tax is imposed under section

4611(a) at the Hazardous Substance Superfund financing rate under section 4611(c).''

(2) Subsection (b) of section 9505 (relating to transfers to Superfund) is amended by adding at the end thereof the following: ''In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).''

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 3142. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

''SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

''(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

''(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

''(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

''(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

''(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

''(c) EXPENDITURES.—

''(1) GENERAL EXPENDITURE PURPOSES.—

''(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

''(i) the payment of removal costs described in section 401(23)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

''(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

''(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 464 of such Act.

(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(2) "(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MIMIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (2) of section 9505(d) shall apply for purposes of this subsection.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.——

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act

(or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

Subtitle C—General Revenue Provisions

SEC. 13200. AMENDMENT OF 1954 CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 13201. INCREASE IN TAX ON CIGARETTES MADE PERMANENT.

Subsection (c) of section 283 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to increase in tax on cigarettes) is amended by striking out all that follows "December 31, 1982" and inserting in lieu thereof a period.

SEC. 13202. TAX ON SMOKELESS TOBACCO.

(a) IN GENERAL.—Section 5701 (relating to rate of tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) SMOKELESS TOBACCO.—On smokeless tobacco, manufacturered in or imported into the United States, there shall be imposed the following taxes:

"(1) SNUFF.—On snuff, 24 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

"(2) CHEWING TOBACCO.—On chewing tobacco, 8 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.".

(b) CONFORMING AMENDMENTS.—

(1) The heading of chapter 52 is amended by inserting "SMOKELESS TOBACCO," after "CIGARETTES,".

(2) Section 5702(c) (defining tobacco products) is amended by striking out "and cigarettes" and inserting in lieu thereof ", cigarettes, and smokeless tobacco".

(3) Section 5702 (d) (defining manufacturers of tobacco products) is amended by striking out "cigars or cigarettes" each place it appears and inserting in lieu thereof "cigars, cigarettes, or smokeless tobacco".

(4) Section 5702 is amended by adding at the end thereof the following new subsection:

"(n) DEFINITIONS RELATING TO SMOKELESS TOBACCO.—

"(1) SMOKELESS TOBACCO.—The term 'smokeless tobacco' means any snuff or chewing tobacco.

"(2) SNUFF.—The term 'snuff' means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

"(3) CHEWING TOBACCO.—The term 'chewing tobacco' means any leaf tobacco that is not intended to be smoked.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to smokeless tobacco removed after March 31, 1986.

SEC. 13203. INCREASE IN EXCISE TAX ON COAL.

(a) INCREASE IN TAX.—Subsections (a) and (b) of section 4121 (relating to imposition of tax on coal) are amended to read as follows:

"(a) TAX IMPOSED.—

"(1) IN GENERAL.—There is hereby imposed on coal from mines located in the United States sold by the producer, a tax equal to the rate per ton determined under subsection (b).

"(2) LIMITATION ON TAX.—The amount of the tax imposed by paragraph (1) with respect to a ton of coal shall not exceed the applicable percentage (determined under subsection (b)) of the price at which such ton of coal is sold by the producer.

"(b) DETERMINATION OF RATES AND LIMITATION ON TAX.—For purposes of subsection (a), in the case of sales during any calendar year beginning after December 31, 1985—

"(1) the rate of tax on coal from underground mines shall be $1.10,

"(2) the rate of tax on coal from surface mines shall be $.55, and

"(3) the applicable percentage shall be 4.4 percent.".

(b) 5-YEAR MORATORIUM ON INTEREST ACCRUALS WITH RESPECT TO THE INDEBTEDNESS OF THE BLACK LUNG DISABILITY TRUST FUND.—No interest shall accrue for the period beginning on October 1, 1985, and ending on September 30, 1990, with respect to any repayable advance to the Black Lung Disability Trust Fund.

(c) EXISTING TERMINATION RETAINED.—Paragraph (1) of section 4121(e) (relating to temporary increase in amount of tax) is amended—

(1) by striking out "$1" and inserting in lieu thereof "$1.10",

(2) by striking out "$.50" and inserting in lieu thereof ".55", and

(3) by striking out "4 percent" and inserting in lieu thereof "4.4 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 1985.

SEC. 13204. ONLY RAILROAD RETIREMENT BENEFITS EQUIVALENT TO SOCIAL SECURITY BENEFITS TREATED AS TIER 1 BENEFITS.

(a) IN GENERAL.—Paragraph (4) of section 86(d) (defining Social Security benefits) is amended to read as follows:

"(4) TIER 1 RAILROAD RETIREMENT BENEFIT.—For purposes of paragraph (1), the term 'tier 1 railroad retirement benefit' means—

"(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term 'employment' as defined in the Social Security Act, and

"(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any monthly benefit for which the generally applicable payment date is after December 31, 1985.

SEC. 13205. MEDICARE COVERAGE OF, AND APPLICATION OF HOSPITAL INSURANCE TAX TO, NEWLY HIRED STATE AND LOCAL GOVERNMENT EMPLOYEES.

(a) APPLICATION OF HOSPITAL INSURANCE TAX TO NEWLY HIRED EMPLOYEES OF STATE AND LOCAL GOVERNMENTS.—

(1) IN GENERAL.—Subsection (u) of section 3121 of the Internal Revenue Code of 1954 (relating to application of hospital insurance tax to Federal employment) is amended to read as follows:

"(u) APPLICATION OF HOSPITAL INSURANCE TAX TO FEDERAL, STATE, AND LOCAL EMPLOYMENT.—

"(1) FEDERAL EMPLOYMENT.—For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

"(2) STATE AND LOCAL EMPLOYMENT.—For purposes of the taxes imposed by sections 3101(b) and 3111(b)—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), subsection (b) shall be applied without regard to paragraph (7) thereof.

"(B) EXCEPTION FOR CERTAIN SERVICES.—Service shall not be treated as employment by reason of subparagraph (A) if—

"(i) the service is included under an agreement under section 218 of the Social Security Act, or

"(ii) the service is performed—

"(I) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

"(II) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

"(III) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency, or

"(IV) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical

or dental intern or a medical or dental resident in training.

As used in this subparagraph, the terms 'State' and 'political subdivision' have the meanings given those terms in section 218(b) of the Social Security Act.

"(c) EXCEPTION FOR CURRENT EMPLOYMENT WHICH CONTINUES.—Service performed for an employer shall not be treated as employment by reason of subparagraph (A) if—

"(i) such service would be excluded from the term 'employment' for purposes of this chapter if subparagraph (A) did not apply;

"(ii) such service is performed by an individual—

"(I) who was performing substantial and regular service for remuneration for that employer before January 1, 1986,

"(II) who is a bona fide employee of that employer on December 31, 1985, and

"(III) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

"(iii) the employment relationship with that employer has not been terminated after December 31, 1985.

"(d) TREATMENT OF AGENCIES AND INSTRUMENTALITIES.—For purposes of subparagraph (C), under regulations—

"(i) All agencies and instrumentalities of a State (as defined in section 218(b) of the Social Security Act) or of the District of Columbia shall be treated as a single employer.

"(ii) All agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in clause (i).

"(3) MEDICARE QUALIFIED GOVERNMENT EMPLOYMENT.—For purposes of this chapter, the term 'medicare qualified government employment' means service which—

"(A) is employment (as defined in subsection (b)) with the application of paragraphs (1) and (2), but

"(B) would not be employment (as so defined) without the application of such paragraphs."

"(2) CONFORMING AMENDMENTS.—

(A)(i) Section 3125 of such Code (relating to returns in the case of governmental employees in Guam, American Samoa, and the District of Columbia) is amended by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d), respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

"(a) STATES.—Except as otherwise provided in this section, in the case of the taxes imposed by sections 3101(b) and 3111(b) with respect to service performed in the employ of a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby), the return and payment of such taxes may be made by the head of the agency or instrumentality having the control of such service, or by such agents as

such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).''

(ii) The section heading for such section 3125 is amended by inserting ''STATES,'' before ''GUAM''.

(iii) The item relating to section 3125 in the table of sections for subchapter C of chapter 21 of such Code is amended by inserting ''States,'' before ''Guam''.

(B) Subsection (b) of section 1402 of such Code is amended by striking out ''medicare qualified Federal employment (as defined in section 3121(u)(2))'' and inserting in lieu thereof ''medicare qualified government employment (as defined in section 3121(u)(3))''.

(C) Section 3122 of such Code (relating to Federal service) is amended by striking out ''including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))'' and inserting in lieu thereof ''including such service which is medicare qualified government employment (as defined in section 3121(u)(3))''.

(D) Subsection (a) of 6205 of such Code (relating to special rules applicable to certain employment taxes) is amended by adding at the end thereof the following new paragraph:

''(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.''

(E)(1) Section 6413(a) of such Code (relating to adjustment of certain employment taxes) is amended by adding at the end thereof the following new paragraph:

''(5) STATES AND POLITICAL SUBDIVISIONS AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.''

(ii) Section 6413(c)(2) of such Code (relating to special refunds of certain employment taxes) is amended—

(I) by striking out ''3125(a)'', ''3125(b)'', and ''3125(c)'' in subparagraphs (D), (E), and (F), respectively, and inserting in lieu thereof ''3125(b)'', ''3125(c)'', and ''3125(d)'', respectively, and

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

''(G) EMPLOYEES OF STATES AND POLITICAL SUBDIVISIONS.—In the case of remuneration received from a State

or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer."

(b) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—

(1) REVISION OF DEFINITION OF MEDICARE QUALIFIED GOVERNMENT EMPLOYMENT.—Section 210(p) of the Social Security Act (42 U.S.C. 410(p) is amended to read as follows:

"MEDICARE QUALIFIED GOVERNMENT EMPLOYMENT

"(p)(1) For purposes of sections 226 and 226A, the term 'medicare qualified government employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of—

"(A) subsection (a)(5), or

"(B) subsection (a)(7), except as provided in paragraphs (2) and (3).

"(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

"(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

"(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

"(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood of other similar emergency, or

"(D) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training.

As used in this paragraph, the terms 'State' and 'political subdivision' have the meanings given those terms in section 218(b).

"(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

"(A) such service would be excluded from the term 'employment' for purposes of this section if paragraph (1)(B) did not apply;

"(B) such service is performed by an individual—

"(i) who was performing substantial and regular service for remuneration for that employer before January 1, 1986,

"(ii) who is a bona fide employee of that employer on December 31, 1985, and

"(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

"(C) the employment relationship with that employer has not been terminated after December 31, 1985.

"(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1954)—

"(A) all agencies and instrumentalities of a State (as defined in section 218(b)) or of the District of Columbia shall be treated as a single employer, and

"(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph "(A)."

(2) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—

(a) FOR INDIVIDUALS AGE 65 OR OLDER AND FOR DISABLED INDIVIDUALS.—Section 226 of such Act (42 U.S.C. 426) is amended by striking out "medicare qualified Federal employment" in subsections (a)(2)(C)(i) and (b)(2)(C)(ii)(I) and inserting in lieu thereof "medicare qualified government employment".

(B) FOR INDIVIDUALS WITH END-STAGE RENAL DISEASE.—Section 226A(a) of such Act (42 U.S.C. 426(1)(a)) is amended by striking out "medicare qualified Federal employment" in paragraphs (1)(A)(ii) and (1)(B)(iii) and inserting in lieu thereof "medicare qualified government employment".

(C) CONFORMING AMENDMENTS.—

(i) Section 1811 of such Act (42 U.S.C. 1395c) is amended by striking out "Federal employment" in clauses (1) and (2) and inserting in lieu thereof "government employment".

(ii) Section 226(g) of such Act (42 U.S.C. 426(g)) is amended by striking out "medicare qualified Federal employment" and inserting in lieu thereof "medicare qualified government employment by virtue of service described in section 201(a)(5)".

(c) OPTIONAL MEDICARE COVERAGE OF CURRENT EMPLOYEES.—Section 218 of the Social Security Act (42 U.S.C. 418) is amended by adding at the end the following new subsection:

"(v)(1) The Secretary shall, at the request of any State, enter into or modify an agreement with such State under this section for the purpose of extending the provisions of title XVIII, and sections 226 and 226A, to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

"(2) This subsection shall apply only with respect to employees—

"(A) whose services are not treated as employment as that term applies under section 210(p) by reason of paragraph (3) of such section; and

"(B) who are not otherwise covered under the State's agreement under this section.

"(3) Payments by the State required under subsection (e) with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such services for which wages were paid to such employees constituted 'employment' as defined in section 3121 of such Code.

"(4) For purposes of sections 226 and 226A of this Act, services covered under an agreement pursuant to this subsection shall be treated as 'medicare qualified government employment'.

"(5) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.

"(w) Notwithstanding sections 3125(a), 6205(a)(5), 6413(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof, respectively, are covered under an agreement pursuant to this section.".

(d) EFFECTIVE DATES.—

(1) HOSPITAL INSURANCE TAXES.—The amendments made by subsection (a) shall apply to services performed after December 31, 1985.

(2) MEDICARE COVERAGE.—

(A) IN GENERAL.—The amendments made by subsection (b) shall be effective after December 31, 1985, and the amendments made by paragraph (3) of that subsection shall apply to services performed (for medicare qualified government employment) after that date.

(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before January 1, 1986.

(3) OPTIONAL COVERAGE OF CURRENT EMPLOYEES.—The amendment made by subsection (c) shall apply to services performed after December 31, 1985.

SEC. 13206. FULL-TIME STUDENTS NOT ELIGIBLE FOR INCOME AVERAGING.

(a) IN GENERAL.—Subsection (d) of section 1303 (defining eligible individuals for income averaging) is amended to read as follows:

"(d) Eligible Individuals Not To Include Full-Time Students.—

"(1) IN GENERAL.—For purposes of this part, an individual shall not be an eligible individual for the computation year if, at any time during any base period year, such individual was a student.

"(2) EXCEPTION FOR MARRIED STUDENTS PROVIDING 25 PERCENT OR LESS OF JOINT INCOME.—Paragraph (1) shall not apply to any individual for any computation year if—

"(A) the individual makes a joint return for the computation year, and

"(B) not more than 25 percent of the aggregate adjusted gross income of such individual and the spouse of such individual for such computation year is attributable to such individual.

"(3) STUDENT DEFINED.—For purposes of this subsection, the term 'student' means, with respect to a taxable year, an individ-

ual who during each of 5 calendar months during such taxable year—

"(A) was a full-time student at an educational organization described in section 170(b)(1)(A)(ii); or

"(B) was pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in section 170(b)(1)(A)(ii) or of a State or political subdivision of a State.".

(b) REPEAL OF NON-FULL-TIME STUDENT SUPPORT EXCEPTION.—Paragraph (2) of section 1303(c) (relating to individuals receiving support from others) is amended—

(1) by striking out subparagraph (A),

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), and

(3) by striking out "subparagraph (C)" in the second sentence and inserting in lieu thereof "subparagraph (B)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 1985.

SEC. 13207. APPLICATION OF FRINGE BENEFIT RULES TO AIRLINES AND THEIR AFFILIATES.

(a) PARENTS OF AIRLINE EMPLOYEES TREATED AS EMPLOYEES IN APPLYING FRINGE BENEFIT RULES.—

(1) IN GENERAL.—Section 132(f) (relating to certain individuals treated as employees with respect to certain fringe benefits) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR PARENTS IN THE CASE OF AIR TRANSPORTATION.—Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on January 1, 1985.

(b) LINE OF BUSINESS TEST FOR AFFILIATES PROVIDING AIRLINE-RELATED SERVICES.—

(1) IN GENERAL.—Section 132(h) (relating to special rules) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR AFFILIATES OF AIRLINES.—

"(A) IN GENERAL.—If—

"(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

"(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

"(B) QUALIFIED AFFILIATE.—For purposes of this paragraph, the term 'qualified affiliate' means any corporation which is predominantly engaged in airline-related services.

"(C) AIRLINE-RELATED SERVICES.—For purposes of this paragraph, the term 'airline-related services' means any of the following services provided in connection with air transportation:

"(i) Catering.

"(ii) Baggage handling.

"(iii) Ticketing and reservations.

"(iv) Flight planning and weather analysis.

"(v) Restaurants and gift shops located at an airport.

"(vi) Such other similar services provided to the airline as the Secretary may prescribe.

"(D) AFFILIATED GROUP.—For purposes of this paragraph, the term 'affiliated group' has the meaning given such term by section 1504(a).".

(2) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1985.

(c) TRANSITIONAL RULE FOR DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING AIRLINE.—If, as of September 12, 1985—

(1) an individual—

(A) was an employee (within the meaning of section 132 of the Internal Revenue Code of 1954, including subsection (f) thereof) of one member of an affiliated group (as defined in section 1504 of such Code), hereinafter referred to as the "first corporation", and

(B) was eligible for no-additional-cost service in the form of air transportation provided by another member of such affiliates group, hereinafter 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 air transportation of passengers,

then, for purposes of applying paragraphs (1) and (2) of section 132(a) of the Internal Revenue Code of 1954, with respect to no-additional-cost services and qualified employee discounts provided after December 31, 1984, for such individual by the second corporation, the first corporation shall be treated as engaged in the same air transportation line of business as the second corporation. For purposes of the preceding sentence, an employee of the second corporation who is performing services for the first corporation shall also be treated as an employee of the first corporation.

(d) SPECIAL RULE FOR SERVICES RELATED TO PROVIDING AIR TRANSPORTATION.—Section 531 of the Tax Reform Act of 1984 is amended by redesignating subsections (g) and (h) as subsections (h) and (i), respectively, and by inserting after subsection (f) the following new subsection:

"(g) SPECIAL RULE FOR CERTAIN SERVICES RELATED TO AIR TRANSPORTATION.—

"(1) IN GENERAL.—If—

"(A) an individual performed services for a qualified air transportation organization, and

"(B) such services are performed primarily for persons engaged in providing air transportation and are of the kind which (if performed on September 12, 1984) would qualify such individual for no-additional-cost services in the form of air transportation,

then, with respect to such individual, such qualified air transportation organization shall be treated as engaged in the line of business of providing air transportation.

"(2) QUALIFIED AIR TRANSPORTATION ORGANIZATION.—For purposes of paragraph (1), the term 'qualified air transportation organization' means any organization—

"(A) if such organization (or a predecessor) was in existence on September 12, 1984,

"(B) if such organization is described in section 501(c)(6) of the Internal Revenue Code of 1954 and the membership of such organization is limited to entities engaged in the transportation by air of individuals or property for compensation or hire, and

"(C) if such organization is operated in furtherance of the activities of its members or owners.".

SEC. 13208. CERTAIN INSOLVENT TAXPAYERS ALLOWED TO REDUCE CAPITAL GAINS PREFERENCE ITEM FOR PURPOSES OF THE INDIVIDUAL MINIMUM TAX.

(a) IN GENERAL.—Paragraph (9) of section 57(a) (relating to capital gains as items of tax preference) is amended by adding at the end thereof the following new subparagraph:

"(E) SPECIAL RULE FOR CERTAIN INSOLVENT TAXPAYERS.—

"(i) IN GENERAL.—The amount of the tax preference under subparagraph (A) shall be reduced (but not below zero) by the excess (if any) of—

"(I) the applicable percentage of gain from any farm insolvency transaction, over

"(II) the applicable percentage of any loss from any farm insolvency transaction which offsets such gain.

"(ii) REDUCTION LIMITED TO AMOUNT OF INSOLVENCY.—The amount of the reduction determined under clause (i) shall not exceed the amount by which the taxpayer is insolvent immediately before the transaction (reduced by any portion of such amount previously taken into account under this clause).

"(iii) FARM INSOLVENCY TRANSACTION.—For purposes of this subparagraph, the term 'farm insolvency transaction' means—

"(I) the transfer by a farmer of farmland to a creditor in cancellation of indebtedness, or

"(II) the sale or exchange by the farmer of property described in subclause (I) under the threat of foreclosure,

but only if the farmer is insolvent immediately before such transaction.

"(iv) INSOLVENT.—For purposes of this subparagraph, the term 'insolvent' means the excess of liabilities over the fair market value of assets.

"(v) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term 'applicable percentage' means that percentage of net capital gain with respect to which a deduction is allowed under section 1202(a).

"(vi) FARMLAND.—The term 'farmland' means any land used or held for use in the trade or business of farming (within the meaning of section 2032A(e)(5)).

"(vii) FARMER.—The term 'farmer' means any taxpayer if 50 percent or more of the average annual gross income of the taxpayer for the 3 preceding taxable years is attributable to the trade or business of farming (within the meaning of section 2032A(e)(5)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transfers or sales or exchanges made after December 31, 1981, in taxable years ending after such date.

SEC. 13209. TREATMENT OF CERTAIN POLLUTION CONTROL BONDS.

(a) GENERAL RULE.—For purposes of subparagraph (F) of section 103(b)(4) of the Internal Revenue Code of 1954 (relating to pollution control facilities), any obligation issued after December 31, 1985, shall be treated as described in such subparagraph if it is part of an issue substantially all of the proceeds of which are used by a qualified regional pollution control authority to acquire existing air or water pollution control facilities which the authority itself will operate in order to maintain or improve control of pollutants. The provisions of section 103(b)(17) of such Code (relating to prohibition on acquisition of existing property not permitted) shall not apply to any obligation described in the preceding sentence.

(b) $200,000,000 LIMITATION.—The aggregate amount of obligations to which subsection (a) applies shall not exceed $200,000,000, except that the amount of such obligations issued during calendar year 1986 to which subsection (a) applies shall not exceed $100,000,000.

(c) RESTRICTIONS.—Subsection (a) shall apply only if—

(1) the amount paid (directly or indirectly) for the facilities does not exceed their fair market value,

(2) the fees or charges imposed (directly or indirectly) on any seller for the use of any facilities after the sale are not less than the amounts charged for the use of such facilities to persons other than the seller,

(3) the original use of the facilities acquired with the proceeds of such obligations commenced before September 3, 1982, and

(4) no person other than the qualified regional pollution control authority is considered after the sale as the owner of the facilities for purposes of Federal income taxes.

(d) QUALIFIED REGIONAL POLLUTION CONTROL AUTHORITY DEFINED.—For purposes of this section, the term "qualified regional pollution control authority" means an authority which—

(1) is a political subdivision created by State law to control air or water pollution,

(2) has within its jurisdictional boundaries all or part of at least 2 counties (or equivalent political subdisivion),

(3) operates air or water pollution control facilities, and

(4) was created on September 1, 1969.

(e) REPEAL OF SECTION 103(b)(11).—Paragraph (11) of section 103(b) is hereby repealed.

SEC. 13210. TREATMENT OF THE NETTING OF GAINS AND LOSSES BY COOPERATIVES.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules applicable to cooperatives) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) SPECIAL RULES FOR THE NETTING OF GAINS AND LOSSES BY COOPERATIVES.—For purposes of this subchapter, in the case of any organization to which part I of this subchapter applies—

"(1) OPTIONAL NETTING OF PATRONAGE GAINS AND LOSSES PERMITTED.—The net earnings of such organization may, at its option, be determined by offsetting patronage losses (including any patronage loss carried to such year) which are attributable to 1 or more allocation units (whether such units are functional, divisional, departmental, geographic, or otherwise) against patronage earnings of 1 or more other such allocation units.

"(2) CERTAIN NETTING PERMITTED AFTER SECTION 381 TRANSACTIONS.—If such an organization acquires the assets of another such organization in a transaction described in section 381(a), the acquiring organization may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of 1 or more allocation units of the acquiring or acquired organization against earnings of the acquired or acquiring organization, respectively, but only to the extent—

"(A) such earnings are properly allocable to periods after the date of acquisition, and

"(B) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same organization.

"(3) NOTICE REQUIREMENTS.—

"(A) IN GENERAL.—In the case of any organization which exercises its option under paragraph (1) for any taxable year, such organization shall, on or before the 15th day of the 9th month following the close of such taxable year, provide to its patrons a written notice which—

"(i) states that the organization has offset earnings and losses from 1 or more of its allocation units and that such offset may have affected the amount which is being distributed to its patrons,

"(ii) states generally the identity of the offsetting allocation units, and

"(iii) states briefly what rights, if any, its patrons may have to additional financial information of such organization under terms of its charter, articles of incorporation, or bylaws, or under any provision of law.

"(B) CERTAIN INFORMATION NEED NOT BE PROVIDED.—An organization may exclude from the information required to be provided under clause (ii) of subparagraph (A) any detailed or specific data regarding earnings or losses of such units which such organization determines would disclose commercially sensitive information which—

"(i) could result in a competitive disadvantage to such organization, or

"(ii) could create a competitive advantage to the benefit of a competitor of such organization.

"(C) FAILURE TO PROVIDE SUFFICIENT NOTICE.—If the Secretary determines that an organization failed to provide sufficient notice under this paragraph—

"(i) the Secretary shall notify such organization, and

"(ii) such organization shall, upon receipt of such notification, provide to its patrons a revised notice meeting the requirements of this paragraph.

Any such failure shall not affect the treatment of the organization under any provision of this subchapter or section 521.

"(4) PATRONAGE EARNINGS OR LOSSES DEFINED.—For purposes of this subsection, the terms 'patronage earnings' and 'patronage losses' means earnings and losses, respectively, which are derived from business done with or for patrons of the organization."

(b) TAX-EXEMPT STATUS NOT AFFECTED BY NETTING.—Section 521(b) (relating to applicable rules) is amended by adding at the end thereof the following new paragraph:

"(6) NETTING OF LOSSES.—Exemption shall not be denied any such association because such association computes its net earnings for purposes of determining any amount available for distribution to patrons in the manner described in paragraph (1) of section 1388(j)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1962.

(2) NOTIFICATION REQUIREMENT.—The provisions of section 1388(j)(3) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall apply to taxable years beginning on or after the date of the enactment of this Act.

(3) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer that a change in law is intended as to whether any patronage earnings may or not be offset by nonpatronage losses, and any determination of such issue shall be made as if such amendments had not been enacted.

SEC. 13211. ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

Subsection (c) is amended of section 126 of the Deficit Reduction Act of 1984 is amended—

(1) by striking out "1985" and inserting in lieu thereof "1986"; and

(2) by striking out "3rd" each place it appears and inserting in lieu thereof "4th".

SEC. 13212. LIMITATION ON ISSUANCE OF UNITED STATES BONDS.

Subsection (a) of section 3102 of title 31, United States Code, is amended by striking out "$200,000,000,000" and inserting in lieu thereof "$250,000,000,000".

SEC. 13213. AUTHORIZATION OF ADDITIONAL FUNDS TO INTERNAL REVENUE SERVICE FOR REVENUE ENFORCEMENT AND RELATED PURPOSES, ETC.

(a) AUTHORIZATION.—There is authorized to be appropriated $46,500,000 for each of the fiscal years 1986, 1987, and 1988 for the use of the Internal Revenue Service to employ 1,550 additional agents and examination employees.

(b) RESTORATION OF PROPOSED CUTS.—It is the sense of the Congress that—

(1) the restoration of the cuts in the budget for the Internal Revenue Service for fiscal year 1986, and

(2) the further increase in such budget total,

recommended by the Committee on Appropriations of the House of Representatives are necessary for the efficient operation of the Government and to carry out the purposes of this Act.

Subtitle D—Provisions Relating to Unemployment Taxes

SEC. 13301. RAILROAD UNEMPLOYMENT REPAYMENT TAX.

(a) RATE OF TAX.—Subsection (c) of section 3321 of the Internal Revenue Code of 1954 (relating to rate of railroad unemployment repayment tax) is amended to read as follows:

"(c) RATE OF TAX.—For purposes of this section—

"(1) IN GENERAL.—The applicable percentage for any taxable period shall be the sum of—

"(A) the basic rate for such period, and

"(B) the surtax rate (if any) for such period.

"(2) BASIC RATE.—For purposes of paragraph (1)—

"(A) FOR PERIODS BEFORE 1989.—The basic rate shall be—

"(i) 4.3 percent for the taxable period beginning on July 1, 1986, and ending on December 31, 1986,

"(ii) 4.7 percent for the 1987 taxable period, and

"(iii) 6 percent for the 1988 taxable period.

"(B) FOR PERIODS AFTER 1988.—For any taxable period beginning after December 31, 1988, the basic rate shall be the sum of—

"(i) 2.9 percent, plus

"(ii) 0.3 percent for each preceding taxable period after 1988.

In no event shall the basic rate under this subparagraph exceed 5 percent.

"(3) SURTAX RATE.—For purposes of paragraph (1), the surtax rate shall be—

"(A) 3.5 percent for any taxable period if, as of September 30 of the preceding calendar year, there was a balance of transfers (or unpaid interest thereon) made after September

30, 1985, to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

"(B) zero for any other taxable period.

"(4) BASIC RATE NOT TO APPLY TO RAIL WAGES PAID AFTER SEPTEMBER 30, 1990.—The basic rate under paragraph (1)(A) shall not apply to rail wages paid after September 30, 1990."

(b) BASE OF TAX TO BE COMPENSATION USED FOR RAILROAD RETIREMENT TAX PURPOSES.—Subsection (b) of section 3323 of such Code (defining rail wages) is amended to read as follows:

"(b) RAIL WAGES.—

"(1) IN GENERAL.—For purposes of this chapter, the term 'rail wages' means compensation (as defined in section 3231(e) for purposes of the tax imposed by section 3201(a)) with the modifications specified in paragraph (2).

"(2) MODIFICATIONS.—In applying subsection (e) of section 3231 for purposes of paragraph (1)—

"(A) ONLY EMPLOYMENT COVERED BY RAILROAD UNEMPLOYMENT INSURANCE ACT TAKEN INTO ACCOUNT.—Such subsection (e) shall be applied—

"(i) by substituting 'rail employment' for 'services' each place it appears,

"(ii) by substituting 'rail employer' for 'employer' each place it appears, and

"(iii) by substituting 'rail employee' for 'employee' each place it appears.

"(B) $7,000 WAGE BASE.—Such subsection (e) shall be applied by substituting for 'the applicable base' in paragraph (2)(A)(i) thereof—

"(i) except as provided in clauses (ii) and (iii), '$7,000',

"(ii) '$3,500' for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, and

"(iii) for purposes of applying the basic rate under section 3321(c)(1)(A), '$5,250' for the taxable period beginning on January 1, 1990.

"(C) SUCCESSOR EMPLOYERS.—For purposes of this subsection, rules similar to the rules applicable under section 3231(e)(2)(C) shall apply."

(c) USE OF TAXES.—

(1) IN GENERAL.—Paragraph (2) of section 232(a) of the Railroad Retirement Revenue Act of 1983 (relating to tax used to repay loans made to railroad unemployment insurance account) is amended to read as follows:

"(2) TAXES CREDITED AGAINST LOANS TO RAILROAD UNEMPLOYMENT INSURANCE ACCOUNT.—

"(A) TAXES ATTRIBUTABLE TO BASIC RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE BEFORE OCTOBER 1, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the basic rate under section 3321(c)(1)(A) of the Internal Revenue Code of 1954 shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made before October 1, 1985.

"(B) TAXES ATTRIBUTABLE TO SURTAX RATE TO REDUCE RAILROAD UNEMPLOYMENT LOANS MADE AFTER SEPTEMBER 30, 1985.—So much of the amount transferred under paragraph (1) as is attributable to the surtax rate under section 3321(c)(1)(B) of such Code shall be credited against, and operate to reduce, the outstanding balance of railroad unemployment loans made after September 30, 1985."

(2) TRANSFERS TO RAILROAD UNEMPLOYMENT FUND AFTER LOAN REPAID.—Subsection (c) of section 232 of such Act is amended—

(A) by striking out "the amount" in paragraph (1) and inserting in lieu thereof "the amount described in subparagraph (A) or (B) of subsection (a)(2)", and

(B) by inserting before the comma at the end of paragraph (2) "against which the amount described in such subparagraph may be credited under such subparagraph".

(d) TECHNICAL AMENDMENTS.—

(1) Subsection (a) of section 3322 of such Code (relating to taxable period) is amended—

(A) by adding "and" at the end of paragraph (1), and

(B) by striking out paragraphs (2) and (3) and inserting in lieu thereof the following:

"(2) each calendar year after 1986."

(2) Subsection (b) of section 3322 of such Code (relating to earlier termination if loans to rail unemployment fund repaid) is amended—

(A) by striking out "The tax imposed by this chapter shall not apply" and inserting in lieu thereof "The basic rate under section 3321(c)(1)(A) of the tax imposed by section 3321 shall not apply", and

(B) by inserting "made before October 1, 1985," after "no balance of transfers" in paragraph (1) thereof.

SEC. 13302. EXTENSION OF BORROWING AUTHORITY UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT.

Section 10(d) of the Railroad Unemployment Insurance Act is amended by striking out the last sentence thereof.

SEC. 13303. CERTAIN EXEMPTIONS FROM THE FEDERAL EMPLOYMENT TAX ACT.

(a) CERTAIN AGRICULTURAL LABOR.—Paragraph (1)(B) of section 3306(c) of the Internal Revenue Code of 1954 (defining employment) is amended by striking out "January 1, 1986," and inserting in lieu thereof "January 1, 1988".

(b) FULL-TIME STUDENTS EMPLOYED BY SUMMER CAMPS.—Notwithstanding paragraph (3) of section 276(b) of the Tax Equity and Fiscal Responsibility Act of 1982, the amendments made by paragraphs (1) and (2) of such section 276(b) shall also apply to remuneration paid after September 19, 1985.

(c) Services Performed on Certain Fishing Boats.—

(1) IN GENERAL.—Section 822(b) of the Economic Recovery Tax Act of 1981 is amended to read as follows:

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to remuneration paid after December 31, 1980.".

(2) TECHNICAL AMENDMENT.—Paragraph (20) of section 3121(b) of such Code (defining employment for purposes of Federal Insurance Contributions Act) is amended by inserting "(other than service described in paragraph (3)(A))" after "service".

TITLE XIV—REVENUE SHARING

SEC. 14001. TERMINATION OF GENERAL REVENUE SHARING.

(a) IN GENERAL.—(1) Except as otherwise provided in this section, chapter 67 of title 31, United States Code, is hereby repealed.

(2) The Secretary of the Treasury shall continue to be the trustee of the Trust Fund, which shall remain in existence until amounts all entitlement payments which are required to be made under the Revenue Sharing Act are made in accordance with the terms of such Act. Any funds remaining in the Trust Fund after all of such entitlement payments are completely made shall revert to the General Fund of the Treasury of the United States.

(3) The Secretary is authorized to take such necessary or appropriate actions, to carry out the requirements of this Act with respect to funds appropriated to the Trust Fund, as were authorized under the terms of the Revenue Sharing Act, including but not limited to enforcement of the regulatory provisions concerning nondiscrimination, audits, accounting procedures, public hearings, expenditures in accordance with State and local law, and cooperation with reasonable requests for information.

(4) The Secretary may increase or decrease a payment to a unit of general local government under the Revenue Sharing Act for the entitlement period ending September 30, 1986, to account for a prior underpayment or overpayment only if the increase or decrease is demanded by the Secretary or such unit of general local government before March 1, 1986.

(5) Amounts paid to units of general local government from the Trust Fund shall be used, obligated, or appropriated by the units of general local government before October 1, 1987, and shall continue to be subject to the terms of the Revenue Sharing Act.

(6) Subsection (a)(1) of this section shall not have the effect of releasing or extinguishing any fiscal sanction, finding, determination, compliance agreement, or other duly authorized action for the purpose of sustaining any proper action or prosecution for enforcement authorized under the terms of the Revenue Sharing Act.

(7) The Attorney General, and persons adversely affected by a practice of a local government, may bring a civil action in an appropriate district court of the United States against the applicable unit of general local government as authorized under the Revenue Sharing Act. The court is authorized to grant such relief as was authorized under the terms of the Revenue Sharing Act.

(8) The Secretary shall report to Congress on the operation and status of the Trust Fund and the implementation of this section not later than December 1 of each year the Trust Fund remains on the books of the Department of the Treasury.

(b) CONFORMING AMENDMENTS.—(1) The table of chapters for subtitle V of title 31, United States Code, is amended by striking out the item relating to chapter 67.

(2) Paragraph (2) of section 1115(b) of the Social Security Act (42 U.S.C. 1315(b)(2)) is amended—

(A) by adding "and" at the end of subparagraph (A),

(B) by striking out "; and" at the end of subparagraph (B) and inserting in lieu thereof a period, and

(C) by striking out subparagraph (C).

(3) Section 501(b)(6) of the Housing Act of 1949 (42 U.S.C. 1471(b)(6)) and section 102(a)(17) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(17)) are each amended by striking out "or under chapter 67 of title 31, United States Code" and inserting in lieu thereof "or was considered an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter".

(4) Section 302 of the Age Discrimination Act of 1975 (42 U.S.C. 6101) is amended by striking out ", including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.)".

(5) Paragraph (3) of section 3 of the Coastal Barrier Resources Act (16 U.S.C. 3502(3)) is amended by striking out subparagraph (A) and redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(6) Subparagraph (B) of section 119(n)(2) of the Housing and Community Development Act of 1974 (42 U.S.C. 5318(n)(2)(B)) is amended by striking out "is an eligible recipient under chapter 67 of title 31, United States Code" and inserting in lieu thereof "was an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter".

(7) Paragraph (1) of section 248(h) of the National Housing Act (12 U.S.C. 1715z-13(h)(1)) is amended by striking out "is an eligible recipient under chapter 67 of title 31, United States Code" and inserting in lieu thereof "was an eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such chapter".

(c) DEFINITIONS.—For purposes of this section—

(1) The term "Trust Fund" means the State and Local Government Fiscal Assistance Trust Fund established under the Revenue Sharing Act.

(2) The term "Revenue Sharing Act" means the provisions of chapter 67 of title 31, United States Code, as in effect on the day before the date of enactment of this Act and subject to the terms of any appropriation Act of fiscal year 1986.

(3) The term "Secretary" means the Secretary of the Treasury.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated for fiscal year 1987 such sums as may be necessary to administer the provisions of this section.

(e) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the repeal and amendments made by this section, and the provisions of this section, shall take effect on the earlier of—

(A) the date of the adjournment sine die of the 99th Congress, or

(B) December 31, 1986,

unless the provisions of chapter 67 of title 31, United States Code, are amended before the earlier of such dates to apply to any entitlement period beginning after September 30, 1986.

(2) The provisions of subsections (a)(4), (c), and (d) shall take effect on the date of enactment of this Act.

(3) Nothing in this section shall be construed to prevent the payment of any allocation for the entitlement period ending September 30, 1986.

TITLE XV—CIVIL SERVICE, POSTAL SERVICE, AND GOVERNMENTAL AFFAIRS GENERALLY

Subtitle A—Postal Service Programs

SEC. 15101. REVENUE FORGONE.

Notwithstanding subsection (c) of section 2401 of title 39, United States Code, the amount authorized to be appropriated pursuant to such subsection for fiscal year 1986 shall be $749,000,000.

SEC. 15102. DELAY OF STEP 16 RATES; ELIMINATION OF PHASING SCHEDULE; TERMINATION OF REDUCTION IN RATES OF POSTAGE FOR CERTAIN MAILERS.

(a) DELAY OF STEP 16 RATES.—The increase in rates of postage for non-profit and certain other mailers announced by the Board of Governors of the United States Postal Service in Resolution No. 85-7 (adopted September 6, 1985) shall not take effect before January 1, 1986.

(b) ELIMINATION OF PHASING SCHEDULE.—(1) Section 3626(a) of title 39, United States Code, is amended to read as follows:

"(a)(1) Except as provided in paragraph (2) of this subsection, rates of postage for a class of mail or kind of mailer under former section 4358, 4452(b), 4452(c), 4554(b), or 4554(c) of this title shall be established in accordance with applicable provisions of this chapter.

"(2) Rates of postage for a class of mail or kind of mailer referred to in paragraph (1) of this subsection shall be established in accordance with the requirement that the direct and indirect postal costs attributable to such class of mail or kind of mailer (excluding any other costs of the Postal Service) shall be borne by such class of mail or kind of mailer, as the case may be.".

(2) The amendment made by this subsection shall apply with respect to rates of postage taking effect after December 31, 1985.

(c) TERMINATION OF REDUCTION IN RATES OF POSTAGE FOR CERTAIN MAILERS.—Section 3626 of title 39, United States Code, is amended by adding at the end thereof the following:

"(f) In the administration of this chapter, the rates for mail under former section 4358(g) of this title shall be established without regard to either the provisions of such former section 4358(g) or the provisions of this section.".

SEC. 15103. STUDY AND REPORT.

(a) PERIOD OF STUDY.—The Postal Rate Commission shall study and, within 6 months after the date of the enactment of this Act, transmit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a written report on the matters described in subsection (b).

(b) PURPOSE OF STUDY.—The purpose of the study under this section is—

(1) to develop recommendations for legislation which would reduce the amount of revenue forgone with respect to former sections 4355(a), 4355(b), 4358(d), 4452(b), 4452(c), 4554(b) and 4554(c) of title 39, United States Code, by changing the eligibility requirements under which the reduced rates of postage under those sections would apply to mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements;

(2)(A) to identify the kinds of mailers which are the most frequent users of, or which otherwise significantly benefit from, rates for mail under subsections (a), (b), and (c) of former section 4358 of title 39, United States Code; and

(B) to examine the arguments for and against making the eligibility requirements for the rates referred to in subparagraph (A) more stringent, taking into consideration—

(i) the findings under subparagraph (A);

(ii) costs and benefits to the public; and

(iii) any other factor which may be appropriate; and

(3) to develop one or more alternatives for the method currently used by the United States Postal Service in computing revenue forgone (as determined with respect to the provisions of law referred to in section 2401(c) of title 39, United States Code) and to determine the advantages and disadvantages of each such alternative.

(c) In preparing its report under this section, the Postal Rate Commission shall invite and consider the views of interested parties.

(d) The United States Postal Service shall, upon request of the Postal Rate Commission, cooperate in the conduct of the study and the preparation of the report under this section.

SEC. 15104. RESTRICTION RELATING TO ELIGIBILITY FOR IN-COUNTY SECOND-CLASS RATES OF POSTAGE.

Section 3626 of title 39, United States Code, as amended by section 15102(c) of this Act, is further amended by adding at the end thereof the following:

"(g)(1) In the administration of this section, the rates for mail under subsections (a), (b), and (c) of former section 4358 of this title shall not apply to an issue of a publication if the number of copies of such issue distributed within the county of publication is less than the number equal to the sum of 50 percent of the total paid circulation of such issue plus one.

"(2) Paragraph (1) of this subsection shall not apply to an issue of a publication if the total paid circulation of such issue is less than 10,000 copies.".

SEC. 15105. CURBING OF SUBSIDIES FOR ADVERTISING-ORIENTED "PLUS ISSUES" MAILED TO SUBSCRIBERS AT IN-COUNTY RATES.

Section 3626 of title 39, United States Code, as amended by sections 15102(c) and 15104 of this Act, is further amended by adding at the end thereof the following:

"(h) In the administration of this section, the number of copies of a subscription publication mailed to nonsubscribers during a calen-

dar year at rates under subsections (a), (b), and (c) of former section 4358 of this title may not exceed 10 percent of the number of copies of such publication mailed at such rates to subscribers.".

Subtitle B—Civil Service Programs

SEC. 15201. PAY ADJUSTMENTS.

(a) LIMITATION ON PAY ADJUSTMENTS FOR STATUTORY PAY SYSTEMS.—(1) The rates of pay under the General Schedule and the rates of pay under the other statutory pay systems referred to in section 5301(c) of title 5, United States Code, shall not be adjusted under section 5305 of such title during fiscal year 1986.

(2)(A)(i) For fiscal years 1987 and 1988, the President shall provide for the adjustment of rates of pay under section 5305 of title 5, United States Code, as appropriate to reduce outlays, relating to pay of officers and employees of the Federal Government, by at least $746,000,000 in fiscal year 1987 and $1,264,000,000 in fiscal year 1988 (without regard to reductions in outlays which result by reason of subparagraph (B)(ii) of this paragraph, paragraph (1) of this subsection, subsection (b) of this section, and the application of section 1009 of title 37, United States Code), computed using the baseline used for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, 99th Congress), agreed to on August 1, 1985.

(ii) Clause (i) of this subparagraph shall not be construed to suspend the requirements of section 5305 of title 5, United States Code, with respect to fiscal years 1987 and 1988.

(B) Each adjustment in a pay rate or schedule which takes effect pursuant to subparagraph (A) of this paragraph—

(i) shall, to the maximum extent practicable, be of the same percentage; and

(ii) shall be effective with respect to pay periods beginning on or after January 1 of the fiscal year involved.

(b) LIMITATION ON PAY ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES.—(1) Notwithstanding any other provision of law, and except as otherwise provided in this subsection, in the case of a prevailing rate employee described in section 5342(a)(2) of title 5, United States Code, or an employee covered by section 5348 of such title, the total adjustment to any wage schedule or rate applicable to such employee which is to become effective (determined without regard to paragraph (2)) during—

(A) fiscal year 1986, shall (except to the extent permitted by section 616(a)(2) of H.R. 5798, incorporated by reference in section 101(j) of Public Law 98-473 (98 Stat. 1963)) be equal to zero;

(B) fiscal year 1987, shall not exceed an increase equal to the overall percentage of the adjustment (under section 5305 of title 5, United States Code) in the rates of pay under the General Schedule for such fiscal year; and

(C) fiscal year 1988, shall not exceed an increase equal to the overall percentage of the adjustment (under section 5305 of title 5, United States Code) in the rates of pay under the General Schedule for such fiscal year.

(2) Notwithstanding any other provision of law, any increase permitted by paragraph (1) which is scheduled to take effect during fiscal year 1987 or 1988 (determined without regard to this paragraph) shall take effect as of the beginning of the first applicable pay period beginning at least 90 days after the date on which such increase is so scheduled to take effect.

(3) Notwithstanding the provisions of section 9(b) of Public Law 92-392 or section 704(b) of Public Law 95-454, the provisions of paragraphs (1) and (2) shall apply (in such manner as the Office of Personnel Management shall prescribe) to prevailing rate employees to whom such section 9(b) applies, except that the provisions of paragraph (1) shall not apply to any increase in a wage schedule or rate which is required by the terms of a contract entered into before October 1, 1985.

(4) Nothing in this subsection or any provision of law governing the use of appropriated funds for the payment of employees covered by this subsection during the period covered by paragraph (1) (or any part of such period) shall be construed to permit or require the payment to any such employee at a rate in excess of the rate that would be payable were this subsection, or such provision of law governing the use of appropriated funds, not in effect.

(5) The Office may make exceptions from the limitations imposed by paragraph (1) if the Office determines that such exceptions are necessary to ensure the recruitment or retention of well-qualified employees.

SEC. 15202. PROVISIONS RELATING TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.

(a) AMOUNTS TO BE REFUNDED FROM CARRIERS' SPECIAL RESERVES.—(1) The Office of Personnel Management—

(A) shall determine the minimum level of financial reserves necessary to be held by a carrier for each health benefits plan under chapter 89 of such title for the purpose of ensuring the stable and efficient operation of such plan; and

(B) shall require the carrier to refund to the Employees Health Benefits Fund (described in section 8909(a) of title 5, United States Code) any such reserves in excess of such minimum level in such amounts and at such times during fiscal years 1986 and 1987 as the Office determines appropriate.

(2) In carrying out its responsibilities under this subsection, the Office shall ensure that the aggregate amount to be refunded to the Employees Health Benefits Fund under this subsection—

(A) during fiscal year 1986 shall be not less than $800,000,000; and

(B) during fiscal year 1987 shall be not less than $300,000,000.

(3) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States as a result of a refund made under this subsection.

(4)(A) Subject to subparagraphs (B) and (C), any amounts refunded to the Employees Health Benefits Fund under this subsection may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants, as defined by section 8901(3) of title 5,

United States Code, (including the Government contribution for former employees of the United States Postal Service) enrolled in health benefits plans under such chapter.

(B) This paragraph applies to a refund to the extent that such refund represents amounts attributable to Government contributions which were made under section 8906(b) of title 5, United States Code, (including contributions made by the United States Postal Service) as determined under regulations which the Office of Personnel Management shall prescribe.

(C) Any part of the amount in the Employees Health Benefits Fund as a result of a refund made under this subsection may be transferred—

(i) to the government of the District of Columbia, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the government of the District of Columbia to subscription charges under this chapter (as determined by the Office of Personnel Management); and

(ii) to the United States Postal Service, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the United States Postal Service to subscription charges under this chapter (as determined by the Office).

(5) The provisions of this subsection shall apply notwithstanding any provision of the Federal Employees Benefits Improvement Act of 1985.

(b) REPEAL OF 75 PERCENT MAXIMUM IN GOVERNMENT CONTRIBUTIONS.—(1) Section 8906(b)(2) of title 5, United States Code, is amended to read as follows:

"(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 100 percent of the subscription charge.".

(2) The amendment made by paragraph (1) shall be effective with respect to pay periods commencing on or after March 1, 1986.

(c) GOVERNMENT CONTRIBUTIONS FOR RETIRED FORMER EMPLOYEES OF THE UNITED STATES POSTAL SERVICE.—Section 8906(g) of title 5, United States Code, is amended—

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

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

"(2) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after October 1, 1986, shall be paid by the United States Postal Service.".

SEC. 15203. COMPUTATION OF HOURLY RATES OF PAY.

(a) METHOD OF COMPUTATION.—Section 5504(b) of title 5, United States Code, is amended—

(1) by striking out the first sentence;

(2) in the second sentence, by striking out "When" and inserting in lieu thereof "When, in the case of an employee,";

(3) in paragraph (1), by striking out "2,080" and inserting in lieu thereof "2,087"; and

(4) in the last sentence, by striking out "title." and inserting in lieu thereof "title other than an employee or individual excluded by section 5541(2)(xvi) of this title.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to pay periods commencing on or after March 1, 1986.

SEC. 15204. COMPUTATION OF RETIREMENT ANNUITY FOR PART-TIME EMPLOYMENT.

(a) IN GENERAL.—(1) Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(o)(1) In computing an annuity under this subchapter for an employee whose service includes service that was performed on a part-time basis—

"(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

"(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

"(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.".

(2) Section 8341 of such title is amended—

(A) by striking out "and (n)" in subsection (b)(1) and inserting in lieu thereof ", (n), and (o)"; and

(B) by striking out "and (n)" in subsection (d) and inserting in lieu thereof "(n), and (o)".

(b) Section 4109(b) of title 38, United States Code, is repealed.

(c) The amendments made by this section shall be effective with respect to service performed on or after the date of the enactment of this Act.

SEC. 15205. EFFECT OF WAGE AREA SURVEY REGARDING CERTAIN FEDERAL EMPLOYEES IN TUCSON, ARIZONA.

(a) IN GENERAL.—Notwithstanding any other provision of law limiting the amounts payable to prevailing wage rate employees during the fiscal year 1986, wage schedules or rates applicable to the Tucson, Arizona, wage area shall not be reduced as a result of a wage survey conducted during fiscal year 1985.

(b) EFFECTIVE DATE.—This section shall be effective as of October 1, 1985.

Subtitle C—Federal Motor Vehicle Expenditure Control

SEC. 15301. MONITORING SYSTEM.

The head of each executive agency, including the Department of Defense, shall designate one office, officer, or employee of the agency to establish and operate a central monitoring system for, and provide oversight of, the motor vehicle operations of the agency, related activities, and related reporting requirements.

SEC. 15302. DATA COLLECTION.

(a) COST IDENTIFICATION AND ANALYSIS.—The head of each executive agency, including the Department of Defense, shall develop a system to identify, collect, and analyze data with respect to all costs, including obligations and outlays, incurred by the agency in the operation, maintenance, acquisition, and disposition of motor vehicles, including Government-owned vehicles, leased vehicles, and privately owned vehicles used for official purposes.

(b) REQUIREMENTS FOR DATA SYSTEMS.—The Administrator, in cooperation with the Comptroller General and the Director, shall promulgate requirements governing the establishment and operation by executive agencies of the systems required by subsection (a), including requirements with respect to data concerning the costs and uses of motor vehicles and with respect to the uniform collection and submission of such data. Requirements promulgated under this section shall be in conformance with accounting principles and standards issued by the Comptroller General. Each executive agency, including the Department of Defense, shall comply with such requirements.

SEC. 15303. AGENCY STATEMENTS WITH RESPECT TO MOTOR VEHICLE USE.

(a) CONTENTS OF STATEMENT.—The head of each executive agency, including the Department of Defense, shall include with the appropriation request of such agency submitted under section 1108 of title 31, United States Code, for fiscal year 1988 and each succeeding fiscal year, a statement—

(1) specifying—

(A) the total motor vehicle acquisition, maintenance, leasing, operation, and disposal costs, including obligations and outlays, incurred by such agency in the most recently completed fiscal year; and

(B) an estimate of such costs for the fiscal year in which such request is submitted and for the succeeding fiscal year; and

(2) justifying why the existing and any new motor vehicle acquisition, maintenance, leasing, operation, and disposal requirements of the agency cannot be met through the Interagency Fleet Management System operated by the Administrator, a qualified private fleet management firm, or any other method which is less costly to the Government.

(b) COMPLIANCE WITH REQUIREMENTS.—The head of each executive agency shall comply with the requirements promulgated under section 15302(b) in preparing each statement required under subsection (a).

SEC. 15304. PRESIDENTIAL REPORT.

(a) SUMMARY AND ANALYSIS OF AGENCY STATEMENTS.—The President shall include with the budget transmitted pursuant to section 1105 of title 31, United States Code, for fiscal year 1988 and each succeeding fiscal year, or in a separate written report to the Congress for each such fiscal year, a summary and analysis of the statements most recently submitted by the heads of executive agencies pursuant to section 15303(a). Each such summary and analysis shall include a review, for the fiscal year preceding the fiscal year in which the budget is submitted, the current fiscal year, and the

fiscal year for which the budget is submitted, of the cost savings that have been achieved, that are estimated will be achieved, and that could be achieved, in the acquisition, maintenance, leasing, operation, and disposal of motor vehicles by executive agencies through—

(1) the use of a qualified private fleet management firm or another private contractor;

(2) increased reliance by executive agencies on the Interagency Fleet Management System operated by the Administrator; or

(3) other existing motor vehicle management systems.

(b) APPLICABILITY TO FISCAL YEAR 1986.—The summary and analysis submitted under subsection (a) during fiscal year 1987 is not required to include a review, under the second sentence of such subsection, of the cost savings achieved for fiscal year 1986.

SEC. 15305. STUDY REQUIRED.

(a) STUDY OF COSTS, BENEFITS, AND FEASIBILITY.—(1) The head of each executive agency, including the Department of Defense, shall conduct a comprehensive and detailed study of the costs, benefits, and feasibility of—

(A) relying on the Interagency Management Fleet System operated by the Administrator;

(B) entering into a contract with a qualified fleet management firm or another private contractor; or

(C) using any other means less costly to the Government,

to meet its motor vehicle operation, maintenance, leasing, acquisition, and disposal requirements.

(2) Each study conducted under paragraph (1) shall compare the costs, benefits, and feasibility of the alternatives described in subparagraphs (A), (B), and (C) of such paragraph to the costs and benefits of the agency's current motor vehicle operations and, in the case of the alternatives described in subparagraphs (B) and (C) of such paragraph, to the costs, benefits, and feasibility of the use of the Interagency Fleet Management System operated by the Administrator.

(b) SUBMISSION TO DIRECTOR AND COMPTROLLER GENERAL.—Within 6 months after the date of enactment of this Act, the head of each executive agency shall submit a report concerning the study required under subsection (a) to the Administrator.

SEC. 15306. INTERAGENCY CONSOLIDATION.

(a) IDENTIFICATION OF OPPORTUNITIES FOR CONSOLIDATION.—The Administrator shall review and identify interagency opportunities for the consolidation of motor vehicles, related equipment, and facilities, and of functions relating to the administration and management of such vehicles, equipment, and facilities, in order to reduce the size and cost of the Federal Government's motor vehicle fleet.

(b) REPORT AND ACTION ON FINDINGS.—Within one year after the date of enactment of this Act, the Administrator shall—

(1) submit a report to the Congress specifying the findings and recommendations of the Administrator from the review conducted under subsection (a); and

(2) take such action as the Administrator considers appropriate based on such findings and recommendations and in ac-

cordance with section 211 of the Federal Property and Administrative Services Act.

SEC. 15307. REDUCTION OF STORAGE AND DISPOSAL COSTS.

The Administrator shall take such actions as may be necessary to reduce motor vehicle storage and disposal costs and to improve the rate of return on motor vehicle sales through a program of vehicle reconditioning prior to sale.

SEC. 15308. SAVINGS.

(a) ACTIONS BY PRESIDENT REQUIRED.—The President shall establish, for each executive agency, including the Department of Defense, goals to reduce outlays for the operation, maintenance, leasing, acquisition, and disposal of motor vehicles in order to reduce, by fiscal year 1988, the total amount of outlays by all executive agencies for such operation, maintenance, leasing, acquisition, and disposal to an amount which is $150,000,000 less than the amount for such operation, maintenance, leasing, acquisition, and disposal requested by the President in the budget submitted under section 1105 of title 31, United States Code, for fiscal year 1986.

(b) MONITORING OF COMPLIANCE AND COMPLIANCE REPORT.—The Director shall monitor compliance by executive agencies with the goals established by the President under subsection (a) and shall include, in each summary and analysis required under section 15304, a statement specifying the reductions in expenditures by executive agencies, including the Department of Defense, achieved under such goals.

SEC. 15309. COMPLIANCE.

(a) ADMINISTRATOR OF GENERAL SERVICES.—The Administrator shall comply with and be subject to the provisions of this part with regard to all motor vehicles that are used within the General Services Administration for official purposes.

(b) MANAGERS OF OTHER MOTOR POOLS.—The provisions of this part with respect to motor vehicles from the Interagency Fleet Management System shall be complied with by the executive agencies to which such motor vehicles are assigned.

SEC. 15310. APPLICABILITY.

(a) PRIORITY IN REDUCING HEADQUARTERS USE.—The heads of executive agencies shall give first priority to meeting the goals established by the President under section 15308(a) by reducing the costs of administrative motor vehicles used at the headquarters and regional headquarters of executive agencies, rather than by reducing the costs of motor vehicles used by line agency personnel working in agency field operations or activities.

(b) REGULATIONS, STANDARDS, AND DEFINITIONS.—The President shall require the Administrator, in cooperation with the Director, to promulgate appropriate regulations, standards, and definitions to assure that executive agencies meet the goals established under section 15308(a) in the manner prescribed by subsection (a).

SEC. 15311. COOPERATION.

The Director and the Administrator shall closely cooperate in the implementation of the provisions of this part.

SEC. 15312. REPORTS.

The Comptroller General shall evaluate the extent to which the Director, the Administrator, and executive agencies have complied with this part. By January 31, 1988, the Comptroller General shall submit a report to the Congress describing the results of such evaluation.

SEC. 15313. DEFINITIONS.

For purposes of this title—

(1) the term "executive agency" means an Executive agency (as such term is defined in section 105 of title 5, United States Code), which operates at least three hundred motor vehicles, except that such term does not include the Tennessee Valley Authority;

(2) the term "Director" means the Director of the Office of Management and Budget;

(3) the term "Administrator" means the Administrator of General Services;

(4) the term "Comptroller General" means the Comptroller General of the United States; and

(5) the term "motor vehicle" means any vehicle self-propelled or drawn by mechanical power, except that such term does not include any vehicle designed or used for military field training, combat, or tactical purposes, or any other special purpose vehicle exempted from the requirements of this part by the Administrator.

TITLE XVI—HIGHER EDUCATION PROGRAMS

SEC. 16001. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This title may be cited as the "Student Financial Assistance Amendments of 1985".

(b) REFERENCE.—References in this title to "the Act" are to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

Subtitle A—Savings in Student Loan Program Operations

SEC. 16011. RECOVERY OF OUTSTANDING ADVANCES TO GUARANTY AGENCIES.

Section 422 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) Notwithstanding any other provision of this section, advances made by the Secretary under this section shall be repaid in accordance with this paragraph and shall be deposited in the fund established by section 431. The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $75,000,000 during fiscal year 1988.

"(2) In determining the amount of advances which shall be repaid by a State or nonprofit private institution or organization under paragraph (1), the Secretary—

"(A) shall consider the solvency and maturity, as determined by the Comptroller General, of the reserve and insurance funds of the State or nonprofit private institution or organization assisted by such advances;

"(B) shall not seek repayment of such advances from any State described in subsection (c)(5)(B) during any year of its eligibility under such subsection; and

"(C) shall not seek repayment of such advances from any State if such repayment encumbers the reserve fund requirement mandated by the statutes of such State.".

SEC. 16012. DISBURSEMENT OF STUDENT LOANS TO INSTITUTIONS REQUIRED.

(a) FISL LOANS REQUIREMENT.—Section 427(a)(2) of the Act is amended—

(1) by striking out clause (ii) of subparagraph (B) and by redesignating clauses (iii) and (iv) of subparagraph (B) as clauses (ii) and (iii), respectively;

(2) by striking out "or the fifteen-year period" in the matter following clause (viii) of subparagraph (C); and

(3) by amending subparagraph (I) to read as follows:

"(I) the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subparagraph shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check; and".

(b) GSL LOANS REQUIREMENT.—Section 428(b)(1)(O) of the Act is amended to read as follows:

"(O) provides that funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this subparagraph shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check;".

(c) CONFORMING AMENDMENT.—Section 433A(a) of the Act is amended by striking out "to a borrower" in the first sentence.

SEC. 16013. MULTIPLE DISBURSEMENTS OF STUDENT LOANS REQUIRED.

(a) REPEAL OF INCENTIVES TO LENDERS TO MAKE MULTIPLE DISBURSEMENTS.—Section 428(a) of the Act is amended by striking out paragraph (8).

(b) MULTIPLE DISBURSEMENT REQUIRED IN FISL PROGRAM.—Section 427(a) of the Act is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

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

"(3) in the case of a loan made for any period of enrollment of more than six months, one semester, two quarters, or 600 clock hours and for an amount of $1,000 or more, the proceeds of the loan will be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second installment being not less than one-third of such period.

For purposes of paragraph (3), all loans issued for the same period of enrollment shall be considered as a single loan.".

(c) MULTIPLE DISBURSEMENTS REQUIRED IN GSL PROGRAM.—Section 428(b)(1) of such Act is amended—

(1) by redesignating subparagraph (P) as subparagraph (Q); and

(2) by inserting after subparagraph (O) the following new subparagraph:

"(P) provides that the proceeds of any loan made for any period of enrollment of more than six months, one semester, two quarters, or 600 clock hours and for an amount of $1,000 or more—

"(i) will be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second installment being not less than one-third of such period, or

"(ii) will be disbursed in such installments pursuant to the escrow provisions of subsection (i) of this section,

but all loans issued for the same period of enrollment shall be considered as a single loan for purposes of this subparagraph; and".

(d) ORIGINATION FEE TO BE DEDUCTED PROPORTIONATELY FROM EACH INSTALLMENT.—Section 438(c)(2) of the Act is amended by striking out "which may be deducted from the proceeds of the loan prior to payment to the borrower" and inserting in lieu thereof "which shall be deducted proportionately from each installment payment of the proceeds of the loan to the borrower".

(e) CONFORMING AMENDMENTS.—(1) Section 425(a)(1) of the Act is amended—

(A) by inserting "and" at the end of subparagraph (A), by striking out subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B); and

(B) by striking out the last sentence.

(2) Section 428(a)(3)(A) of the Act is amended—

(A) by striking out "Except as provided in paragraph (8) and subject" and inserting in lieu thereof "Subject"; and

(B) by striking out "but, except as provided in paragraph (8) of this subsection, such portion" and inserting in lieu thereof "but such portion".

(3) Section 428(b)(1)(A) of such Act is amended—

(A) by inserting "and" at the end of division (i);

(B) by striking out division (ii) and by redesignating division (iii) as division (ii); and

(C) in the matter following such division, by striking out "annual limit," and all that follows and inserting in lieu thereof "annual limit;".

SEC. 16014. PRECLAIM COLLECTION ACTIVITIES.

(a) DELAY REQUIRED BEFORE SUBMISSION OF CLAIMS BY GUARANTY AGENCIES.—(1) Section 428(c)(1)(A) of the Act is amended by adding at the end thereof the following new sentence: "In no case shall a State or nonprofit private institution or organization with which the Secretary has an agreement pursuant to subsection (b) file a claim for such reimbursement with respect to such losses prior to

270 days after the loan becomes delinquent with respect to any loan installment.".

(2) Section 430(e)(2) of the Act is amended—

(A) by striking out "one hundred and twenty days" and inserting in lieu thereof "180 days"; and

(B) by striking out "one hundred and eighty days" and inserting in lieu thereof "240 days".

(b) SUPPLEMENTAL PRECLAIMS ASSISTANCE.—(1) Section 428(c)(6)(A) of the Act is amended—

(A) by inserting after "assistance for default prevention," the following: "the administrative costs of supplemental preclaim assistance for default prevention,"; and

(B) by striking out "as such terms are defined in subparagraph (B)" and inserting in lieu thereof "as such terms are defined in subparagraph (B) or (C)".

(2) Section 428(c)(6) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C)(i) For purposes of this paragraph, 'administrative costs of supplemental preclaim assistance for default prevention' means (subject to divisions (ii) through (iv)) any administrative costs—

"(I) incurred by a guaranty agency in connection with a loan on which the guarantor has exercised preclaims assistance required or permitted under sections 428(c)(2)(A) and 428(f)(2), and which has been in delinquent status for at least 120 days; and

"(II) which are directly related to providing collection assistance to the lender on a delinquent loan, prior to a claim being filed by the guaranty agency,

including the attributable compensation of appropriate personnel (and in the case of personnel who perform several functions, only the portion of compensation attributable to the collection assistance), fees paid to locate a missing borrower, postage, equipment, supplies, telephone, and similar charges, but does not include overhead costs.

"(ii) The administrative costs for which reimbursement is authorized under this subparagraph must be clearly supplemental to the preclaim assistance for default prevention which the guaranty agency is required to provide pursuant to section 428(c)(2)(A) and section 428(f)(2) of this Act.

"(iii) The services associated with carrying out this subparagraph may be provided by the guaranty agency directly or under contract, except that such services may not be carried out by an organization or entity (other than the guaranty agency)—

"(I) that is the holder or servicer of the loan or an organization or entity that owns or controls the holder or servicer of the loan; or

"(II) that is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the holder or servicer of the loan.

"(iv) The costs associated with carrying out this subparagraph may not exceed 2 percent of the outstanding principal balance of each delinquent loan subject to the supplemental preclaim assistance authorized by this subparagraph or $100, whichever is less.".

(3) The amendments made by this subsection shall be effective in accordance with section 16041(a) of this title without regard to whether such amendments are reflected in the regulations prescribed by the Secretary of Education.

SEC. 16015. PROMPT PAYMENT OF SUPPLEMENTAL GUARANTY ADMINISTRATIVE COST AGREEMENT.

(a) PURPOSE.—It is the purpose of the amendments made by this section to assure the prompt payment of the amount due under the supplemental guaranty administrative cost agreement made under section 428(f)(2) in order to encourage improved collection of student loans and preclaims assistance to prevent default on student loans.

(b) PROMPT PAYMENT REQUIRED.—(1) Section 428(f)(1) of the Act is amended—

(A) by striking out "is authorized to" and inserting in lieu thereof "shall";

(B) by striking out "shall not exceed" and inserting in lieu thereof "shall be equal to"; and

(C) by striking out the third and fourth sentences of such section.

(2) Section 428(f)(2) of the Act is amended—

(A) by striking out "is authorized to" and inserting in lieu thereof "shall";

(B) by striking out "shall not exceed" and inserting in lieu thereof "shall be equal to"; and

(C) by striking out the third and fourth sentences of such section.

SEC. 16016. GUARANTY AGENCY; LENDER OF LAST RESORT.

Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(j) In each State, the guaranty agency or an eligible lender in the State described in section 435(d)(1)(D) of this Act shall make loans directly, or through an agreement with an eligible lender or lenders, to students who are eligible to have interest benefits paid on their behalf (under subsection (a) of this section) but who are otherwise unable to obtain loans under this part. Loans made under this subsection shall neither exceed the amount of the need of the borrower, as determined under subsection (a)(2)(B), nor be less than $200.".

SEC. 16017. STUDENT LOAN CONSOLIDATION.

(a) LOAN CONSOLIDATION AUTHORIZED.—Part B of title IV of the Act is amended by inserting after section 428B the following new section:

"CONSOLIDATION LOANS

"SEC. 428C. (a)(1) For the purpose of providing loans to eligible borrowers for consolidation of their obligations with respect to student loans made, insured, or guaranteed under this part or made under part E of this title, the Secretary or a guaranty agency shall enter into agreements in accordance with subsection (b) with the following eligible lenders:

"(A) the Student Loan Marketing Association;

"(B) agencies described in subparagraphs (D) and (F) of section 435(g)(1); and

"(C) eligible lenders described in subparagraphs (A), (B), (C), and (E) of such section.

"(2) Except as provided in section 429(e), no contract of insurance under this part shall apply to a consolidation loan unless such loan is made under an agreement pursuant to this section and is covered by a certificate issued in accordance with subsection (b)(2). Loans covered by such a certificate that is issued by a guaranty agency shall be considered to be insured loans for the purposes of reimbursements under section 428(c), but no payment shall be made with respect to such loans under section 428(f) to any such guaranty agency.

"(3) For the purpose of this section, the term 'eligible borrower' means a borrower who—

"(A) has an outstanding indebtedness, at the time of application for a consolidation loan, to one or more lenders or programs under this title of not less than $5,000;

"(B) has not during the previous 4 months carried at an eligible institution at least one-half the normal full-time academic workload;

"(C) if in repayment status, is not delinquent with respect to any required payment on such indebtedness by more than 90 days; and

"(D) is not a parent borrower under section 428B(a)(1).

"(4) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except with respect to loans received under this title after the date of receipt of the consolidation loan. For the purpose of computing the outstanding indebtedness of such an individual, only loans received after such date shall be taken into account.

"(b)(1) Any lender described in clause (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

"(A)(i) that, in the case of lenders described in subsection (a)(1)(C), the lender will make a consolidation loan to any eligible borrower on request of that borrower, if the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, and will make such loans to other eligible borrowers only to the extent permitted by the Secretary in an agreement under subsection (d);

"(ii) that, in the case of lenders described in subsection (a)(1)(B), the lender will make, subject to the availability of funds allocated for such purpose, a consolidation loan to any eligible borrower—

"(I) who is, or was at the time of receiving a loan which is selected for consolidation, a resident of the State of such lender; or

"(II) who received loans under this title while attending an institution of higher education in the State of such lender,

except that the lender may elect to limit further the availability of its loans under this section to those borrowers for whom the lender is the holder of a loan selected for consolidation; or

"(iii) that, in the case of the Student Loan Marketing Association, the lender will make a consolidation loan to any eligible borrower on request of that borrower;

"(B) that each consolidation loan made by the lender will bear interest, and be subject to repayment, in accordance with subsection (c);

"(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the maximum principal amount for all insured loans made to a borrower, in an amount (i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(3)(A)(i), and (ii) which is equal to the sum of the unpaid principal, accrued unpaid interest and late charges of all loans received by the eligible borrower under this title which are selected by the borrower for consolidation;

"(D) that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans;

"(E) that, in the case of any lender, such lender will not make consolidation loans under this part from the proceeds of bonds or other obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, issued subsequent to the enactment date of the Student Financial Assistance Amendments of 1985; and

"(F) such other terms and conditions as the Secretary or guaranty agency (whichever is party to the agreement) may specifically require of the lender to carry out this section.

"(2) The Secretary shall issue a certificate of comprehensive insurance coverage under section 429(b) to a lender which has entered into an agreement with the Secretary under paragraph (1) of this subsection. A guaranty agency may issue a certificate of comprehensive insurance coverage to a lender if the lender has entered into an agreement under paragraph (1) of this subsection. The Secretary shall not issue such a certificate under this paragraph to a lender described in clause (B) or (C) of subsection (a)(1) if the Secretary determines that such lender has reasonable access in its State, for the purpose of obtaining such a certificate, to a guaranty agency. In either case, such certificate shall, at a minimum, provide—

"(A) that all consolidation loans made by such lender in conformity with the requirements of this section will be insured against loss of principal and interest by the issuer of such certificate;

"(B) that a consolidation loan will not be insured unless the lender has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being consolidated (i) that the loan is a legal, valid, and binding obligation of the borrower; (ii) that each such loan was made and serviced in compliance with applicable laws and regulations; and (iii) in the case of loans under this part, that the insurance on such loan is in full force and effect;

"(C) the effective date and expiration date of the certificate;

"(D) the aggregate amount to which the certificate applies;

"(E) that, if the lender prior to the expiration of the certificate no longer proposes to make consolidation loans, the lender

will so notify the issuer of such certificate in order that the certificate may be terminated (without affecting the insurance on any consolidation loan made prior to such termination); and

"(F) the terms upon which the issuer of the certificate may limit, suspend, or terminate the lender's authority to make consolidation loans under the certificate (without affecting the insurance on any consolidation loan made prior to such limitation, suspension, or termination).

"(3) A consolidation loan made pursuant to this section shall be insurable under a certificate issued pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which—

"(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him would not, under applicable law, create a binding obligation, endorsement may be required;

"(B) provides for the payment of interest and the repayment of principal in accordance with subsection (c) of this section and contains notice of the possibility of a revised repayment schedule under paragraph (2) of such subsection;

"(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—

"(i) during which the borrower is pursuing a full-time course of study at an eligible institution, is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary;

"(ii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition;

"(iii) not in excess of 3 years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is so disabled; or

"(iv) which is a single period, not in excess of 12 months, at the request of the borrower, during which the borrower is seeking and unable to find full-time employment; and

that any such period shall not be included in determining the repayment period provided pursuant to subsection (c)(2) of this section;

"(D) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

"(E)(i) contains a notice of the system of disclosure concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations.

"(c)(1) Consolidation loans made under this section shall bear interest at the rate of 10 per centum per annum on the unpaid principal balance of the loan, except that, if the consolidation loan is used for the purpose of discharging liability on a loan made pursuant to section 428B, the consolidation loan shall bear interest at a rate per annum on such unpaid balance which is equal to the highest applicable interest rate under section 427A on any loan which is selected for consolidation by the borrower. For the purposes of payment of special allowances under section 438(b)(2), the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.

"(2) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2)(F) and approved by the issuer of such certificate, the lender of a consolidation loan, with the agreement of the borrower, may establish such repayment terms as will promote the objectives of this section, including the establishment of graduated and income sensitive repayment schedules. In each case a consolidation loan shall be repaid as follows:

"(A) in the case of a consolidation loan the original amount of which is less than $7,500, such loan shall be repaid in not more than 10 years;

"(B) in the case of a consolidation loan the original amount of which equals or exceeds $7,500 but is less than $11,000, such loan shall be repaid in not more than 13 years; or

"(C) in the case of a consolidation loan the original amount of which equals or exceeds $11,000, such loan shall be repaid in not more than 15 years.

"(3) Repayment of a consolidation loan shall commence within 60 days after all holders have, pursuant to subsection (b)(1)(D), discharged the liability of the borrower on the loans selected for consolidation.

"(4) No origination fee or insurance premium shall be charged to the borrower on any consolidation loan, and no insurance premium shall be payable by the lender to the issuer of the certificate of insurance with respect to any such loan.

"(d)(1) If, within 18 months after the effective date of this section, an eligible lender described in subsection (a)(1)(B) for a State has not entered into an agreement with the Secretary or a guaranty agency for purposes of making consolidation loans under this section, the Secretary may, after a hearing and upon a determination of need therefor, enter into an agreement for the purposes of making consolidation loans to eligible borrowers in such State with an eligible lender described in clause (B) or (C) of subsection (a)(1) from another State.

"(2) Notice of the hearing required by paragraph (1) of this subsection shall be sent to the Governor of the affected State and the eligible lenders described in subsection (a)(1)(B) for that State. At any such hearing representatives of such Governor and lenders may present evidence and testimony and examine witnesses, and full consideration shall be given to the views of such Governor and lenders with respect to the interests of the eligible borrowers in that State and with respect to the impact on programs of such lenders of allowing a lender described in clause (B) or (C) of subsection (a)(1)

from another State to make consolidation loans pursuant to an agreement under this subsection in such State.

"(3) An agreement under this subsection may contain such terms and conditions as the Secretary may specifically require of the lender to carry out this section.

"(4) The requirements of paragraphs (1) and (2) of this subsection shall not apply if, in any State, an eligible lender described in subsection (a)(1)(B) from another State is functioning as a secondary market described in subparagraph (D) or (F) of section 435(g)(1) prior to the date of enactment of the Student Financial Assistance Amendments of 1985 and such lender agrees to make consolidation loans to eligible borrowers in such State.

"(e) The authority to make loans under this section expires at the close of September 30, 1991. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b). Loans made under this section shall not be considered to be new loans made to students for purposes of section 424(a).".

(b) CONFORMING AMENDMENTS.—(1) Section 427(a) of the Act is amended by striking out "A loan" and inserting in lieu thereof "Except as provided in section 428C, a loan".

(2) Section 435(g)(1) of the Act is amended—

(A) by striking out "section 439 (o) and (q)" in subparagraph (G) and inserting in lieu thereof "sections 428C and 439(q)"; and

(B) by striking out "section 428(j)" in subparagraph (H) and inserting in lieu thereof "sections 428(h) and 428C".

(3) Section 438 of the Act is amended—

(A) in subsection (b)(5)(A)(ii), by inserting ", 428C," after "428B"; and

(B) in subsection (c)(2), by striking out "section 428B and section 439(o)" and inserting in lieu thereof "sections 428B and 428C".

(4) Section 439(d)(1)(C) of the Act is amended by striking out "428(A), and except with respect to loans under section 439(o)," and inserting in lieu thereof "428A, and except with respect to loans under section 428C,".

(c) SPECIAL ALLOWANCE.—(1) Section 438(b)(2)(A) of the Act is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(2) The first sentence of section 438(b)(2)(B)(i) of the Act is amended—

(A) by inserting "appropriate" before "quarterly rate" the second time it appears; and

(B) by inserting "or subparagraph (C)" before the period.

(3) Section 438(b)(2) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) In the case of loans made in accordance with section 428C, the applicable per centum to be added under clause (iii) of subparagraph (A) shall be 3 per centum.".

(d) COST EVALUATION REPORT.—The Secretary of Education shall evaluate the cost, efficiency, and impact of the consolidation loan program established by the amendments made by this section and

shall report to the Congress not later than June 30, 1988, on the findings and recommendations required by this subsection.

SEC. 16018. EXTENSION OF PROGRAM.

(a) EXTENSION OF AUTHORITY.—Part B of title IV of the Act is amended—

(1) in section 424(a)—

(A) by striking out "1986" and inserting in lieu thereof "1988";

(B) by striking out "1990" and inserting in lieu thereof "1992";

(2) in section 428(a)(5)—

(A) by striking out "1986" and inserting in lieu thereof "1988";

(B) by striking out "1990" and inserting in lieu thereof "1992"; and

(3) in section 439(l), by striking out "1988" and inserting in lieu thereof "1990".

(b) EXTENSION OF FAMILY CONTRIBUTION SCHEDULES.—Section 9 of the Student Financial Assistance Technical Amendments Act of 1982 is amended—

(1) in subsection (a), by striking out "and from July 1, 1986, through June 30, 1987," and inserting in lieu thereof "from July 1, 1986, through June 30, 1987, from July 1, 1987, through June 30, 1988, from July 1, 1988, through June 30, 1989, and from July 1, 1989, through June 30, 1990,"; and

(2) in subsection (c)—

(A) by striking out "and" at the end of paragraph (3);

(B) by striking out the comma at the end of paragraph (4) and inserting in lieu thereof a semicolon; and

(C) by inserting after such paragraph the following new paragraphs:

"(5) April 1, 1987, for the period of instruction from July 1, 1987, through June 30, 1988;

"(6) April 1, 1988, for the period of instruction from July 1, 1988, through June 30, 1989; and

"(7) April 1, 1989, for the period of instruction from July 1, 1989, through June 30, 1990,".

SEC. 16019. SAVINGS FROM OPERATIONS OF THE STUDENT LOAN MARKETING ASSOCIATION.

(a) GENERAL RULE.—In order to contribute to carrying out the directions in the first concurrent resolution on the budget for the fiscal year 1986 (S. Con. Res. 32, 99th Congress, agreed to August 1, 1985) designed to reduce the Federal budget deficit, the Student Loan Marketing Association shall, during the fiscal year 1986, reduce the level of obligations owed to the Federal Financing Bank by $30,000,000 which, but for this section, will be paid to the Federal Financing Bank after October 1, 1986.

(b) SPECIAL RULE.—The amount described in subsection (a) may not be credited by the Student Loan Marketing Association to reduce the obligation to repay the Federal Financing Bank amounts which the Student Loan Marketing Association owes to the Federal Financing Bank in each of the fiscal years 1987 and 1988.

(c) SAVINGS PROVISION.—Nothing in this section shall be construed to authorize or require the Student Loan Marketing Association or the Federal Financing Bank to renegotiate the contract or other agreement under which the Student Loan Marketing Association agreed to pay amounts made available by the Federal Financing Bank to carry out section 439 of the Higher Education Act of 1965.

SEC. 16020. DEFINITION.

Section 435 of the Act is amended by adding at the end thereof the following new subsection:

"(k) The term 'guaranty agency' means a State or nonprofit private institution or organization with which the Secretary has an agreement pursuant to section 428(b).".

Subtitle B—Savings From Improved Student Loan Collection

SEC. 16021. AGREEMENT FOR AUDITS.

Section 428(b)(2) of the Act is amended—

(1) by striking out "and" at the end of subparagraph (B);

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and"; and

(3) by inserting after such subparagraph the following:

"(D) provide for—

"(i) conducting, except as provided in clause (ii), financial and compliance audits of the guaranty agency at least once every two years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

"(ii) with regard to a guaranty program of a State which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period of time covered by such audit.".

SEC. 16022. RECOVERY COSTS.

Section 430(b) of the Act is amended—

(1) by striking out in paragraph (1) "(including reasonable administrative costs)" and inserting in lieu thereof the following: "(including reasonable administrative and collection costs, to the extent set forth in regulations issued by the Secretary)";

(2) by striking out paragraph (2); and

(3) by striking out "(1)".

SEC. 16023. CREDIT BUREAU REPORTS.

Part B of title IV of the Act is amended by adding immediately after section 430 the following new section:

"REPORTS TO CREDIT BUREAUS AND INSTITUTIONS OF HIGHER EDUCATION

"SEC. 430A. (a) For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part or covered by a guaranty agreement pursuant to section 428, the

Secretary, and each guaranty agency, eligible lender, and subsequent holder shall enter into agreements with credit bureau organizations to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such organizations in complying with the Fair Credit Reporting Act, such agreements may provide for timely response to the Secretary (concerning loans covered by Federal loan insurance) or by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement) to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subsection (c), such agreements shall require the the Secretary or guaranty agency, eligible lender, or subsequent holder to disclose to such organizations with respect to any loan dispersed to a student—

"(1) the date of disbursement and the amount of the loan;

"(2) the date of default and information concerning collection of the loan, including information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 430(a) or the guaranty agency has made a payment to the previous holder of the loan; and

"(3) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 437.

"(b) Such agreements may also provide for the disclosure by such organizations to the Secretary, a guaranty agency, eligible lender, or subsequent holder upon receipt of a notice under subsection (a)(2) that such a loan is in default, or information which may assist the Secretary, guaranty agency, eligible lender, or subsequent holder in collecting the loan.

"(c) Agreements entered into pursuant to this section shall contain such provisions as may be necessary to ensure that—

"(1) no information is disclosed by the Secretary, guaranty agency, eligible lender, or subsequent holder unless its accuracy and completeness have been verified and the Secretary, guaranty agency, eligible lender, or subsequent holder has determined that disclosure would carry out the purpose of this section;

"(2) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Secretary, guaranty agency, eligible lender, or subsequent holder with respect to such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 168i);

"(3) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning such information; and

"(4) with regard to notices of default under subsection (a)(2) of this section, except for disclosures made to obtain the borrower's location, the Secretary, guaranty agency, eligible lender, or subsequent holder (A) shall not disclose any such information until the Secretary, guaranty agency, eligible lender, or subsequent holder has notified the borrower that such information

will be disclosed to credit bureau organizations unless the borrower enters into repayment of the loan, but (B) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(d) A guaranty agency, eligible lender, subsequent holder, or credit bureau organization which discloses or receives information under this section shall not be considered a Government contractor within the meaning of section 552a of title 5 of the United States Code (the Privacy Act of 1974).

"(e) The Secretary and each guaranty agency, eligible lender, and subsequent holder is authorized to disclose information described in subsections (a) and (b) concerning student borrowers to the eligible institutions such borrowers attend or previously attended.

"(f) Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from the Secretary, or a guaranty agency, eligible lender, or subsequent holder regarding the status of a borrower's account on a loan insured or guaranteed under this part until the later of—

"(1) seven years from the date on which the agency paid a claim to the holder on insurance or the guaranty, or

"(2) seven years from the date the Secretary, guaranty agency, eligible lender, or subsequent holder first reported the account to a consumer reporting agency.".

SEC. 16024. CIVIL PENALTIES.

Section 432 of the Act is further amended by adding at the end thereof the following new subsection:

"(f)(1) Upon determination, after reasonable notice and opportunity for a hearing on the record, that a lender or a guaranty agency—

"(A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or

"(B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed $15,000 for each violation, failure, or misrepresentation.

"(2) No civil penalty may be imposed under paragraph (1) of this subsection unless it is determined that—

"(A) the violation, failure or substantial misrepresentation referred to in that paragraph resulted from—

"(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted to avoid the violation, failure, or substantial representation;

"(ii) gross negligence; or

"(iii) willful actions on the part of the lender or guaranty agency; and

"(B) the violation, failure, or substantial misrepresentation is material.

"(3) A lender or guaranty agency has no liability under paragraph (1) of this subsection if, prior to the institution of an action under that paragraph, the lender or guaranty agency cures or corrects the violation or failure or notifies the person who received the substantial misrepresentation of the actual nature of the financial charges involved.

"(4) For the purposes of paragraph (1) of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both, and the Secretary may only impose a single civil penalty for each such violation, failure, or substantial misrepresentation.

"(5) If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under paragraph (1) of this subsection, but the assignee shall not be liable for any such civil money penalty.

"(6) Until a matter is referred to the Attorney General, any civil penalty under paragraph (1) of this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or substantial misrepresentation; the frequency and persistence of the violation, failure, or substantial misrepresentation; and the amount of any losses resulting from the violation, failure, or substantial misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged (unless the lender or agency has in the case of a final agency determination commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding).".

SEC. 16025. ASSIGNMENT AND REFERRAL OF NDSL LOANS FOR COLLECTION.

Section 463(a)(5) of the Act is amended to read as follows:

"(5) provide that where a note or written agreement evidencing a loan has been in default despite due diligence on the part of the institution in attempting collection thereon—

"(A) if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may—

"(i) require the institution to assign such note or agreement to the Secretary, without recompense; and

"(ii) apportion any sums collected on such a loan (less an amount not to exceed 30 per centum of any sums collected to cover the Secretary's collection costs) among other institutions in accordance with section 462; or

"(B) if the institution is not one described in clause (A), the Secretary may—

"(i) allow such institution to transfer its interest in such loan to the Secretary, for collection, and the Secretary may use any collections thereon (less an amount not to exceed 30 per centum of any sums collected to cover the Secretary's collection costs) to make allocations to institutions of additional capital contributions in accordance with section 462; or

"(ii) allow such institution to refer such note or agreement to the Secretary, without recompense, except that any sums collected on such a loan (less an amount not to exceed 30 per centum of any sums collected to cover the Secretary's collection costs) shall be repaid to such institution no later than 180 days after collection by the Secretary and treated as an additional capital contribution;".

SEC. 16026. REPORTING BY CONSUMER REPORTING AGENCY ON NDSL LOANS.

Section 463(c) of the Act is amended by adding at the end the following new paragraph:

"(3) Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from the Secretary regarding the status of a borrower's account on a loan made under this part until the later of—

"(A) seven years from the date on which the Secretary accepted an assignment or referral of a loan, or

"(B) seven years from the date the Secretary first reported the account to a consumer reporting agency, if that account had not been previously reported by any other holder of the note.".

SEC. 16027. DEFAULT PENALTY ON NDSL LOANS.

Section 463A(a)(7) of the Act is amended by inserting immediately before the semicolon at the end thereof the following: "and a description of any penalty imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or institutions to collect on a loan".

SEC. 16028. NDSL LOAN AGREEMENTS.

(a) CHARGES FOR LATE PAYMENTS.—Section 464(c)(1)(H) of the Act is amended to read as follows:

"(H) pursuant to regulations of the Secretary, shall provide for an assessment of a charge with respect to the loan for failure of the borrower to pay all or part of an installment when due, which shall include the expenses reasonably incurred in attempting collection of the loan, to the extent permitted by the Secretary, except that no charge imposed under this clause shall exceed 20 per centum of the amount of the monthly payment of the borrower; and".

(b) CONFORMING AMENDMENT.—Section 464(c)(4) of the Act is amended to read as follows:

"(4) The institution may elect—

"(A) to add the amount of any charge imposed under paragraph (1)(H) to the principal amount of the loan as of the first day after the day on which the installment was due and to notify the borrower of the assessment of the charge; or

"(B) to make the amount of the charge payable to the institution not later than the due date of the next installment.".

SEC. 16029. REFERRAL OF NDSL LOANS FOR COLLECTION.

Section 467 of the Act is amended to read as follows:

"COLLECTION OF DEFAULTED LOANS

"SEC. 467. (a) With respect to any loan—

"(1) which was made under this part, and

"(2) which is referred, transferred, or assigned to the Secretary by an institution with an agreement under section 463(a),

the Secretary is authorized to attempt to collect such loan by any means authorized by law for collecting claims of the United States (including referral to the Attorney General for litigation) and under such terms and conditions as the Secretary may prescribe, including reimbursement for expenses reasonably incurred in attempting such collection.

"(b) The Secretary shall continue to attempt to collect any loan referred, transferred, or assigned under paragraph (5)(A), (5)(B)(i), or (6) of section 463(a) until all appropriate collection efforts, as determined by the Secretary, have been expended.".

Subtitle C—Savings Related to General Provisions

SEC. 16031. EXCLUSION OF LIQUIDATION PROCEEDS FROM FAMILY CONTRIBUTION COMPUTATIONS.

Section 482 of the Act is amended by adding at the end thereof the following new subsection:

"(f) The Secretary shall, within 30 days after the date of enactment of this subsection, promulgate special regulations to permit, in the computation of family contributions for the programs under subpart 1 of part A and part B of this title for any academic year beginning on or after July 1, 1985, the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, or bankruptcy.".

SEC. 16032. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR STUDENT LOANS.

(a) STUDENT IDENTIFICATION.—Section 484(a) of the Act is amended—

(1) by striking out the word "such" each place it appears in paragraph (4) and inserting in lieu thereof "any"; and

(2) by striking out "(which need not be notarized)" in paragraph (5) and inserting in lieu thereof "(which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number)".

(b) ELIGIBILITY DETERMINATIONS.—Section 484 of the Act is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) In order to be eligible to receive any loan under this title (other than a loan under section 428B or 428C) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title, shall—

"(1) have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or

"(2) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period; and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.".

(c) CONFORMING AMENDMENT.—Section 428(a)(2)(C)(i) of the Act is amended by striking out "subparts 1 and 2 of part A," and inserting in lieu thereof "subpart 1 of part A (as determined in accordance with section 484(b)), subpart 2 of part A,".

SEC. 16033. STATUTE OF LIMITATIONS.

Part F of title IV of the Act is amended by adding immediately after section 484 the following new section:

"STATUTE OF LIMITATIONS

"SEC. 484A. (a) Notwithstanding any provision of State law that would set an earlier deadline for filing suit—

"(1) an institution which receives funds under this title may file suit for collection of a refund due from a student on a grant made or work assistance awarded under this title during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date the refund first became due;

"(2) a guaranty agency which has an agreement with the Secretary under section 428(c) may file suit for collection of the amount due from a borrower on a loan made under part B of this title during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower; and

"(3) an institution which has an agreement with the Secretary pursuant to section 463(a) may file suit for collection of the amount due from a borrower on a loan made under part E of this title during a period of time extending at least until a date six years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date of the default of the borrower with respect to that amount; and

"(4) subject to the provisions of section 2416 of title 28 of the United States Code, the Attorney General may file suit—

"(A) for payment of a refund due from a student on a grant made under this title until six years following the date on which the refund first became due;

"(B) for collection of the amount due the Secretary from a borrower pursuant to section 428(c)(2)(D) of this title until six years following the date on which the loan is assigned to the Secretary under part B of this title; and

"(C) for collection of the amount due from a borrower on a loan made under this part until six years following the date on which the loan is assigned, transferred, or referred to the Secretary under part E of this title.

"(b) Notwithstanding any provision of State law to the contrary—

"(1) a borrower who has defaulted on a loan made under this title shall be required to pay, in addition to other charges specified in this title, reasonable collection costs; and

"(2) in collecting any obligation arising from a loan made under part B of this title, a guaranty agency or the Secretary shall not be subject to a defense raised by any borrower based on a claim of infancy.".

SEC. 16034. PROGRAM PARTICIPATION AGREEMENTS.

(a) USE OF INTEREST ON FUNDS RECEIVED.—Section 487(a)(1) of the Act is amended to read as follows:

"(1) The institution will use funds received by it for any program under this title and any interest or other earnings thereon solely for the purposes specified in, and in accordance with the provision of, that program.".

(b) AUDIT AND RECOVERY OF FUNDS.—Section 487(b)(1) of the Act is amended by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A)(i) except as provided in clause (ii), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, at least once every two years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organization, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

"(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit;".

Subtitle D—Effective Dates

SEC. 16041. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle shall take effect on the date of enactment of this Act.

(b) PROSPECTIVE PROVISIONS; LOANS.—(1) The amendments made by sections 16012, 16027, and 16028 shall apply to loans to cover the

cost of attendance for any period of enrollment beginning on or after January 1, 1986.

(2) The amendments made by section 16013 shall apply to loans made on or after July 1, 1986.

(c) RETROACTIVE PROVISIONS; LOANS.—(1) The amendment made by section 16015 shall apply to any fiscal year beginning after September 30, 1984.

(2) The amendments made by sections 16021 through 16026, 16029, and 16032(b) shall apply to all loans, including loans made before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

(d) PROSPECTIVE PROVISION; ALL ASSISTANCE.—The amendment made by section 16032(a) shall apply to grants, loans, or work assistance to cover the cost of attendance for any period of enrollment beginning on or after January 1, 1986.

(e) RETROACTIVE PROVISION; GRANTS.—The amendment made by section 16033 shall apply to all grants, including grants awarded before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

(f) RETROACTIVE PROVISIONS; ALL ASSISTANCE.—The amendment made by section 16034 shall apply to all grants, loans, or work assistance, including such assistance awarded before the enactment of this Act, and shall take effect 90 days after the enactment of this Act.

TITLE XVII—GRADUATE MEDICAL EDUCATION COUNCIL AND TECHNICAL AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

SEC. 17001. COUNCIL ON GRADUATE MEDICAL EDUCATION.

Title VII of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART H—GRADUATE MEDICAL EDUCATION

"COUNCIL ON GRADUATE MEDICAL EDUCATION

"SEC. 799. (a) There is established the Council on Graduate Medical Education (hereafter in this section referred to as the 'Council'). The Council shall—

"(1) prior to July 1, 1988, and every three years thereafter, provide advice and make recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to—

"(A) the supply and distribution of physicians in the United States;

"(B) current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties;

"(C) issues relating to foreign medical school graduates;

"(D) appropriate Federal policies with respect to the matters specified in subparagraphs (A), (B), and (C), including policies concerning changes in the financing of undergradu-

ate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs;

"(E) appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathy, and accrediting bodies with respect to the matters specified in subparagraphs (A), (B), and (C), including efforts for changes in undergraduate and graduate medical education programs; and

"(F) deficiencies in, and needs for improvements in, existing data bases concerning the supply and distribution of, and post-graduate training programs for, physicians in the United States and steps that should be taken to eliminate those deficiencies; and

"(2) encourage entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council under paragraph (1)(E).

"(b) The Council shall be composed of—

"(1) the Assistant Secretary for Health or the designee of the Assistant Secretary;

"(2) the Administrator of the Health Care Financing Administration;

"(3) the Chief Medical Director of the Veterans' Administration;

"(4) 6 members appointed by the Secretary to include representatives of practicing primary care physicians, national and specialty physician organizations, foreign medical graduates, and medical student and house staff associations; and

"(5) 4 members appointed by the Secretary to include representatives of schools of medicine and osteopathy and public and private teaching hospitals; and

"(6) 4 members appointed by the Secretary to include representatives of health insurers, business, and labor.

"(c)(1) Members of the Council appointed under paragraphs (4), (5), and (6) of subsection (b) shall be appointed for a term of 4 years, except that the term of office of the members first appointed shall expire, as designated by the Secretary at the time of appointment, 4 at the end of one year, 4 at the end of 2 years, 3 at the end of 3 years, and 3 at the end of 4 years.

"(2) The Secretary shall appoint the first members to the Council under paragraphs (4), (5), and (6) of subsection (b) within 60 days after the date of enactment of this section.

"(d) The Council shall elect one of its members as Chairman of the Council.

"(e) Nine members of the Council shall constitute a quorum, but a lesser number may hold hearings.

"(f) Any vacancy in the Council shall not affect its power to function.

"(g) Each member of the Council who is not otherwise employed by the United States Government shall receive compensation at a rate equal to the daily rate prescribed for GS–18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the Council. A member of the

Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

"(h)(1) In order to carry out the provisions of this section, the Council is authorized to—

"(A) collect such information, hold such hearings, and sit and act at such times and places, either as a whole or by subcommittee, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Council or such subcommittee may consider available; and

"(B) request the cooperation and assistance of Federal departments, agencies, and instrumentalities, and such departments, agencies, and instrumentalities are authorized to provide such cooperation and assistance.

"(2) The Council shall coordinate activities carried out under this section with the activities of the National Advisory Council on Health Professions Education under section 702 and with the activities of the Secretary under section 708. The Secretary shall, in cooperation with the Council and pursuant to the recommendations of the Council, take such steps as are practicable to eliminate deficiencies in the data base established under section 708 and shall make available in its reports such comprehensive data sets as are developed pursuant to this section.

"(i) In the reports required under subsection (a), the Council shall specify its activities during the period for which the report is made.

"(j) The Council shall terminate on September 30, 1996."

SEC. 17002. SPECIAL PAY PROVISIONS.

(a) SERVICE IN THE INDIAN HEALTH SERVICE.—Section 208(a)(2)(B) of the Public Health Service Act (42 U.S.C. 210(a)(2)(B)) is amended by inserting "(other than an officer serving in the Indian Health Service)" after "Corps".

(2) The amendment made by paragraph (1) shall take effect as of October 7, 1985.

(b) EMPLOYEES AT THE GILLIS W. LONG HANSEN'S DISEASE CENTER.—Section 208(e) of the Public Health Service Act (42 U.S.C. 210(e)) is amended to read as follows:

"(e) Any civilian employee of the Service who is employed at the Gillis W. Long Hansen's Disease Center on the date of the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 shall be entitled to receive, in addition to any compensation to which the employee may otherwise be entitled and for so long as the employee remains employed at the Center, an amount equal to one-fourth of such compensation.".

SEC. 17003. USE OF FISCAL AGENTS BY PUBLIC HEALTH SERVICE.

Title XXI of the Public Health Service Act is amended by adding at the end the following new section:

"USE OF FISCAL AGENTS

"SEC. 2116. (a) The Secretary may enter into contracts with fiscal agents—

"(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

"(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 319 or 322,

"(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

"(3) to make such audits of records as may be necessary to assure that these payments are proper, and

"(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

"(b)(1) Contracts under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provision of law requiring competition.

"(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

"(c) A contract under subsection (a) may provide for advances of funds to enable entities to make payments under the contract.

"(d) Subsections (d) and (e) of section 1842 of the Social Security Act shall apply to contracts with entities under subsection (a) in the same manner as they apply to contracts with carriers under that section.

"(e) In this section, the term 'fiscal agent' means a carrier described in section 1842(f)(1) of the Social Security Act and includes, with respect to contracts under subsection (a)(1)(A), an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93-638).".

SEC. 17004. TECHNICAL REVISIONS RELATING TO EMERGENCY MEDICAL SERVICES FOR CHILDREN.

Section 1910 of the Public Health Service Act (42 U.S.C. 300w-9) is amended—

(1) by striking out "grant to not more than four States in any fiscal year" in the first sentence of subsection (a) and inserting in lieu thereof "not more than four grants in any fiscal year to States or accredited schools of medicine in States";

(2) by adding at the end of subsection (a) the following new sentence: "Only one grant under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.";

(3) by striking out "other States" in subsection (b) and inserting in lieu thereof "States in which grants under such subsection have not been made";

(4) by redesignating subsection (c) as subsection (d); and

(5) by inserting after subsection (b) the following new subsection:

"(c) For purposes of this section—

"(1) the term 'school of medicine' has the same meaning as in section 701(4); and

"(2) the term 'accredited' has the same meaning as in section 701(5).".

TITLE XVIII—SMALL BUSINESS PROGRAMS

SEC. 18001. SMALL BUSINESS ADMINISTRATION PROGRAM AND AUTHORIZATION LEVELS.

Section 20 of the Small Business Act is amended by adding the following new subsections:

"(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 $60,000,000 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), $25,000,000 in loans as provided in paragraph (11), and $20,000,000 in loans to disabled veterans and Vietnam era veterans 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 $2,971,000,000 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), $400,000,000 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 $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 $1,050,000,000; and

"(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 $75,000,000.

"(v) There are authorized to be appropriated to the Administration for fiscal year 1986, $515,000,000. Of such sum, $295,000,000 shall be available for the purpose of carrying out the programs referred to in paragraphs (1) through (3) of subsection (u); $12,000,000 shall be available for the purposes of carrying out the provisions of section 412 of the Small Business Investment Act of 1958; and $208,000,000 shall be available for salaries and expenses of the Administration. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out 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.

"(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 $70,000,000 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), $35,000,000 in loans as provided in paragraph (11), and $20,000,000 in loans to disabled veterans and Vietnam era veterans 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 $3,134,000,000 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), $450,000,000 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 $1,096,000,000; and

"(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 $75,000,000.

"(x) There are authorized to be appropriated to the Administration for fiscal year 1987, $605,000,000. Of such sum, $381,000,000 shall be available to carry out the programs referred to in paragraphs (1) through (3) of subsection (w); $14,000,000 shall be available to carry 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. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out 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.

"(y) The following program levels are authorized for fiscal year 1988—

"(1) for the programs authorized by section 7(a) of this Act, the Administration is authorized to make $75,000,000 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), $40,000,000 in loans as provided in paragraph (11), and $20,000,000 in loans to disabled veterans and Vietnam era veterans 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 $3,245,000,000 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), $65,000,000 in loans as provided in paragraph (11), $16,000,000 in loans as provided in paragraph (12), $450,000,000 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 $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 $1,142,000,000; and

"(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 $75,000,000.

"(z) There are authorized to be appropriated to the Administration for fiscal year 1988, $634,000,000. Of such sum, $409,000,000 shall be available to carry out the programs referred to in paragraphs (1) through (3) of subsection (y); $13,000,000 shall be available to carry out the provisions of section 412 of the Small Business Investment Act of 1958; and $212,000,000 shall be available for salaries and expenses of the Administration. There also 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.".

SEC. 18002. TECHNICAL AND CLERICAL AMENDMENTS.

Section 20 of the Small Business Act is amended—

(1) in subsection (t), as added by section 302 of Public Law 98-270—

(A) by inserting "(1)" after "(t)";

(B) by striking out "each of fiscal years 1985 and 1986," and inserting in lieu thereof "fiscal year 1985"; and

(C) by striking out "for each of such years"; and

(2) in subsection (t), as added by section 3 of Public Law 98-395—

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

(B) by redesignating such subsection (t) as paragraph (2).

SEC. 18003. DETERMINATION OF LABOR SURPLUS AREAS.

(a) IN GENERAL.—Section 15 of the Small Business Act is amended by adding at the end thereof the following new subsection:

"(n) For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the ninetieth day after the date of the enactment of this Act.

SEC. 18004. FEDERAL FINANCING BANK PURCHASE OF GUARANTEED OBLIGATIONS.

(a) IN GENERAL.—Title III of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"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).".

(b) CLERICAL AMENDMENT.—The table of sections for title III is amended by adding at the end thereof the following new item:

"Sec. 320. Guaranteed obligations not eligible for purchase by Federal Financing Bank.".

SEC. 18005. ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES.

(a) IN GENERAL.—Title III of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new section:

"ISSUANCE AND GUARANTEE OF TRUST CERTIFICATES

"SEC. 321. (a) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by small business investment companies and guaranteed by the Administration under this Act: Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

"(b) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of princi-

pal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

"(c) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

"(d) The Administration shall not collect any fee for any guarantee under this section: Provided, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

"(e)(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

"(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

"(f) The Administration shall—

"(1) provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

"(4) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.".

(b) RULES AND REGULATIONS; CONSULTATION.—(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 321(f)(1) of the Small Business Investment Act, and shall contract with an agent

for an initial period of not to exceed two years to carry out the functions provided for in sections 321(f)(2) and 321(f)(3) of such Act.

(2) Notwithstanding any law, rule, or regulation, within 60 days after the date of the enactment of this Act, the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act.

(c) CLERICAL AMENDMENT.—The table of sections for title III of such Act is amended by adding at the end thereof the following new item:

"Sec. 321. Issuance and guarantee of trust certificates.".

SEC. 18006. TERMINATION OF AUTHORITY TO MAKE CERTAIN DISASTER ASSISTANCE LOANS.

(a) IN GENERAL.—The Small Business Act is amended—

(1) in section (7)(b)—

(A) by striking out "The" after "(b)" and inserting in lieu thereof "Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the,";

(B) by striking out the semicolon at the end of paragraph (2) and inserting in lieu thereof a period; and

(C) by striking out paragraphs (3) and (4);

(2) in section 7(c)(4) by striking out the last, undesignated paragraph; and

(3) in section 18(a) by striking out all that follows "Federal Government," through "Consolidated Farm and Rural Development Act".

(b) PIPELINE LOANS OR PREVIOUS DISASTERS.—Notwithstanding the amendments made by this section, sections 18002 and 18016, or any other provision of law, the Small Business Administration shall continue to accept, process, and approve loan applications under paragraphs (1) through (4) of subsection 7(b) of the Small Business Act and shall obligate and disburse loan funds on account of disasters declared before October 1, 1985, even if any such application is filed after the date of the enactment of this Act.

SEC. 18007. GUARANTEE FEE.

Section 7(a) of the Small Business Act is amended by adding at the end thereof the following new sentence:

"(16) The Administration shall collect a guarantee fee equal to two 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.".

SEC. 18008. PILOT PROGRAM INVOLVING SALE OF DEVELOPMENT COMPANY DEBENTURES.

(a) PILOT PROGRAM.—Title V of the Small Business Investment Act of 1958 is amended by adding the following new section:

"SEC. 504. (a) Notwithstanding any other law, rule, or regulation, the Administration shall conduct a pilot program involving the sale to investors, either publicly or by private placement, of debentures

guaranteed pursuant to section 503 of the Small Business Investment Act of 1958 as follows—

"(1) of the program levels otherwise authorized by law for fiscal year 1986, an amount not to exceed $200,000,000; and

"(2) of the program levels otherwise authorized by law for fiscal year 1987, an amount not to exceed $295,000,000.

"(b) Nothing in any provision of law shall be construed to authorize the Federal Financing Bank to acquire—

"(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under section 503 of the Small Business Investment Act of 1958 and which is being sold pursuant to the provisions of the pilot program authorized in this section,

"(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).".

(b) REPORT ON PILOT PROGRAMS.—The Administration shall report to the President and the Congress on the conduct of the pilot program established under subsection (a) not later than 90 days after the date on which the last sale is made pursuant to such subsection in each fiscal year, and unless a report has been made not later than October 1 of 1986 and 1987, the Administration shall make an interim report by such dates.

(c) AUTHORITY FOR ISSUANCE OF TRUST CERTIFICATES.—Such title is further amended by adding at the end thereof the following new section:

"SEC. 505. (a) The Administration is authorized to issue trust certificates representing ownership of all of a fractional part of debentures issued by State or local development companies and guaranteed by the Administration under this Act: Provided, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of guaranteed debentures.

"(b) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this section. Such guarantee shall be limited to the extent of principal and interest on the guaranteed debentures which compose the trust or pool. In the event that a debenture in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid debenture represents in the trust or pool. Interest on prepaid or defaulted debentures shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all debentures constituting the pool.

"(c) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this section.

"(d) The Administration shall not collect any fee for any guarantee under this section: Provided, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (f)(2) of this section.

"(e)(1) In the event the Administration pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

"(2) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the debentures constituting the trust or pool against which the trust certificates are issued.

"(f) The Administration shall—

"(1) provide for a central registration of all trust certificates sold pursuant to this section; such central registration shall include with respect to each sale, identification of each development company; the interest rate paid by the development company; commissions, fees, or discounts paid to brokers and dealers in trust certificates; identification of each purchaser of the trust certificate; the price paid by the purchaser for the trust certificate; the interest rate paid on the trust certificate; the fees of any agent for carrying out the functions described in paragraph (2); and such other information as the Administration deems appropriate;

"(2) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate poolings; such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interests of the Government;

"(3) prior to any sale, require the seller to disclose to a purchaser of a trust certificate issued pursuant to this section, information on the terms, conditions, and yield of such instrument; and

"(4) have the authority to regulate brokers and dealers in trust certificates sold pursuant to this section.".

(d) RULES AND REGULATIONS.—(1) Notwithstanding any law, rule, or regulation, within 60 days after the date of enactment of this act, the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 505(f)(1) of the Small Business Investment Act, and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 505(f)(2) of such Act.

(2) Notwithstanding any law, rule or regulation, within 60 days after the date of enactment of this Act, the Small Business Administration also shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement sections 504 and 505 of the Small Business Investment Act.

SEC. 18009. MISREPRESENTATION AS A SMALL BUSINESS OR MINORITY CONCERN.

Section 16 of the Small Business Act is amended by adding to the end thereof the following new subsections:

"(d) Whoever misrepresents the status of any concern or person as a 'small business concern' or 'small business concern owned and controlled by socially and economically disadvantaged individuals', in order to obtain for oneself or another any—

"(1) prime contract to be awarded pursuant to section 9 or 15;

"(2) subcontract to be awarded pursuant to section 8(a);

"(3) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

"(4) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility,

shall be punished by a fine of not more than $50,000 or by imprisonment for not more than five years, or both.

"(e) Any representation of the status of any concern or person as a 'small business concern' or 'small business concern owned and controlled by socially and economically disadvantaged individuals' in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.".

SEC. 18010. REPORT CONCERNING ALTERNATIVE SOURCES FOR LOAN GUARANTEES.

Not later than June 30, 1986, the Administrator of the Small Business Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives an internal report concerning—

(1) the options available to provide a guarantee on loans under section 7(a) of the Small Business Act from sources outside the Federal Government, together with such recommendations as the Administrator may have with respect to such options, including an evaluation of the feasibility of establishing a corporation owned by the Federal Government to make such guarantees; and

(2) the imposition, on each participating lender in the guaranteed loan program under section 7(a) of the Small Business Act, of an annual fee of between one-quarter of one percent and one percent of the value of the unpaid balance of any loan made under such program, particularly on the revenues that could be expected and whether such revenues could be used for a loss reserve fund or to defray the cost of administration of the program.

SEC. 18011. USER FEES.

(a) REPORT ON USER FEES.—Not later than September 30, 1986, the Small Business Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report on user fees. The report shall specify for each fee which is currently being imposed or which is under consideration—

(1) the type of service provided by the Administration for which the fee is or may be charged;

(2) the amount of fee imposed or being considered;

(3) the formula for setting the fee; and

(4) the statutory or regulatory authority for the fee.

(b) REVIEW OF APPROPRIATENESS OF FEES.—The Administration shall review all other services provided by the Administration for which no fee is currently being imposed and include in the report its findings and recommendations as to—

(1) whether or not a fee should be imposed for each service; and

(2) whether statutory authority is needed to impose the fee.

SEC. 18012. UTILIZATION OF PROGRAM AUTHORITY.

Section 20(a) of the Small Business Act is amended—

(1) by inserting "(1)" after "SEC. 20. (a)"; and

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

"(2) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and 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 purchase debentures and preferred securities and 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, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter into such commitments.".

SEC. 18013. BUSINESS LENDING REFORMS.

Section 7(a)(2) of the Small Business Act is amended—

(1) by striking out "$100,000" both places it appears and inserting in lieu thereof "$155,000";

(2) by striking out "90" in subparagraph (B) and inserting in lieu thereof "85";

(3) by striking out "90" in the proviso and inserting in lieu thereof "85"; and

(4) by inserting before the period the following:

": Provided, further, That the Administration may reduce its participation below the per centums stated in this paragraph if the lender requests the reduction under the preferred lenders program or any successor thereto. As used in this sentence the term 'preferred lenders program' means a program under which, pursuant to a written agreement between the lender and the Administration, the lender has been delegated (1) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (2) authority to service and liquidate such loans".

SEC. 18014. SURETY GUARANTEES.

Section 411 of the Small Business Investment Act of 1958 is amended—

(1) in subsection (a) by striking out "$1,000,000" and inserting in lieu thereof "$1,250,000"; and

(2) in subsection (e)(2) by striking out "$1,000,000" and inserting in lieu thereof "$1,250,000".

SEC. 18015. ELIGIBILITY OF SMALL BUSINESSES OWNED BY INDIAN TRIBES.

(a) CONSIDERATION OF INDIAN TRIBES.—Section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(2)(C)) is amended by inserting "Indian tribes," after "Native Americans,".

(b) CLARIFICATION OF DEFINITION OF "SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN".—Paragraph (4) of section 8(a) of such Act (15 U.S.C. 637(a)(4)) is amended to read as follows:

"(4)(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 an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II).".

(c) DETERMINATION OF ECONOMIC DISADVANTAGE OF AN INDIAN TRIBE.—Paragraph (6) of such Act (15 U.S.C. 637(a)(6)) is amended by adding at the end thereof the following new sentence: "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.".

(d) DEFINITION OF "INDIAN TRIBE".—Section 8(a) of such Act (15 U.S.C. 637(a)) is amended by adding at the end thereof the following new paragraph:

"(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. 18016. SIZE STANDARD FOR AGRICULTURAL ENTERPRISES.

Section 3(a) of the Small Business Act is amended by inserting the following before the period at the end of the first sentence:

: "Provided, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $500,000".

SEC. 18017. ENCOURAGEMENT OF VETERANS BUSINESS RESOURCE COUNCILS.

(a) FINDINGS.—The Congress finds that—

(1) Veterans Business Resource Councils have been established in the following ten States: California, Ohio, Texas, New York, Massachusetts, Indiana, Louisiana, Maryland, Minnesota, and Missouri;

(2) the concept of Veterans Business Resource Councils to establish networks of veterans with business experience assisting fellow veterans seeking to establish small businesses merits serious consideration; and

(3) the majority of our Nation's Vietnam era veterans fall within the thirty-five to forty-five-year-old age range, in which most people decide to enter into small business ownership.

(b) RECOMMENDATIONS.—The Congress urges the Small Business Administration—

(1) to evaluate the effectiveness of the Veterans Business Resource Councils which are currently operating and to recommend improvements in their operations;

(2) to develop guidelines to assist in the establishment of Veterans Business Resource Councils; and

(3) to work with the remaining States and any interested organizations to encourage the establishment of Veterans Business Resource Councils in those States.

TITLE XIX—VETERANS' PROGRAMS

SEC. 19001. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This title may be cited as the "Veterans' Health-Care and Compensation Rate Amendments of 1985".

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SUBTITLE A—HEALTH CARE

SEC. 19011. ELIGIBILITY FOR HEALTH CARE OF VETERANS WITH NON-SERVICE-CONNECTED DISABILITIES.

(a) HOSPITAL CARE AND NURSING HOME CARE.—(1) Subsection (a) of section 610 is amended to read as follows:

"(a)(1) The Administrator shall furnish hospital care, and may furnish nursing home care, which the Administrator determines is needed—

"(A) to any veteran for a service-connected disability;

"(B) to a veteran whose discharge or release from the active military, naval, or air service was for a disability incurred or aggravated in line of duty, for any disability;

"(C) to a veteran who, but for a suspension pursuant to section 351 of this title (or both such a suspension and the receipt

of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement described in such section, for any disability;

"(D) to a veteran who has a service-connected disability rated at 50 percent or more, for any disability;

"(E) to any other veteran who has a service-connected disability, for any disability;

"(F) to a veteran who is a former prisoner of war, for any disability;

"(G) to a veteran exposed to a toxic substance or radiation, as provided in subsection (e) of this section;

"(H) to a veteran of the Spanish-American War, the Mexican border period, or World War I, for any disability; and

"(I) to a veteran for a non-service-connected disability, if the veteran is unable to defray the expenses of necessary care as determined under section 622(a)(1) of this title.

"(2)(A) To the extent that resources and facilities are available, the Administrator may furnish hospital care and nursing home care which the Administrator determines is needed to a veteran for a non-service-connected disability if the veteran has an income level described in section 622(a)(2) of this title.

"(B) In the case of a veteran who is not described in paragraph (1) of this subsection or in subparagraph (A) of this paragraph, the Administrator may furnish hospital care and nursing home care which the Administrator determines is needed to the veteran for a non-service-connected disability—

"(i) to the extent that resources and facilities are otherwise available; and

"(ii) subject to the provisions of subsection (f) of this section.

"(3) In addition to furnishing hospital care and nursing home care described in paragraphs (1) and (2) of this subsection through Veterans' Administration facilities, the Administrator may furnish such hospital care in accordance with section 603 of this title and may furnish such nursing home care as authorized under section 620 of this title.".

(2) Such section is further amended by adding at the end the following new subsections:

"(f)(1) The Administrator may not furnish hospital care or nursing home care under this section to a veteran who is eligible for such care by reason of subsection (a)(2)(B) of this section unless the veteran agrees to pay to the United States the applicable amount determined under paragraph (2) of this subsection.

"(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to the lesser of—

"(A) the cost of furnishing such care, as determined by the Administrator; and

"(B) the amount determined under paragraph (3) of this subsection.

"(3)(A) In the case of hospital care furnished during any 365-day period, the amount referred to in paragraph (2)(B) of this subsection is—

"(i) the amount of the inpatient Medicare deductible, plus

"(ii) one-half of such amount for each 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period.

"(B) In the case of nursing home care furnished during any 365-day period, the amount referred to in paragraph (2)(B) of this subsection is the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during such 365-day period.

"(C)(i) Except as provided in clause (ii) of this subparagraph, in the case of a veteran who is admitted for nursing home care under this section after being furnished, during the preceding 365-day period, hospital care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of hospital care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such nursing home care until—

"(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

"(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

"(ii) In the case of a veteran who is admitted for nursing home care under this section after being furnished, during any 365-day period, hospital care for which the veteran has paid an amount under subparagraph (A)(ii) of this paragraph and who has not been furnished 90 days of hospital care in connection with such payment, the amount of the liability of the veteran under paragraph (2) of this subsection with respect to the number of days of such nursing home care which, when added to the number of days of such hospital care, is 90 or less, is the difference between the inpatient Medicare deductible and the amount paid under such subparagraph until—

"(I) the veteran has been furnished, beginning with the first day of such hospital care furnished in connection with such payment, a total of 90 days of hospital care and nursing home care; or

"(II) the end of the 365-day period applicable to the hospital care for which payment was made,

whichever occurs first.

"(D) In the case of a veteran who is admitted for hospital care under this section after having been furnished, during the preceding 365-day period, nursing home care for which the veteran has paid the amount of the inpatient Medicare deductible under this subsection and who has not been furnished 90 days of nursing home care in connection with such payment, the veteran shall not incur any liability under paragraph (2) of this subsection with respect to such hospital care until—

"(i) the veteran has been furnished, beginning with the first day of such nursing home care furnished in connection with such payment, a total of 90 days of nursing home care and hospital care; or

"(ii) the end of the 365-day period applicable to the nursing home care for which payment was made,

whichever occurs first.

"(E) A veteran may not be required to make a payment under this subsection for hospital care or nursing home care furnished under this section during any 90-day period in which the veteran is furnished medical services under section 612(f) of this title to the extent that such payment would cause the total amount paid by the veteran under this subsection for hospital care and nursing home care furnished during that period and under section 612(f)(4) of this title for medical services furnished during that period to exceed the amount of the inpatient Medicare deductible in effect on the first day of such period.

"(4) Amounts collected or received on behalf of the United States under this subsection shall be deposited in the Treasury as miscellaneous receipts.

"(5) For the purposes of this subsection, the term 'inpatient Medicare deductible' means the amount of the inpatient hospital deductible in effect under section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)) on the first day of the 365-day period applicable under paragraph (3) of this subsection.

"(g) Nothing in this section requires the Administrator to furnish care to a veteran to whom another agency of Federal, State, or local government has a duty under law to provide care in an institution of such government.".

(b) MEDICAL SERVICES FURNISHED ON AN OUTPATIENT OR AMBULATORY BASIS.—(1) Subsection (a) of section 612 is amended—

(A) by striking out the first sentence and inserting in lieu thereof the following:

"(1) Except as provided in subsection (b) of this section, the Administrator may furnish such medical services as the Administrator determines are needed—

"(A) 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 or released from the active military, naval, or air service); and

"(B) for any disability of a veteran who has a service-connected disability rated at 50 percent or more.";

(B) by designating the sentence beginning "The Administrator may also" as paragraph (2) and in such sentence striking out "The Administrator may also furnish to any such veteran" and inserting in lieu thereof "As part of medical services furnished to a veteran under paragraph (1) of this subsection, the Administrator may furnish to the veteran";

(C) by striking out the sentence beginning "In the case of"; and

(D) by adding at the end of such subsection the following:

"(3) In addition to furnishing medical services under this subsection through Veterans' Administration facilities, the Administrator

may furnish such services in accordance with section 603 of this title.".

(2) Subsection (f) of such section is amended—

(A) by striking out "The Administrator, within the limits of Veterans' Administration facilities, may" and inserting in lieu thereof "(1) Except as provided in paragraph (4) of this subsection, the Administrator may";

(B) by redesignating clause (1) as clause (A), redesignating subclauses (A) and (B) of such clause as subclauses (i) and (ii), respectively, and inserting "and" at the end of such clause;

(C) by striking out clause (2);

(D) by redesignating clause (3) as clause (B);

(E) by designating the second sentence as paragraph (2) and in such sentence striking out "The Administrator may also furnish to any such veteran" and inserting in lieu thereof "As part of medical services furnished to a veteran under paragraph (1) of this subsection, the Administrator may furnish to the veteran";

(F) by striking out the third sentence; and

(G) by adding at the end the following:

"(3) In addition to furnishing medical services under this subsection through Veterans' Administration facilities, the Administrator may furnish such services in accordance with section 603 of this title.

"(4)(A) The Administrator may not furnish medical services under this subsection (including home health services under paragraph (2) of this subsection) to a veteran who is eligible for hospital care under this chapter by reason of section 610(a)(2)(B) of this title unless the veteran agrees to pay to the United States the amount determined under subparagraph (B) of this paragraph.

"(B) A veteran who is furnished medical services under this subsection and who is required under subparagraph (A) of this paragraph to agree to pay an amount to the United States in order to be furnished such services shall be liable to the United States, in the case of each visit in which such services are furnished to the veteran, for an amount equal to 20 percent of the estimated average cost (during the calendar year in which the services are furnished) of an outpatient visit in a Veterans' Administration facility. Such estimated average cost shall be determined by the Administrator.

"(C) A veteran may not be required to make a payment under this paragraph for services furnished under this subsection during any 90-day period to the extent that such payment would cause the total amount paid by the veteran under this paragraph for medical services furnished during that period and under section 610(f) of this title for hospital and nursing home care furnished during that period to exceed the amount of the inpatient Medicare deductible in effect on the first day of such 90-day period.

"(D) This subsection does not apply with respect to home health services under this subsection to the extent that such services are for improvements and structural alterations.

"(E) For the purposes of this paragraph, the term 'inpatient Medicare deductible' means the amount of the inpatient hospital deductible in effect under section 1813(b) of the Social Security Act (42 U.S.C. 1395e(b)).

"(F) Amounts collected or received by the Veterans' Administration under this paragraph shall be deposited in the Treasury as miscellaneous receipts.".

(3) Subsection (g) of such section is amended to read as follows:

"(g)(1) The Administrator may furnish medical services which the Administrator determines are needed to a veteran—

"(A) who is a veteran of the Mexican border period or of World War I; or

"(B) who is in receipt of increased pension or additional compensation or allowances based on the need of regular aid and attendance or by reason of being permanently housebound (or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance).

"(2) As part of medical services furnished to a veteran under paragraph (1) of this subsection, the Administrator may furnish to the veteran home health services under the terms and conditions set forth in subsection (f) of this section.

"(3) In addition to furnishing medical services under this subsection through Veterans' Administration facilities, the Administrator may furnish such services in accordance with section 603 of this title.".

(4) Subsection (i) of such section is amended by adding at the end the following:

"(6) To any veteran who is in receipt of pension under section 521 of this title.".

(c) INCOME THRESHOLDS FOR CERTAIN NON-SERVICE-CONNECTED CARE.—(1) Section 622 is amended to read as follows:

"§622. Determination of inability to defray necessary expenses; income thresholds

"(a)(1) For the purposes of section 610(a)(1)(I) of this title, a veteran shall be considered to be unable to defray the expenses of necessary care if—

"(A) the veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(B) the veteran is in receipt of pension under section 521 of this title; or

"(C) the veteran's attributable income is not greater than the Category A threshold.

"(2) For the purposes of section 610(a)(2)(A) of this title, a veteran's income level is described in this paragraph if the veteran's attributable income is not greater than the Category B threshold.

"(b) For the purposes of this section:

"(1) The Category A threshold—

"(A) for the calendar year beginning on January 1, 1986, is—

"(i) $15,000 in the case of a veteran with no dependents; and

"(ii) $18,000 in the case of a veteran with one dependent, plus $1,000 for each additional dependent; and

"(B) for a calendar year beginning after December 31, 1986, is the amount in effect for purposes of this paragraph

for the preceding calendar year as adjusted under subsection (c) of this subsection.

"(2) The Category B threshold—

"(A) for the calendar year beginning on January 1, 1986, is—

"(i) $20,000 in the case of a veteran with no dependents; and

"(ii) $25,000 in the case of a veteran with one dependent, plus $1,000 for each additional dependent; and

"(B) for a calendar year beginning after December 31, 1986, is the amount in effect for purposes of this paragraph for the preceding calendar year as adjusted under subsection (c) of this subsection.

"(c) Effective on January 1 of each year, the amounts in effect under paragraphs (1) and (2) of subsection (b) of this section shall be increased by the percentage by which the maximum rates of pension were increased under section 3112(a) of this title during the preceding calendar year.

"(d)(1) Notwithstanding the attributable income of a veteran, the Administrator may refuse to make a determination described in paragraph (2) of this subsection if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance.

"(2) A determination described in this paragraph is a determination—

"(A) that for the purposes of subsection (a)(1)(C) of this section a veteran's attributable income is not greater than the Category A threshold; or

"(B) that for the purposes of subsection (a)(2) of this section a veteran's attributable income is not greater than the Category B threshold.

"(3) For the purposes of paragraph (1) of this subsection, the corpus of the estate of a veteran shall be determined in the same manner as the manner in which determinations are made of the corpus of the estates of persons under section 522 of this title.

"(e)(1) In order to avoid a hardship to a veteran described in paragraph (2) of this subsection, the Administrator may deem the veteran to have an attributable income during the previous year not greater than the Category A threshold or the Category B threshold, as appropriate.

"(2)(A) A veteran is described in this paragraph for the purposes of subsection (a)(1) of this section if—

"(i) the veteran has an attributable income greater than the Category A threshold; and

"(ii) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below such threshold.

"(B) A veteran is described in this paragraph for the purposes of subsection (a)(2) of this section if—

"(i) the veteran has an attributable income greater than the Category B threshold; and

"(ii) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below such threshold.

"(f) For purposes of this section:

"(1) The term 'attributable income' means the income of a veteran for the previous year determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under section 521 of this title would be reduced if such veteran were eligible for pension under that section.

"(2) The term 'corpus of the estate of the veteran' includes the corpus of the estates of the veteran's spouse and dependent children, if any.

"(3) The term 'previous year' means the calendar year preceding the year in which the veteran applies for care or services under section 610(a) or 612(f) of this title.

"(g) For the purposes of sections 610(b)(2) and 624(c) of this title, the fact that a veteran is—

"(1) eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

"(2) a veteran with a service-connected disability; or

"(3) in receipt of pension under any law administered by the Veterans' Administration,

shall be accepted as sufficient evidence of such veteran's inability to defray necessary expenses.".

(2) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"622. Determination of inability to defray necessary expenses; income thresholds.".

(3) The first increase under subsection (c) of section 622 of title 38, United States Code, as added by paragraph (1), shall take effect on January 1, 1987.

(d) CONFORMING AMENDMENTS.—(1) Section 525(a) is amended by striking out "section 612(i)(5) of this title" and inserting in lieu thereof "clauses (5) and (6) of section 612(i)".

(2) Section 601(6) is amended—

(A) in clause (A)(i), by striking out "section 612(f)(1)(A)" and inserting in lieu thereof "section 612(f)(1)(A)(i)", and

(B) in clause (B)(ii), by striking out "section 612(f)(1)(B)" and inserting in lieu thereof "section 612(f)(1)(A)(ii)".

(3) Section 610(e) is amended—

(A) by striking out "may be furnished hospital care or nursing home care under subsection (a)(5)" in subparagraphs (A) and (B) of paragraph (1) and inserting in lieu thereof "is eligible for hospital care and nursing home care under subsection (a)(1)(G)"; and

(B) by striking out "subsection (a)(5)" in paragraphs (2) and (3) and inserting in lieu thereof "subsection (a)(1)(G)".

(4) Section 612A is amended—

(A) by striking out "clause (1)(B)" in subsection (b)(1) and inserting in lieu thereof "paragraph (1)(A)(ii)"; and

(B) by striking out "612(f)(2)" in subsection (e)(1) and inserting in lieu thereof "612(a)(1)(B)".

(5) Section 620(f)(1)(A)(ii) is amended by striking out "612(f)(2)" and inserting in lieu thereof "612(a)(1)(B)".

(6) Section 663(a)(1) is amended by striking out "612(f)(2)" both places it appears and inserting in lieu thereof "612(a)(1)(B)".

(e) REPORTS ON FURNISHING OF HEALTH CARE AND IMPLEMENTATION OF CHANGES IN ELIGIBILITY.—(1) The Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report for each of fiscal years 1986, 1987, and 1988 concerning the implementation of the amendments made by this section.

(2) Each report under paragraph (1) shall provide detailed information with respect to the fiscal year for which it is submitted regarding—

(A) the number of veterans who received health care from the Veterans' Administration during the fiscal year concerned (shown in total and separately for hospital care, nursing home care, outpatient care, and domiciliary care);

(B) with respect to veterans who applied for health care from the Veterans' Administration during such fiscal year but did not receive such care—

(i) the number of such veterans (shown in total and separately for hospital care, nursing home care, outpatient care, and domiciliary care); and

(ii) the primary reasons why such care was not furnished;

(C) the guidelines and processes for—

(i) implementation of the income-threshold criteria for Veterans' Administration health-care eligibility established by paragraph (1)(I) and subparagraphs (A) and (B) of paragraph (2) of section 610(a) of title 38, United States Code (as added by subsection (a)), paragraph (4) of section 612(f) of such title (as added by subsection (b)), and section 622 of such title (as amended by subsection (c)); and

(ii) the collection of payments required by section 610(f) of such title (as added by subsection (a)(2)) and by section 612(f)(4) of such title (as added by subsection (b)(2));

(D) the numbers and characteristics of, and the type and extent of health care furnished by the Veterans' Administration to, veterans eligible for such care by reason of any such authorities, including—

(i) with respect to those eligible by reason of each such authority, the numbers who applied for and were furnished such care, the type and extent of such care that they were furnished, and their incomes and family sizes; and

(ii) with respect to veterans eligible by reason of section 610(a)(2)(B) of such title, the average and total payments made by such veterans for such care (shown in total and separately for hospital care, nursing home care, and outpatient care); and

(E) the numbers of, and the type and extent of health care furnished by the Veterans' Administration to, veterans eligible for such care by reason of each clause of section 610(a)(1) of such title (shown in total and separately for veterans with service-connected disabilities for each percentile disability rating).

The report for fiscal year 1986 shall include information relating only to care furnished on or after April 1, 1986.

(3) Each report under this subsection shall be submitted not later than the February 1 following the end of the fiscal year for which it is required.

(f) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall apply to hospital care, nursing home care, and medical services furnished on or after April 1, 1986.

(2)(A) The provisions of sections 610 and 622 of title 38, United States Code, as in effect on the day before the date of the enactment of this Act, shall apply with respect to hospital and nursing home care furnished on or after April 1, 1986, to veterans furnished such care or services on March 31, 1986, but only to the extent that such care is furnished with respect to the same episode of care for which it was furnished on March 31, 1986, as determined by the Administrator pursuant to regulations which the Administrator shall prescribe.

(B) During the months of April and May 1986, the Administrator may, in order to continue a course of treatment begun before April 1, 1986, furnish medical services to a veteran on an ambulatory or outpatient basis without regard to the amendments made by this section.

(C) For the purposes of this paragraph, the term "episode of care" means a period of consecutive days—

(i) beginning with the first day on which a veteran is furnished hospital or nursing home care; and

(ii) ending on the day of the veteran's discharge from the hospital or nursing home facility, as the case may be.

SEC. 19012. TECHNICAL REVISION OF AUTHORITY TO CONTRACT FOR HOSPITAL CARE AND MEDICAL SERVICES.

(a) REPEAL OF CONTRACT AUTHORITY FROM DEFINITION OF VETERANS' ADMINISTRATION FACILITIES.—Section 601 is amended—

(1) in paragraph (4)—

(A) by inserting "and" at the end of clause (A); and

(B) by striking out the semicolon at the end of clause (B) and all that follows through the end of such paragraph and inserting in lieu thereof a period; and

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

"(9) The term 'non-Veterans' Administration facilities' means facilities other than Veterans' Administration facilities.".

(b) REENACTMENT OF CONTRACT AUTHORITY.—(1) Chapter 17 is amended by inserting after section 602 the following new section:

"§ 603. Contracts for hospital care and medical services in non-Veterans' Administration facilities

"(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish—

"(1) hospital care or medical services to a veteran for the treatment of—

"(A) a service-connected disability; or

"(B) a disability for which a veteran was discharged or released from the active military, naval, or air service;

"(2) medical services for the treatment of any disability of—

"(A) a veteran described in section 612(a)(1)(B) of this title;

"(B) a veteran described in section 612(f)(1)(A)(ii) of this title; or

"(C) a veteran described in section 612(g) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities;

"(3) hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Veterans' Administration facility until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility;

"(4) hospital care for women veterans;

"(5) hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and non-Veterans' Administration facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Veterans' Administration within the 48 contiguous States, but the authority of the Administrator under this paragraph with respect to the Commonwealth of Puerto Rico shall expire on September 30, 1988, and until such date the Administrator may, if necessary to prevent hardship, waive the applicability to the Commonwealth of Puerto Rico of the restrictions in this paragraph with respect to hospital patient loads and the incidence of the furnishing of medical services;

"(6) diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Veterans' Administration out-patient clinics to obviate the need for hospital admission; or

"(7) outpatient dental services and treatment, and related dental appliances, for a veteran described in section 612(b)(1)(G) of this title.

"(b) In the case of any veteran for whom the Administrator contracts to furnish care or services in a non-Veterans' Administration facility pursuant to a provision of subsection (a) of this section, the

Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 602 the following new item:

"603. Contracts for hospital care and medical services in non-Veterans' Administration facilities.".

(c) CONFORMING AMENDMENTS.—(1) Section 612(b)(3) is amended by striking out "clause (i), (ii), or (v) of section 601(4)(C)" and inserting in lieu thereof "clause (1), (2), or (5) of section 603(a)".

(2) Section 612(b)(4) is amended by striking out "section 601(4)(C)" both places it appears and inserting in lieu thereof "section 603".

(3) Section 612A(e)(1) is amended by striking out "601(4)(C)(ii)" and inserting in lieu thereof "603(a)(2)".

(4) Section 903(a) is amended by inserting "hospital care in accordance with section 603 of this title or" after "was receiving".

(5) Section 102(b) of the Veterans' Administration Health-Care Amendments of 1985 (Public Law 99-166) is amended—

(A) by striking out "such section" in paragraph (1) and inserting in lieu thereof "section 603(a)(5)"; and

(B) by striking out "clause (v) of section 601(4)(C)" in paragraph (5) and inserting in lieu thereof "section 603(a)(5)".

SEC. 19013. RECOVERY OF THE COST OF CERTAIN HEALTH CARE AND SERVICES FURNISHED BY THE VETERANS' ADMINISTRATION.

(a) IN GENERAL.—Section 629 is amended to read as follows:

"§ 629. Recovery by the United States of the cost of certain care and services

"(a)(1) Subject to the provisions of this section, in any case in which a veteran is furnished care or services under this chapter for a non-service-connected disability described in paragraph (2) of this subsection, the United States has the right to recover or collect the reasonable cost of such care or services (as determined by the Administrator) from a third party to the extent that the veteran (or the provider of the care or services) would be eligible to receive payment for such care or services from such third party if the care or services had not been furnished by a department or agency of the United States.

"(2) Paragraph (1) of this subsection applies to a non-service-connected disability—

"(A) that is incurred incident to the veteran's employment and that is covered under a workers' compensation law or plan that provides for payment for the cost of health care and services provided to the veteran by reason of the disability;

"(B) that is incurred as the result of a motor vehicle accident to which applies a State law that requires the owners or operators of motor vehicles registered in that State to have in force automobile accident reparations insurance;

"(C) that is incurred as the result of a crime of personal violence that occurred in a State, or a political subdivision of a State, in which a person injured as the result of such a crime is entitled to receive health care and services at such State's or subdivision's expense for personal injuries suffered as the result of such crime; or

"(D) that is incurred by a veteran—

"(i) who does not have a service-connected disability; and

"(ii) who is entitled to care (or payment of the expenses of care) under a health-plan contract.

"(3) In the case of a health-plan contract that contains a requirement for payment of a deductible or copayment by the veteran—

"(A) the veteran's not having paid such deductible or copayment with respect to care or services furnished under this chapter shall not preclude recovery or collection under this section; and

"(B) the amount that the United States may collect or recover under this section shall be reduced by the appropriate deductible or copayment amount, or both.

"(b)(1) As to the right provided in subsection (a) of this section, the United States shall be subrogated to any right or claim that the veteran (or the veteran's personal representative, successor, dependents, or survivors) may have against a third party.

"(2)(A) In order to enforce any right or claim to which the United States is subrogated under paragraph (1) of this subsection, the United States may intervene or join in any action or proceeding brought by the veteran (or the veteran's personal representative, successor, dependents, or survivors) against a third party.

"(B) The United States may institute and prosecute legal proceedings against the third party if—

"(i) an action or proceeding described in subparagraph (A) of this paragraph is not begun within 180 days after the first day on which care or services for which recovery is sought are furnished to the veteran by the Administrator under this chapter;

"(ii) the United States has sent written notice by certified mail to the veteran at the veteran's last-known address (or to the veteran's personal representative or successor) of the intention of the United States to institute such legal proceedings; and

"(iii) a period of 60 days has passed following the mailing of such notice.

"(c)(1) The Administrator may compromise, settle, or waive any claim which the United States has under this section.

"(2)(A) The Administrator, after consultation with the Comptroller General of the United States, shall prescribe regulations for the purpose of determining the reasonable cost of care or services under subsection (a)(1) of this section. Any determination of such cost shall be made in accordance with such regulations.

"(B) Such regulations shall provide that the reasonable cost of care or services sought to be recovered or collected from a third-party liable under a health-plan contract may not exceed the amount that such third party demonstrates to the satisfaction of the Administrator it would pay for the care or services in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with facilities (other than facilities of departments or agencies of the United States) in the same geographic area.

"(C) Not later than 45 days after the date on which the Administrator prescribes such regulations (or any amendment to such regulations), the Comptroller General shall submit to the Committees on

Veterans' Affairs of the Senate and the House of Representatives the Comptroller General's comments on and recommendations regarding such regulations (or amendment).

"(d) Any contract or agreement into which the Administrator enters with a person under section 3718 of title 31 for collection services to recover indebtedness owed the United States under this section shall provide, with respect to such services, that such person is subject to sections 3301 and 4132 of this title.

"(e) A veteran eligible for care or services under this chapter—

"(1) may not be denied such care or services by reason of this section; and

"(2) may not be required by reason of this section to make any copayment or deductible payment in order to receive such care.

"(f) No law of any State or of any political subdivision of a State, and no provision of any contract or other agreement, shall operate to prevent recovery or collection by the United States under this section or with respect to care or services furnished under section 611(b) of this title.

"(g) Amounts collected or recovered on behalf of the United States under this section shall be deposited into the Treasury as miscellaneous receipts.

"(h)(1) Subject to paragraph (3) of this subsection, the Administrator shall make available medical records of a veteran described in paragraph (2) of this subsection for inspection and review by representatives of the third party concerned for the sole purposes of permitting the third party to verify—

"(A) that the care or services for which recovery or collection is sought were furnished to the veteran; and

"(B) that the provision of such care or services to the veteran meets criteria generally applicable under the health-plan contract involved.

"(2) A veteran described in this paragraph is a veteran who is a beneficiary of a health-plan contract under which recovery or collection is sought under this section from the third party concerned for the cost of the care or services furnished to the veteran.

"(3) Records shall be made available under this subsection under such conditions to protect the confidentiality of such records as the Administrator shall prescribe in regulations.

"(i) For purposes of this section—

"(1)(A) The term 'health-plan contract' means 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 such services are paid.

"(B) Such term does not include—

"(i) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of such Act (42 U.S.C. 1395j);

"(ii) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.);

"(iii) a workers' compensation law or plan described in subparagraph (A) of subsection (a)(2) of this section; or

"(iv) a program, plan, or policy under a law described in subparagraph (B) or (C) of such subsection.

"(2) The term 'payment' includes reimbursement and indemnification.

"(3) The term 'third party' means—

"(A) a State or political subdivision of a State;

"(B) an employer or an employer's insurance carrier;

"(C) an automobile accident reparations insurance carrier; or

"(D) a person obligated to provide, or to pay the expenses of, health services under a health-plan contract.".

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), section 629 of title 38, United States Code, as amended by subsection (a), shall apply to care and services provided on or after the date of the enactment of this Act.

(2)(A) Such section shall not apply so as to nullify any provision of a health-plan contract (as defined in subsection (i) of such section) that—

(i) was entered into before the date of the enactment of this Act; and

(ii) is not modified or renewed on or after such date.

(B) In the case of a health-plan contract (as so defined) that was entered into before such date and which is modified or renewed on or after such date, the amendment made by subsection (a) shall apply—

(i) with respect to such plan as of the day after the date that it is so modified or renewed; and

(ii) with respect to care and services provided after such date of modification or renewal.

(3) For purposes of paragraph (2), the term "modified" includes any change in premium or coverage.

(c) REPORTS.—(1) Not later than six months after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the process for and results of the implementation of section 629 of title 38, United States Code, as amended by subsection (a). Such report shall show the costs of administration (and a detailed breakdown of such costs) and the amount of receipts and collections under such section.

(2) Not later than February 1, 1988, the Administrator shall submit to such Committees a report—

(A) updating the information in the report submitted under paragraph (1); and

(B) providing information on the process and results of such implementation through at least the end of fiscal year 1987.

SUBTITLE B—COMPENSATION RATE INCREASES

SEC. 19021. DISABILITY COMPENSATION.

(a) IN GENERAL.—Section 314 is amended—

(1) by striking out "$66" in subsection (a) and inserting in lieu thereof "$68";

(2) by striking out "$122" in subsection (b) and inserting in lieu thereof "$126";

(3) by striking out "$185" in subsection (c) and inserting in lieu thereof "$191";

(4) by striking out "$266" in subsection (d) and inserting in lieu thereof "$274";

(5) by striking out "$376" in subsection (e) and inserting in lieu thereof "$388";

(6) by striking out "$474" in subsection (f) and inserting in lieu thereof "$489";

(7) by striking out "$598" in subsection (g) and inserting in lieu thereof "$617";

(8) by striking out "$692" in subsection (h) and inserting in lieu thereof "$713";

(9) by striking out "$779" in subsection (i) and inserting in lieu thereof "$803";

(10) by striking out "$1,295" in subsection (j) and inserting in lieu thereof "$1,335";

(11) by striking out "$1,609" and "$2,255" in subsection (k) and inserting in lieu thereof "$1,659" and "$2,325", respectively;

(12) by striking out "$1,609" in subsection (l) and inserting in lieu thereof "$1,659";

(13) by striking out "$1,774" in subsection (m) and inserting in lieu thereof "$1,829";

(14) by striking out "$2,017" in subsection (n) and inserting in lieu thereof "$2,080";

(15) by striking out "$2,255" each place it appears in subsections (o) and (p) and inserting in lieu thereof "$2,325";

(16) by striking out "$968" and "$1,442" in subsection (r) and inserting in lieu thereof "$998" and "$1,487", respectively;

(17) by striking out "$1,449" in subsection (s) and inserting in lieu thereof "$1,494"; and

(18) by striking out "$280" in subsection (t) and inserting in lieu thereof "$289".

(b) SPECIAL RULE.—The Administrator of Veterans' Affairs may adjust administratively, consistent with the increases authorized by this section, the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 19022. ADDITIONAL COMPENSATION FOR DEPENDENTS.

Section 315(1) is amended—

(1) by striking out "$79" in clause (A) and inserting in lieu thereof "$81";

(2) by striking out "$132" and "$42" in clause (B) and inserting in lieu thereof "$136" and "$43", respectively;

(3) by striking out "$54" and "$42" in clause (C) and inserting in lieu thereof "$56" and "$43", respectively;

(4) by striking out "$64" in clause (D) and inserting in lieu thereof "$66";

(5) by striking out "$143" in clause (E) and inserting in lieu thereof "$147"; and

(6) by striking out "$120" in clause (F) and inserting in lieu thereof "$124".

SEC. 19023. CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.

Section 362 is amended by striking out "$349" and inserting in lieu thereof "$360".

SEC. 19024. DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.

Section 411 is amended—

(1) by striking out the table in subsection (a) and inserting in lieu thereof the following:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E-1	$491	W-4	$703
E-2	505	O-1	621
E-3	518	O-2	640
E-4	552	O-3	686
E-5	566	O-4	725
E-6	578	O-5	799
E-7	607	O-6	900
E-8	640	O-7	973
E-9	[1] 669	O-8	1,067
W-1	621	O-9	1,145
W-2	645	O-10	[2] 1,255
W-3	664		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $722.

"[2] If the veteran served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 402 of this title, the surviving spouse's rate shall be $1,345.";

(2) by striking out "$55" in subsection (b) and inserting in lieu thereof "$57";

(3) by striking out "$143" in subsection (c) and inserting in lieu thereof "$147"; and

(4) by striking out "$70" in subsection (d) and inserting in lieu thereof "$72".

SEC. 19025. DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

Section 413 is amended—

(1) by striking out "$240" in clause (1) and inserting in lieu thereof "$247";

(2) by striking out "$345" in clause (2) and inserting in lieu thereof "$356";

(3) by striking out "$446" in clause (3) and inserting in lieu thereof "$460"; and

(4) by striking out "$446" and "$90" in clause (4) and inserting in lieu thereof "$460" and "$93", respectively.

SEC. 19026. SUPPLEMENTAL DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.

Section 414 is amended—

(1) by striking out "$143" in subsection (a) and inserting in lieu thereof "$147";

(2) by striking out "$240" in subsection (b) and inserting in lieu thereof "$247"; and

(3) by striking out "$122" in subsection (c) and inserting in lieu thereof "$126".

SEC. 19027. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect as of December 1, 1985.

SUBTITLE C—MISCELLANEOUS PROVISIONS

SEC. 19031. STUDY OF EFFECT OF VIETNAM EXPERIENCE ON HEALTH STATUS OF WOMEN VIETNAM VETERANS.

(a) REQUIREMENT FOR EPIDEMIOLOGICAL STUDY.—(1)(A) Except as provided in paragraph (2), the Administrator of Veterans' Affairs shall provide for the conduct of an epidemiological study of any long-term adverse health effects (particularly gender-specific health effects) which have been experienced by women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era and which may have resulted from traumatic experiences during such service, from exposure during such service to phenoxy herbicides (including the herbicide known as Agent Orange), to other herbicides, chemicals, or medications that may have deleterious health effects, or to environmental hazards, or from any other experience or exposure during such service.

(B) The Administrator may include in the study conducted under this paragraph an evaluation of the means of detecting and treating long-term adverse health effects (particularly gender-specific health effects) found through the study.

(2)(A) If the Administrator, in consultation with the Director of the Office of Technology Assessment, determines that it is not feasible to conduct a scientifically valid study of an aspect of the matters described in paragraph (1)—

(i) the Administrator shall promptly submit to the appropriate committees of the Congress a notice of that determination and the reasons for the determination; and

(ii) the Director, not later than 60 days after the date on which such notice is submitted to the committees, shall submit to such committees a report evaluating and commenting on such determination.

(B) The Administrator is not required to study any aspect of the matters described in paragraph (1) with respect to which a determination is made and a notice is submitted pursuant to subparagraph (A)(i).

(C) If the Administrator submits to the Congress notice of a determination made pursuant to subparagraph (A) that it is not scientifically feasible to conduct the study described in paragraph (1)(A), this section (effective as of the date of such notice) shall cease to have effect as if repealed by law.

(3) The Administrator shall provide for the study to be conducted through contracts or other agreements with private or public agencies or persons.

(b) APPROVAL OF PROTOCOL.—(1) The study required by subsection (a) shall be conducted in accordance with a protocol approved by the Director of the Office of Technology Assessment.

(2) Not later than April 1, 1986, the Administrator shall publish a request for proposals for the design of the protocol to be used in conducting the study under this section.

(3) In considering any proposed protocol for use or approval under this subsection, the Administrator and the Director shall take into consideration—

(A) the protocol approved under section 307(a)(2)(A)(i) of the Veterans Health Programs Extension and Improvement Act of 1979 (Public Law 96-151; 38 U.S.C. 219 note); and

(B) the experience under the study being conducted pursuant to that protocol.

(c) OTA REPORTS.—(1) Concurrent with the approval or disapproval of any protocol under subsection (b)(1), the Director shall submit to the appropriate committees of the Congress a report—

(A) explaining the reasons for the Director's approval or disapproval of the protocol, as the case may be; and

(B) containing the Director's conclusions regarding the scientific validity and objectivity of the protocol.

(2) If the Director has not approved a protocol under subsection (b)(1) by the last day of the 180-day period beginning on the date of the enactment of this Act, the Director—

(A) shall, on such day, submit to the appropriate committees of the Congress a report describing the reasons why the Director has not approved such a protocol; and

(B) shall, each 60 days thereafter until such a protocol is approved, submit to such committees an updated report on the report required by clause (A).

(d) OTA MONITORING OF COMPLIANCE.—(1) In order to ensure compliance with the protocol approved under subsection (b)(1), the Director shall monitor the conduct of the study under subsection (a).

(2)(A) The Director shall submit to the appropriate committees of the Congress, at each of the times specified in subparagraph (B), a report on the Director's monitoring of the conduct of the study pursuant to paragraph (1).

(B) A report shall be submitted under subparagraph (A)—

(i) before the end of the 6-month period beginning on the date on which the Director approves the protocol referred to in paragraph (1);

(ii) before the end of the 12-month period beginning on such date; and

(iii) annually thereafter until the study is completed or terminated.

(e) DURATION OF STUDY.—The study conducted pursuant to subsection (a) shall be continued for as long after the date on which the first report is submitted under subsection (f)(1) as the Administrator determines that there is a reasonable possibility of developing, through such study, significant new information on the health effects described in subsection (a)(1).

(f) REPORTS.—(1) Not later than 24 months after the date of the approval of the protocol pursuant to subsection (b)(1) and annually thereafter, the Administrator shall submit to the appropriate committees of the Congress a report containing—

(A) a description of the results obtained, before the date of such report, under the study conducted pursuant to subsection (a); and

(B) any administrative actions or recommended legislation, or both, and any additional comments which the Administrator considers appropriate in light of such results.

(2) Not later than 90 days after the date on which each report required by paragraph (1) is submitted, the Administrator shall publish in the Federal Register, for public review and comment, a description of any action that the Administrator plans or proposes to take with respect to programs administered by the Veterans' Administration based on—

(A) the results described in such report;

(B) the comments and recommendations received on that report; and

(C) any other available pertinent information.

Each such description shall include a justification or rationale for the planned or proposed action.

(g) DEFINITIONS.—For the purposes of this section:

(1) The term "gender-specific health effects" includes—

(A) effects on female reproductive capacity and reproductive organs;

(B) effects on reproductive outcomes;

(C) effects on female-specific organs and tissues; and

(D) other effects unique to the physiology of females.

(2) The term "Vietnam era" has the meaning given such term in section 101(29) of title 38, United States Code.

SEC. 19032. ADVISORY COMMITTEE ON NATIVE-AMERICAN VETERANS.

(a) ESTABLISHMENT OF COMMITTEE.—Not later than February 1, 1986, the Administrator of Veterans' Affairs shall establish an advisory committee to be known as the Advisory Committee on Native-American Veterans (hereinafter in this section referred to as the "Committee").

(b) DUTIES.—The Committee shall examine and evaluate programs and other activities of the Veterans' Administration with respect to the needs of veterans who are Native Americans, including American Indians and Alaska Natives. Such examination and evaluation shall include—

(1) an assessment of the needs of such veterans with respect to health care, rehabilitation, readjustment counseling, outreach services, and other benefits and services under programs administered by the Veterans' Administration; and

(2) a review of the manner in which and the extent to which the programs and other activities of the Veterans' Administration meet such needs.

(c) MEMBERS.—The Committee shall consist of—

(1) the Secretary of Labor (or a representative of the Secretary of Labor designated by the Secretary after consultation with the Assistant Secretary of Labor for Veterans' Employment);

(2) the Chief Medical Director and Chief Benefits Director of the Veterans' Administration or their representatives; and

(3) members appointed by the Administrator from the general public, including—

(A) representatives of veterans who are Native Americans, including American Indians and Alaska Natives and such veterans with service-connected disabilities; and

(B) individuals who are recognized authorities in fields pertinent to the needs of such veterans, including the specific health-care needs of such veterans and the furnishing of health-care services by the Veterans' Administration to such veterans.

(d) PARTICIPATION BY OTHER AGENCIES.—The Administrator may invite representatives of other departments and agencies of the Federal Government to participate in the meetings and other activities of the Committee.

(e) NUMBER AND PAY OF MEMBERS.—The Administrator shall determine the number and pay and allowances of the members of the Committee appointed by the Administrator.

(f) REPORTS.—(1) Not later than November 1, 1986, and November 1, 1987, the Committee shall submit to the Administrator a report containing the findings and any recommendations of the Committee regarding the matters described in subsection (b) that were examined and evaluated by the Committee during the preceding fiscal year.

(2) Not later than 60 days after receiving each such report, the Administrator shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Administrator considers appropriate.

(g) ALASKA NATIVE DEFINED.—For the purposes of this section, the term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(h) TERMINATION.—The Committee shall terminate 90 days after the date on which the second report is transmitted by the Committee pursuant to subsection (f)(2).

SEC. 19033. WAIVER OF CONGRESSIONAL NOTICE-AND-WAIT PERIOD FOR ADMINISTRATIVE REORGANIZATION OF CERTAIN VETERANS' ADMINISTRATION AUTOMATED DATA PROCESSING ACTIVITIES.

(a) WAIVER.—The Administrator of Veterans' Affairs may undertake the administrative reorganization described in subsection (b) without regard to the requirements of section 210(b)(2) of title 38, United States Code.

(b) COVERED ADMINISTRATIVE REORGANIZATION.—The administrative reorganization referred to in subsection (a) is a reorganization that—

(1) involves the transfer of certain functions from the Office of Data Management and Telecommunications of the Veterans' Administration to the Department of Veterans' Benefits of the Veterans' Administration; and

(2) is described in letters dated November 1, 1985, that were submitted by the Administrator to the chairmen and ranking minority members of the Committees on Veterans' Affairs of the Senate and House of Representatives.

SEC. 19034. RATIFICATION OF CERTAIN TEMPORARILY EXPIRED AUTHORITIES.

(a) VETERANS' ADMINISTRATION REGIONAL OFFICE IN THE REPUBLIC OF THE PHILIPPINES.—Any action by the Administrator of Veterans' Affairs in providing, during the ratification period, for a Veterans' Administration Regional Office in the Republic of the Philippines under section 230 of title 38, United States Code, is hereby ratified with respect to that period.

(b) CONTRACT CARE AUTHORITY IN PUERTO RICO AND THE VIRGIN ISLANDS.—Any action by the Administrator in entering into a contract applicable to the ratification period for furnishing care described in subclause (v) of section 601(4)(C) of title 38, United States Code, any action by the Administrator under such contract, and any waiver described in that subclause made by the Administrator that is applicable to that period, is hereby ratified with respect to that period.

(c) ALCOHOL AND DRUG TREATMENT AND REHABILITATION CONTRACT PROGRAM.—Any action by the Administrator in entering into a contract described in section 620A(a) of title 38, United States Code, that is applicable to the ratification period, and any action by the Administrator under such contract, is hereby ratified with respect to that period.

(d) RATIFICATION PERIOD DEFINED.—For the purposes of this section, the term "ratification period" means the period beginning on November 1, 1985, and ending on December 3, 1985.

TITLE XX—MISCELLANEOUS PROVISIONS

SEC. 20001. MISCELLANEOUS PROVISIONS.

(a) When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to section 310 of the Congressional Budget Act of 1974, upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (d) shall be deemed stricken from the bill and may not be offered as an amendment from the floor. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive or suspend the provisions of this subsection.

(b) No motion to waive or suspend the requirement of section 305(b)(2) of the Congressional Budget Act of 1974, as it relates to germaneness with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order raised under that section, as well as to waive or suspend the provisions of this subsection.

(c) This section shall become effective on the date of enactment of this title and shall remain in effect until January 2, 1987.

(d)(1)(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to section 310 of the Congressional Budget Act of 1974 shall be considered extraneous if such provision does not produce a change in outlays or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected; (B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions; (C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous; (D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision.

(2) A provision shall not be considered extraneous under (1)(A) above if: (A) it is designed to mitigate the direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; (B) it will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution; (C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; (D) such provision will be likely to produce a significant reduction in outlays or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

And the House agree to the same.

From the Committee on the Budget, for consideration of the entire amendment and the entire House amendment to the Senate amendment, except for sections 778H, 778I, 780, 781, 783 through 789B, 789D through 789G, subpart A of part 3 of subtitle I of title VII, section 793, subsections (a), (b), (c), (f), and (g)(1) of section 794, and sections 795 and 796 of the Senate amendment, and except for sections 2502(a) and 2503 of division B of the House amendment to the Senate amendment:

WILLIAM H. GRAY III,
BUTLER DERRICK,
MICHAEL D. BARNES,
CHARLES E. SCHUMER,
BARBARA BOXER,
BUDDY MACKAY,
JIM SLATTERY,
CHESTER G. ATKINS,

From the Committee on Ways and Means, solely for the consideration of sections 144(b)(3), 204, 205, 746(e)(2)–(4), and 759, subtitles A, C–F, H, and I of title VII, part G of title IX, and part I of title IX of the Senate amendment, and of subtitles B and C of title III

and section 1974 of division A, and all of division B except parts E and G of title I, of the House amendment to the Senate amendment:

SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
JIM JONES,
HAROLD FORD,
ED JENKINS,
JOHN J. DUNCAN,
BILL GRADISON,
CARROLL CAMPBELL,
WM. THOMAS,

From the Committee on Agriculture, solely for the consideration of title I and section 536 of the Senate amendment:

E DE LA GARZA,
ED JONES,
LEON E. PANETTA,
TONY COELHO,
BERKLEY BEDELL,
ED MADIGAN,
BILL EMERSON,
JAMES M. JEFFORDS,
E. THOMAS COLEMAN,

From the Committee on Agriculture, solely for the consideration of subpart B of part 3 of subtitle I of title VII of the Senate amendment:

E DE LA GARZA,
CHARLIE ROSE,
WALTER B. JONES,
CHARLES HATCHER,
CHARLIE WHITLEY,
ROBIN TALLON,
ROBERT L. THOMAS,
LARRY J. HOPKINS,
PAT ROBERTS,
WEBB FRANKLIN,
LARRY COMBEST,

From the Committee on Agriculture, solely for the consideration of section 2502(b) of division B of the House amendment to the Senate amendment:

E DE LA GARZA,
CHARLIE ROSE,
CHARLIE WHITLEY,
LARRY J. HOPKINS,
PAT ROBERTS,

From the Committee on Armed Services, solely for the consideration of title II and section 165 of the Senate amendment, and of title I of division A of the House amendment to the Senate amendment:

LES ASPIN,
G.V. MONTGOMERY,
PAT SCHROEDER,
WM. L. DICKINSON,

BUD HILLIS,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the Senate amendment and of title II of division A of the House amendment to the Senate amendment:

FERNAND J. ST GERMAIN,
PARREN J. MITCHELL,
STAN LUNDINE,
MARY ROSE OAKAR,
BRUCE VENTO,
BARNEY FRANK,
CHALMERS P. WYLIE,
STEWART MCKINNEY,
MARGE ROUKEMA,
STEVE BARTLETT,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of subtitle A of title IV of division A of the House amendment to the Senate amendment:

FERNAND J. ST GERMAIN,
STAN LUNDINE,

From the Committee on Education and Labor, solely for the consideration of parts A through E of title IX of the Senate amendment, and of subtitle A of title III of division A of the House amendment to the Senate amendment:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
MARIO BIAGGI,
PAT WILLIAMS,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TERRY L. BRUCE,
JIM JEFFORDS,
E. THOMAS COLEMAN,
STEVE GUNDERSON,
PAUL B. HENRY,

From the Committee on Education and Labor, solely for the consideration of section 746(d), subtitle H of title VII, section 782, and parts G and I of title IX of the Senate amendment, and of subtitles B and C of title III of division A, and of sections 2181 and 2505 and title VI of division B, of the House amendment to the Senate amendment:

GUS HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
DALE E. KILDEE,
MAJOR R. OWENS,
CHARLES A. HAYES,
MERVYN M. DYMALLY,
CHESTER G. ATKINS,
JAMES M. JEFFORDS,
THOMAS E. PETRI,

MARGE ROUKEMA,
STEVE BARTLETT,
ROD CHANDLER,
RICHARD ARMEY,
HARRIS W. FAWELL,

From the Committee on Education and Labor, solely for the consideration of part F of title IX of the Senate amendment:

AUGUSTUS F. HAWKINS,
AUSTIN J. MURPHY,
BILL CLAY,
PAT WILLIAMS,
JIM JEFFORDS,
TOM PETRI,
STEVE BARTLETT,

From the Committee on Energy and Commerce, solely for the consideration of sections 706 and 713–716, parts 2–5 of subtitle A of title VII (except for section 734), subtitle B of title VII (except for subsections (d) and (e)(2)-(4) of section 746), sections 769B, 770, 772, 774, and 782, and parts G and H of title IX of the Senate amendment, and of section 1974 of division A, and of section 2107, parts B–G of title I, and section 2302 of division B of the House amendment to the Senate amendment:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
THOMAS LUKEN,
DOUG WALGREN,
BARBARA A. MIKULSKI,
MICKEY LELAND,
CARDISS COLLINS,
RON WYDEN,
ED MADIGAN,
(for medicaid and maternal and child health only),
BOB WHITTAKER,
(for Medicare, Medicaid, and maternal and child health only),

From the Committee on Energy and Commerce, solely for the consideration of those portions of section 789C of the Senate amendment inserting subsections 9505 (c), (d), and (e) in the Internal Revenue Code:

JOHN D. DINGELL,
DENNIS E. ECKART,
RALPH M. HALL,
BILLY TAUZIN,
WAYNE DOWDY,
TOM LUKEN,
AL SWIFT,
MIKE SYNAR,
NORMAN F. LENT,
DON RITTER,
JACK FIELDS,
DAN SCHAEFER,

From the Committee on Energy and Commerce, solely for the consideration of sections 501, 502, 521-524, and 536 of the Senate amendment, of subtitles A–E of title IV and subtitles B and C of title VIII of division A of the House amendment to the Senate amendment:

JOHN D. DINGELL,
PHIL SHARP,
ED MARKEY,
DOUG WALGREN,
AL SWIFT,
MICKEY LELAND
(except for strategic petroleum reserve, shared-energy, biomass loan guarantee, and synfuels programs),
RICHARD C. SHELBY,
MIKE SYNAR,
BILLY TAUZIN,
JAMES T. BROYHILL,
BILL DANNEMEYER,
CARLOS MOORHEAD,
BOB WHITTAKER,
MICHAEL G. OXLEY,
FRED J. ECKERT,

From the Committee on Energy and Commerce, solely for the consideration of sections 403 and 404 of the Senate amendment, and subtitle F of title IV of division A of the House amendment to the Senate amendment:

JOHN D. DINGELL,
TIMOTHY E. WORTH,
JAMES H. SCHEUER,
TOM LUKEN,
AL SWIFT,
MICKEY LELAND,
CARDISS COLLINS,
MIKE SYNAR,
BILLY TAUZIN,

From the Committee on Energy and Commerce, solely for the consideration of sections 401, 402, 408, 769G, 777(h)(1), and subsections (d), (e), (g)(2) and (g)(3) of section 794 of the Senate amendment, and of subtitles G and H of title IV of division A, and of sections 2252(b) and 2402 of division B of the House amendment to the Senate amendment:

JOHN D. DINGELL,
JAMES J. FLORIO,
PHIL SHARP,
BILLY TAUZIN,
RALPH M. HALL,
WAYNE DOWDY,
BILL RICHARDSON,
JIM SLATTERY,
JIM BROYHILL,
NORMAN F. LENT,

DON RITTER,
DAN COATS,
JACK FIELDS,

From the Committee on Government Operations, solely for the consideration of subtitle G of title VII of the Senate amendment:

JACK BROOKS,
DON FUQUA,
TED WEISS,
FRANK HORTON,
ROBERT S. WALKER,

From the Committee on Government Operations, solely for the consideration of section 523 and parts C and D of title VIII of the Senate amendment, and of subtitle E of title IV of division A of the House amendment to the Senate amendment:

JACK BROOKS,
DON FUQUA,
CARDISS COLLINS,
FRANK HORTON,
AL MCCANDLESS,

From the Committee on Interior and Insular Affairs, solely for the consideration of sections 521, 522, and 531–535 of the Senate amendment, and of subtitle C of title IV, section 1542, title V, subtitles D and H of title VI, and subtitle C of title VIII, of division A of the House amendment to the Senate amendment:

MO UDALL
(except for Outer Continental Shelf programs),
JOHN F. SEIBERLING
(except for Outer Continental Shelf programs),
JIM WEAVER
(except for Nuclear Regulatory Commission fees),
GEORGE MILLER,
PHIL SHARP
(except for Outer Continental Shelf programs),
NICK RAHALL,
BRUCE F. VENTO
(except for Outer Continental Shelf programs),
JERRY HUCKABY,
SAM GEJDENSON
(except for Outer Continental Shelf programs),
DON YOUNG
(except for Nuclear Regulatory Commission fees),
MANUEL LUJAN, Jr.
(except for Nuclear Regulatory Commission fees),
ROBERT J. LAGOMARSINO

(except for Outer Continental Shelf programs, and Nuclear Regulatory fees),
RON MARLENEE
(except for Outer Continental Shelf programs, and Nuclear Regulatory fees),
CHARLES PASHAYAN, Jr.
(except for Nuclear Regulatory Commission fees),

From the Committee on the Judiciary, solely for the consideraton of section 982 and that portion of section 999 amending paragraph (2) of section 4074(c) of the Employee Retirement Income Security Act, of the Senate amendment, and of that portion of section 1458 inserting section 4041(c)(2)(B)(ii) in the Employee Retirement Income Security Act, of division A, and section 2124(b) of division B, of the House amendment to the Senate amendment:

PETER W. RODINO, Jr.,
DANIEL GLICKMAN,
DON EDWARDS,
HAMILTON FISH, Jr.,
THOMAS N. KINDNESS,

From the Committee on Merchant Marine and Fisheries, solely for consideration of sections 405, 406, 407, and 531–535 of the Senate amendment, and of titles V and VI of division A of the House amendment to the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
GLENN M. ANDERSON,
JOHN BREAUX,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
DOUGLAS H. BOSCO,

(In lieu of Mr. Hughes solely for consideration of sections 531–535 of the Senate amendment and title V and subtitles D and H of title VI of division A of the House amendment to the Senate amendment):

BILLY TAUZIN,
NORMAN F. LENT,
GENE SNYDER,
DON YOUNG
(except as listed below),
BOB DAVIS,

(In lieu of Mr. Young solely for consideraton of sections 531–535 of the Senate amendment and title V and subtitles D and H of title VI of division A of the House amendment to the Senate amendment):

WILLIAM CARNEY,
JACK FIELDS
(for purposes of OCS programs only),

From the Committee on Post Office and Civil Service, solely for the consideration of section 769G and parts A and B of title VIII of

the Senate amendment, and of title VII of division A of the House amendment to the Senate amendment:

WILLIAM D. FORD,
MICKEY LELAND,
MARY ROSE OAKAR,
GENE TAYLOR,
BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation, solely for the consideration of title VI, sections 777(h)(2) and 1202, and those portions of section 789C inserting sections 9505(c), (d), and (e) in the Internal Revenue Code, of the Senate amendment, and of sections 1533, 1541, and title VIII of division A, and section 2252(c) of division B of the House amendment to the Senate amendment:

JAMES J. HOWARD
(except for Superfund authorization and pipeline programs),
GLENN M. ANDERSON
(except for Superfund authorization and pipeline programs),
ROBERT A. ROE
(except for Superfund authorization and pipeline programs),
NORMAN Y. MINETA
(except for Superfund authorization and pipeline programs),
JAMES L. OBERSTAR
(except Superfund authorization),
HENRY J. NOWAK
(except Superfund authorization and pipeline programs),
BOB EDGAR
(except Superfund authorization and pipeline programs),
ROBERT A. YOUNG
(except Superfund authorization and pipeline programs),
NICK RAHALL
(except Superfund authorization and pipeline programs),
GENE SNYDER
(except Superfund authorization and pipeline programs),
JOHN PAUL HAMMERSCHMIDT

(except Superfund authorization),
BUD SHUSTER
(except Superfund authorization and pipeline programs),
ARLAN STANGELAND
(except Superfund authorization),
NEWT GINGRICH
(except Superfund authorization and pipeline programs),
BILL CLINGER
(except Superfund authorization and pipeline programs),

(In lieu of Mr. Rahall solely for the consideration of section 1541 and subtitle B of title VIII of division A of the House amendment to the Senate amendment):

JOHN BREAUX,

From the Committee on Science and Technology, solely for the consideration of sections 406(a)-(c), (e)-(g), and (i) of the Senate amendment:

DON FUQUA,
JAMES H. SCHEUER,
TIM WORTH,
MANUEL LUJAN, Jr.,
CLAUDINE SCHNEIDER,

From the Committee on Small Business, solely for the consideration of title X of the Senate amendment and of title IX of division A of the House amendment to the Senate amendment:

PARREN J. MITCHELL,
JOSEPH P. ADDABBO,
JOSEPH M. McDADE,
SILVIO O. CONTE,

From the Committee on Veterans' Affairs, solely for the consideration of section 205 and title XI of the Senate amendment, and of title X of division A of the House amendment to the Senate amendment:

G.V. MONTGOMERY,
BOB EDGAR
(solely for requirement of Medicare providers to accept VA beneficiaries),
DOUGLAS APPLEGATE
(solely for requirement of Medicare providers to accept VA beneficiaries),
JOHN PAUL HAMMERSCHMIDT,
CHALMERS P. WYLIE,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,
BOB DOLE,
RICHARD G. LUGAR,
THAD COCHRAN,
ED ZORINSKY,
PATRICK LEAHY,
JOHN MELCHER,

From the Committee on Finance—general conferees:

BOB PACKWOOD,
W.V. ROTH, Jr.,
J.C. DANFORTH,
JOHN H. CHAFEE,
RUSSELL B. LONG,
LLOYD BENSTEN,
SPARK M. MATSUNAGA,

From the Committee on Armed Services:

SAM NUNN,

From the Committee on Veterans' Affairs:

FRANK H. MURKOWSKI,
ALAN K. SIMPSON,
ALAN CRANSTON,

From the Committee on Finance—for CHAMPUS Medicare Subconference only:

DAVE DURENBERGER,
MAX BAUCUS,

From the Committee on Banking, Housing, and Urban Affairs:

JACK GARN,
JOHN HEINZ,
CHIC HECHT,

From the Committee on Commerce, Science, and Transportation:

J.C. DANFORTH,
BOB PACKWOOD,
BARRY GOLDWATER,
LARRY PRESSLER,
SLADE GORTON,
TED STEVENS,
FRITZ HOLLINGS,
RUSSELL LONG,
DANIEL K. INOUYE,
WENDELL FORD,
DON RIEGLE,

From the Committee on Energy and Natural Resources—general conferees:

JAMES A. MCCLURE,
PETE V. DOMENICI,
MALCOLM WALLOP,
J. BENNETT JOHNSTON,
WENDELL H. FORD,

From the Committee on Energy and Natural Resources—conferees on title VI, section 6701 only:

JAMES A. MCCLURE,
MARK O. HATFIELD,
PETE V. DOMENICI,
J. BENNETT JOHNSTON,

WENDELL H. FORD,

From the Committee on Commerce, Science, and Transportation—conferees on title VI, section 6701 only:

BOB PACKWOOD,
ERNEST F. HOLLINGS,
RUSSELL B. LONG,

From the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
AL SIMPSON,
STEVE SYMMS,
LLOYD BENTSEN,
QUENTIN N. BURDICK,
FRANK R. LAUTENBERG,

From the Committee on Labor and Human Resources—general conferees:

ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
EDWARD M. KENNEDY,
CLAIBORNE PELL,

From the Committee on Labor and Human Resources—for PBGC and ERISA Subconference only:

(For the purposes of Subconference No. 18 only):

ORRIN HATCH,
DON NICKLES,
STROM THURMOND,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Finance—for PBGC and ERISA Subconference only:

BOB PACKWOOD,
JOHN CHAFEE,
JOHN HEINZ,
GEORGE MITCHELL,
DANIEL PATRICK MOYNIHAN,

From the Committee on Finance—for Private Health Insurance Coverage Subconference only:

JOHN HEINZ,
DAVE DURENBERGER,
MAX BAUCUS,

From the Committee on Labor and Human Resources—for PBGC and ERISA Subconference only:

ORRIN HATCH,
DON NICKLES,
STROM THURMOND,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Environment and Public Works:

(For Superfund authorization only):

JOHN H. CHAFEE,
LLOYD BENTSEN,

From the Committee on Governmental Affairs:

W.V. ROTH, Jr.,

TED STEVENS,
WILLIAM S. COHEN,
TOM EAGLETON,
CARL LEVIN,
ALBERT GORE, Jr.,

From the Committee on the Budget—general conferees:

PETE V. DOMENICI,
W.L. ARMSTRONG,
NANCY LANDON KASSEBAUM,
RUDY BOSCHWITZ,
FRITZ HOLLINGS,
J. BENNETT JOHNSTON,
HOWARD M. METZENBAUM,

From the Committee on Small Business:

LOWELL P. WEICKER, Jr.,
SLADE GORTON,
DALE BUMPERS,

Managers of the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the text of the bill (H.R. 3128) to make changes in spending and revenue provisions for purposes of deficit reduction and program improvement, consistent with the budget process, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House amendment struck out all of the Senate amendment after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the House amendment and the Senate amendment. The differences between the Senate amendment, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE PROGRAMS

The Senate amendment included agriculture provisions relating to agricultural exports, food stamps and commodity distribution, and agricultural credit.

The House bill contained no similar provisions.

The Conference substitute deletes the Senate provisions and substitutes language providing that the expenditures and outlays of Titles XI and XIII of the Food Security Act of 1985 shall be counted for purposes of determining savings in this reconciliation legislation. The provisions contained in the Senate reconciliation language have been considered by the Congress within the context of the conference on H.R. 2100, the Food Security Act of 1985.

TOBACCO SUPPORT PROGRAM

(1) Findings and purposes

(a) The Senate amendment sets forth certain findings concerning the importance of maintaining a viable tobacco price support and production adjustment program and the reasons necessitating a reform in the current program. (Sec. 792.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(b) The Senate amendment states that the purposes of the bill are—

(1) to encourage cooperation among tobacco producers and purchasers and the Secretary of Agriculture in reducing tobacco price support levels, assessment costs, and the size of producer associations' inventories;

(2) to adjust the method by which price support levels and production quotas are calculated to reflect market conditions;

(3) to facilitate the purchase and sale of Flue-cured and Burley tobacco presently in the inventories of the producer associations;

(4) to provide that purchasers and producers of domestic tobacco will share equally in the cost of maintaining the tobacco price support program; and

(5) to expedite reform of the system of grading tobacco. (Sec. 792.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(2) Price support adjustments

(a) The Senate amendment establishes the price support level for the 1985 crop of Burley tobacco at $1.449 per pound. (Sec. 792A.)

The House bill contains no comparable provision.

The Conference substitute establishes the price support level for the 1985 crop of Burley tobacco at $1.488 per pound, in accordance with the provisions of Public Law 99-157, and establishes the price support level for the 1986 crop of Flue-cured tobacco at $1.438 per pound and the price support level for the 1986 crop of Burley tobacco at $1.488 per pound. The House conferees expressed concern that the level of price supports in the Senate amendment was inadequate.

(b) The Senate amendment establishes the price support level for the 1985 and subsequent crops of any kind of tobacco (other than Flue-cured and Burley tobacco) for which marketing quotas are in effect or are not disapproved by producers at the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, the amount by which (1) the support level for the crop for which the determination is being made, as determined under section 106(b) of the Agricultural Act of 1949, is greater or less than (2) the support level for the immediately preceding crop, as determined under such section, as that difference may be adjusted by the Secretary of Agriculture under section 106(d) of such Act if the support level under clause (1) is greater than the support level under clause (2).

The Senate amendment also provides that, if requested by the board of directors of the association through which price support for the respective kind of tobacco specified above is made available to producers, the Secretary may reduce the support level for such kind of tobacco to the extent requested by the association to more accurately reflect the market value and improve the marketability of such tobacco. (Sec. 792A.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision but makes it applicable to the 1986 and subsequent crops since the 1985 price

support level for these kinds of tobacco has already been announced.

(c) The Senate amendment establishes the price support level for the 1986 and subsequent crops of Flue-cured and Burley tobacco for which marketing quotas are in effect or are not disapproved by producers. Under this provision, the support level would be the level in cents per pound at which the immediately preceding crop was supported, plus or minus, respectively, an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of—

(1) 66.7 percent of the amount by which the average price received by farmers for Flue-cured and Burley tobacco, respectively, on the United States auction markets, as determined by the Secretary during the 5 marketing years immediately preceding the marketing year for which the determination is being made (excluding the high and low years) is greater or less than the average market price received by farmers for such tobacco on the United States auction markets during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made (excluding the high and low years); and

(2) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by tobacco growers during the calendar year immediately preceding the year in which the determination is made.

For the purposes of this provision, the average market price for Burley tobacco for the 1984 and each prior applicable marketing year would be reduced by $0.30 per pound, and the average market price for Flue-cured tobacco for the 1985 and each prior applicable marketing year would be reduced by $0.30 per pound. Also, the support level for the 1985 crop of Flue-cured tobacco would be deemed to be $1.399 per pound.

The Senate amendment specifies that the index of prices paid by tobacco farmers is to include items representing general, variable costs of producing tobacco, as determined by the Secretary. However, such index is not to include the cost of land, risk, overhead, management, purchase or leasing of quota, marketing contributions or assessments, and other costs not directly related to the production of tobacco. (Sec. 792A.)

The House bill contains no comparable provision.

The Conference substitute provides that the formula for making future adjustments in the price support levels for Flue-cured and Burley tobacco, as contained in the Senate provision, is applicable to the 1987 and subsequent crops of such tobacco. The Conference substitute establishes, for purposes of calculating future adjustments in the price support levels for Flue-cured and Burley tobacco, that the average market price for Burley tobacco for the 1985 marketing year is to be reduced by $0.039 per pound and the average market price for Flue-cured tobacco for the 1985 marketing year is to be reduced by $0.25 per pound. The Conference substitute deletes the provision that deems the price support level for the 1985 crop of Flue-cured tobacco to be $1.399 per pound.

(d) The Senate amendment, effective for the 1986 and subsequent crops of tobacco, strikes out section 106(g) of the Agricultural Act of 1949, which gives the Secretary authority to lower the price support on certain low quality grades of Flue-cured tobacco if requested by the board of directors of the producer association that makes price support available to producers of Flue-cured tobacco. (Sec. 792A)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(3) Determination of marketing quotas for Flue-cured and Burley tobacco

(a) The Senate amendment defines the term "reserve stock level" to be the greater of 100 million pounds (farm sales weight), in the case of Flue-cured tobacco, and 50 million pounds, in the case of Burley tobacco, or 15 percent of the national marketing quota for Flue-cured or Burley tobacco, respectively, for the marketing year immediately preceding the marketing year for which the level is being determined. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(b) The Senate amendment defines the term "domestic manufacturer of cigarettes" to mean a person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(c) The Senate amendment provides that for the 1986 and each subsequent crop of Flue-cured tobacco, the national marketing quota for a marketing year would be the amount of Flue-cured tobacco, as determined by the Secretary of Agriculture, that is not more than 103 percent nor less than 97 percent of the total of—

(1) the aggregate of the amounts of Flue-cured tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on the United States auction markets or from producers during the marketing year;

(2) the average annual exports of Flue-cured tobacco during the 3 preceding marketing years; and

(3) the amount, if any, of Flue-cured tobacco that the Secretary, in his discretion, determines is necessary to increase or decrease the inventory of the producer-owned cooperative marketing association that makes price support available to producers of Flue-cured tobacco to establish or maintain such inventory at the reserve stock level for Flue-cured tobacco.

In determining the amount of Flue-cured tobacco necessary to establish the inventory of the producer association at the reserve stock level under clause (3) above, the Secretary must provide for attaining the reserve stock level over a period of 5 years. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that (1) deletes the requirement that the reserve stock level be attained over a period of 5 years; and (2) establishes that for each of the 1982 through 1989 marketing years for Flue-cured

tobacco, the national marketing quota for each such marketing year will not be less than 94 percent of the national marketing quota for the preceding marketing year; and for each of the 1990 through 1993 marketing years for Flue-cured tobacco, the national marketing quota for each such marketing year will not be less than 90 percent of the national marketing quota for the preceding marketing year. The House conferees expressed concern that the national marketing quota under the Senate amendment would have resulted in large reductions annually, reflecting the impact of the "buy-out."

It is the intention of the conferees to create a quota setting formula that will establish, as nearly as possible, a quota for the marketing year equal to actual demand of purchasers from that year's crop, plus or minus the amount necessary to maintain the prescribed reserve stock level, as well as the average exports for the 3 preceding years. The conferees encourage the Secretary of Agriculture to study carefully the recordkeeping requirements necessary to determine accurate future marketing quotas for Flue-cured and Burley tobacco.

(d) The Senate amendment deletes the limitation of 10 percent on any downward adjustment in the national marketing quota for Burley tobacco. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(e) The Senate amendment provides that for the 1986 and each subsequent crop of Burley tobacco, the national marketing quota for any marketing year would be the amount of Burley tobacco, as determined by the Secretary, that is not more than 103 percent nor less than 97 percent of the total of—

(1) the aggregate of the amounts of Burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on the United States auction markets or from producers during the marketing year;

(2) the average annual exports of Burley tobacco during the 3 preceding marketing years; and

(3) the amount, if any, of Burley tobacco that the Secretary, in his discretion, determines is necessary to increase or decrease the inventories of the producer-owned cooperative marketing associations that make price support available to producers of Burley tobacco to establish or maintain such inventories, in the aggregate, at the reserve stock level for Burley tobacco.

In determining the amount of Burley tobacco necessary to establish or maintain the inventories of the producer associations at the reserve stock level under clause (3) above, the Secretary must provide for attaining the reserve stock level over a period of 5 years. Also, any downward adjustment in the inventories of Burley tobacco of the producer associations under clause (3) above could not exceed the greater of 35 million pounds or 50 percent of the amount by which the total inventories of Burley tobacco of the producer associations exceed the reserve stock level for Burley tobacco. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that (1) clarifies that the 5-year period for attaining the reserve stock level applies only to the initial attainment of the reserve stock level; and (2) establishes that for each of the 1986 through 1989 marketing years for Burley tobacco, the national marketing quota for each such marketing year will not be less than 94 percent of the national marketing quota for the preceding marketing year; and for each of the 1990 through 1993 marketing years for Burley tobacco, the national marketing quota for each such marketing year will not be less than 90 percent of the national marketing quota for the preceding marketing year.

The conferees' concern with respect to the determination of future national marketing quotas (as noted in connection with item (c) above) applies to both Burley and Flue-cured tobacco.

(f) The Senate amendment makes inapplicable to Burley tobacco the limitation of 90 percent on the minimum national factor that is used in determining the farm marketing quota for each year under a poundage quota system. (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(g) The Senate amendment requires, no later than December 1 of any marketing year with respect to Flue-cured tobacco (December 1, 1985, with respect to the 1986 crop) and January 15 of any marketing year with respect to Burley tobacco (January 15, 1986, with respect to the 1986 crop), each domestic manufacturer of cigarettes to submit to the Secretary a statement, by kind, of the amount of Flue-cured and Burley tobacco (for which a national marketing quota is in effect or for which the Secretary has proclaimed a national marketing quota for the next succeeding marketing year) that the manufacturer intends to purchase, directly or indirectly, on the United States auction markets or from producers during the next succeeding marketing year. On receipt, the Secretary would aggregate the amounts of intended purchases in a manner that would not allow the identification of any manufacturer's amount of intended purchases.

The Senate amendment also provides that if any domestic manufacturer of cigarettes fails to submit to the Secretary the required statement of its amount of intended purchases, the Secretary would establish the amount of the intended purchases to be attributed to such manufacturer based on (1) the amount of intended purchases submitted by the manufacturer for the preceding marketing year, or (2) if the manufacturer did not submit a statement of its amount of intended purchases for the preceding marketing year, the most recent information available to the Secretary.

The Senate amendment requires that all information with respect to the amount of intended purchases submitted by domestic manufacturers of cigarettes must be kept confidential by officers and employees of the Department of Agriculture. Such information may only be disclosed by such persons in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving enforcement of the Agricultural Adjustment Act of 1938, except that the name of any person violating any provision of the Act, together with a statement of the particular

provisions of such Act that were violated, could be published. Criminal penalties of a $1,000 fine or 1-year imprisonment, or both, and removal from office, are provided for violation of this provision by Department of Agriculture employees.

The Senate amendment exempts statements of the amount of intended purchases that are submitted under this provision from disclosure under the provisions of section 552 of title 5, United States Code (Freedom of Information Act). (Sec. 792B.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that establishes the deadline for submission of the domestic cigarette manufacturer's statement of intended purchases from the 1986 crops of Flue-cured and Burley tobacco as 14 days from the date of enactment of this Act, on January 15, 1986, whichever is later, in the case of Burley tobacco.

(4) Marketing quota announcement date

The Senate amendment changes the date by which the Secretary of Agriculture must proclaim or announce the national marketing quota for any kind of tobacco other than Flue-cured and Burley tobacco from February 1 to March 1 prior to the marketing year in question. (Sec. 792C.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision with an amendment that establishes the deadline for the proclamation and announcement of the 1986 national marketing quotas for Flue-cured and Burley tobacco as 21 days from the date of enactment of this Act, or, in the case of Burley tobacco, February 1, 1986, whichever is later.

(5) Reduction in excess tobacco not subject to marketing penalty

(a) The Senate amendment, effective for the 1986 and subsequent crops of tobacco, reduces the amount of Flue-cured and Burley tobacco that may be marketed without penalty when acreage-poundage or poundage farm marketing quotas are in effect from 110 to 103 percent of the farm marketing quota for the farm. (Sec. 792D.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(b) The Senate amendment reduces from 110 to 103 percent of the farm marketing quota the amount of tobacco marketed from a farm on which price support would be made available when acreage-poundage or poundage marketing quotas are in effect. (Sec. 792D.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(6) Purchase requirements; penalty

The Senate amendment requires each domestic manufacturer of cigarettes, at the conclusion of each marketing year, on or before a date prescribed by the Secretary of Agriculture, to submit to the Secretary a statement, by kind, of the amount of Flue-cured and Burley quota tobacco purchased, directly or indirectly, by such manufacturer during such marketing year. The statement must include the amount of each such kind of tobacco purchased by the

manufacturer on the United States auction markets, from producers, and from the inventories of tobacco from the 1985 and subsequent crops of the producer associations that make price support available to producers of Flue-cured or Burley tobacco.

The Senate amendment subjects to a penalty any domestic manufacturer of cigarettes that the Secretary determines, after notice and opportunity for a hearing, has failed to purchase during a marketing year on the United States auction markets, from producers, or from the inventories from the 1985 and subsequent crops of the producer associations a quantity of Flue-cured and Burley quota tobacco equal to at least 90 percent of the amount of the intended purchases of such tobacco, respectively, submitted by the manufacturer or established by the Secretary for such manufacturer for that marketing year for purposes of determining the national marketing quota for such tobacco.

If the total amount of Flue-cured or Burley quota tobacco, respectively, marketed by producers at auction in the United States during the marketing year in question is less than the national marketing quota (including any adjustments for overmarketings or undermarketings) for that kind of tobacco for that marketing year, the amount of intended purchases of each domestic manufacturer of cigarettes for purposes of determining the penalty would be reduced by the percentage by which the total amount marketed at auction in the United States during the marketing year is less than the national marketing quota (including any adjustments for overmarketings and undermarketings) for that kind of tobacco for the marketing year. For purposes of this section, the term "marketed" would include disposition of tobacco by cosigning the tobacco to a producer association for a price support advance.

The Senate amendment provides that the amount of any penalty to be imposed on a manufacturer under this provision would be equal to (1) twice the per pound assessment (as determined under section 106A or 106B of the Agricultural Act of 1949) for the kind of tobacco involved, multiplied by (2) the amount by which the purchases by such manufacturer on the United States auction markets, from producers, or from the inventories from the 1985 and subsequent crops of the producer associations of Flue-cured and Burley quota tobacco, respectively, for the marketing year are less than 90 percent of the amount of intended purchases of such kinds of tobacco submitted by the manufacturer or established by the Secretary for such manufacturer for that marketing year.

The Senate amendment requires that an amount equivalent to the penalty collected by the Secretary under this provision be transmitted by the Secretary to the appropriate producer association that makes price support available to producers of Flue-cured or Burley tobacco, as the case may be, for deposit in such association's No Net Cost Fund or Account.

The Senate amendment provides that the provisions relating to confidentiality of information submitted by domestic manufacturers of cigarettes with respect to intended purchases of tobacco and exemption of such information from disclosure under the Freedom of Information Act apply to information submitted by such manufacturers with respect to the amount of purchases of Flue-cured and Burley quota tobacco during a marketing year.

The Senate amendment defines the term "quota tobacco" as used in this provision to mean any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers. (Sec. 792E.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision and adds a new provision that permits, with respect to the 1985 and subsequent crops of Burley tobacco, the approval of agreements involving the lease and transfer of Burley tobacco quotas filed after July 1 if the county ASC committee determines, with the concurrence of the State ASC Committee, that (1) all interested parties agreed to such lease and transfer agreement before July 1 and (2) the failure to file a record of the lease and transfer was not a result of gross negligence on the part of any party to such agreement.

(7) Assessment to no net cost funds or accounts

(a) The Senate amendment amends section 106A of the Agricultural Act of 1949 to provide that the Secretary of Agriculture shall require that each purchaser of Flue-cured and Burley quota tobacco pay an assessment to the producer association that makes price support available to producers of that respective kind of tobacco for deposit in the association's No Net Cost Tobacco Fund. The term "purchaser" is defined to mean any person who purchases in the United States, either directly or indirectly for the person's own account or for the account of another, Flue-cured or Burley quota tobacco. The assessment would be in an amount determined from time to time by the association with the approval of the Secretary and would be paid with respect to all purchases of Flue-cured and Burley tobacco that is marketed by producers from a farm, including purchases of such tobacco from the 1986 and subsequent crops from the producer association.

The amount of the producer contributions and purchaser assessments to be paid under section 106A of the Act of 1949 is to be determined by the Secretary in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining an association's Fund. In making such determination with respect to purchaser assessments, however, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco would be taken into account.

The Secretary is to approve the amount of purchaser assessments determined by an association only if the Secretary determines that such amount (in addition to the amount of the producer contributions to the Fund) will result in accumulation of a Fund adequate to reimburse the Commodity Credit Corporation for any net losses the Corporation may sustain under its loan agreements with the association.

The Secretary must also require that any producer contribution or purchaser assessment to be paid under section 106A of the 1949 Act is to be collected—

(1) from the person who acquired the tobacco involved from the producer, but an amount equal to the producer contribution may be deducted by the purchaser from the price paid to such producer in case the tobacco is marketed by sale;

(2) if the tobacco involved is marketed by a producer through a warehouseman or agent, from such warehouseman or agent who may deduct an amount equal to the producer contribution from the price paid to the producer and who may add an amount equal to the purchaser asssessment to the price paid by the purchaser; and

(3) if the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser.

The Senate amendment also provides that, effective for the 1986 and subsequent crops, the loan agreements between the Commodity Credit Corporation and an association must provide that if the Secretary determines that the amount in the Fund or any net gains on tobacco pledged by the association as security for price support loans exceeds the amounts necessary for the purposes specified in section 106A of the 1949 Act, the association, with the approval of the Secretary, may suspend the payment and collection of contributions and assessments under section 106A of the 1949 Act on terms and conditions established by the association, with the approval of the Secretary. (Sec. 792F.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision. The House conferees expressed concern that the Senate provision does not address producers' uncertainty with respect to future assessments, and fails to apply an equal assessment on imported tobacco.

(b) The Senate amendment amends section 106B of the Agricultural Act of 1949 to require that, if a No Net Cost Tobacco Account is established for an association under section 106B, the Secretary must require that each purchaser of Flue-cured and Burley quota tobacco must pay an assessment to the Commodity Credit Corporation for deposit in the association's Account. The term "purchaser" is defined to mean any person who purchases in the United States, either directly or indirectly for the person's own account or for the account of another, Flue-cured or Burley quota tobacco in the United States. The assessment would be determined by the Secretary in consultation with the association and would be paid with respect to all purchases of Flue-cured and Burley tobacco that is marketed by producers from a farm, including purchases of such tobacco from the 1986 and subsequent crop from the association.

The amount of the assessment to be paid by producers and purchasers of tobacco is to be determined in such a manner that producers and purchasers share equally, to the maximum extent practicable, in maintaining the association's Account. In making such determination with respect to purchasers assessments, however, only 1985 and subsequent crops of Flue-cured and Burley quota tobacco would be taken into account. Also, the amount of any assessment that is determined by the Secretary for the 1986 and subsequent crops of Burley quota tobacco is to be determined without regard to any net losses that the Commodity Credit Corporation may sustain under its loan agreements with associations with respect to the 1983 crop of such tobacco.

Under the Senate amendment any assessment to be paid by a producer or a purchaser under section 106B would be collected

from the person who acquired the tobacco involved from such producer, but an amount equal to the producer assessment could be deducted by the purchaser from the price paid to the producer in case such tobacco is marketed by sale. However, if tobacco of the kind for which an Account is established is marketed by a producer through a warehouseman or other agent, both the producer and the purchaser assessment would be collected from such warehouseman or agent who could deduct an amount equal to the producer assessment from the price paid to the producer and who could add an amount equal to the purchaser assessment to the price paid by the purchaser. Also, if tobacco is marketed by a producer directly to any person outside the United States, both the producer and the purchaser assessment would be collected from the producer who could add an amount equal to the purchaser assessment to the price paid by the purchaser. (Sec. 792F.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

The conferees encourage the Secretary of Agriculture to use funds from the no-net-cost assessments collected from producers on the 1985 Burley tobacco crop as (provided for in P.L. 99-157) to offset the producers' liability for potential losses associated with the 1982 and 1984 crops of Burley tobacco. In the event that there are no potential losses on the 1982 and 1984 Burley tobacco crops for which producers are responsible, the boards of directors of the Burley tobacco producer associations may determine, with the approval of the Secretary of Agriculture, how such funds may be used.

(c) The Senate amendment provides that each person who fails to collect any contribution or assessment as required by section 106A or 106B of the 1949 Act and remit such contribution or assessment to the producer association or the Commodity Credit Corporation, as the case may be, at such time and in such manner as may be prescribed by the Secretary, is liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco involved for the immediately preceding year on the quantity of tobacco as to which the failure occurs. The Secretary may reduce any such marketing penalty in such amount as the Secretary determines equitable in any case in which the failure was unintentional or without knowledge on the part of the person concerned. Any penalty may be assessed by the Secretary only after notice and opportunity for a hearing.

Any person against whom such a penalty is assessed may obtain review of such penalty in an appropriate district court of the United States by filing a civil action in such court not later than 30 days after the penalty is imposed.

An amount equivalent to any such penalty collected by the Secretary must be transmitted by the Secretary to the appropriate association or to the Commodity Credit Corporation, as the case may be, for deposit in the appropriate association's Fund or Account. (Sec. 792F.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(8) Exemption from rulemaking

The Senate amendment requires the Secretary of Agriculture to implement the provisions of the Senate amendment without regard to the provisions requiring notice and other procedures for public participation in rulemaking contained in section 553 of title 5, United States Code, or in any directive of the Secretary. (Sec. 792F(c).)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(9) Purchase of inventory stock

The Senate amendment requires the producer association that makes price support available to producers of Flue-cured tobacco to offer to sell its stocks of Flue-cured tobacco from the 1976 through 1984 crops at the base prices, including carrying charges, in effect as of the date of the offer, reduced by 90 percent for Flue-cured tobacco from the 1976 through 1981 crops and reduced by 10 percent for Flue-cured tobacco from the 1982 through 1984 crops. The purchasers of the 1976 through 1984 crops of Flue-cured tobacco are to pay the full carrying charges that have accrued to such tobacco from the date of the offer made under this provision to the date that such tobacco is removed from the inventory of the association.

The Senate amendment requires each producer association that makes price support available to producers of Burley tobacco to offer to sell its stocks of Burley tobacco from the 1982 crop at the listed base price in effect as of July 1, 1985, and to offer to sell its stocks of Burley tobacco from the 1984 crop at the associations' costs for such tobacco as of the date of enactment of the bill. Also, purchasers of the 1982 crop of Burley tobacco are to pay the full carrying charges that have accrued to such tobacco, and purchasers of the 1984 crop of Burley tobacco are to pay the full carrying charges that have accrued to such tobacco from the date of enactment of the bill to the date such tobacco is removed from the inventories of the associations.

The Senate amendment requires no later than 30 days after the date of enactment of the bill, that the Commodity Credit Corporation acquire title to the Burley tobacco from the 1983 crop that is pledged as security for loans on such tobacco by calling the loans on such tobacco. The Corporation is then to offer such tobacco for sale at such times, in such quantities, and subject to such conditions as the Corporation deems appropriate. If this tobacco is not sold within 2 years from the date the Corporation calls the loans, the Corporation may offer to sell to domestic manufacturers of cigarettes the remaining stocks of such tobacco at the associations' costs, including carrying charges, as of the date on which the Corporation calls the loans on such tobacco, reduced by 90 percent. Neither tobacco producers nor tobacco purchasers would be responsible for carrying charges that accrue to the 1983 crop of Burley tobacco after the date on which the Commodity Credit Corporation calls the loans on such tobacco.

The Senate amendment authorizes domestic manufacturers of cigarettes to enter into agreements to purchase inventory stocks of Flue-cured and Burley tobacco, as set forth in the bill. To be eligi-

ble for the reductions in price, the manufacturers would have to enter into such agreements as soon as practicable, but no later than 90 days, after the date of enactment of the bill. Such agreements must provide that, over a period of time, each participating domestic manufacturer of cigarettes must purchase a percentage of the stocks of Flue-cured and Burley tobacco held by the producer associations at the close of the 1984 marketing year, or with respect to the 1983 crop of Burley tobacco, by the Commodity Credit Corporation at the time the Corporation offers such tobacco for sale to domestic manufacturers of cigarettes under the bill. The period of time over which the purchases would be made could not exceed 8 years from the date of enactment of the bill with respect to Flue-cured tobacco, 5 years from the date of enactment of the bill with respect to Burley tobacco from the 1982 and 1984 crops, and 5 years from the date the Commodity Credit Corporation offers the 1983 crop of Burley tobacco for sale to domestic manufacturers of cigarettes with respect to the 1983 crop of Burley tobacco.

The percentage to be purchased by each participating manufacturer is to be at least equal to such manufacturer's respective percentage of the total quantity of net cigarettes manufactured for use as determined by the Secretary of Agriculture on the basis of the monthly reports ("Manufacturer of Tobacco Products—Monthly Reports") submitted (on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

The amount of tobacco to be purchased by each participating manufacturer is to be determined annually and would be based on the manufacturer's percentage of net cigarettes manufactured for use multiplied by the appropriate annual amount to be withdrawn from the inventories of the producer associations or the Commodity Credit Corporation. The appropriate annual amount to be withdrawn from inventories would be—

(1) 12½ percent of the inventories of Flue-cured tobacco from the 1976 through 1984 crops on hand on the date of enactment of the bill;

(2) 20 percent of the inventories of Burley tobacco from the 1982 and 1984 crops on hand on the date of enactment of the bill; and

(3) 20 percent of the inventories of Burley tobacco from the 1983 crop held by the Commodity Credit Corporation on the date 2 years after the call of the loans on such tobacco by the Corporation.

Any purchases by a manufacturer from the inventories of the associations or from the Commodity Credit Corporation for a crop covered by this provision in any year of the buy-out period that exceed the amount of the manufacturer's purchases required under the agreement would be applied against future purchases required of such manufacturer.

The Senate amendment provides that in carrying out this provision, manufacturers may confer with one another and, separately or collectively, with associations, the Secretary of Agriculture, and the Commodity Credit Corporation as may be necessary or appropriate to effectuate the provision. Each agreement entered into under this provision must be submitted to the Secretary for review

and approval. Agreements with producer associations would be submitted by the association. No agreement could become effective until approved by the Secretary, and the Secretary may not approve any such agreement unless the Secretary has determined that—

(1) the agreement will not unduly impair or disrupt the orderly marketing of current and future tobacco crops during the term of the agreement and is otherwise consistent with the purposes of the bill; and

(2) the price and other terms of sale are uniform and nondiscriminatory among various purchasers.

The Senate amendment also provides that provisions relating to confidentiality of information submitted by cigarette manufacturers with respect to intended purchases of tobacco and exemption of such information from the Freedom of Information Act would apply to information submitted by domestic manufacturers of cigarettes with respect to net cigarettes manufactured for use, including information provided on ATF Form 3068. (Sec. 792G.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(10) Review of tobacco grading system and disaster crop designation

The Senate amendment requires the Secretary of Agriculture to conduct a study of the methods and procedures for grading tobacco marketed in the United States, including an evaluation of—

(1) the extent to which grades assigned to tobacco accurately reflect the quality of such tobacco;

(2) the extent to which the number of grades of tobacco affects the operation of the grading system; and

(3) the competence and independence of tobacco graders.

The Secretary is also required to study the feasibility and desirability of providing for a grade that would be used to designate tobacco that is of such poor quality as a result of a natural disaster as to affect substantially its marketability. As part of this study the Secretary would be required to look at the feasibility and desirability of establishing a price support level, if any, for such tobacco which may be adjusted by the Secretary as necessary to facilitate the sale of such tobacco and protect the no net cost funds or accounts.

Within 120 days after the enactment of the bill, the Secretary is to report the results of these studies, together with any recommendations for necessary legislation, to the House and Senate agriculture committees. As soon as practicable after submission of this report, but no later than the opening of the marketing season for the 1986 crop of Flue-cured tobacco, the Secretary is to implement any recommendations made in such report that may be implemented by the Secretary under existing authority. (Sec. 792H.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(11) Investment of tobacco inspection fees

The Senate amendment authorizes the investment of the fees and charges collected for providing inspection services under the Tobacco Inspection Act. Such fees and charges could be invested by

the Secretary of Agriculture in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments. Any income realized from this activity would be used to pay the expenses of the Secretary of Agriculture incident to providing services under the Tobacco Inspection Act or reinvested in the manner authorized in the bill. (Sec. 792I.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

(12) Effective date

The Senate amendment provides that, except as otherwise provided in the subpart, the subpart and the amendments made by the subpart are to become effective on the date of enactment of the subpart. (Sec. 792J.)

The House bill contains no comparable provision.

The Conference substitute adopts the Senate provision.

TITLE II—ARMED SERVICES AND DEFENSE-RELATED PROGRAMS

The House bill contained a provision (sec. 1101) that would authorize the United States to collect from a third-party payer the reasonable cost of care provided in medical facilities of the uniformed services. "Third-party payer" includes both insurance underwriters and private employers who offer self-insured or partially self-insured/partially underwritten health insurance plans. Such collection would be authorized only in the case of a non-active duty beneficiary.

The Senate amendment contained a provision (sec. 203) similar to section 1101 of the House bill, except the collection authority would be limited to fiscal years 1986 and 1987.

The Senate amendment also contained two provisions dealing with military retirement. Section 201 would place a ceiling on the total of basic pay and retired pay accrual charge that would require a $2.9 billion reduction in the accrual charge for the military retirement system. Section 202 would require the Secretary of Defense to submit a report (including draft legislation) proposing two separate plans to change the military retirement system: one of the proposed plans would consist only of changes in the military retirement system other than changes in the procedure for periodic cost-of-living adjustments in retired pay. Each proposal would have to be sufficient to reduce the accrual charge by $2.9 billion.

The Senate amendment also contained two provisions (sec. 204 and 205) dealing with the linkage of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) to Medicare. These provisions are discussed under Title ——.

The House recedes with amendments.

The conferees agree to drop sections 201 and 202 of the Senate amendment because identical provisions were enacted as sections 666 and 667 of the Department of Defense Authorization Act, 1986 (Public Law 99-145).

The conferees agree to retain the provision to bill third-party payers for the cost of medical care provided to non-active duty beneficiaries in military medical facilities. This provision would

become permanent law, but would be applicable only to inpatient medical care. Once the inpatient collection process is operational, the conferees intend to review the program to determine the feasibility and cost-effectiveness of extending this coordination of benefits requirement to outpatient services as well. Authority to collect would become effective on October 1, 1986, and would apply to any insurance, medical service, or health plan agreement entered into, amended or renewed on or after the date of enactment of this act.

The reasonable cost of inpatient medical care to be collected would be determined in accordance with regulations prescribed by the Secretary of Defense. In such regulations, the Secretary of Defense may utilize the per diem charge currently used for collections under the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.), diagnosis related groups, fee schedules, or such other methodology determined appropriate by the Secretary. Regardless of the methodology, however, the reasonable cost collected from a third-party payer should not exceed an amount equal to the prevailing rate that the third-party payer can demonstrate to the satisfaction of the Secretary of Defense it would pay under valid contractual arrangements with other facilities or providers within the same geographic area for similar service or services. The conferees want to ensure that Department of Defense collection practices are consistent with and do not impede cost containment initiatives undertaken by the private sector.

For the first year, funds collected would be returned to the Treasury. When the Department of Defense and the military services successfully implement a program of collections and develop an accounting system that is capable of tracking the level of funds collected and identifying the disposition of those funds within the military medical care system, the conferees contemplate that the Congress will be prepared to review the Department of Defense's request to permit the funds to be returned to the appropriation account from which the care was provided, rather than to the Treasury. The conferees further contemplate that the progress made on such an accounting system will be reviewed next year.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 13, 1985.

Hon. LES ASPIN,
Chairman, Committee on Armed Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the reconciliation provisions of subconferences four and five as of December 13, 1985.

The provision in subconference four authorizes the federal government to recover from third-party health insurers the cost of inpatient medical care provided to dependents of active-duty military members, military retirees, and retirees' dependents when these patients are covered by private health insurance, effective October 1, 1986.

The provision in subconference five requires institutions wishing to participate in Medicare to accept Civilian Health and Medical Care Program for the Uniformed Services (CHAMPUS) patients at

the same reimbursement rates applied to Medicare users, effective January 1, 1987. The savings of both these provisions fall within function 050.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

Attachment.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 4, CHANGE FROM RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88	1989	1990
Authorizations: Third-party reimbursement:						
Budget authority	0	−160	−200	−360	−215	−235
Outlays	0	−160	−200	−360	−215	−235

SUBCONFERENCE 5, CHANGE FROM RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88	1989	1990
Authorizations: CHAMPUS						
Budget authority	0	−105	−160	−265	−175	−185
Outlays	0	−85	−150	−235	−170	−185

1. Study of use by CHAMPUS of Medicare Prospective Payment System (section 204 of the Senate amendment)

Present law

Section 634 of the Department of Defense Authorization Act of 1985, Public Law 98-525, required the Secretary of Defense and the Secretary of Health and Human Services to study jointly the possible effects of the adoption for the CHAMPUS program of a prospective payment system for inpatient hospital services like the one used for medicare.

The report, with recommendations, was to be submitted to the Committees on Armed Services and Finance in the Senate, and the Committees on Armed Services and Ways and Means in the House of Representatives no later than February 28, 1985. Although the Department of Defense transmitted its portion of the study to the Department of Health and Human Services, the joint report has not yet been sent to Congress.

House bill

No provision.

Senate amendment

The Secretary of Defense and the Secretary of Health and Human Services would be required to study jointly the possible effects of the adoption for the CHAMPUS program of a prospective payment system for inpatient hospital services like the one use for medicare. The study would address: (1) the advisability and feasibility of requiring by law that a hospital participate in the CHAMPUS program as a condition of participating in medicare; and (2) the changes that might be expected, if such a system were adopted, in the CHAMPUS patient workload and the CHAMPUS aggregate payment levels to various segments of the provider community (e.g. hospitals and nursing homes).

The report with recommendations would be submitted to the Committees on Armed Service and Finance in the Senate and the Committees on Armed Services and Ways and Means in the House of Representatives no later than December 1, 1985.

Conference agreement

House recedes with an amendment. The date for submission of the report would be extended until June 30, 1986. The conferees expect the Secretaries to issue the report in a timely fashion.

2. Requirement of Medicare providers of Hospital services to participate in CHAMPUS and/or CHAMPVA programs. (section 205 of the Senate amendment)

Present law

Current law contains no requirement that medicare-participating hospitals accept beneficiaries of CHAMPUS or CHAMPVA. Current law imposes no requirement on such hospitals regarding acceptance of payment amounts under these programs as payment in full.

Section 931 of the Department of Defense Authorization Act for fiscal year 1984 included a provision authorizing CHAMPUS and CHAMPVA to utilize medicare reimbursement procedures in paying for care under these programs.

House bill

No provision.

Senate amendment

The bill would require a medicare-participating hospital to accept and also participate in the CHAMPUS and CHAMPVA programs and to accept payment made under both programs as payment in full.

The bill would be effective, generally on October 1, 1985.

Conference agreement

House recedes with an amendment. Admissions practices, payment methodologies and amounts would be prescribed in regulations jointly issued by the Secretary of Health and Human Services and the Secretaries of Defense and Transportation. It is the intent of the managers that the Secretary of Defense will identify hospi-

tals which fail to meet this additional condition and convey that information to the Secretary of HHS for appropriate action.

The Secretary of HHS would be required to report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement as a reult of this additional requirement.

3. Requirement of Medicare providers to accept Veterans' Administration beneficiaries (section)

Present law

Current law does not require medicare-participating hospitals to accept Veteran Administration beneficiaries.

Further, the Administrator of the VA contracts individually with facilities to provide services to eligible veterans. The Office of Management and Budget is requiring the VA to cap reimbursement rates under these contracts at levels similar to rates established for medicare beneficiaries.

House bill

The bill would require medicare participating hospitals to accept Veterans' Administration (VA) beneficiaries on a basis similar to medicare and requires them to accept payment amounts determined under VA regulations as payment in full. The Secretary of HHS would be authorized to take corrective action or to terminate a provider's agreement for failure to comply.

Senate amendment

No provision.

Conference agreement

The conference agreement does not include the House bill.

Title III—Housing and Related Programs

Section 3002 prohibits The Federal Financing Bank from purchasing notes or other obligations guaranteed under Section 108 of the Community Development Block Grant Program after June 30, 1986, and requires the Secretary of HUD by July 1, 1986, to take the actions necessary to provide for the financing by the private sector of loans guaranteed under Section 108.

Section 3003 authorizes $1.279 billion in fiscal year 1986 for public housing operating subsidies.

Section 3004—Provides that loans made for public and Indian housing, as well as modernization assistance, will be forgiven at the end of each fiscal year. It also gives direction for the use of the budget authority in the HUD Independent Appropriations Act of 1986, P.L. 99-160, which provides funds for new public housing development and modernization on the basis of long-term financing. As the legislative language the conferees adopted forgives the future public housing indebtedness and as this is tantamount to capital grant financing, the conferees intend that any budget authority that becomes available due to the change in financing will be rescinded. If this approach is used the conferees intend that any budget authority not needed to fund the 7000 additional public and

Indian housing units or provide the level of modernization activity assumed by the Appropriations Committee for FY 86 and any other budget authority not needed for public housing development or modernization activities will be rescinded. Further, the conferees expect that the Congressional Budget Office take this into consideration in developing the baseline for FY 1987.

Section 3005—Rural Housing Authorization. Provides that the aggregate principal amount of loans that may be guaranteed or insured in fiscal year 1986 may not exceed $2,146,600,000 to be allocated as follows: Sec. 502 homeownership loans $1,209.6 million; Sec. 515 rental loans $900 million; Sec. 514 farmworker housing loans $19 million; Sec. 524 site loans $1 million; and Sec. 504 repair loans $17 million.

Section 3006—Management of Insured and Guaranteed Loans. (a) Prohibits rural housing loans made directly or by private lenders and insured or guaranteed by the Farmers Home Administration from being sold to the Federal Financing Bank. (b) Provides that each insured or guaranteed loan contain an agreement by FmHA to pay the difference between the interest rate paid by the borrower and the full private market rate of interest. (c) Provides for protection of the borrowers' rights by requiring that the loan be assigned to the Secretary in the event of a substantial default but before foreclosure. The conferees wish to make clear that Congress intends that the FmHA follow the practices of private mortgage bankers and lenders with regard to defining substantial defaults and that the full forebearance provisions under existing law be extended to the borrower. (d) Provides that the rights that were available to FmHA borrowers prior to the enactment of this provision will continue to be available. (e) Further provides for a loss reserve account of not less than 5 percent of the loans sold to the public and makes other conforming changes in existing law.

The Conference Report also contains a provision to require that not later than 90 days after enactment, regulations be issued to implement the new loan sales approach including any measures that will facilitate the marketability of such loans in the private sector; and to assure that such loans will be competitive with other federally insured or guaranteed loans.

Section 3007—Extends the insuring authorities for all FHA programs through March 17, 1986.

Section 3008—Extends through March 17, 1986, the authority of the HUD Secretary to provide Section 312 rehabilitation loans.

Section 3009—Extends through March 17, 1986, the authority for all of housing related loan and grant programs of the Farmers Home Administration.

Section 3010—Extends through March 17, 1986, the flood insurance and crime and riot insurance programs.

Section 3011(a)—Grandfathers through March 17, 1986, the eligibility of certain metropolitan cities and urban counties as entitlement communities for purposes of the Community Development Block Grant program.

Section 3011(b)—Continues through March 17, 1986, the requirement that the interest rate on Section 202 loans for the elderly and handicapped not exceed 9¼ percent.

Section 3011(c)—Extends through March 17, 1986, the requirements of the Home Mortgage Disclosure Act of 1975.

TITLE IV

SUBTITLE A—AMTRAK, LOCAL RAIL SERVICE ASSISTANCE, TRAVEL AND TOURISM

Amtrak authorization

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(a), would limit the appropriation for Amtrak to $582 million in fiscal year 1986, $606.1 million in fiscal year 1987, and $630.3 million in fiscal year 1988.

House amendment to Senate amendment

The House amendment, in section 1581(a), would authorize an appropriation not to exceed $603.5 million for Amtrak for fiscal year 1986.

Conference substitute

The conference substitute authorizes the appropriation of $600 million in fiscal year 1986, $606.1 million in fiscal year 1987, and $630.3 million in fiscal year 1988.

Use of nonoperational capital funds to maintain service

House bill

No Provision.

Senate amendment

No Provision.

House amendment to Senate amendment

The House amendment, in section 1581(b), provides that unless sufficient funds are otherwise available to operate Amtrak's rail system at substantially the same level of service, maintenance, and equipment overhauls as are in effect on the date of enactment, the carrier must use funds designated for non-operational capital projects to maintain the operations of the system.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Capital assets

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(e), would amend section 304(c) of the Rail Passenger Service Act (RPSA) to permit Amtrak to restate its books and tax returns for years prior to fiscal year 1982 as if preferred stock had actually been issued in the years when it received certain capital grant funds. The amendment would remove an uncertainty as to the reporting of depreciation of the assets acquired with such capital grants.

House amendment to Senate amendment

The House amendment, in section 1583, contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Government travel

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(g), would amend section 306(f) of the RPSA to permit Amtrak to participate in the contract air program administered by the General Services Administration (GSA) in markets where service of Amtrak is competitive with that of air carriers. Under this program, GSA lists certain carriers as "preferred carriers" for federal employee travel. The program currently is restricted to air carriers. This amendment would allow Amtrak to increase revenues by approximately $1 million annually.

House amendment to Senate amendment

The House amendment, in section 1584, contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Report consolidation

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(f)(3), would amend section 308(a) of the RPSA, which currently requires Amtrak to submit monthly reports to Congress on the fully allocated itemized revenues and expenses of each train operated. This section would require Amtrak to consolidate the monthly reports into an annual report due no later than February 15 of each year. The report would incorporate the following information for the preceding

fiscal year: data on ridership; short-term avoidable profit or loss per passenger mile; revenue-to-cost ratio; revenues; subsidy requirements; and, on-time performance.

The provision also would require specification of significant operational problems which have been identified by Amtrak, together with proposals to resolve such problems.

House amendment to Senate amendment

The House amendment, in section 1585, contains a similar provision, with two differences. The House amendment also would require data on passenger miles for the preceding fiscal year and would not require specification of significant operational problems.

Conference substitute

The conference substitute is the Senate amendment, with an amendment to require information on passenger miles.

Charter trains

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(m), would repeal section 402(g) of the RPSA which requires Amtrak to enter into an industry-wide agreement with respect to the operation of charter and special trains.

House amendment to Senate amendment

The House amendment, in section 1586, contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Discretionary audits

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(o), would amend section 805(2) of the RPSA to eliminate the requirement that the General Accounting Office conduct an annual performance audit of Amtrak. Under this amendment, such audits would be discretionary.

House amendment to Senate amendment

The House amendment, in section 1587(a), contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Repeal of studies and reports

House bill

No Provision.

Senate amendment

The Senate amendment, in sections 403(1), (p), (q), and (r), would repeal requirements for a number of studies and reports that either have been done or are no longer necessary.

Specifically, the provision would repeal section 306(k) of the RPSA, which deals with a study the Interstate Commerce Commission (ICC) was required to do in 1977; section 806 of the RPSA, which deals with a report the Secretary of Transportation was required to do in 1973; section 810 of the RPSA, which deals with a study the Secretary of Transportation was required to do in 1980; and section 811 of the RPSA, which requires Amtrak to submit an annual report to Congress on the ratio of revenue to operating expenses on each of its routes. This last report is not necessary, because the same information would be contained in the new consolidated report described in a previous section.

House amendment to Senate amendment

The House amendment, in section 1587(b), contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Emergency assistance repeal

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(j), would repeal title VII of the RPSA, which authorized interim emergency Federal financial assistance to private railroads to assist them in carrying out the operating contracts with Amtrak authorized by the Act. This financial assistance was never required or used.

House amendment to Senate amendment

The House amendment, in section 1587(c), contains the same provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

NECIP report repeal

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(s), would repeal section 703(1)(D) of the Railroad Revitalization and Regulatory Reform Act of 1976, which requires Amtrak and the Secretary of Transportation to submit annual reports on the progress of the Northeast Corridor Improvement Project.

House amendment to Senate amendment

The House amendment, in section 1587(d), contains a similar provision, specifying an effective date of October 1, 1986.

Conference substitute

The conference substitute is the Senate amendment.

Performance evaluation center repeal

House bill

No Provision.

Senate amendment

The Senate amendment, in sections 402(f) (1) and (2), would repeal section 305(1) of the RPSA, which requires Amtrak to maintain a Performance Evaluation Center and to report to Congress every six months on the Center's activities and recommendations. This provision also would make a conforming change in section 305(m) of the RPSA.

House amendment to Senate amendment

The House amendment, in section 1587(e), contains a similar provision, without the conforming change to section 305(m) of the RPSA.

Conference substitute

The conference substitute is the Senate amendment.

Revenue-cost ratio

House bill

No Provision.

Senate amendment

No Provision.

House amendment to Senate amendment

The House amendment, in section 1588, would require Amtrak to set a goal of recovering at least 61 percent of its operating costs from its revenue beginning in fiscal year 1986. Currently, Amtrak is required to recover fifty percent of its operating costs from revenues.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Labor-related cost savings

House bill

No Provision.

Senate amendment

No provision.

House amendment to Senate amendment

The House amendment, in section 1589, would direct Amtrak and the representatives of employees of Amtrak to negotiate changes in existing agreements between such parties that would result in cost savings to Amtrak. Amtrak and the representatives of Amtrak's employees would report the results of their negotiations to Congress within six months of the date of enactment.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Route discontinuance

House bill

No Provision.

Senate amendment

No provision.

House amendment to Senate amendment

The House amendment, in section 1590, would prohibit Amtrak, as a result of the provision of this subtitle, from reducing the frequency of service on any line which, as of May 1, 1985, had three or fewer trains operating in either direction per week.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Employment vacancy filing

House bill

No Provision.

Senate amendment

No provision.

House amendment to Senate amendment

The House amendment, in section 1592(a), would amend section 704(c) of the Regional Rail Reorganization Act to provide a sanction when railroads fail to file job vacancy notices with the Railroad Re-

tirement Board. The provision would require the Board to issue a warning when it becomes aware of a railroad's failure to file. Thereafter, the railroad would be liable for a $1,000 civil penalty for any failure to file a notice of a subsequent job vacancy.

Conference substitute

The conference substitute is the House amendment to the Senate amendment, with two amendments: (1) reducing the civil penalty to $500; and, (2) exempting Amtrak from certain first-right-of-hire provisions where Amtrak hires qualified train and engine employees who hold seniority rights to work in intercity rail passenger service in connection with the assumption of functions previously performed under contract by other carriers.

The conferees intend that the Railroad Retirement Board will issue appropriate regulations providing for reasonable guidelines to implement this section.

Central register of railroad employment extension

House bill

No Provision.

Senate amendment

No Provision.

House amendment to Senate amendment

The House amendment, in section 1592(b), would extend for two additional years the applicability of the provisions of section 704 of the Regional Rail Reorganization Act with respect to the maintenance of a central register of railroad employment, filing of vacancy notices, and dispute resolution procedures.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Transportation of used unoccupied vehicles

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(b), would amend section 103(3) of the RPSA to provide that Amtrak's authority to operate auto-ferry service extends to the transportation of used automobiles regardless of whether the automobiles are accompanied by their owners. Amtrak now operates Auto Train service between Virginia and Florida. Under the current law, it only can transport an automobile if the automobile's owner is also travelling on the train regardless of whether excess space is available. This amendment would permit Amtrak to generate additional revenues of approximately $1 million annually.

House amendment to Senate amendment

The House amendment, in section 1593, would amend section 103(3) of the RPSA to provide that Amtrak's authority to operate auto-ferry service extends to the transportation of unoccupied vehicles when space is available.

Conference substitute

The conference substitute provides that Amtrak's authority to operate auto-ferry service extends to the transportation of used, unoccupied vehicles when space is available.

Amtrak corporate citizenship

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(h), would amend section 306(m) of the RPSA to specify that Amtrak shall be considered a citizen only of the District of Columbia for purposes of determining original jurisdiction in Federal district courts.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment.

Route and service criteria—403(d) trains

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(i)(1), would amend section 403(d) of the RPSA regarding Amtrak's operation of commuter trains. Under current law, Amtrak is required to operate these trains if they meet the current criterion for short-distance trains of 80 passenger miles per train mile (pm/tm), a criterion that would be eliminated by the Senate amendment. The Senate amendment provides that, effective October 1, 1986, if a train operated under this section does not meet the avoidable loss per passenger mile criterion for short-distance trains, Amtrak may discontinue the train unless the State or States involved enter into an agreement ensuring that the criterion would be met.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment, with an amendment giving Amtrak the flexibility to "discontinue, modify, or adjust such service" to meet the applicable criterion.

Route and service criteria—legislative review

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(i)(2), would amend section 404(c) of the RPSA to provide that any changes proposed by Amtrak to its Route and Service Criteria shall not be effective until 120 days after they have been submitted to the Congress. This amendment is made necessary by the fact that the current law contains a one-house legislative veto declared unconstitutional by the United States Supreme Court.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment, with an amendment providing that the Congress may pass a joint resolution during the period which, if signed by the President (or, if vetoed, overridden by Congress), would disapprove such changes.

Route and service criteria—short and long distance trains

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(i)(3), (4) and (5), would amend sections 404(c) and (d) of the RPSA to eliminate, effective October 1, 1986, the passenger mile per train mile (pm/tm) criterion. Under current law, each Amtrak route is required to meet both the pm/tm and short-term avoidable loss criteria. If a route is projected not to meet these criteria, Amtrak must discontinue, modify or adjust the service over the route so that the criteria will be met. Under the amendment, Amtrak would continue to be required to review each of its routes to determine whether it meets the criterion on short-term avoidable loss per passenger mile.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment.

ICC regulation

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(k), would amend section 306(a)(3) of the RPSA to strike an obsolete reference to the Interstate Commerce Act and ICC regulation of train discontinuances.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment.

Meaning of "discontinuance" for labor protection purposes

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(n), would amend section 405(a) of RPSA to clarify that the term "discontinuance" of rail service does not include any reduction in frequency, seasonal suspension or other service modification that does not result in the elimination of all service on a route.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the Senate amendment, with an amendment. Under the conference substitute, the term "discontinuance" shall not include any adjustment in frequency the effect of which is a temporary suspension of service, unless such suspension causes a reduction of passenger train operations on a particular route to a frequency of less than three round trips per week at any time during any calendar year. In approving this substitute, the conferees understand that the term "adjustment in frequency" includes "seasonal suspension."

Northeast Corridor cost dispute decisions

House bill

No provision.

Senate amendment

The Senate amendment, in section 402(t), would repeal section 1163 of the Northeast Rail Service Act of 1981 and would amend section 402(a) of the RPSA to modify the criteria to be used by the Interstate Commerce Commission (ICC) in future determinations of the compensation to be paid Amtrak for the use of the Northeast Corridor by freight railroads (primarily Conrail) and various commuter authorities.

House amendment to Senate amendment

No provision.

Conference substitute

The conference substitute is the Senate amendment with four amendments: (1) providing that the modified criteria to be used in ICC determinations shall not apply to the commuter authorities, which shall continue to be governed by the statutory standard adopted in 1981; (2) specifying that the ICC shall make future determinations within 120 days; (3) clarifying that the conference substitute shall not preclude parties from independently entering into agreements dealing with the compensation to be paid to Amtrak by the freight carriers; and, (4) clarifying that the conference substitute shall not be construed to alter the long-standing Congressional policy against cross-subsidization among intercity, commuter, and rail freight services. That is, the conferees do not intend that intercity and freight, intercity and commuter, or freight and commuter services cross-subsidize one another.

Local rail service assistance [LRSA]

House bill

No provision.

Senate amendment

The Senate amendment, in 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.

House amendment to Senate amendment

The House amendment, in section 1571, provides that no funds are authorized to be appropriated after September 1, 1985, for grants to states under the LRSA program.

Conference substitute

The conference substitute authorizes the appropriation of $12 million in fiscal year 1986, $10 million in fiscal year 1987, and $8 million in fiscal year 1988, with a provision that no funds are authorized to be appropriated for the period after September 30, 1988. Funds appropriated will remain available after September 30, 1988, for obligation and expenditure, subject to the same statutory criteria, guidelines, and requirements under which the program currently operates. In addition, states that have established revolving loan funds from their rail assistance grants are also unaffected by the conference substitute.

Study commission

House bill

No provision.

Senate amendment

No provision.

House amendment to Senate amendment

The House amendment, in section 1582, would establish a Study Commission, the National Railroad Passenger Corporation Financial Status Commission, to examine the ability of Amtrak to further improve its financial performance. The Commission would also be responsible for studying the short-term and long-term capital needs of Amtrak. In addition, the Study Commission would investigate alternative funding mechanisms for Amtrak. The 17-member Commission would be required to transmit its findings, conclusions and recommendations to Congress no later than March 30, 1986.

This section also would authorize the appropriation of not to exceed $1 million for the Commission to carry out its responsibilities.

Conference substitute

The conference substitute is the Senate amendment.

Relocation assistance

House bill

No Provision.

Senate amendment

No Provision.

House amendment to Senate amendment

The House amendment, in section 1591, would add a new section 812 to the RPSA to provide a procedure to submit a petition to the Department of Transportation for safety-related Amtrak relocation assistance.

Conference substitute

The conference substitute is the Senate amendment.

Rail employee taxes

House bill

No Provision.

Senate amendment

No Provision.

House amendment to Senate amendment

The House amendment, in section 1594, would exempt railroad employees from multiple state income tax liability. It would amend section 11504 of the Interstate Commerce Act to provide that railroad employees would only be subject to state income tax liability in the state where the employee earns more than 50 percent of the employee's pay from the railroad or, if there is no such state, in the state of residence of the employee.

Conference substitute

The conference substitute is the Senate amendment.

Amtrak Board representatives

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(c), would amend section 303(a) of the RPSA to provide that the two members of the Amtrak Board of Directors who are selected by the preferred stockholders shall serve until their successors are appointed.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

Amtrak officers' pay

House bill

No Provision.

Senate amendment

The Senate amendment, in section 402(d), would amend section 303(d) of the RPSA to strike the provision imposing a pay cap on the officers of Amtrak, leaving discretion in Amtrak's board to set the level of compensation.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

U.S. Travel and Tourism Administration authorization

House bill

No Provision.

Senate amendment

The Senate amendment, in section 408, would authorize the appropriation of $12 million for the U.S. Travel and Tourism Administration in fiscal year 1986, $13 million in fiscal year 1987, and $14 million in fiscal year 1988.

House amendment to Senate amendment

No Provision.

Conference substitute

The conference substitute is the House amendment to the Senate amendment.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 17, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 7. The enclosed table reflects the budget impact of the provisions assuming a December 31, 1985 date of enactment.

If you wish further details on these estimates, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 7, CHANGE FROM RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88
Authorizations:				
Amtrak:				
Budget authority	−113	−137	−142	−392
Outlays	−98	−126	−140	−364
Local rail service assistance:				
Budget authority	−7	−10	−13	−30
Outlays	−1	−4	−8	−13
Total:				
Budget authority	−120	−147	−155	−422
Outlays	−99	−130	−148	−377

TITLE IV

SUBTITLE B

Reduction in highway authorizations

House bill

This section reduces fiscal year 1986 highway authorizations a total of $800 million. The reduction is made by reducing authorizations for the Interstate 4R program $350 million, the Primary program $150 million, and the Bridge Replacement and Rehabilitation program $300 million, which reduces authorizations for these three programs to their fiscal year 1985 levels.

The Secretary of Transportation is directed to reduce fiscal year 1986 apportionments for these three programs on the first day following enactment of this bill. In the event that any state has obligated previously authorized funds for these three programs in excess of the reduced amounts contained in this bill, the Secretary of Transportation is directed to subtract the excess from the fiscal

year 1987 apportionments made to the affected states for these three program on October 1, 1986.

Senate amendment

No comparable provision.

Conference substitute

House provision, except fiscal year 1986 authorizations would be reduced a total of $400 million—$175 million for the Interstate 4R program, $75 million for the Primary program, and $150 million for the Bridge Replacement and Rehabilitation program.

Obligation limitations

House bill

Establishes obligation ceilings for affected highway and highway safety construction programs of $13.25 billion in fiscal year 1986, $13.80 billion in fiscal year 1987 and $14.40 billion in fiscal year 1988.

Programs exempted from obligation ceilings include obligations for Emergency Relief under section 125, Minimum Allocation under section 157, Bridges on Federal Dams under section 320, all of Title 23, United States Code, Acceleration of Bridge Projects under section 147 of the Surface Transportation Assistance Act of 1978, Woodrow Wilson Bridge Improvements under section 9 of the Federal-Aid Highway Act of 1981, Pennsylvania and Illinois demonstration projects authorized in sections 131(b) and 131(j) of the Surface Transportation Act of 1982, National Visitor Center improvements authorized under section 118 of the National Visitors Center Facilities Act of 1968, and Zilwaukee Bridge project construction required as the result of construction failure.

This section further specifies that no obligation controls be placed upon ongoing emergency projects carried out under section 125 of Title 23, United States Code or section 147 of the Surface Transportation Assistance Act of 1978.

Senate amendment

Establishes obligation ceilings for affected highway and highway safety construction programs of $12.75 billion in fiscal year 1986, $13.25 billion in fiscal year 1987, and $13.80 billion in fiscal year 1988.

Programs exempted from obligation ceilings include obligations for Emergency Relief under section 125, Minimum Allocation under section 157, Bridges on Federal Dams under section 320, all of Title 23, United States Code, Acceleration of Bridge Projects under section 147 of the Surface Transportation Assistance Act of 1978, Woodrow Wilson Bridge Improvements under section 9 of the Federal-Aid Highway Act of 1981, and National Visitor Center Improvements under section 118 of the National Visitors Center Facilities Act of 1968.

Conference substitute

Establishes obligation ceilings for affected highway and highway safety construction programs of $13.125 billion for fiscal year 1986,

$13.525 billion for fiscal year 1987, and $14.1 billion for fiscal year 1988.

Programs exempted from obligation ceilings are the same as the House bill, except the Zilwaukee Bridge project is not exempted.

The redundant House provision specifying that no obligation controls be placed upon ongoing emergency projects carried out under section 125 of Title 23, United States Code, or section 147 of the Surface Transportation Assistance Act of 1978 is deleted.

Distribution of obligation authority

House bill

Directs the Secretary of Transportation to distribute obligation authority to the states for each of the fiscal years 1986, 1987, and 1988 based 95 percent upon the ratio that each state's apportionments or allocations for that year bears to the total nationwide apportionments or allocations made for that year and 5 percent based upon the ratio that each state's available unobligated balance of funds previously apportioned or allocated bears to the nationwide total of such available unobligated apportionments or allocations. These latter determinations shall be made based upon each state's unobligated balance of Federal-aid highway and highway safety funds previously apportioned or allocated which remain available for obligation on the last day of the preceding fiscal year which are not subject to lapse on such last day of that fiscal year.

This section limits first quarter obligations for each state to obligation of no more than 35 percent of its total obligation authority for the year and the nationwide total obligations for the first quarter to no more than 25 percent of the total for each of fiscal years 1986, 1987, and 1988.

This section also directs the Secretary of Transportation to provide in fiscal years 1986, 1987, and 1988 all states sufficient obligation authority to prevent lapses of funds previously authorized to be apportioned or allocated, notwithstanding the previous provisions of this section, except for those instances where a state indicates its intent to lapse funds apportioned under section 104(b)(5)(A) of Title 23, United States Code.

The Secretary of Transportation is further directed after August 1 of fiscal years 1986, 1987, and 1988 to revise the distribution of obligation authority to the states if one or more states will not obligate the obligation authority amounts previously distributed to them under this section. Such redistribution shall be made giving priority to states having large unobligated balances of funds apportioned to them under section 104 of Title 23, United Stated Code and to states experiencing substantial proportional reductions in apportionments or allocations as the result of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981.

The Secretary may not distribute amounts authorized for administrative expenses and Federal lands highways programs.

Section 157(b) of Title 23, United States Code, is amended to make clear that Minimum Allocation funds, which are exempt from obligation ceilings, are not considered in computing the distribution of obligation authority to the states.

Senate amendment

Same as House bill except that obligation authority for each of fiscal years 1986, 1987, and 1988 is distributed to the states based strictly upon the ratio that each state's apportionments or allocations bear to the nationwide total apportionments and allocation for that fiscal year. Senate bill does not contain House bill conforming amendment to Section 157(b) regarding Minimum Allocation funds.

Conference substitute

Same as House bill except that obligation authority for each of fiscal year 1986, 1987, and 1988 is distributed to the states based strictly upon the ratio that each state's apportionments or allocations bear to the nationwide total apportionments and allocations for that fiscal year.

Emergency relief

House bill

No comparable provision

Senate amendment

This section increases the maximum amount which the Secretary may expend in any State for any single natural disaster or catastrophic failure under the provision of section 125, Emergency Relief, of Title 23, United States Code, from $30 million to $55 million for any disasters or failures occurring in calendar year 1985.

Conference substitute

Senate provision.

National minimum drinking age

House bill

No comparable provision.

Senate amendment

This section amends section 158 of Title 23, United States Code, to direct the Secretary of Transportation to permanently withhold, beginning in fiscal year 1989, ten percent of highway funds apportioned each year under sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this Title from any state which does not have in effect an acceptable permanent twenty-one year old minimum drinking age law in effect on the first day of fiscal year 1989.

Fiscal year 1987 and 1988 funds withheld pursuant to existing law may be restored to any state enacting a suitable minimum twenty-one year old drinking law as long as the normal lapsing period for such funds has not expired. Funds withheld under this section for fiscal year 1989 and subsequent fiscal years may not be restored.

Conference substitute

Similar to the Senate provision, except section 158 is further amended by directing that a state law containing a grandfather

clause allowing those persons under 21 who had the right to drink under the state's previous law is to be considered as meeting the requirements of section 158, if such state law is enacted no later than October 1, 1986, or the tenth day following the last day that the state's legislature first meets after the date of enactment, whichever date is later. Any 21 year old minimum drinking age law containing a grandfather clause enacted after the later of those two dates will not be considered in compliance with section 158, and a state enacting such a law after such date will be sanctioned in accordance with section 158, as amended. In addition, it is also intended that a state failing to enact such a law prior to October 1, 1986, because its legislature has not met or finished its next session shall be subject to the 5 percent penalty on October 1, 1986, subject to reimbursement upon enactment of its grandfather law during such session.

Any state enacting an acceptable minimum drinking age law after September 30, 1988, will be entitled to be reimbursed for only those funds withheld in fiscal year 1987 and 1988 and for no subsequent years. After FY 1988, funds withheld for succeeding fiscal years from any state that has not yet enacted a minimum drinking age law in conformance with section 158 will be considered to have permanently lapsed, except that Interstate funds would be reallocated by the Secretary under section 118(b) of Title 23, United States Code. Funds withheld from a state and remaining available for reimbursement will be allocated to such state the day after a minimum drinking age law is enacted in accordance with section 158. Reimbursable funds include only those funds withheld from apportionment in fiscal years 1987 and 1988 that, under current law, have not lapsed and remain available for apportionment. Upon apportionment, such funds shall be available for obligation for a period not to exceed the period such funds are normally available when apportioned.

The Conference Substitute also includes conforming amendments to make technical corrections in the minimum drinking age provision of P.L. 98-363.

Ohio River bridge reprogramming

House bill

This section amends section 147 of the Federal-Aid Highway Act of 1978 to permit the use of previously set aside and authorized funds, excess to the needs of the two bridge projects designated as the result of the 1978 Act, to carry out three bridge replacement projects over the Ohio River. Such projects will use state-of-the-art design and construction technology to provide the most cost-effective projects which result in minimum future maintenance and rehabilitation costs.

The Secretary is instructed to allocate sufficient funds from the available excess to carry out two Ohio River highway bridge replacement projects between Newport, Kentucky, and Cincinnati, Ohio, and between Covington, Kentucky, and Cincinnati, Ohio, before allocating any remaining available funds for the Ohio River highway bridge replacement project between Maysville, Kentucky, and Aberdeen, Ohio.

Funds allocated under this section are to be made available for obligation in the same manner and extent as if such funds were made available under chapter 1 of Title 23, United States Code except that such funds are made available until expended and are not subject to any obligation limitations.

The Federal share of such projects shall be 90 percent as specified under subsection (a) of section 147 of the 1978 Federal-Aid Highway Act.

In order to maximize the dissemination of knowledge gained from the use of advanced technology and other effects on these projects, the Secretary is directed to submit reports on these projects, together with recommendations for applying the results to other projects, and where appropriate, changes in law necessary to incorporate the beneficial results into other projects. Such reports are to be submitted one year, six years, 11 years, and 21 years after completion of the three bridge replacement projects authorized under this section.

Senate amendment

No comparable provision.

Conference substitute

Same as the House provision with technical changes, except that no more than $65 million of section 147 funds shall be available to carry out the three bridge replacement projects over the Ohio River. The balance of section 147 funds shall be redistributed to all states pursuant to section 144(e) of Title 23, United States Code.

The Conferees want to emphasize four points with respect to this provision. First, the term "replace" is used in a functional sense, meaning that the new bridge will be a substitute for the old bridge on the particular route in question. The Conferees want to make it clear that the bridges being replaced do not necessarily have to be taken down.

Second, it is the intent and expectation of the Conferees that the Secretary assure that sufficient funds are set aside from the $65 million to fully construct the bridges described in subparagraphs (2)(A) and (2)(B). In the unlikely event that the $65 million is not sufficient to fully construct the bridges described in subparagraphs (2)(A) and (2)(B), the state would have to use other Federal and state funds available to it to make up the difference. Once these projects proceed to the point where the Secretary can make a determination and certify in writing that sufficient funds have been set aside from the $65 million to complete these projects, then the Secretary is to allocate remaining funds to the project described in subparagraph (2)(C). Of course, if the $65 million is not sufficient to complete the projects described in subparagraphs (2)(A) and (2)(B), then no funds could be allocated to the project described in paragraph (2)(C). Since the projects described in paragraphs (2)(A) and (2)(B) have priority over the project described in subparagraph (2)(C), the Conferees fully recognize that the amounts allocated to the bridge described in subparagraph (2)(C) will not be sufficient to fully construct it. The state will have to use other Federal and state funds available to it to make up the difference.

Third, the Conferees have agreed to this provision with the understanding that no additional special Federal funding will be provided for any of these bridges. In that regard, it is the intent and expectation of the Conferees that the Secretary require, as a condition precedent to making an allocation from the $65 million of each project, the state to agree in writing that it will provide the necessary funds to complete such project in the event that the amount allocated under this provision is not sufficient. In other words, before receiving any funds under this provision, the state must agree to bear full responsibility for completing the project. With respect to the projects described in subparagraphs (2)(A) and (2)(B), this agreement would cover at least the following situations: (1) the state must agree to complete the projects in the event that the $65 million turns out to be insufficient; and (2) the state must agree to cover any cost overruns which might occur subsequent to the Secretary certifying that sufficient funds have been set aside to complete the project (this latter situation should be quite remote given the intent of the Conferees that the Secretary not make the required certification until he or she has a high degree of assurance as to the final cost of the project). With respect to the project described in subparagraph (2)(C), the agreement would set forth the funding arrangements that have been made by the state to assure completion of the project given the limited Federal contribution under this provision.

And fourth, the Conferees want to note the extraordinary nature of the situation that led to the need for this provision. The excess funds being reprogrammed by this provision were the result of changed circumstances, overly conservative estimates of inflation, and cost savings achieved by the Section 147 demonstration program, a one-time special program to demonstrate methods to accelerate construction of bridge projects. Thus, this provison should not in any way be viewed as a precedent with respect to cost savings that might be achieved on bridge projects funded under the normal Federal-aid programs.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 19, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised estimate of the Budget impact of the reconciliation provisions within the jurisdiction of subconference 14. This supersedes the previous estimate dated December 18, 1985, and reflects additional information provided by the committee staff.

If you wish further details on this estimate we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner.)

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 14, CHANGE FROM RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88
Direct spending: Federal-aid highways:				
Budget authority	−400			−400
Outlays	−200	−1,000	−1,300	−2,500
Total:				
Budget authority	−400			−400
Outlays	−200	−1,000	−1,300	−2,500

Note.—Assumes a December 31, 1985 date of enactment.

TITLE V—CORPORATION FOR PUBLIC BROADCASTING AND FEDERAL COMMUNICATIONS COMMISSION

Section 5001—Public Broadcasting authorization

House bill

The House bill contained no provision.

Senate bill

The Senate bill authorized the Corporation for Public Broadcasting (CPB) at $200 million for FY 1987, $214 million for FY 1988, $238 million for FY 1989 and $254 million for FY 1990. The Senate bill also authorized the Public Telecommunications Facilities Program (PTFP) at $24 million for FY 1986, $28 million for FY 1987 and $32 million for FY 1988, in addition to certain provisions related thereto.

Conference agreement

The Conference adopts the Senate provision.

Section 5001(c)(1) of the conference report authorizes appropriations for the operations of the Corporation for Public Broadcasting (CPB) at $200 million for fiscal year 1987, $214 million for fiscal year 1988, $238 million for fiscal year 1989, and $254 million for fiscal year 1990. Section 5001(a) of the conference report authorizes appropriations for the Public Telecommunications Facilities Program (PTFP) at $24 million for fiscal year 1986, $28 million for fiscal year 1987, and $32 million for fiscal year 1988.

The CPB is a private, nonprofit corporation organized under the laws of the District of Columbia. CPB acts as the public trustee for funds appropriated pursuant to the Public Broadcasting Act of 1967.

The PTFP provides grants for broadcast equipment and other telecommunications "hardware." This program is administered by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce.

The 1981 reauthorization legislation sharply curtailed federal support for public broadcasting in view of overall federal budget constraints. For CPB, Congress authorized $130 million for each of fiscal years 1984, 1985, and 1986. For PTFP, Congress authorized $20 million for fiscal year 1982, $15 million for fiscal year 1983, and

$12 million for fiscal year 1984. At the same time, Congress sought to stimulate alternatives to federal funding and allowed public broadcasting stations greater freedom to engage in commercial ventures for support. The 1981 authorization also established the Temporary Commission on Alternative Financing (TCAF) to explore financing alternatives for public broadcasting.

It was hoped at the time that new sources of revenue, provided for in part by that Act, could be generated to compensate for decreasing federal funds, thereby preventing a deterioration in service. However, since that time, despite major efforts by the Public Broadcasting System, revenue has not been forthcoming in sufficient amounts to compensate for the drastic cuts. As a result, many stations have had to reduce the amount of locally produced programming, overall broadcast hours, and staff. Moreover, important cultural and educational series are being forced out of production. For example, the series "Nature: Living Wild" and "Latenight America" have been cancelled due to lack of funding. Production of new shows for "Great Performances", "Frontline" and "Playhouse" has been scaled back 20 percent. Production for "Wonderworks" and "Reading Rainbow", both popular and critically acclaimed programs for children, has been cut 30 percent and 33 percent respectively. Two-thirds of all "Sesame Street" programs are now reruns of previous segments, and for the first time, no new American-produced series aired on public television last Fall.

A low level of funding for the PTPF program threatens to undermine severely the goal of assuring the availability of quality public broadcasting facilities which are vitally necessary to assure the public receives adequate access to public broadcast programming. Currently, approximately 30 percent of the country does not receive public radio signals, and approximately 10 percent of the public still does not receive a local public television signal. Many large geographic areas, particularly in the West, cannot receive a public television signal. There is no local service yet in Montana, 15 percent of Missourians do not receive public television signals, and similar problems exist in Nevada, Arizona, Alaska and Hawaii. In other areas there are particular problems where mountains and buildings interfere with signals, and equipment is needed to correct this situation in order to serve the entire community. Finally, a severe problem is developing with respect to preservation and maintenance of existing transmission and other broadcasting equipment, and it has become very clear that updating and replacing equipment and parts requires an ongoing commitment of resources if quality public broadcasting signals are going to be available to the public.

In 1983, in an attempt to prevent further decline in the system, Congress passed a supplemental authorization bill which increased the authorizations for CPB to $145 million for fiscal year 1984, $153 million for fiscal year 1985, and $162 million for fiscal year 1986 (Public Law 98-214).

In 1984, the Congress passed S. 2436, and the House companion legislation, H.R. 5541. Based upon hearings on these bills and upon the findings of the TCAF, it was clear that alternative financing mechanisms had not developed to the point where they could replace or substantially supplement federal support for public broad-

casting. These bills therefore provided authorization levels that were substantially higher than those provided by the 1981 legislation. For CPB, S. 2436 and H.R. 5541 authorized $238 million for fiscal year 1987, $253 million for fiscal year 1988, and $270 million for fiscal year 1989. For PTFP, they authorized $50 million for fiscal year 1985, $53 million for fiscal year 1986, and $56 million for fiscal year 1987. On August 29, 1984, the President vetoed S. 2436.

As a result of this veto, on September 20, 1984, the Senate passed new authorizing legislation, S. 607. For CPB, S. 607 authorized $200 million for fiscal year 1987, $225 million for fiscal year 1988, and $250 million for fiscal year 1989. For PTFP, it authorized $25 million for fiscal year 1985, $35 million for fiscal year 1986, and $40 million for fiscal year 1987. S. 607 passed the House on October 5, 1984, but was pocket vetoed by the President on October 22, 1984.

The Conference report retains strong support for our nation's public broadcasting system, recognizing that this system still needs adequate federal funding. At the same time, the conferees are aware of federal budget constraints, and have endeavored to strike an appropriate balance in this legislation. The authorization levels in the conference agreement are well below those in S. 2436 and S. 607, and the conferees believe these levels provide the minimum amount that will allow CPB and PTFP to fulfill adequately their important functions.

The funding levels contained in this measure are below the Administration's own 1985 recommendations for CPB. However, the conferees expressly reject the Administration proposal to abolish the PTFP program which is a program critically necessary to meeting the goal that public broadcasting service is available to all Americans.

In addition to reauthorizing CPB and PTFP, Section 5001(b) of the conference report amends section 393 of the 1934 Act by striking subsection (c), which provides that not less than 75 percent of program funds shall be available for new public telecommunications facilities that will reach unserved areas. By striking this 75 percent allocation guideline, the Conference Committee intends that the administrators of the program have flexibility to use a greater proportion of funds for replacement or rebuilding of equipment in existing public telecommunications facilities. The release of additional funds for this purpose will help prevent service to the public from being disrupted by failures or breakdowns in aging equipment.

In approving grants, the conferees intend that NTIA shall continue to follow the criteria set forth in section 393(b) of the 1934 Act, which remain unchanged by this legislation.

Section 5001(c)(2) of the conference report also amends section 396(k)(3)(a)(i)(II) of the Communications Act of 1934 to strike the words "research, training, technical assistance, engineering, instructional support, payment of interest on indebtedness." This amendment is intended to provide CPB with greater flexibility to use the funds allocated to it to meet the evolving needs of public broadcasting. In providing CPB with this flexibility, the Committee does not intend to preclude CPB from providing funds for research, training, technical assistance, engineering, instructional support, and 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 remain specified obligations of CPB under this subclause.

Finally, Section 5001(c)(3) of the conference report amends section 396(k) of the 1934 Act to strike paragraph (8). Paragraph (8) currently requires that public broadcasting entities, if they file income tax returns declaring unrelated business income from commercial activities permitted under the 1934 Act, must refund to CPB an amount equal to the unrelated business income tax paid.

TCAF reviewed the possibility that additional sources of income could be generated by public broadcasters entering auxiliary commercial ventures. For example, some public television stations use spare production capacity to produce programs for cable television, others lease the satellite uplink for commercial purposes. Some public radio stations have signed agreements to lease excess satellite distribution capacity for commercial paging ventures. However, TCAF concluded that profits from these ventures are extremely small, and prospects for them to generate meaningful income in the foreseeable future appear dim.

TCAF also concluded that Section 396(k)(8) of the Public Broadcasting Act of 1981 is a barrier to increased entrepreneurial activities by public broadcasters. The Conference Committee agrees that the additional generation of revenues should be encouraged and adopts TCAF's recommendation to repeal the unrelated business income tax provision.

Section 5002—Federal Communications Commission

House bill

The House bill contained a cost of regulation fee schedule and certain provisions related thereto.

Senate bill

The Senate bill authorized the Federal Communications Commission at $98.1 million for FY 1986, and $97.6 million for FY 1987 with certain related provisions. The Senate bill also contained a cost of regulation fee schedule and related fee provisions.

Conference agreement

The conference adopts the Senate provision.

FCC Travel

Subsection (b) of the Conference Report amends section 4(g)(2) of the 1934 Act (47 U.S.C. 154(g)(2)) to extend the FCC's travel reimbursement program through fiscal year 1987. New subparagraph (E) is added to section 4(g)(2) to authorize the Commission to obligate travel reimbursement funds that are received after the close of a fiscal year.

Annual Report

Subsection (c) of the Conference Report changes the due date on the FCC annual report to Congress required by section 5(g) of the Communications Act. Because of circumstances beyond its control,

the FCC has been unable to submit the report by January 31, as current law provides. By prescribing March 31 as the new due date, the conferees have provided more than ample time for timely submission. The conferees expect that the report will be submitted as soon after January 31 as is possible. In no case, should the report be submitted later than March 31.

Charges for operation

Section 5002(e) of the Conference Report creates a new section 8 of the Communications Act of 1934 which requires the Federal Communications Commission (FCC) to charge fees for the regulatory services it provides to many of the communications entities within its jurisdiction. These fees have been recommended by the FCC and are based on the Commission's estimates of the cost of providing such services. The fee schedule will not subject any additional communications entities to Commission regulation.

The Conferees believe that fees based on the cost of regulation principle are an appropriate mechanism by which a portion of the FCC's regulatory expenses may be recaptured.

Non-commercial radio and TV stations will not be subject to any of the fees listed in this schedule. In addition, no provision in the fee schedule applies to petitions to deny the grant of a license to regulated communications entities filed by non-licensees.

The fee schedule shall be implemented not later than 360 days after the date of enactment of this section.

Section (8)(b) of the Communications Act requires the Commission to review these fees every 2 years, and to increase or decrease the fees to reflect changes in the Consumer Price Index (CPI). Adjustments will apply to all fees, but an individual fee shall not be adjusted until the net change in the CPI amounts to at least $5 for fees under $100, or 5 percent of fees of $100 or more. Adjusted fees will be rounded upward to the next $5 increment. The Commission shall notify Congress of any adjustments no later than 90 days before such adjustment takes effect. Adjustments to fees pursuant to this procedure shall not be subject to judicial review, because these changes merely are ministerial, nondiscretionary acts.

Subsection (c) requires the Commission to develop penalty charges that will be assessed for late payment of fees. These penalties will equal 25 percent of the late payment of fees. The Commission is authorized to dismiss applications or other filings to penalize late payment of charges.

Subsection (d) provides that the fees shall not apply to specified radio services: Local government, police, fire, highway maintenance, forestry-conservation, public safety, and special emergency radio. In addition, the charges established shall not apply to governmental entities licensed in other services. The Commission is authorized to waive or defer fee payments in specific instances, where good cause is shown and where waiver or deferment of fees would promote the public interest. The Conferees intend that the Commission's discretion to waive or defer fees shall be narrowly defined.

Subsection (e) provides that the fees collected by the Commission under this section will be deposited in the general fund of the U.S.

Treasury. Although the fees collected will reimburse the United States for amounts appropriated for use by the Commission in carrying out its functions, nothing in this section shall be interpreted to affect the need for full funding of the Commission's activities through the normal appropriations process.

Subsection (f) directs the Commission to prescribe rules and regulations to implement this fee schedule.

The Conference Report requires the Commission to collect fees for the following regulatory services:

Private Radio Service

1. *Marine Corps Stations* (New, Modifications, Renewals). Maritime stations on land which are intended for the transmission of marine radionavigation information or communications for the operation of ships and for convenience of shipboard personnel and passengers. Alaska stations intended are for point-to-point communications within Alaska where no other means of communication is available.

2. *Operational Fixed Microwave Stations.* (New, Modifications, Renewals). These stations are most commonly used for point-to-point communications. These communications are associated with Aviation, Marine, Public Safety, Industrial and Land Transportation Radio Services.

3. *Aviation Ground Stations* (New, Modifications, Renewals). These stations are intended for the transmission of air radionavigation communications for the operation of aircraft. This definition is applicable to the following Part 87 stations: Flight Test, Aviation Instruction, Aeronautical Search, Rescue, Radionavigation Land Test, etc.

4. *Land Mobile Radio Licenses* (New, Modifications, Renewals). These sections are used to satisfy the needs of commercial and industrial activities, state and local governments, transportation systems and religious, philanthropic and educational endeavors.

Equipment Approval Service

1. *Certification.*—An equipment authorization issued by the Commission for equipment designed to be operated without individual license under Parts 15 and 18. Applies mostly to low power radio frequency devices, some computing devices, receivers which tune anywhere in the band 30 to 890 MHz, CB receivers and some other kinds of Industrial, Scientific and Medical (ISM) equipment.

1.a. *Receivers (except TV and FM receivers).*—A device for receiving electrical waves and/or signals. These include CB receivers, scanning receivers, radio control and security alarms and receivers tuning between 30 and 890 MHz. TV and FM receivers are excluded as they require only *verification.* A process which allows the manufacturer to be responsible for measurement necessary to insure with appropriate technical requirements. Reports of compliance are not required unless requested by the FCC.

1.b. *All other devices.*—These include non-licensed transmitting devices (low-power communication devices, personal computers (PC), PC peripheral devices, telemetering devices, cordless telephones, TV interface devices, to name a few) and Industrial, Scien-

tific and Medical Equipment (Industrial heating equipment and induction cooking ranges).

2. *Type Acceptance.*—Equipment authorization issued by the Commission for transmitting equipment to be used pursuant to a station authorization.

2.a. *Approval of Subscription TV Systems.*—Applies to encoding and decoding schemes for transmission and reception of scrambled pay TV programs over the air. Applicants must show that the requirements of Part 73 of the rules are met by the system.

2.b. *All others.*—Applies to certain licensed transmitting equipment such as AM stereo exciter-generators, remote pick-up, low power TV, TV translators, instructional TV, FM broadcast translators/boosters, cable TV relay, mobile, maritime radio-telephone, aviation transmitters, to name a few.

3. *Type Approval.*—Equipment authorization issued by the Commission based on examination and measurement of one or more sample units by the Commission at its laboratory. This applies to some compulsorily installed marine safety-of-life equipment, and to some non-licensed devices, including certain ISM devices.

3.a. *Ship (Radio-Telegraph) Automatic Alarm Systems.*—Self-explanatory.

3.b. *Ship and Lifeboat (Radio-Telegraph) Transmitters.*—Self-explanatory.

3.c. *All others (with testing).*—Examinations and measurement testing required of new and major modification of some non-licensed transmitting devices (wireless microphones telemetering devices) and some Industrial, Scientific and Medical Equipment (ultrasonic, heating, medical disthermy).

3.d. *All others (without testing).*—Applies to equipment previously tested and approved as new equipment, however resubmitted for approval under new name or minor modification to original approval.

4. *Notification.*—Process requires manufacturers to test devices for compliance with applicable FCC regulations and to keep records of test data. Manufacturer submits brief application for authorization of device citing that all regulatory requirements have been met. Test data is not required unless requested by FCC.

Mass Media Bureau

1. *Commercial TV Stations.*—

Commercial Television Station.—Any UHF or VHF station other than those classified by the FCC as non-commercial educational stations.

Construction Permit for New Station.—The instrument authorizing construction of a broadcast facility which has not been previously authorized.

1.a. *New and Major Change Construction Permits Application Fees.*—The charge levied when filing an application for a permit to construct a new station or change frequency or station location of a previously authorized facility. The application fee does not apply to requests for Special Temporary Authority or reinstatement of expired permits.

1.b. *Minor Change Application Fee.*—The charge levied when filing an application for a construction permit to make minor changes in previously authorized facilities.

(1) Minor changes include any change involving operating power; the installation of a transmitter which has not been authorized by the FCC for use by licensed broadcast station; any change in location, height or directional radiating characteristics of the antenna or antenna system; and moving the main studio of a TV station to a location outside the principal community, or to move the studio from one location outside the principal community to another such location.

(2) Minor changes do not include extension of time to construct, reinstatement of expired permit, modifications that may be made without prior authorization from the FCC and requests for Special Temporary Authority.

1.c. *Hearing Charge.*—The charge levied when an application is designated for hearing.

1.d. *License Fee.*—The charge levied when an application is filed for a license to cover a construction permit. License fees are not applicable to any license modification that may be made without prior authorization from the FCC.

2. *Commercial Radio Stations.*—

Commercial Radio Station.—Any AM or FM station other than those classified by the FCC as non-commercial educational stations.

Construction Permit for New Station.—The instrument authorizing construction of a broadcast facility which has not been previously authorized.

2.a. New and Major Change Construction Permits:

(1) *Application Fee AM Station.*—The charge levied when filing an application for a permit to construct a new station or for a construction permit for any increase in power, or any change in frequency, hours of operation or station location. The application fee does not apply to requests for Special Temporary Authority or reinstatement of expired permits.

(2) *Application Fee FM Station.*—The charge levied when filing an application for a permit to construct a new station or for a construction permit to change frequency or station location. The application fee does not apply to requests for Special Temporary Authority or reinstatement of expired permits.

2.b. *Minor Changes Application Fee—AM & FM.*—The charge levied when filing an application for a construction permit to make minor changes in previously authorized facilities.

(1) Minor changes include the installation of a transmitter which has not been authorized by the FCC for use by licensed broadcast stations; any change in the location, height, or directional radiating characteristics of the antenna or antenna system; any change involving operating power of an FM station; any decrease in nominal power of an AM station; and moving the main studio of a station to a location outside the principal community, or to move the studio from one location outside the principal community to another such location.

(2) Minor changes do not include extensions of time to construct, reinstatement of expired permit, modifications that may be made without prior authorization from the FCC, requests

for Special Temporary Authority or remote control authorizations.

2.c. *Hearing Charge.*—The charge levied when an application is designated for hearing.

2.d. *License Fee:*

(1) AM. The charge levied when filing an application for a license to cover a construction permit. AM license fees are not applicable to requests to determine power by the direct method or for any license modification that may be made without prior authorization from the FCC.

(2) FM. The charge levied when filing an application for a license to cover a construction permit. FM license fees are not applicable to any license modification that may be made without prior authorization from the FCC.

Directional Antenna.—A system of one or more towers used to orient or redirect radiation in a certain direction.

2.e. *Directional Antenna License Fee* (AM Only).—The charge levied when filing for a license for a directional antenna. This charge is in addition to the AM license fee.

3. *FM/TV Translators and LPTV Stations* (New & Major Change Construction Permits).

FM Translator Station.—A station in the broadcast service operated for the purpose of retransmitting the programs and signals of an FM broadcast station, without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing FM reception to the general public.

Television Translator Station.—A station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristics of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

Low Power Television Station.—A UHF or VHF station that may originate programming or provide a subscription television service. The transmitter power output is limited to a maximum of 1,000 watts for a UHF station and 10 watts for a VHF station, except where VHF operation is on an allocated channel and then 100 watts may be employed.

3.a. *Application Fee:*

(1) *FM Translators.*—The charge levied when filing an application for a permit to construct a new station or to make major changes in previously-authorized facilities. Major changes include changes in frequency (output channel) or authorized principal community for area.

(2) *TV Translators and LPTV Stations.*—The charge levied when filing an application for a permit to construct a new station or make major changes in previously authorized facilities. Major changes include any change in frequency (output channel) assignment or any of the following changes if such changes will increase the signal range of the station in any horizontal direction.

(i) Transmitting antenna system including the direction of the radiation, directive antenna pattern or transmission

line; (ii) antenna height; (iii) antenna location exceeding 200 meters; or (iv) authorized operating power.

3.b. *License Fee.*—The charge levied when filing an application to cover a construction permit for a new station or major change in previously authorized facilities.

4. *Station Assignment and Transfer Fees.*—

4.a. *AM, FM, and TV Commercial Stations:*

(1) *"Long" Form Application Fees.*—The charge levied when filing an Application for Consent to Assignment of Broadcast Construction Permit or License (FCC Form 314) or an Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License (FCC Form 315).

(2) *"Short" Form Application Fee.*—The charge levied when filing FCC "short" form Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of control of Corporation Holding Broadcast Station Construction Permit or License (FCC Form 316).

4.b. *FM/TV Translators & LPTV Stations.*—The charge levied when filing Application for Transfer of Control of Corporate License or Permit or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power TV Station (FCC Form 345).

5. *Auxiliary Services Major Actions—Application Fee.*—The charge levied when filing applications for new stations and changes to existing stations (equivalent to the category "New and Major Changes" in other services), including Remote Pickup, TV Auxiliary Broadcast Stations, Aural Broadcast STI and Intercity Relay, and Low Power Auxiliary Stations.

6. *Renewals—All Services.*—The charge levied when filing an application for license renewals. The license periods are five years for television broadcast stations and seven years for radio broadcast stations. Auxiliary Service licenses are generally held by licensees of full service AM, FM or TV stations and are renewed automatically whenever the main station license is renewed.

7. *Cable Television Service.*—

Cable Television Service.—A fixed or mobile station used in connection with the operations of cable television systems for the transmission of television, audio and other signals to a cable system or within a cable system (Section 73.5(a) of the Commission's Rules).

7.a. *Cable Television Relay Service (CARS).*—Filing fees for construction permits, assignments and transfers, renewals and modifications.

7.b. *Cable Special Relief Petitions.*—Filing fees for petitions filed by a cable television system, a franchising authority, an applicant, permittee or licensee of a television broadcast, translator or microwave relay station, or by any other interested party, seeking waiver of any provision of the rules relating to cable television systems, or the imposition of additional or different requirements, or the issuance of a ruling on a complaint or disputed question.

8. *Direct Broadcast Satellites.*—

Direct Broadcast Satellites.—A radio communication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public.

8.a. *Application Fee.*—Self-explanatory.

8.b. *CP and Launch Authority.*—An applicant for a DBS facility is first granted an authorization. The applicant then has one year to demonstrate "due diligence" toward construction of the proposed satellite. If the showing is successfully made, a construction permit will be issued. The fee is for issuance of this construction permit, which specifies orbital positions and frequencies to be used, as well as granting launch authority.

8.c. *License to Operate a Satellite.*—Self-explanatory filing fee.

8.d. *Hearing Charges.*—Self-explanatory.

Common Carrier Bureau

1. *Domestic Public Land Mobile Stations (Base, Dispatch, Control & Repeater Stations).*—

Domestic Public Land Mobile Radio Service.—A public communications service for hire between land mobile stations wherever located and their associated base stations which are located within the United States or its possession, or between land mobile station in the United States and base stations in Canada.

Base Station.—A land station in the land mobile service carrying on a service with land mobile stations.

Dispatch Station.—A fixed station, operated by a subscriber, or a group of subscribers, which communicates, under the supervision and control of the base station licensee, through the base station, with the individual subscriber's own mobile station or stations.

Control Station.—A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the application of such station.

Repeater Station.—A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specific location.

1.a. *New or Additional Facility Authorizations, Assignments and Trasnfers* (per transmitter/per station).—Initial authorization to construct and operate common carrier land mobile stations and their associated bases stations; approval of major modifications to an authorized facility and consent to assign or transfer control a station authorization.

1.b. *Renewals and Minor Modifications* (per station).—Renewal of an initial authorization and minor modifications effected on authorized facilities.

1.c. *Air-Ground Individual License Renewals and Modifications.*—Application for license, renewal or modification for airborne mobile stations for subscribers to a common carrier service for public correspondence.

2. *Cellular Systems.*—A mobile radio system with a high capacity to service subscriber units due to the coordinated reuse of a group of radio channels. A system in which the assigned spectrum is di-

vided into discrete channels which are assigned in groups to geographic cells covering a cellular geographic service area.

2.a. *Initial Construction Permits & Major Modification Applications* (per cellular system).—Self-explanatory.

2.b. *Assignments and Transfers* (per station).—Self-explanatory.

2.c. *Initial Covering License* (per cellular system).—Initial authorization to operate a cellular system.

2.d. *Renewals.*—Self-explanatory.

2.e. *Minor Modifications and Additional Licenses.*—A minor modification effected on an authorized facility. Application notifying of additional sites or completion of contruction of original sites for which license to cover not yet filed, requiring additional licenses.

3. *Rural Radio (Central Office, Interoffice or Relay Facilities.*—A domestic public radio service rendered by fixed stations on frequencies below 1000 MHz used to provide (1) public message communication service between a central office and subscribers located in rural areas to which it is impracticable to extend service between landlines, or (2) public message communication service between landline central offices and different exchange areas which it is impracticable to interconnect by other means, or (3) private line telephone, telegraph, or facsimile service between 2 or more points to which it is impracticable to extend service via landline.

3.a. *Initial Construction Permits, Assignments and Transfers* (per transmitter)..—Self-explanatory.

3.b. *Renewals and Modifications* (per station).—Self-explanatory.

4. *Offshore Radio Service.*—A public communications service for hire betwen stations located in the offshore coastal waters of the United States and its possessions.

4.a. *Initial Construction Permits, Assignments and Transfers* (per transmitter).—Self-explanatory.

4.b. *Renewals and Modifications* (per station).—Self-explanatory.

5. *Local Television or Point-to-Point Microwave Radio Service.*—

Local Television.—Radio communications service for the transmission of television material and related communications.

Point-to-Point Microwave.—A service rendered on microwave frequencies by fixed stations between points which lie within the United States or between points to its possessions, or to points in Canada and Mexico.

5.a. *Construction Permits, Modification of Construction Permits, and Renewals of License.*—Self-explanatory.

5.b. *Assignments and Transfers of Authorizations.*—Self-explanatory.

5.c. *Initial License for New Frequency.*—Self-explanatory.

6. *International Fixed Public Radio (Public & Control Stations).*—

Public Stations.—Stations which are open to public correspondence and which, in general, are intended to provide radiocommunications between any one of the contiguous 48 states, Alaska, Hawaii or any U.S. possession in connection with the relaying of international traffic between stations.

Control Stations.—Stations whose transmissions are used to control automatically the emissions of operations of another radio station at a specified location, or to transmit automatically to an

alarm center telemetering information relative to the operation of such station.

6.a. *Initial Construction Permits, Assignments & Transfers.*—Self-explanatory.

6.b. *Renewals and Modifications.*—Self-explanatory.

7. *Satellite Services.*—A service that provides access to any authorized satellite for communications purposes.

7.a. *Transmit Earth Stations.*—Antennas and associated transmitting and receiving equipment which gives access to a communications satellite.

(1) *Initial Station Authorization.*—Authority to construct and/or operate a transmitting earth station for regular private or common carrier communications services or for telemetry, tracking and command functions.

(2) *Assignments and Transfers of Authorization.*—Self-explanatory.

(3) *All Other Applications.*—Any other application for regular or temporary authorization, including but not limited to, modification or renewal of station authorization, temporary authorizations or waivers.

7.b. *Small Transmit/Receive Stations.*—Small antennas (two meters or less) and associated transmitting and receiving equipment which gives access to a communications satellite.

(1) *Lead Station Authorization.*—Authority to construct and/or operate a small transmit/receive earth station for regular private or common carrier communication services. A Lead Authorization is the first earth station authorization in a network of user earth stations. The Lead Authorization establishes the terms and conditions under which routine authorizations may be granted.

(2) *Routine Stations Authorization.*—Authority to construct and/or operate a small transmit and/or receive earth station for regular private or common carrier communications services under the terms and conditions of a Lead Authorization. An application for a routine authorization must identify the Lead Authorization to which it is associated.

(3) *All Other Applications.*—Any other application for regular or temporary authorization, including but not limited to, modification or renewal of station authorizations, temporary authorizations or waivers, and transfers and assignments.

7.c. *Received Only Earth Stations.*—Stations licensed to only receive transmissions from communications satellites.

(1) *Initial Station Authorization.*—An authorization or assignment of frequency to a regular commercial received-only earth station for which protection from interference is being requested.

(2) *All Other Applications.*—Any other application or regular or temporary authorization, including but not limited to, modification or renewal of station authorizations, temporary authorizations or waivers, and transfers and assignments.

7.d. *Applications for Authority to Construct a Space Station.*—Self-explanatory.

7.e. *Application for Authority to Launch and Operate a Space Station.*—Authorization to launch a space station and assignment of an orbital location at which the space station is to be operated.

7.f. *Satellite Systems Application.*—All antennas and associate transmit and receive equipment required to operate a single satellite communications system which generally includes a main Transmit Earth Station and many Small Transmit/Receive earth stations. The application is processed as a total and complete system in bands where frequency coordination is not required for each station site.

(1) *Initial Station Authorization.*—Authority to construct and/or operate a satellite system for regular private or common carrier communications services.

(2) *Assignments and Transfers of System Authorizations.*—Self-explanatory.

(3) *All Other Applications.*—Any other application for regular or temporary authorization, including but not limited to, modifications or renewal of station authorizations, temporary authorizations or waivers, and transfers and assignments.

8. *Multipoint Distribution Service.*—One way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in a omnidirectional pattern) to multiple receiving facilities located at fixed points determined by the subscribers.

8.a. *Construction Permits, Renewals and Modifications of Construction Permits.*—Self-explanatory.

8.b. *Assignments and Transfers of Control* (per station).—Self-explanatory.

8.c. *Initial License (first license or a license adding a new frequency).*—Self-explanatory.

9. *Section 214 Applications.*—All circuits (channels) installed or acquired and required to be reported pursuant to Sections 63.03(e), 63.04(e) and 63.07(b) of the Commission's rules.

9.a. *Overseas Cable Construction Permits.*—Authorization to lay a new cable or cables.

9.b. *Domestic Cable Construction Permits.*—Authorization to lay a new cable or cables.

9.c. *All other 214 Applications.*—Authorization to install or acquire a 4 kHz or 24 Kb/s channels for domestic use. Any Domestic broad band channel is considered, for free purposes, a single 4 kHz frequency. All international 214 applications other than cable construction permits.

10. *Tariff Filings.*—Published charges or regulations for one or more, but not all carriers applicable to communication service between points of a system which is subject to any provision of the Communications Act of 1934 and which participates or engages in such communications service, irrespective of whether it is a terminal or intermediate carrier.

10.a. *Filing Fee.*—A filing is a Letter of Transmittal with accompanying tariff supplement, revised page(s), additional page(s), concurrence(s), notice of revocation, adoption notice or any other schedule(s) of rates or regulations filed in accordance with Part 61 of the Commission's rules.

10.b. *Special Permission Filing.*—An application to waive any portion of Part 61 of the Commission's rules.

11. *Telephone Equipment Registration.*—Registration of equipment filed pursuant to Part 68 of the rules. (Terminal equipment and protective circuitry.)

12. *Digital Electronic Message Service.*—A two-way domestic end-to-end fixed radio service utilizing Digital Termination Systems for the exchange of digital information.

12.a. *Contruction Permits, Renewals and Modifications of Construction Permits.*—Self-explanatory.

12.b. *Assignments and Transfers of Control* (per station).—Self-explanatory.

12.c. *Initial License (first license of license adding a new frequency).*—Self-explanatory.

The FCC has previously maintained fee schedules under the general authority granted to the head of each federal agency (see section 9701 of title 31 U.S. Code). However, in 1976, the U.S. Court of Appeals (D.C. Circuit) ruled that the Commission had exceeded its authority under those provisions of law and struck down the fee schedule which was then in place (NAB v. FCC 554 F2d 1118). Since that time the FCC has not attempted to reinstitute a schedule of fees. It is the intent and understanding of Congress that the subsequent enactment of specific fee authority for meeting the actual cost of handling transactions before the FCC will supercede any authority the FCC would otherwise have under section 9701 of title 31 to impose additional fees over and above those provided for under this reconciliation Act.

Cross-Ownership Rule Waivers

The conferees are concerned with Commission enforcement of the local cross-ownership rules particularly in light of the number of recent waiver requests to these rules the Commission has considered. The Commission's purpose in granting any waiver to the cross-ownership rules should be to further the public interest; furtherance of the private interest of any applicant or licensee must be subservient to this purpose.

The conferees expect the Commission to review such requests with great scrutiny and not grant a waiver unless the applicant meets the burden of clearly demonstrating why such a waiver should be granted. Any temporary waiver granted should be limited in duration to the minimum amount of time necessary.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 13, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 8. As requested by your staff, Table 1 reflects the budget impact of the provisions assuming an October 1, 1985 date of enactment. As request-

ed by the Budget Committee, the estimates in Table 2 assume a December 31, 1985 date of enactment.

If you wish further details on these estimates we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 8

TABLE 1.—CHANGE FROM RESOLUTION BASELINE [1]

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88
Direct spending: Receipts from FCC services and land sale				
Budget authority		−30.0	−36.0	−66.0
Outlays		−30.0	−36.0	−66.0
Authorizations:				
FCC:				
Budget authority	0.9	−.8	[2] −.8	−.7
Outlays	.9	−.8	−.7	−.7
CPB:				
Budget authority	−1.0	2.0	11.0	12.0
Outlays	−.1	−.5	7.4	6.8
Total:				
Budget authority	−0.1	−28.8	−25.8	−54.7
Outlays	.8	−31.3	−29.3	−59.9

[1] Assumes October 1, 1985 date of enactment.
[2] Assumes authorization of the FCC at the 1987 authorization level, adjusted for inflation.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 8

TABLE 2.—CHANGE FROM RESOLUTION BASELINE [1]

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88
Direct spending: Receipts from FCC services and land sale:				
Budget authority		−22.5	−36.0	−58.5
Outlays		−.22.5	−36.0	−58.5
Authorizations:				
FCC:				
Budget authority	0.9	−.8	[2] −.8	−.7
Outlays	.9	−.8	−.7	−.7
CPB:				
Budget authority	−1.0	2.0	11.0	12.0
Outlays	−.1	−.5	7.4	6.8
Total:				
Budget authority	−.1	−21.3	−25.8	−47.2
Outlays	.8	−23.8	−29.3	−52.4

[1] Assumes December 31, 1985 date of enactment.
[2] Assumes authorization of the FCC at the 1987 authorization level, adjusted for inflation.

TITLE VI—WATER TRANSPORTATION PROGRAMS

SUBTITLE A—BOATING SAFETY FUND

The House bill contained a provision to transfer certain funds from the Boating Safety Account to the General Fund of the Treasury. The Senate receded to the House provision.

SUBTITLE B—NOAA CHARTS

Both House and Senate versions contained provisions authorizing the Secretary of Commerce to raise the price of nautical and aeronautical products. The House receded to the Senate with amendments.

The first amendment requires the Secretary to consult with the Secretary of Transportation concerning impacts on aviation and maritime safety before submitting required reports to the Congress and before any adjustments in prices are made.

The second amendment prohibits the Secretary from raising the price of nautical and aeronautical products in order to recover the costs of data acquisition and processing.

The third amendment defines nautical and aeronautical products.

SUBTITLE C—FOREIGN FISHING PERMIT FEES

The House bill included a provision that would amend section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1824(b)). The House would have stricken the terms "and the territorial waters of the United States" in section 204 of the MFCMA thereby altering the formula by which MFCMA costs are assigned. The effect of this change would be to increase the proportion of the costs of implementing the MFCMA allocated to foreign fishing nations. Under current law, the fees, once collected, are deposited in the Fisheries Loan Fund established under section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 742(c)). The House bill also provided that any increase in fees collected through the new formula, over and above what would have been collected via the old formula, would be deposited in the General Fund of the United States Treasury. The Senate bill had no comparable provision.

The Senate receded to the House with amendments, which authorize the Secretary of Commerce to raise foreign fishing fees by instituting the new formula if the Secretary, in consultation with the Secretary of State, finds that any foreign nation receiving an allocation under section 201(e) of the MFCMA is: (1) harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or (2) failing to take sufficient actions to benefit conservation and development of United States fisheries.

Under the new formula, fees that would apply if either of the above conditions are not met would be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this title during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone

during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone during the preceding year. Application of this new formula could be waived at any time during the year if the Secretary, in consultation with the Secretary of State, finds that remedial actions are taken by such foreign nations.

The Secretary, in consultation with the Secretary of State, would be required in each year to make a determination of the performance of foreign nations receiving an allocation and to report to the Congress on those determinations and the reasons therefor.

Any amount collected over and above what would have been collected under the existing fee formula would be deposited in the General Fund of the United States Treasury.

The Conferees wish to clarify that the term "harvesting anadromous species" means the catching and retention of such anadromous species for economic benefit and not situations where, in the course of fishing for other species, anadromous species are caught incidentially and discarded.

SUBTITLE D—OCEAN AND COASTAL RESOURCES MANAGEMENT AND DEVELOPMENT BLOCK GRANT ACT

The House bill included provisions to provide, subject to appropriations, annual block grants to coastal states from a fund consisting of a portion of annual, federal Outer Continental Shelf (OCS) receipts. Similar legislation has passed the House on several occasions (see H. Rpt. 99-300). The Senate bill contained no similar provision. The Senate receded to the House with amendments.

Section 6032(b)(1) was amended to specify that an amount equal to twenty percent of the amount, if any, by which the total OCS revenues during the previous fiscal year exceeded $5 billion shall be deposited annually into the fund. In addition, the fund is capped so that it may not contain more than $150 million at any time during fiscal year 1988, nor more than $300 million during fiscal year 1989. The cap on the fund increases by five percent per year thereafter.

The second amendment provides for the deduction from block grants of a proportion of the funds received by the state pursuant to the Coastal Zone Management Act and the Outer Continental Shelf Lands Act prior to the award of block grants. Funds not awarded as a result of these deductions are to be paid into the General Fund as miscellaneous receipts.

SUBTITLE E—AMENDMENTS TO THE COASTAL ZONE MANAGEMENT ACT

The House bill contained a slightly modified version of H.R. 2121, a bill to reauthorize and amend the Coastal Zone Management Act (CZMA). The Senate bill contained no similar provision. The Senate receded to the House with amendments.

In Section 6043(b), the expression of the federal-state grant provisions under Sections 306 and 306A of the CZMA is changed from a percentage to a ratio. The amendment clarifies that federal funds are to be provided on a matching basis without reference to the total costs for implementing any state program.

Section 6043(c) amends section 306(g) of the CZMA. The amendment requires states to promptly notify the Secretary of any proposed amendments, modifications or other program changes to their federally approved programs. It establishes deadlines for Secretarial review of proposed amendments. In addition, it stipulates that a state may not implement any proposed amendment as part of its approved program until after the amendment has been approved by the Secretary.

The Conferees note that a proposed amendment is not a part of a state's federally approved program until that amendment has received Secretarial approval. Since federal assistance under Section 306 is provided for implementation of approved programs, no federal funds may be utilized for implementation of a proposed amendment until it has been so approved.

Section 6044(g) requires certain information regarding implementation of Section 315 of the CZMA be included in the biennial report required under Section 316 of the CZMA.

The Conferees have agreed upon amendments to Section 315 of the CZMA which would, among other things, require redesignation of all existing national estuarine sanctuaries as national estuarine reserves. The Conferees do not intend that NOAA immediately require that educational and informational materials be modified to effect a redesignation if doing so would impair public recognition and acceptance of any existing sanctuary or impose undue administrative and economic burdens.

Finally, authorization figures for fiscal year 1986 have been added in Section 6046.

SUBTITLE F—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION [NOAA]

The Senate bill incorporates the text of S. 990, the NOAA Ocean and Coastal Programs Authorizations. S. 990 was passed with amendments by the Senate on June 19, 1985, and its provisions are discussed in S. Rpt. 99-72. The House receded to the Senate with amendments.

In Section 6051, fiscal year 1986 authorizations were amended to correspond to fiscal year 1986 appropriations levels. These authorizations are increased by 4.5 percent in fiscal year 1987, consistent with the approach taken by S. 990.

The final text also includes amendments to Title II of the Marine Protection, Research, and Sanctuaries Act and additional amendments to the National Ocean Pollution Planning Act set forth in Subtitles G and H.

Finally, the Senate bill included a two-year reauthorization for the National Advisory Committee on Oceans and Atmosphere (NACOA). The Conferees agreed to a one-year reauthorization at fiscal year 1986 appropriation levels, recognizing that a decision on authorizations for fiscal year 1987 and beyond should be deferred pending further consideration of the role of NACOA and the establishment of a National Ocean Policy Commission.

SUBTITLE G—THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT AMENDMENTS

The Senate bill contained a two-year reauthorization of Title II of the Marine Protection, Research, and Sanctuaries Act in S. 990. The final text contains a two-year reauthorization with additional amendments which were contained in H.R. 1958. For further discussion of these amendments see H. Rpt. 99-101, Part I and H. Rpt. 98-135, Part I.

SUBTITLE H—NATIONAL OCEAN POLLUTION PLANNING ACT AMENDMENTS

The Senate bill included a two-year reauthorization of NOPPA which had been incorporated into S. 990. The final text contains a two-year reauthorization with additional amendments which were contained in H.R. 1958. For further discussion of these amendments see H. Rpt. 99-101, Part II.

SUBTITLE I—WEATHER MODIFICATION

Section 6081 authorizes, for the fiscal years 1986 through 1988, NOAA's program for reporting on all public and private weather modification activities. A similar provision was included in S. 1103 (S. Rpt. 99-75), which passed the Senate June 18, 1985.

Section 6082 directs the Administrator of NOAA to assure the future availability and usefulness of ocean satellite data to the maritime community. In adopting this provision, the Conferees' primary aim was to encourage NOAA to take full advantage of future ocean satellite missions flown by sister agencies, thereby facilitating the use of data and information from such missions by the maritime community. For example, the Navy intends to launch the $300 million Navy Remote Ocean Sensing System (NROSS) in 1990. For an additional modest investment, NOAA could and should establish a system for disseminating real-time NROSS data to the civilian community.

Section 6083 requires the Administrator to report to the appropriate Congressional Committees and to provide full justification before contracting any activity to the private sector pursuant to OMB Circular Memorandum A-76. The 30-day stay of the A-76 process constitutes an appropriate balance between providing an adequate opportunity for Congress to consider and act upon A-76 proposals and ensuring that desirable management efficiencies are achieved without undue delay. A provision similar to Section 6083 was included in S. 1103 (S. Rpt. 99-75), which passed the Senate June 18, 1985.

Section 6084 authorizes, for the fiscal years 1986 and 1987, the activities of the National Climate Program Office. A provision analogous to Section 6084 was included in S. 1103 (S. Rpt. 99-75), which passed the Senate June 18, 1985. The key provision in section 6084 is the statutory establishment of the Climate Program Policy Board, which functions as a "board of directors" for the Program and is responsible for long-range planning and presentation of budgetary recommendations to OMB. The Conferees' intent in enacting section 6084 is well explained in H. Rpt. 98-135 (Part I).

Section 6085 redesignates section 5 of the Coast and Geodetic Survey Act as section 5(1), and amends that section to clarify that it authorizes the Administrator to enter into cooperative agreements with other Federal agencies for joint surveys and investigations. Questions have been raised as to whether section 5(1), as redesignated, applies to agreements among Federal agencies, as well as agreements between the Secretary and other public and private organizations, such as state mapping agencies. The amendment to section 5(1) is intended to clarify that the section does authorize the Secretary to enter into cooperative agreements with other Federal agencies.

Section 6085 also adds a new paragraph (2) to section 5 that explicitly authorizes the Secretary to establish the terms of agreements entered into pursuant to this section, including the terms of reimbursements to the Administration, that reflect the amount of benefits derived by the Administration from the agreement.

SUBTITLE J—MARITIME AUTHORIZATIONS

The Senate bill contained provisions of S. 679 which was passed by the Senate on June 5, 1985 (see Senate Rpt. 99–64). The House bill contained no similar provisions. The House receded to the Senate with an amendment to strike the last subsection.

Construction Differential Subsidy

The Senate bill contained a provision citing those provisions of the Merchant Marine Act, 1936, which authorize repayment to the Federal Government of construction-differential subsidy (CDS) grants with interest. The House bill contained no similar provision. The Senate receded to the House, agreeing to delete the provision as unnecessary.

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 administration action obviates the need for legislative action to achieve the desired savings estimated by CBO at $200 million in fiscal year 1986.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 18, 1985.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 9.

If you wish further details on these estimates, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 9, CHANGE FROM RESOLUTION BASELINE

[By fiscal year, in millions of dollars]

	1986	1987	1988	Total 1986–88
Direct spending: Boat safety:				
Budget authority	−15			−15
Outlays	−6	−5	−3	−14
Authorizations:				
Coastal block grants:				
Budget authority			150	150
Outlays			50	50
National Oceanic and Atmospheric Administration:				
Budget authority	−51	−59	[1] −64	[1] −174
Outlays	−42	−59	−63	−164
Maritime Administration:				
Budget authority	−10	[2] −10	[2] −10	[2] −30
Outlays	−8	−10	−10	−28
Total:				
Budget authority	−76	−69	76	−69
Outlays	−56	−74	−26	−156

[1] Assumes a 1988 authorization for NOAA programs at the 1987 authorization levels, adjusted for inflation at the rate projected in the budget resolution baseline

[2] Assumes authorization of the maritime programs for 1987 and 1988 at the 1986 authorization levels, adjusted for inflation at the rate projected in the budget resolution baseline.

Note —Assumes a December 31, 1985 date of enactment.

TITLE VII—ENERGY AND RELATED PROGRAMS

SUBTITLE A—PIPELINE PROGRAMS

Pipeline Safety Authorization User Fees

This subtitle establishes a user fee to fund the cost of the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act and authorizes appropriations for FY86. The House bill contained conflicting provisions on user fees. The Public Works title prohibited pipeline safety user fees. The Energy and Commerce title required user fees. The Senate had no user fee provisions. The Conferees agreed to establish and collect user fees starting in FY86.

User fees may be based on volume-miles, miles, revenues, or any appropriate combination of these. The Conferees intend for the gas pipeline industry and liquid pipeline industry to each pay their own appropriate share of the pipeline safety program. The Conferees require that the Secretary of Transportation will take into account allocation of Department resources when setting user fees. The Secretary is allowed, but not required, to set higher fees for non-hydrocarbon pipelines such as sour crude, sour gas, or carbon dioxide if these substances require a disproportionate share of Department resources. Likewise, the Secretary could set a special fee for a facility, such as an LNG facility, if it requires a disproportionate share of Department Resources.

The Conferees clearly intend for user fees to cover all Federal costs associated with the Federal Pipeline Safety program, but do not intend for the fees to raise any funds in excess of costs.

The Conferees have not changed the normal budget, authorization and appropriations requirements for the pipeline safety program. The only change caused by the establishment of user fees is the source of funds. Annual authorization and appropriation are still required, but the cost of the program is offset by user fees.

The Conferees note that this is not a trust fund.

SUBTITLE B—STRATEGIC PETROLEUM RESERVE (SUBCONFERENCE NO. 11)

Both the House and the Senate passed bills contain very similar provisions authorizing appropriations for the Strategic Petroleum Reserve for fiscal years 1986, 1987 and 1988. Both provisions also amend sec. 160(c) of the Energy Policy and Conservation Act which currently prohibits the U.S. Government from selling its share of oil from the Naval Petroleum Reserve at Elk Hills, unless the SPR is being filled at a minimum of 100,000 barrels per day or until 500 million barrels are in storage in the SPR. The conference agreement amends that provision so as to continue the prohibition on the sale of the U.S. share of the Elk Hills oil unless an average daily SPR fill rate of at least 35,000 barrels per day is maintained for each of the fiscal years 1986, 1987 and 1988, or until 527 million barrels are in storage in the SPR. The conferees regard the storage level of 527 million barrels as an interim storage figure. Nothing in this provision alters the current objective of filling the SPR to 750 million barrels.

SUBTITLE C—FEDERAL ENERGY CONSERVATION SHARED SAVINGS

The House Budget Reconciliation legislation authorizes the federal government to enter into long-term contracts with private energy service companies for the purpose of saving energy in federal buildings. The Senate included a similar provision in its Budget Reconciliation legislation. The conferees agreed to provide Federal agencies authority to enter into shared energy savings contracts with private energy service companies for limited purposes. Such contracts are designed to facilitate reducing the cost of energy consumed in federal buildings, which totaled over $4 billion in 1984. The subtitle adds a new title VIII, consisting of four sections, to the National Energy Conservation Policy Act (NECPA).

Section 801 authorizes federal agencies to enter into long-term "shared savings" contracts for the limited purpose of reducing the cost of energy consumed in federally owned buildings or other federally owned facilities.

Typically, under such contracts, private energy service companies will install energy efficiency equipment and provide energy management services in federal buildings at no cost to the federal customer. The private company risks its own capital in return for a share of the value of energy savings resulting from the improvements. Thus far, restrictions on long-term contracting authority have prevented the Federal government from reducing the federal energy bill through shared savings contracts.

This provision would, therefore, allow the Federal government to enter into long-term contracts, not to exceed twenty-five years, without the necessity of obligating the total cost of the contract, in-

cluding termination costs, at the time of the contract award. The conferees note that the type of contract permitted under this provision is unique and that such contracts are to be allowed only for the purposes of saving energy and may only be entered into within the context of federal government contracting law and regulation. The conferees further note that allowing shared energy savings contracts to be entered into for up to twenty-five years is not to be interpreted as a general endorsement of long-term contracts for goods and services. However, the conferees also intend that this legislation allow agencies to proceed with shared savings contracts, and every effort should be made to make full use of this authority wherever such contracts are expected to prove cost-beneficial to the agency.

It is understood that due to the unique and specialized nature of these contracts, they may require new contracting procedures. The conferees intend that any changes to existing contracting procedures necessitated by this title be incorporated into standard procurement regulations, such as the Federal Aquisition Regulations and the Defense Acquisition Regulations.

Although energy efficiency improvements frequently provide benefits in addition to energy savings, such as more reliable equipment or increased comfort, the contracts authorized herein are for the purpose of energy savings alone, and any other benefits which arise therefrom must be ancillary to that purpose.

As noted above, a typical contract obligates a private energy service company to risk its own capital on implementing energy savings measures. Implementaton activities might include an energy audit of the building, the purchase or lease and installation of equipment, or the training of personnel required to maintain or operate the equipment. Moreover, the contract might obligate the private contractor to provide ongoing operation and maintenance services for the life of the contract. In return, the Federal agency agrees to share the value of the energy savings, if any, which result from such measures. The "split" of the savings each year, and the method of determining the value of such savings, are specified in the contract. In a ten year contract, for example, the federal share of the savings might begin at 20 percent, but rise steadily to 50 percent by the fifth year. If no savings result, the private contractor receives no payments for savings.

The typical contract also provides the agency the option to purchase the removable equipment at the end of the term of the contract for the remaining value of that equipment, if any. Nothing in this legislation is intended to prevent such arrangements as long as they comply with applicable federal law.

Section 802 authorizes any federal payments pursuant to such contracts representing the shared energy savings due the contractor to be made out of funds appropriated, or otherwise made available, to the agency for energy expenses and related operation and maintenance expenses. This section also authorizes the payment of termination costs, if any, to be made from such funds as long as these costs are provided for in the contract. The conferees wish to make clear that no payments are authorized by this section in excess of payments provided for in the contract and consistent with this title.

Section 803 requires each Federal agency to report periodically to the Secretary of Energy on its progress in implementing this authority. The conferees intend that such reports shall be made at least annually. This section further provides that the Secretary of Energy shall include a summary of that progress in the annual report to Congress already required under section 550 of NECPA, and shall include a description of progress made in achieving energy savings using this authority.

Section 804 defines "Federal agency" to include both civilian and military agencies. It also defines the term "energy savings" to mean a reduction in the cost of energy from a base cost established through a methodology set forth in the contract. The typical contract requires the parties to agree on the method for measuring the reduction of consumption (or, in the case of cogeneration, the production of new energy) resulting from the implemented measures, and for translating that result into dollar savings. The conferees also note that these contracts are restricted to savings energy in federally owned buildings and other federally owned facilities. In the case of congenerated electricity, the definition of "energy savings" limits the use of such electricity to federally owned facilities. However, the conferees recognize that the physical transmission of electricity among federally owned facilities may require using public or private transmission facilities in the customary manner and in accordance with applicable law.

The conferees also note that these contracts are not for saving energy in, for example, vehicles, or for the purpose of producing energy to sell to the private sector.

SUBTITLE D—BIOMASS ENERGY AND ALCOHOL FUEL, LOAN GUARANTEES

The Senate Committee on Energy and Natural Resources version contained a provision which extended the loan guarantee authority for Biomass Energy projects set forth in section 221 of the Biomass Energy and Alcohol Fuels Act of 1980. The House version contained no similar provision.

The conference agreement would amend Section 221 of the Biomass Energy and Alcohol Fuels Act of 1980 (Act), providing one final opportunity for three projects to obtain loan guarantees from the Department of Energy to construct ethanol plants in the United States. It is the clear intention of the conferees that no further administrative or legislative extensions of the conditional commitments be issued and that no loan guarantees be issued after June 30, 1986, assuming that the Department of Energy expedites consideration of these projects.

SUBTITLE E—SYNTHETIC FUELS

The House measure contained provisions terminating on the date of enactment, the United States Synthetic Fuels Corporation established under title I of the Energy Security Act.

The Senate measure contained no comparable provision.

The conference agreement provides for (1) termination of the authority of the SFC to award financial assistance as of the date of enactment; (2) termination of the Board of Directors of the SFC within 60 days after enactment of this Act; and (3) transfer, within

120 days of enactment of this Act, of the duties and responsibilities of the SFC to the Secretary of the Treasury in accordance with subtitle J of title I of the Energy Security Act.

SUBTITLE F—URANIUM ENRICHMENT

The House bill authorized the uranium enrichment program for fiscal years 1986, 1987, and 1988 at a level equal to estimated revenues less specific amounts established in the provision. Those amounts—$110 million in FY 1986, $150 million in FY 1987, and $150 million in FY 1988—were to be paid to the Treasury in partial repayment of the program's debt. The bill also permitted the Department of Energy (DOE) to resell unneeded power purchased from the Tennessee Valley Authority (TVA) to electric utilities. Savings from such transactions were to be deposited in the Treasury as further repayment.

The Senate bill authorized the uranium enrichment program for fiscal years 1986, 1987, and 1988 at a level equal to estimated revenues. Any revenues in excess of expenditures were to be deposited in the Treasury in partial repayment of the program's debt. The bill also required a report by the Secretary of Energy on the effects of a lawsuit, currently under appeal, that invalidated the utility services uranium enrichment contract between DOE and its customers.

The conference substitute is a compromise of the two bills. The substitute authorizes appropriations for the enrichment program during fiscal years 1986, 1987, and 1988 at a level equal to estimated revenues less an amount determined by the Secretary of Energy. The amount determined by the Secretary is to be paid to the Treasury in partial repayment of the unrecovered investment. In addition, any further revenues in excess of expenditures are to be deposited in the Treasury in repayment of the debt identified by the Secretary at the time he makes his first determination. The report required in the Senate bill is retained. The provision in the House bill relating to sales of TVA power is deleted.

The Secretary of Energy is given responsibility for determining the appropriate repayment amount after permitting an opportunity for notice and comment. The determination is in his discretion and is not subject to judicial review. The determination is to be consistent with the financial integrity of the uranium enrichment service activities program over a period of not less than 10 years. The provision also requires that the amount of such repayment shall not adversely affect the reliability of supply of uranium enrichment services at competitive prices for existing and potential customers. The amounts specified in the House bill are to be goals which the Secretary shall seek to achieve, but is not required to achieve.

The conference substitute recognizes that as part of comprehensive legislation to reduce the Federal deficit, the uranium enrichment program shares a responsibility to make a partial repayment of its debt, and that the amounts assumed in the First Concurrent Resolution on the Budget for FY 1986 and contained the House bill are reasonable goals. However, maximizing repayments in the next three years may impair the financial integrity of the program in

the longer term, and thus, the Secretary must establish a repayment amount consistent with such financial integrity as well ensuring that the repayment will not adversely affect the reliability of supplies at competitive prices. The conferees expect the Secretary to consider a variety of factors in his determination, including the appropriate price and market share, the impact upon existing enrichment facilities and other program expenditures, the impact upon research and development of advanced technologies for additional capacity, and the deficit reduction goals in the provision.

The Secretary is to make the determination prior to the submission of the budget in each of the three fiscal years, but may make revised determinations, subject to the same standards and procedures, during such fiscal years. Since fiscal year 1986 has already begun, the Secretary should make the determination as soon as practicable. The conference report on the Energy and Water Development Appropriations Act of FY 1986 explicitly permitted a repayment if authorized. This legislation constitutes such an authorization.

The substitute also requires the Secretary to submit to Congress, along with his first determination, an estimate of the amount of prior investment in the uranium enrichment service activities program that remains unrecovered. The estimate should also include an analysis of how any of the debt should be apportioned between defense and commercial customers.

Tennessee Valley Authority [TVA] Power Sales

The House bill contained a provision entitled "Sale of Unnecessary Electric Energy". The House bill also contained a conflicting provision entitled "Sale by Secretary of Energy of Certain Unnecessary Electric Energy". The Senate bill contains no comparable provision. The House Conferees receded to the Senate in this matter.

Federal Energy Regulatory Commission Annual Charges

The House bill contained a provision requiring the FERC to assess and collect annual charges from interstate oil or natural gas pipelines and public utilities in amounts determined under the provision. The House bill also prohibits FERC from assessing or collecting charges from interstate oil or natural gas pipelines, except those charges assessed or collected pursuant to law approved before the date of enactment of this Act. The Senate bill contained no comparable provision. The House Conferees receded to the Senate on this matter.

TITLE VIII—AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT

SUBTITLE A—AMENDMENTS TO OUTER CONTINENTAL SHELF LANDS ACT

Section 8001—Short title

Neither House version contained a short title. The Senate version contained the short title, "Outer Continental Shelf Lands Act Amendments of 1985". The House Conferees receded to the Senate on the short title.

Section 8002—National policy for the Outer Continental Shelf

The Committee on Merchant Marine version, at section 6401 of H.R. 3500, contained an addition to the policy provision (Section 3 of the OCSLA) which stated that the distribution of section 8(g) receipts will provide states with funds which shall be used for the mitigation of adverse economic and environmental effects related to OCS development. Neither the House Interior Committee nor the Senate Energy Committee versions contained a comparable provision. The Senate Conferees receded to the House Merchant Marine Committee language, with an amendment. The amendment provided that the use of the funds for the mitigation of adverse economic and environmental effects would be discretionary with the State, rather than obligatory. The Conferees rejected the concept of federal control or limitation over State activities. The House Conferees agreed to change the word "shall" to the word "may".

Section 8003—Revision of Section 8(g)

Paragraph (1) of subsection (g) stipulates the type of geographical, geological, and ecological information that is to be shared with coastal states with respect to the 8(g) zone and adjacent federal areas. Both House Committee versions contained similar language and the Senate Committee had no comparable provision. The Conferees agreed to accept the language of the Committee on Merchant Marine and Fisheries on information sharing.

Paragraph (2) of subsection (g) describes the revenues to be divided between the federal government and coastal state governments. The Conferees accepted language of the House Committees, with an amendment to add the words "derived from any bidding system authorized under subsection (a)(1), excluding Federal income and windfall profits tax and" after the words "royalties and other revenues". The intent of the amendment was to assure the division of revenues received from any of the alternative bidding systems, if utilized by the Secretary of the Interior, under section 8 (a). The Conferees also reasserted their intention that federal income and windfall profit taxes would not be included in such division. With the amendment noted, the Conferees agreed on the House language in paragraph (2).

The agreed upon language is clear that Federal income and windfall profits taxes are excluded. If the Secretary were to shift to an alternative bidding system, the fact that revenues may be termed "profit sharing receipts" or some other nomenclature is irrelevant. All such revenues, except federal income and windfall profits taxes, are to be included and the Federal government may not attempt to exclude any revenues by not calling them "bonus", "rent", or "royalty".

Section 8(g)(2) as amended by this title requires that the State's share of the 8(g) revenues together with accrued interest shall be transmitted "not later than the last business day of the month following the month in which these revenues are deposited in the Treasury,". The Conferees fully expect that the Department will comply with this prescribed deadline. However, under this language the Department may expedite distribution of the State's share to the State by omitting the step of investing these escrowed

revenues in interest-bearing securities, which may have a maturity of 30 days or more, and by paying the State its share as soon as the 8(g) revenues can be identified among non-8(g) royalty payments by a lessee.

Under the current reporting system in place, the OCS lessee aggregates payments to the Federal Government of 8(g) and non-8(g) OCS revenues, so some period of time is required for the Department to identify the 8(g) revenues. Thus, even where the Department does invest the State's share of 8(g) revenues, the period during which interest accrues to the State will not commence until the 8(g) revenues can be segregated by the Department and actually invested. It is anticipated that the Department can meet the requirements of section 8(g)(2) as amended without substantial revision of the current OCS reporting system, reporting forms, or Treasury accounts.

Paragraph (3) provides for an agreement between the Secretary of the Interior and the Governor of the coastal State to enter into an unitization or other royalty sharing agreement for the division of revenues from the production of any common potentially hydrocarbon-bearing area. Both House Committees and the Senate Committee had similar language. However, the Senate language contained an additional provision that if no such agreement is reached, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenues received by the Federal Government from such leasing would be subject to the requirements of paragraph (2). The House Conferees receded to the Senate on this provision.

Paragraph (4) provides for the investment by the Secretary of the Treasury of the deposits in the 8(g) account. The Senate language was different from the two House Committee versions because, to provide some flexibility to the Secretary of the Treasury, it required the deposits be invested in securities having the highest reasonably available interest rate as determined by the Secretary of the Treasury. The House Conferees receded to the Senate.

Paragraph (5) provides for the distribution of revenues when there is a boundary dispute between the United States and a state under section 7 of the OCSLA. Both House Committees and the Senate Committee had similar language in this paragraph. The House Conferees receded to the Senate on its language in paragraph (5).

Paragraphs (6) and (7) were identical in all three versions and were not subject to change in the Conference.

During the Conference, an issue was raised as to whether revenues received by the Federal Government from tracts located in what is now the 8(g) zone, but which were leased prior to the date of enactment of the OCS Lands Act Amendments of 1978 (September 18, 1978), should be excluded from the distribution of revenues to the States under this title. The uniform position of the Senate Conferees was that the issue had been settled by a roll call vote on the Senate floor and that all such revenues were subject to such distribution under this title. The House Conferees then considered and rejected a motion to adopt Statement of Managers language to exclude such revenues.

Section 8004—Distribution of 8(g) account

Subsection (a) provides that prior to January 1, 1986, the Secretary shall distribute to designated coastal States the amounts due and payable to each state under paragraph (2) of section 8(g), as amended, for the period between October 1, 1985, and the date of such distribution and the monies to be distributed under subsection (b) of this section. Except for technical differences, both House Committee versions and the Senate Committee version were identical and were not subject to modification by the Conference.

With respect to the requirement of the distribution of the appropriate shares of currently escrowed funds by January 1, 1986, the Conferees understand that it has been the practice of the Department of the Interior to invest such funds to obtain interest on the escrowed funds with the intent of distributing this interest to the States and the Federal Government upon distribution of the account. Because of such investment practices, the full amount of escrowed funds due to be paid under this section may not be liquid as of January 1, 1986. Therefore, the Conferees anticipate that the Secretary will make payments to the states as soon as such investments mature and money is available.

Subsection (b) provides for the fair and equitable distribution of funds in the 8(g) account, including all accrued interest thereon through September 30, 1985. Both house versions contained identical distribution figures for each of the seven states eligible for the funds. The Senate figures were identical, except for Alaska which was $10 million less than that provided in the House bills. The House Interior Committee version also provided that no more than $4.3 billion would be credited to the Federal Treasury. Any money that remained after such credit to the Federal Treasury would be paid to affected coastal States. Neither the Merchant Marine Committee nor the Senate Energy Committee versions contained a comparable provision.

Finally, the House Merchant Marine Committee and Senate Energy Committee versions provided that acceptance of payment under this section shall satisfy and release any and all claims against the U.S. arising under, or related to, section 8(g) as it was in effect prior to the date of enactment of this Act. With respect to all of the described provisions in subsection (b), the Senate receded to the House Merchant Marine Committee version.

Section 8005—Immobilization of boundaries

This section amends the Submerged Lands Act to provide that any boundary between a State and the U.S. which has been or is hereafter established by a final decree of the U.S. Supreme Court shall remain immobilized. All three Committee versions were similar, except for technical differences.

Section 8006—Recoupment

This section provides for States to recoup their share of revenues which should have been, but which were not, deposited in the 8(g) account under section 8(g)(4) of the OCS Lands Act as it was in effect prior to the date of enactment of this Act. All three Committee versions were similar. The language in the first clause relating

to "bonuses, royalties, and other revenues" was taken from existing section 8(g)(4).

Section 6404—Local passthrough

The House Committee on Merchant Marine version contained a provision that would have provided a minimum of 33 percent of the funds to local coastal governments for the mitigation of economic and environmental effects related to OCS development. Neither the House Interior Committee nor the Senate Energy Committee version contained a comparable provision. The House receded to the Senate by deleting the local passthrough provision.

SUBTITLE B—COORINDATION AND CONSULTATION WITH AFFECTED STATES AND LOCAL GOVERNMENTS

Section 8101—Revision of section 19

The House Interior Committee version contained an amendment to section 19 of the OCSLA. The Merchant Marine Committee and the Senate Energy Committee versions has no comparable provision. The Conferees agreed to an amendment to the Interior Committee language.

Under existing law, section 19(c) requires that the Secretary accept the recommendations of a Governor regarding a proposed lease sale or development and production plan if the Secretary determines that acceptance of the recommendation provides a "reasonable balance between the national interest and the well-being of the citizens of the affected state."

During extensive House hearings on the OCS leasing process, including the State/Federal consultation process, several representatives of environmental groups, fishing groups, and state governments, including those from oil-producing states such as Texas and Louisiana, expressed dissatisfaction with the Secretary of the Interior's response to state recommendations. In the past, this dissatisfaction has led to lawsuits and moratoria over lease sales off several states. The development of potential hydrocarbon resources in areas with valuable fisheries resources has also been a contentious and recurring issue.

Under the amendment agreed to by the Conferees, the Secretary will be required, in determining the "national interest", to "equally weigh" the need for offshore energy activities and the need to protect "other resources and uses of the coastal zone and the marine environment, including living marine resources" affected by such offshore energy activities. Section 19, as amended, will require the Secretary to consider carefully and equitably the recommendations of the Governors of coastal states with respect to lease sales and oil and gas development and production plans. The Secretary is required to provide the Governors of affected states with a decision in writing together with reasons and information sufficient to support the decision. The Secretary's decision must also address each specific point raised in the Governor's recommendations. Further, if the Secretary rejects the Governor's recommendation, he may not implement any decision for a period of 30 days following receipt, by the Governor, of the findings on which the Secretarial decision was based.

The amendment includes new language which provides that the scope of judicial review of the Secretary's decision shall be that applied to final federal agency actions by the Administrative Procedure Act, 5 U.S.C. 706(2)(A)—"arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law".

The amendment repeals subsection (d) of existing law.

SUBTITLE C—USE OF AMERICAN-BUILT RIGS FOR OCS DRILLING

Section 8201—Use of American-built rigs for OCS drilling

The Senate receded to the House on Title VI, Subtitle H of the Merchant Marine Committee version—Use of American-built Rigs for OCS Drilling.

TITLE IX—MEDICARE, MEDICAID, AND MATERNAL AND CHILD HEALTH

SUBTITLE A. MEDICARE

1. Rate of increase in payments for inpatient hospital services (sec. 101)

Present law

Current law generally provides that the medicare prospective payment rates should be updated annually by the Secretary of Health and Human Services. The law states that the update for FY 1986 should take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality, but may not exceed the rate of increase in the hospital market basket index (the increase in hospital input prices) plus one quarter of a percentage point. The Secretary of HHS promulgated final regulations freezing hospital medicare payments for FY 1986 at the FY 1985 levels. Public Law 99-107, the Emergency Extension Act of 1985, amended current law to provide that the payment rates in effect on September 30, 1985 should remain in effect for a further 45-day period, through November 14, 1985. Public Law 99-155 extended this requirement through December 14, 1985, and Public Law 99-181 extended the requirement through December 18, 1985.

House bill

The bill would require that the Secretary provide a 1 percent increase in the PPS payment rates for FY 1986. A similar rate of increase would be provided for PPS-exempt hospitals, which remain under a cost reimbursement system. For PPS hospitals, the provision would be effective for discharges occurring during FY 1986 for the Federal portion of the prospective payment rates. For the hospital-specific portion of the payment rates in PPS hospitals, and for PPS-exempt hospitals, the provision would take effect for the hospital's cost reporting period that begins during FY 1986.

Senate amendment

The provision would require the Secretary of Health and Human Services to provide a 0.5 percent increase in the PPS rates for fiscal year 1986 and an increase no greater than the increase in the hospital market basket index in fiscal years 1987 and 1988. Addi-

tionally, the payment limits for PPS-exempt hospitals and units would be increased by 0.5 percent for fiscal year 1986 and by an increase of no more than the hospital market basket in fiscal years 1987 and 1988.

The provision would be effective for hospital cost reporting periods beginning on or after October 1, 1985, for the hospital-specific portion of the PPS rates, and for discharges occurring on or after October 1, 1985, for the Federal portion of the PPS rates. For PPS-exempt hospitals, the provision would take effect for hospital cost reporting periods beginning on or after October 1, 1985.

Conference agreement

The conference agreement includes the House bill with the following modifications. The conference agreement extends the current freeze on the PPS payment rates and on the cost limits for PPS-exempt hospitals through February 28, 1986.

For PPS hospitals, the Secretary will be required to provide an increase of 1 percent in the PPS payment rates for the remainder of fiscal year 1986 and an increase no greater than the increase in the hospital market basket index in fiscal years 1987 and 1988. For fiscal year 1986, the increase in the Federal portion of the rates will take effect for discharges occurring on or after March 1, 1986, and the increase in the hospital specific portion of the rates will take effect with the beginning of the sixth month of the hospital's first cost reporting period beginning on or after October 1, 1985 (e.g., June 1, 1986, for a hospital with a cost reporting period beginning on January 1, 1986; and December 1, 1986 for a hospital with a reporting period beginning on July 1, 1986).

For PPS/exempt hospitals, the Secretary will be required to increase the applicable cost limits for fiscal year 1986 by seven-twelfths of 1 percent (0.5833 percent) effective for hospital cost reporting periods beginning on or after October 1, 1985 but before October 1, 1986. For fiscal years 1987 and 1988, the Secretary will be required to provide an increase in the cost limits that is no greater than the increase in the hospital market basket index. Further, in computing the cost limits for fiscal years 1987 and 1988, the increase for fiscal year 1986 shall be deemed to be 1 percent rather than 0.5833 percent.

2. One-year extension of transition to national DRG rates (sec. 102)

Present law

The Social Security Amendments of 1983 (P.L. 98–21) provided for a new prospective payment system for hospital inpatient services provided to medicare beneficiaries.

Current law provides for a three-year transition from payments based on hospital specific costs to payments based on national DRG (diagnosis related group) rates. During this period, a declining portion of the total prospective payment will be based on a hospital's historical reasonable costs and an increasing portion will be based on a combination of regional and national DRG rates. In the fourth year of the program and thereafter, medicare payments will be determined under a totally national DRG payment methodology. The blend of the historical cost (hospital specific) portion of the pay-

ment rate with the Federal portion of the DRG payment rate is changed with the beginning of the hospital's cost reporting period.

The Federal DRG component is comprised, for the first three years, of a combination of national and regional rates. This phase-in takes account of current differences in hospital costs across regions; different payment levels are provided for nine census regions of the United States. Changes in the blend and the amounts of the national/regional components of the Federal DRG payment rates are made on the Federal fiscal year basis. The prospective payment rate transition started with each hospital's first cost reporting period that began on or after October 1, 1983. The current transition schedule is shown below.

For hospital cost reporting periods beginning on or after:

Fiscal year [1]	Hospital specific portion (percent)	Federal DRG portion (percent)
1984	75	25 (100 percent regional)
1985	50	50 (25 national, 75 regional)
1986	25	75 (50 national, 50 regional)
1987	0	100 (100 national)

[1] The hospital specific portion (HSP) amount and the proportional shares of the HSP and the Federal DRG amount change with the beginning of the hospital's cost reporting period. The Federal (national and regional) rates and their proportional shares change with the beginning of the Federal fiscal year

P.L. 99-107, the Emergency Extension Act of 1985, amended current law to provide that hospital payment rates that were in effect on September 30, 1985 should remain in effect for a further 45-day period, through November 14, 1985. This change also suspends the transition at the blend of 50 percent hospital specific/50 percent Federal for the 45-day period. Public Laws 99-155 and 99-181 extended this requirement through December 18, 1985.

House bill

The bill would extend the transition period for one additional year. The 50 percent hospital specific cost/50 percent Federal DRG payment rate blend would be maintained for FY 1986. Since changes in the regional/national composition are made on a Federal fiscal year basis, the transition schedule would be revised as follows. For hospital cost reporting periods beginning on or after:

Fiscal year [1]	Hospital specific portion (percent)	Federal DRG portion (percent)
1984	75	25 (100 percent regional)
1985	50	50 (25 national 75 regional)
1986	50	50 (25 national, 75 regional)
1987	25	75 (50 national 50 regional))
1988	0	100 (100 national)

This provision would have two effects. First, it would continue to base 50 percent of the payment on the hospital's own historical cost base for one more year. Second, it would continue to base 75 percent of the Federal portion of the payment rate on regional costs for one more year. For the blend of the regional and national portions of the Federal component of the payment rate, the provision would be effective for discharges occurring on or after October 1, 1985. The blend of the hospital specific and Federal portions would be effective for discharges occurring during hospital cost reporting periods beginning on or after October 1, 1985.

[1] The hospital specific portion (HSP) amount and the proportional shares of the HSP and the Federal DRG amount change with the beginning of the hospital's cost reporting period. The Federal (national and regional) rates and their proportional shares change with the beginning of the Federal fiscal year

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with the following modifications. Beginning with the sixth month of the hospital's cost reporting period beginning during fiscal year 1986, the hospital specific/Federal blend will be 45 percent hospital specific and 55 percent Federal. For hospital cost reporting periods beginning during fiscal year 1987 the hospital specific/Federal blend will be 25 percent hospital specific and 75 percent Federal. Effective for discharges occurring on or after March 1, 1986 and before October 1, 1986 the blend of the Federal rate components will be 75 percent regional and 25 percent national. For discharges occurring during fiscal year 1987, the blend of Federal rate components will be 50 percent regional and 50 percent national.

The conferees believe that this modification in the transition will give all hospitals more time to adjust to the prospective payment system. In addition, it would provide hospitals in higher cost regions of the country an opportunity to make the necessary changes to reduce their costs. This modification in the transition to national rates does not reflect a lack of support for the prospective payment system. The conferees do not believe that any further delay in the transition to national rates is warranted. The conferees believe that significant progress must be made in developing refinements to the DRG system to more accurately reflect the actual costs incurred in providing care. For example, the conferees, in this legislation, have requested a report on refining the hospital wage index to reflect the higher costs incurred in core city areas relative to suburban areas. In addition, the conferees anticipate that significant progress will be made toward implementing a severity of illness index.

It has come to the conferees' 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 comtemplated 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.

3. Application of revised hospital wage index (sec. 103)

Present Law

As an integral part of the medicare prospective payment system (PPS) for hospitals, the Federal portion of the prospective payment rates is adjusted to take into account differences in wages from area to area. This is accomplished by means of an area wage index applied to all PPS hospitals in urban and rural areas. The current hospital wage index is constructed from a national data base of hospital wage records maintained by the Bureau of Labor Statistics (BLS). There are a number of technical flaws in this index, princi-

pally that it fails to recognize differences at the local level regarding the number of part-time hospital workers.

In response to requirements in the Deficit Reduction Act of 1984, P.L. 98-369, the Health Care Financing Administration developed a new "gross hospital wage index," based on a more refined survey of hospital wage costs. This index is derived from total gross hospital wages including salaries of interns and residents, personnel employed in areas other than the inpatient area, hospital-based physicians and all other salaries paid to hospital employees. P.L. 98-369 required that any new wage index be implemented retroactive to October 1, 1983. According to the PPS final regulations published September 3, 1985, HCFA planned to implement the new wage index October 1, 1985, retroactive to October 1, 1983.

P.L. 99-107, the Emergency Extension Act of 1985, amended current law to provide that medicare hospital payments would be determined on the same basis as they were on September 30, 1985, effective through November 14, 1985. Public Law 99-155 extended this requirement through December 14, 1985, and Public Law 99-181 extended it through December 18, 1985. This means that there can be no change in the wage index until after this date.

a. New gross wage index

House bill

The Secretary would be required to implement the new "gross wage index" published in the proposed PPS regulations on June 10, 1985. The provision of current law requiring retroactive application of the new wage index would be repealed. The house bill does not preclude the Secretary from making adjustments to reflect computation errors that may have been made in calculating the specific index amounts. The provision would be effective for discharges occurring during fiscal year 1986.

The House bill requires that the gross wage index be used for FY 1986. Further, the House bill requires the Secretary to make refinements, as necessary, in the area wage index for FY 1987 and beyond.

Senate amendment

Similar provision, except references final PPS regulations published September 3, 1985. The provision would be effective for discharges that occur during FY 1986, with Secretarial authority to make periodic adjustments in the appropriate wage index for discharges occurring after September 30, 1986.

Conference agreement

The conference agreement follows the Senate amendment with a modification that the provision would be effective for discharges occurring on or after March 1, 1986.

b. Wage index study

House bill

The Secretary would be required to study, in consultation with the Prospective Payment Assessment Commission, and make a rec-

ommendation to the Congress by May 1, 1986, on refining the area wage adjustment to reflect the higher wage costs incurred by hospitals located in core city areas relative to those in surburban areas of the same metropolitan area.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with a modification of the reporting date to March 1, 1987.

4. Change in formula for indirect teaching adjustment (sec. 104)

Present law

The medicare program provides reimbursement for both the direct and indirect costs of medical education incurred by teaching hospitals. The direct costs of approved medical education programs (such as salaries for residents and teachers and classroom costs) are excluded from the prospective payment system, and are reimbursed on a reasonable cost basis. The indirect costs are increased patient care costs associated with teaching programs due to such factors as increased diagnostic testing, increased numbers of procedures prescribed, higher staffing ratios, and a more severely ill patient population.

A proxy measure, defined as the hospital's ratio of the number of interns and residents divided by the number of beds (IRB), has been used to adjust medicare prospective payments for indirect medical education costs. An adjustment factor for indirect medical education costs was estimated statistically based on the increase in hospitals' costs as their ratio of interns and residents to the number of beds (IRB) increases. This factor was first used as an adjustment to the medicare limits on hospital payments under the former cost-based reimbursement system.

When Congress enacted the prospective payment system, it established the indirect teaching adjustment factor at double the factor which was in effect as of January 1, 1983. After recomputing this factor, the Health Care Financing Administration estimated, on a linear basis, that a 0.1 increase in the IRB ratio would result in a 5.79 percent increase in a hospital's cost per discharge; doubled, the indirect teaching factor was established at 11.59 percent. This adjustment is made to the Federal DRG portion of the PPS rate only. The adjustment was doubled because of concerns that the DRG system would adversely affect teaching hospitals. These concerns stemmed from doubts about the ability of the DRG case classification system to fully account for factors such as severity of illness, urban location, bed size, and increased medicare costs associated with hospitals that serve large numbers of low-income patients. The doubling of the indirect teaching adjustment from 5.79 percent to 11.59 percent was done on a budget-neutral basis, which means that the DRG payments were adjusted downwards overall to account for the doubling of the indirect teaching adjustment.

a. Adjustment reduction

House bill

The House bill would reduce the indirect teaching adjustment to 8.1 percent (for FY's 1986 and 1987) and 8.7 percent (for FY's 1988 and beyond) for each 0.1 increase in the IRB ratio, on a variable or curvilinear basis. (An adjustment made on a variable basis reflects the non-linear cost relationship; that is, each increase in residents-to-bed ratio does not result in a proportional increase in costs).

The reduction from 8.7 percent to 8.1 percent in FY 1986 and FY 1987 recognizes that a portion of the indirect teaching adjustment compensates hospitals serving a disproportionate share of low-income patients. When the disproportionate share payment provisions expire at the end of FY 1987, the indirect teaching adjustment would revert to 8.7 percent.

The savings from the reduction in the indirect teaching adjustment from 11.59 percent on a linear basis to 8.7 percent on a curvilinear basis would be total systems savings. The savings from the further reduction from 8.7 percent to 8.1 percent would be used to offset the additional costs of the disproportionate share provision.

Senate amendment

The Senate amendment would reduce the indirect teaching adjustment from 11.59 percent to 7.7 percent on a variable, or curvilinear basis, for fiscal years 1986 and 1987, and 8.7 percent for fiscal years 1988 and beyond.

Conference agreement

The conference agreement includes the House bill with an amendment to clarify effective dates (see item (g)).

b. Intern outpatient counting

House bill

The House bill would provide that interns and residents assigned to outpatient departments of a hospital would be counted for purposes of determining the indirect teaching adjustment.

Senate amendment

There is a similar provision in section 704 of the Senate amendment.

Conference agreement

The conference agreement includes the Senate amendment.

c. Restandardizing the DRG rates

House bill

The House bill would require the Secretary to restandardize the Federal DRG payment amounts by excluding, for discharges occurring after September 30, 1985, the reduced indirect medical education payment amounts based on the indirect teaching adjustment factors authorized by this provision (i.e., 8.1 percent in fiscal years

1986 and 1987, and 8.7 percent in fiscal years 1988 and thereafter) in place of the factor used under current law (i.e., 11.59 percent).

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with the modification that the Secretary will be required to restandardize the Federal DRG payment amounts effective for discharges occurring after September 30, 1986.

d. Reduce the standardized rates

House bill

The House bill requires that the Secretary restandardize the standardized payment amounts. In order to ensure that the budget neutrality calculation does not redistribute payment amounts among the twenty payment areas for which standardized payment amounts are calculated, the budget neutrality adjustment should be calculated to take into account the varying teaching payments in each of these regions. For each of these twenty payment areas, indirect teaching payments based on rates standardized to 8.1 percent curvilinear and paid out on the same basis (plus the disproportionate share payments) shall be neither more nor less than the payments based on rates standardized by 11.59 percent linear indirect medical education factor and paid out on 8.7 percent curvilinear basis.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with the modification that the reduction in the Federal DRG payment amounts will be effective for discharges occurring on or after October 1, 1986

e. Counting of non-employee interns

House bill

No Provision.

Senate amendment

In determining the indirect teaching adjustment, the Senate amendment would prohibit the Secretary from distinguishing between interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of the hospital.

Conference agreement

The conference agreement includes the Senate amendment.

f. Intern and resident reimbursement limitations

House bill

No provision.

Senate amendment

Effective July 1, 1986, the Senate amendment would provide that interns and residents whose costs are not recognized as reasonable for the following reasons would not be counted in determining the indirect teaching adjustment: (1) those whose training exceeds the lesser of 5 years or the minimum number of years necessary to meet initial board eligibility requirements except, however, those who begin geriatric fellowship programs prior to July 1, 1991. After July 1, 1989, if the required number of years of training changes, the Secretary may change the number of years within specified limits; (2) for the year beginning July 1, 1986, one-third of those who are not graduates of accredited or approved schools of medicine, osteopathy, dentistry, or podiatry; for the year beginning July 1, 1987, two-thirds of those who are not graduates of such accredited schools; and for the year beginning July 1, 1988, none of those who are not graduates of such accredited schools; (3) for hospitals at which on October 1, 1985, more than 50 percent of their interns and residents were not graduates of accredited schools, one-third of such graduates for the 2 years beginning July 1, 1986, two-thirds of such graduates for the 3 years beginning July 1, 1988, and none of such graduates beginning July 1, 1991.

Conference agreement

The conference agreement does not include the Senate amendment.

g. Effective date

House bill

The House bill would be effective for discharges occurring on or after October 1, 1985.

Senate amendment

The Senate amendment provides an identical effective date.

Conference agreement

The Conference agreement includes the Senate amendment with the modification that the effective date will be March 1, 1986. In addition, the Secretary will be prohibited from implementing this provision until such time as the additional payments to disproportionate share hospitals are initiated.

5. Additional payment amounts for hospitals serving a disproportionate share of low income patients (sec. 105)

Present law

Under the Social Security Amendments of 1983, the Secretary of HHS is required to make adjustments to the PPS rates as the Secretary deems appropriate for hospitals that serve a disproportion-

ate number of low income or medicare part A patients. The Deficit Reduction Act of 1984 requires the Secretary, prior to December 1, 1984, to develop and publish a definition of disproportionate share hospitals, to identify such hospitals, and to make the list available to the Committees with legislative jurisdiction over part A. The Secretary has failed, to date, to develop any criteria for defining or identifying such hospitals or otherwise make any information available to the Committees.

House bill

a. Fiscal years 1986 and 1987 payments

For FY 1986 and FY 1987, the House bill would require the Secretary of HHS to make additional payments, by adjusting the Federal portion of the DRG payment, for eligible urban PPS hospitals with 100 beds or more, serving a disproportionate share of low income patients.

b. Eligible hospitals

The House bill would provide that such adjustment would be made to urban PPS hospitals with 100 or more beds meeting the disproportionate share criteria.

c. Low income patient definition

The proxy measure for low income would be the percentage of a hospital's total inpatient days attributable to medicaid patients (including medicaid-eligible medicare beneficiaries—medicare/medicaid crossovers).

d. Mandatory payment rate

The Federal portion of the DRG payment would be increased by .7 percent for each 1 percentage point increase in the ratio of low income inpatient days to total inpatient days, above the minimum threshold of 15 percent. The maximum adjustment would be 16 percent.

A limited exceptions process would be established for urban PPS hospitals with 100 beds or more. The Secretary would be required to make disproportionate share payments where a hospital can demonstrate that more than 30 percent of its net inpatient care revenue is provided by local or state governments for inpatient care for low income patients not otherwise reimbursed by medicare or medicaid. If this threshold is met, the per DRG add-on would be 16 percent. In no case would a hospital receive an adjustment greater than 16 percent.

This bill reduces the indirect teaching adjustment from 8.7 percent to 8.1 percent to reflect the disproportionate share adjustment. When the disproportionate share adjustment expires in two years, the indirect teaching adjustment would be increased for FY 1988 and beyond to 8.7 percent. The disproportionate share provision would be budget neutral and would be accomplished by restandardizing the standardized payment amounts.

e. Restandardization of DRG rates

The House bill would require the Secretary to restandardize the DRG payment amounts to reflect the disproportionate share adjustment.

f. Data development

No provision.

g. Data use for payment

No provision.

h. Discretionary payment add-on

No provision.

i. Waiver of Paperwork Reduction Act

No provision.

j. Effective date

The House bill would be effective for discharges occurring between October 1, 1985 and September 30, 1987.

Senate amendment

a. Fiscal years 1986 and 1987 payments

Similar provision, except that additional payments would be made to qualified urban or rural hospitals regardless of bed size.

b. Eligible hospitals

The Senate amendment provides that such additional payments would be made to any PPS hospital meeting the disproportionate share criteria.

c. Low income patient definition

The proxy measure for low income patients would be the percentage of a hospital's total medicare part A patient days attributable to medicare patients who are also enrolled in the Federal Supplemental Security Income (SSI) program.

d. Mandatory payment rate

For hospitals with 100 beds or more, the Federal portion of the PPS payment would be increased by 2 percent plus .25 percent for each 1 percentage point (or portion thereof) that the proxy measure is above the 15 percent minimum threshold. The maximum adjustment would be 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.

e. Restandardization of DRG rates

No provision.

f. Data development

The Secretary would be required to develop accurate data on medicare patients who are also enrolled in SSI by October 1, 1986.

g. Data use for payment

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.

h. Discretionary payment add-on

The Senate amendment would provide that disproportionate share payments may be made to a hospital based on data provided by the hospital if the Secretary agrees that such data is more accurate than the data which would otherwise be used.

i. Waiver of Paperwork Reduction Act

The Senate amendment would provide that the Paperwork Reduction Act would not apply to information required for purposes of carrying out this provision.

j. Effective date

The provision would be effective for discharges occurring on or after October 1, 1985, and before October 1, 1987.

Conference agreement

The conference agreement includes the House bill with the following modifications. Additional payments will be made to urban PPS hospitals with more than 100 beds if the hospital's percentage of low income patients is 15 percent or higher. For such hospitals, the Federal portion of the hospital's payment rate will be increased by 2.5 percent plus one-half of the difference between the hospital's percentage of low income patients and 15 percent, up to a maximum increase of 15 percent. The Federal portion of the payment rate will be increased by 5 percent for urban hospitals with less than 100 beds having a percentage of low income patients of 40 percent or higher. The increase will be 4 percent for rural hospitals with a percentage of low income patients of 45 percent or more.

The percentage of low income patients will be defined as the total number of inpatient days attributable to Federal Supplemental Security Income beneficiaries divided by the total number of medicare patient days, plus the number of medicaid patient days divided by total patient days.

Additional payments to qualified hospitals will be effective for discharges occurring on or after March 1, 1986 and before October 1, 1988.

The Congressional Budget Office is required to undertake a study of the impact of payments to disproportionate share hospitals and the advisability of providing additional payments to all "Pickle" hospitals, i.e., those which can demonstrate that more than 30 percent of their revenues are derived from State and local government payments for indigent care provided to patients not covered by

medicare or medicaid. The CBO is required to report the results of this study by January 1, 1987.

6. Treatment of certain rural osteopathic hospitals as rural referral centers (sec. 106)

Present law

Under present law, rural hospitals that meet certain requirements can qualify to receive the "urban standardized payment amount adjusted by the rural wage index applicable for the geographic area. The adjustment was permitted because data indicated that large rural hospitals with high case mix indices had costs which were similar to those of urban hospitals.

Under existing criteria there are approximately 146 rural referral centers. Each rural referral center is reviewed every three years by the Health Care Financing Administration to determine if the center continues to qualify. In order to qualify, a rural referral center must meet a specified case mix index, have at least 6,000 discharges in a cost reporting period, and meet other minor requirements.

House bill

The House bill would allow osteopathic hospitals to meet the rural referral center standard if they had at least 3,000 discharges in a cost reporting period and if they meet all the other requirements, as specified by the Secretary, for rural referral center designation. The provision would be effective for cost reporting periods beginning on or after the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill. The conferees note that rural osteopathic hospitals wishing to qualify as rural referral centers must meet all other applicable requirements, in addition to the new discharge requirement established by this provision.

7. Return on equity capital for inpatient hospital services and other services (sec. 108)

Present law

A return on equity (owner) capital invested and used in providing patient care is considered a medicare allowable cost for proprietary, or for-profit, health care providers. Equity capital is the net worth of a hospital excluding those assets and liabilities not related to patient care. Specifically, equity capital includes: (1) the investment in the plant, property, and equipment (net of depreciation) related to patient care, plus deposited funds required in connection with leases; and (2) working capital maintained for necessary and proper operation of patient care facilities.

The level of payment for return on equity (ROE) formerly was set at a rate of no more than one and one-half times the average

rate of return on trust fund investments. In the Social Security Act Amendments of 1983 (P.L. 98–21), Congress reduced the level of payments for hospitals to the average rate of return on trust fund investments. The rate of return for other providers was not affected.

a. Hospital return on equity payments

House bill

The House bill would provide that return on equity would not be a medicare allowable cost for inpatient hospital services beginning October 1, 1986. In addition, costs attributable to a return on equity capital would be excluded in determining national and regional DRG prospective payment rates adjusted to include capital costs.

The bill would be effective with respect to cost reporting periods beginning on or after October 1, 1986, and to DRG payments for discharges on or after October 1, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with the modification that payments to hospitals for return on equity capital will be separated from payments for other elements of capital costs and phased out over a three-year period. For hospital cost reporting periods beginning in fiscal year 1987, payments for return on equity will be reduced to 75 percent of the otherwise allowable amount. For cost reporting periods beginning during fiscal years 1988 and 1989, return on equity payments will be reduced to 50 percent and 25 percent, respectively, of the otherwise allowable amounts.

The conferees expect that next year the Congress will review the entire issue of the method by which capital expenses of hospitals are reimbursed. At that time, the Congress will review, and may change, the provisions in this Act regarding return on equity.

b. Other provider return on equity payments

House bill

The House bill would reduce the rate of return for other provider services, if regulations provide for ROE, to the average rate of return on the hospital insurance trust fund beginning October 1, 1985.

The bill would be effective with cost reporting periods beginning on or after October 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with a modification. The effective date would be March 1, 1986.

8. Continuation of medicare reimbursement waivers for certain hospitals subject to regional hospital reimbursement demonstrations (sec. 109)

Present law

Section 1886(c) permits a permanent waiver of the standard medicare reimbursement rules for States whose hospital cost containment programs meet a number of requirements, including the requirement that the costs under the State program not exceed those that would have been incurred without the waiver.

House bill

The House bill would permit a local hospital reimbursement system that had operated under a waiver to continue if the State requested the continuation and if the local project meets the requirements for States that receive a waiver, with the following change.

Such a system would have to include substantially all acute care hospitals in the area, and review a minimum of 75 percent of all revenues or expenses there for inpatient hospital services and 75 percent of revenues or expenses for inpatient hospital services provided under the state's plan approved under title XIX. Medicare's costs could not exceed what they otherwise would be under the medicare PPS systems.

This option would be limited to reimbursement systems that were carrying out a demonstration on January 1, 1985 with the approval of the Secretary of Health and Human Services. This provision would become effective upon enactment.

Senate amendment

Similar provision except (a) requires the Secretary to approve such a waiver request and (b) includes demonstrations authorized under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972).

Conference agreement

The conference agreement includes the Senate amendment with a modification to strike the language concerning the effective date.

In addition, the conference agreement will extend the demonstration project known as "Assessment for Community Care Services" through September 30, 1986. The conferees note that this project, carried out by Monroe County Long Term Care Program, Inc. has pioneered in the development of home based alternatives to hospital and nursing home use which allow the delivery of more appropriate and economical care to medicare beneficiaries.

9. Four-year test for State waivers for certain States (Sec. 110)

Present law

Under present law, States may request a waiver of medicare's reimbursement rules for a statewide hospital reimbursement control system under section 1886(c) of the Social Security Act. A number of requirements must be met before such a waiver request is grant-

ed. One requirement is that the State demonstrate, to the Secretary of the Department of Health and Human Services' satisfaction, that the amount of medicare payments made under the waiver would not exceed the amounts that otherwise would have been paid over a 36-month period under Title XVIII, if the State were not under a statewide reimbursement waiver.

House bill

The House bill would extend the 36-month test period under section 1886(c)(1)(C) for a further 12 months. Therefore, the comparison period would be a 48-month period. The provision would apply only to States which had made a request for a waiver under 1886(c) prior to December 31, 1984, and whose request was approved. The Secretary would be prohibited from discontinuing payments under the State's system because the Secretary has reason to believe that the assurances for meeting cost effectiveness tests are not being (or will not be) met before July 1, 1986. The only State that meets these criteria is New Jersey. The provision would be effective upon enactment.

Senate amendment

The Senate amendment would prohibit the Secretary from discontinuing a State's waiver so long as the State takes appropriate steps by July 1, 1986, to assure the Secretary that its 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. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the House bill.

10. Special rule for treatment of depreciation and capital indebtedness for donations of State property to non-profit corporations (sec. 111)

Present law

Section 2314 of the Deficit Reduction Act of 1984 (DEFRA), P.L. 98-369, limited the basis for which medicare depreciation is allowed when a change of ownership occurs. The new owner's basis is the lesser of (1) the historical cost, net of depreciation (cost to the previous owner), or (2) the purchase price.

House bill

The House bill would provide a special rule for treatment of certain transfers. In the case of a hospital or skilled nursing facility that is donated by a State government (donor) to a non-profit corporation (donee), the basis from which capital-related costs to the donee is calculated would be the donor's historical cost (net of depreciation).

The provision would be effective as if it had been included originally in DEFRA.

Senate amendment

Similar provision, except it applies only to hospitals.

Conference agreement

The conference agreement includes the Senate amendment.

11. Report on impact of outlier and transfer policy on rural hospitals (sec. 112)

Present law

Present law requires that additional payments be made under the prospective payment system for hospitals when there is either an unusually long length of stay or the stay is excessively costly (both as defined by the Secretary).

House bill

The Secretary of Health and Human Services would be required to review the impact of the outlier and transfer policies under the PPS system as they relate to rural hospitals, particularly rural hospitals with less than 100 beds.

The Secretary would be required to report to Congress on findings of the review not later than May 1, 1986, and should include in this report recommendations on changes in these policies to the extent that they adversely affect rural hospitals. The provision would be effective upon enactment.

Senate amendment

No provision

Conference agreement

The conference agreement includes the House bill with a modification to change the due date of the report to October 1, 1986.

12. Information on impact of PPS payments on hospitals (sec. 113)

Present law

Under the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) is entitled to the most recently available cost reports submitted by medicare participating hospitals to the Department of Health and Human Services. There is no requirement that the House of Representative's Committee on Ways and Means or the Senate's Committee on Finance receive cost report information on hospitals that participate in the medicare program.

House bill

The House bill would require the Secretary of Health and Human Services to make available to the Prospective Payment Assessment Commission (ProPAC), the Congressional Budget Office, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, the most current information on the payments being made under the prospective payment system to individual hospitals.

The hospital specific information would be treated as confidential and would not be subject to further disclosure in a manner that

would permit the identification of individual hospitals. The provision would be effective upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill, with a modification to omit the House Committee on Ways and Means and the Senate Committee on Finance from, and to add the Congressional Research Service and the General Accounting Office to, the list of entities to receive current PPS payment information.

13. Indirect teaching adjustment related to independent clinic activities (sec. 710)

Present law

For the first three years of the prospective payment system (PPS), a special exception is applied to hospitals which had traditionally been 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 hosptials are, 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.

House bill

No provision.

Senate amendment

The provision would clarify that the split payment provision 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. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment, with the following modifications. Part A services billed under part B under a waiver granted under this authority will be paid at 100 percent of the reasonable charge (or other applicable basis of payment) and the entity billing such services under part B must accept such payment as payment in full. Payment of the indirect teaching adjustment as if all services were billed under the PPS payment methods in part A, will be effective with the first hospital cost reporting period beginning on or after January 1, 1986. Payment or part A services billed under part B at 100 percent of reasonable charges and the requirement that the billing entity accept such payment as full payment will be effective for services provided on or after 10 days following enactment.

14. Coverage of psychologists' services (sec. 711)

Present law

Section 1861(b) of the Social Security Act includes 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.

House bill

No provision.

Senate amendment

The provision would clarify that inpatient hospital services for which payments may be made under medicare part A would include diagnostic or therapeutic services provided by a psychologist. The provision would be effective upon enactment.

Conference amendment

The conference amendment does not include the Senate amendment.

15. Payments to sole community hospitals (sec. 711C)

Present law

Public Law 98–21 provided a special PPS payment formula for hospitals known as sole community hospitals that, due to special circumstances such as isolated location, are the sole source of inpatient services reasonably available in a given geographic area. Such hospitals are paid on the basis that all other PPS hospitals are paid during the first year of the transition period: 75 percent based on the hospital specific rate and 25 percent on the national DRG rate. Unlike other hospitals under PPS, which will eventually be paid totally according to a national DRG rate, sole community hospitals will remain at the 75/25 ratio.

In a suit filed in 1984, Redbud Community Hospital, a sole community hospital in Clearlake, CA, challenged HHS's determination of its PPS rate, arguing that the rate did not take into account the costs of providing several new services that were incurred subsequent to its base year. The United States District Court for the Northern District of California issued a preliminary injunction on July 30, 1984, directing the HHS Secretary to issue regulations taking into account any extraordinary and unusual costs not necessarily reflected in a hospital's base year costs but which, if not considered in estimating the hospital specific rate, were likely to result in a distortion in that rate, and taking into account the special needs of sole community hospitals and the unique effects of their status on the hospital specific rate. HHS issued such regulations on July 1, 1985, but withdrew them on July 31, 1985, after Supreme Court Justice William Rehnquist stayed the order of the U.S. District Court. There is a small number of other sole community hospitals that also consider their PPS payments to be inadequate be-

cause of costs incurred subsequent to their base year due to the addition of new facilities or services.

House bill

No provision.

Senate amendment

a. Payment provision

The Senate amendment would require the Secretary to provide an adjustment to the PPS rates to reasonably compensate sole community hospitals that experience a significant increase in operating costs in cost reporting periods after the base period due to the addition of new inpatient facilities or services (including the opening of a special care unit). Such payment adjustment would be applied to the cost reporting period during which the cost increase was incurred and to subsequent cost reporting periods as may be necessary to reasonably compensate the hospital for the increased costs.

b. Study

The Senate amendment would require the HHS Secretary to complete a study by January 1, 1987, of the effects of this provision, including recommendations on a permanent mechanism for needed expansions of sole community hospitals' services and the hospital specific rates of such hospitals.

The provision would be effective for payments for cost reporting periods beginning on or after October 1, 1983. The provision would expire on September 30, 1989.

Conference agreement

The conference agreement includes the Senate amendment but deletes the language relating to case mix changes, which is superfluous. The conferees intend that this provision will remedy problems for hospitals such as Redbud that have added new inpatient services subsequent to their base years.

16. Sense of the Senate with respect to inpatient hospital deductible (sec. 711B)

Present law

The Secretary of HHS announced that the inpatient hospital deductible for calendar year 1985 will be $492.

Medicare law specifies the formula to be used to determine the inpatient hospital deductible amount, based on the average costs of a day of hospital care. Reduced lengths of stay and lower hospital occupancy rates have reduced costs per admission but have increased the costs of care per day.

House bill

No provision.

Senate amendment

Expresses the sense of the Senate that the Committee on Finance should report legislation on the annual increase in the deductible so that it is more consistent with annual increases in medicare payments to hospitals. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment, with the understanding that this provision expresses only the sense of the Senate.

17. Promulgation of inpatient hospital deductible (sec. 716A)

Present law

The Secretary of HHS announced on September 30, 1985, that the inpatient hospital deductible for calendar year 1986 will be $492, an increase of 23 percent over the corresponding 1985 figure. Medicare law specifies the formula to be used to determine the deductible amount.

The Secretary must publish a notice of the projected increase by October 1 of each year.

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary to publish a notice of the projected increase by September 15 of each year. This provision would be effective for calendar years after 1985.

Conference agreement

The conference agreement includes the Senate amendment.

18. ProPAC expansion (sec. 142 and 734)

Present 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.

House bill

The House bill would expand current ProPAC membership by two, to be appointed no later than January 1, 1986. (See item 40 also for provisions relating to physician payment activities or ProPAC.)

Senate amendment

The provision would expand ProPAC membership by two, to be appointed no later than 60 days after enactment, for 3-year terms. This provision would become effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment. It is the intent of the conferees that the two new ProPAC members would represent nurses and rural hospitals.

19. Extension and payment for hospice care (sec. 121)

Present law

Under current law, 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. Public Law 97-248, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), which authorized this hospice benefit, mandated reports to the Congress by the Secretary of Health and Human Services on September 30, 1983, (regarding the Department's hospice demonstration project) and January 1, 1986 (evaluating the hospice benefit). Current authority for the medicare hospice benefit is scheduled to sunset on October 1, 1986.

In implementing the TEFRA hospice benefit, the Department of Health and Human Services established a prospective payment system and set daily rates for each of four levels of hospice care. Public Law 98-617 increased the routine home care payment rate by approximately $7.00 per day for the fiscal year beginning October 1, 1984, and required the Secretary of HHS to review and adjust the hospice rates annually, beginning October 1, 1985.

The report on the hospice demonstration project, which was to have been submitted by September 30, 1983, has not been received by the Congress. Cost data will not be available to the Secretary in order for the rates to the updated by October 1, 1985.

House bill

The bill would repeal the sunset provision of present law. Beginning January 1, 1986, each of the daily payment rates for hospice care would be increased by $10.00, an amount which is slightly less than the Congressional Budget Office estimate of the savings per day attributable to a medicare hospice election. The Secretary would be given one additional year, until October 1, 1986, to review and adjust the hospice rates and to report to the Congress on the adequacy of the rates in insuring participation in medicare by an adequate number of hospice programs. The repeal of the sunset provision would be effective on enactment of the bill.

Senate amendment

Identical provision.

Conference agreement

The conference agreement includes the House bill.

20. Limiting the penalty for late enrollment in part A (sec. 122)

Present law

Part A coverage under medicare is available on a voluntary basis to individuals 65 or over who are not otherwise entitled to coverage. These individuals may obtain medicare part A coverage by

paying a monthy premium. Anyone purchasing part A coverage after the third month after the month in which he becomes eligible is charged a late penalty of 10 percent of the standard premium for each 12 months he is late in enrolling; that is, for each 12 months during which he could have been, but was not enrolled. This penalty is paid each and every month of coverage for the rest of the beneficiary's life.

House bill

The House bill would limit the part A premium penalty to 10 percent no matter how late an individual enrolled, and the period during which the penalty is paid would be limited to twice the number of years enrollment was delayed. At the end of this period, the premium would revert to the standard monthly premium in effect at that time. For example, if the individual enrolled one year late, the penalty would be 10 percent paid for two years; for late enrollment for two years, the penalty would be 10 percent a year for four years, and so on, after which it would revert to the standard premium amount.

The House bill would also apply to medicare beneficiaries currently paying a part A premium penalty. Months before, during or after January 1986, in which such an individual was required to pay a premium penalty, would be taken into account in determining the month in which the premium would no longer be subject to a penalty increase.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill, with a modification that the effective date will be April 1, 1986.

21. Medicare coverage of, and application of hospital insurance tax to, newly-hired state and local government employees (sec. 123)

Present law

Under present law, there is no Federal requirement that state and local government employees pay the hospital insurance tax. Most state and local government employment is already covered as a result of voluntary agreements for such coverage entered into by the States. About 25–30 percent of such employment is not currently covered.

House bill

The House bill would extend medicare coverage on a mandatory basis for all state and local government employees hired subsequent to December 31, 1985. The employers and their employees would become liable for the hospital insurance portion of the FICA tax and the employees would earn credit toward medicare eligibility based on their covered earnings.

Senate amendment

The Senate amendment is similar, but would include current, as well as newly hired, employees and would become effective October 1, 1986.

22. Responsibilities of medicare hospitals in emergency cases (sec. 124)

Present law

Hospitals that participate in medicare have to meet defined conditions of participation and enter into participation agreements. The participation agreement contains no specific requirements relating to the appropriate treatment of emergency patients, including non-medicare patients.

a. Requirements

(1) Medical screening

House bill

The House bill would require all participating hospitals with emergency departments to provide an appropriate medical screening examination for any individual who requests it (or has a request made on his behalf) to determine whether an emergency medical condition exists or if the patient is in active labor.

Senate amendment

The Senate amendment contains a similar provision, except it would require such examination or treatment only if it is within the capability of the hospital's emergency department. In addition, it provides that these medical screening requirements would not apply if providing a medical screening examination would delay or otherwise be contrary to prompt medical treatment of the individual's medical condition.

Conference agreement

The conference agreement includes the Senate amendment's provision that such examination or treatment is required of the hospital only if it is within the capability of the hospital's emergency department; the conference agreement does not include the Senate amendment's provision that the medical screening requirements would not apply if they would delay or be contrary to prompt treatment.

(2) Necessary stabilization

House bill

The House bill provides that all participating hospitals must, when a patient is found to have an emergency condition or to be in active labor (i) provide further examination and treatment within their competence to stabilize the medical condition or provide treatment for the labor, unless such treatment is refused, or (ii) provide an appropriate transfer to another medical facility in accordance with a defined standard.

Senate amendment

The Senate amendment contains a similar provision, except that such a determination could be made through an appropriate medical screening exmaination or otherwise. In addition, the Senate amendment does not require the hospital to provide for transfer to another medical facility if the transfer is refused.

Conference agreement

The conference agreement includes the House bill's language concerning the hospital's determination of an emergency medical condition or active labor. The conference agreement includes the Senate amendment's provision that transfer is not required if refused, with a clarifying amendment that examination, treatment or transfer could be refused by either the patient or a person responsible for the patient. The conference agreement also provides that if the individual (or a legally responsible person acting on the individual's behalf) refuses further medical examination and treatment or refuses a transfer, the hospital's obligation with respect to further examination and treatment or with respect to transfer is discharged.

(3) Restricting transfers until patient is stabilized

House bill

A hospital may not transfer a patient who has not been stabilized or is in active labor unless: (i) a physician has signed a certificate that, based on the information available at the time and using reasonable standards, the medical benefits to be obtained from appropriate medical treatment at another facility outweigh the risks of transfer, and (ii) the transfer is an appropriate transfer, i.e., the receiving facility has agreed to accept the patient, has space and qualified personnel available for his treatment and is provided with medical examination and treatment records from the transferring hospital, and the transfer is made by proper personnel using equipment that meets health and safety standards.

Senate amendment

The Senate amendment includes a similar provision, except prohibits a hospital from transferring a patient who has not been stabilized or is in active labor unless: (i) the patient (or member of the patient's family if the patient is an unemancipated minor or is unable to communicate) or (ii) a physician or other qualified medical personnel when a physician is not available in the emergency department has made a determination that the benefits of a transfer outweigh the risks, and (iii) the transfer is an appropriate transfer.

Conference agreement

The conference agreement includes the Senate amendment provison conditioning a transfer on patient (or member of the patient's family) approval, with an amendment that a person legally responsible for the patient could also request a transfer. The conference agreement includes the House bill provision requiring physician

certification for transfer, but includes the Senate amendment provision that such certification could also be made by other qualified medical personnel when a physician is not (adding the word "readily") available in the emergency department.

(4) Definition of an appropriate transfer

House bill

Defines an appropriate transfer as one:
(i) in which the receiving facility has available space and qualified personnel for the treatment of the patient, has agreed to accept transfer of the patient and to provide appropriate medical treatment, and is being provided appropriate medical records (or copies) of the examination and treatment provided by the transferring facility;
(ii) in which the transferring hospital provides the receiving hospital with appropriate medical records (or copies) of the examination and treatment effected at the transferring hospital;
(iii) in which the transfer is made through qualified personnel and transportation equipment, including medically appropriate life support measures during the transfer; and
(iv) which meets other requirements the Secretary of HHS may find necessary.

Senate amendment

The Senate amendment contains a similar provision except:
(i) also provides that if the patient's medical condition is sufficiently serious to require an immediate transfer, the receiving facility must be notified of the transfer as soon as practicable under the circumstances;
(ii) no provision;
(iii) provides that the transfer be made by qualified personnel and transportation equipment as required, including necessary and medically appropriate life support measures; and
(iv) identical provision.

Conference agreement

The conference agreement includes:
(i) the House bill, which does not include notification of the transfer as soon as practicable;
(ii) the House bill, which requires the transferring hospital to provide the receiving hospital with appropriate medical records; and
(iii) the Senate amendment regarding qualified personnel and transportation equipment.

b. Enforcement

House bill

The House bill provides that a hospital that fails to meet these requirements would have its medicare participation agreement terminated. In addition, a participating hospital that knowingly violates these requirements and the responsible physician in the hospital with respect to such a violation are each subject to a civil

monetary penalty of not more than $25,000 for each violation. For purposes of this section, a "responsible physician" means a physician who is employed by, or under contract with, the participating hospital, and acting as such an employee or under such contract, has professional responsibility for the provision of examinatons or treatments for the individual, or transfers of the individual with respect to which the violation occurred.

Any person who suffers personal harm, and any medical facility which suffers a financial loss as a direct result of a participating hospital's violation of these requirements, may bring a civil action, in an appropriate Federal district court, against the participating hospital, for damages and other appropriate relief. No civil action may be brought more than two years after the violation.

Senate amendment

The Senate amendment provides that if a hospital knowingly and willfully, or negligently, fails to meet the requirements of this provision, the hospital would be subject to (1) termination of its medicare provider agreement, or (2) at the option of the Secretary, suspension of the medicare provider agreement for an appropriate length of time, as determined by the Secretary, after reasonable notice to the hospital and to the public.

Conference agreement

The conference agreement includes the House bill, with a modification to permit the Secretary to terminate or suspend a hospital's provider agreement for "knowingly and willfully or negligently" failing to meet the requirements of this provision in addition to the civil monetary penalties and civil enforcements.

The civil enforcement provision was restructured to clarify its application. In addition, the courts are directed, on the issue of damages, to apply the law of the State in which the violating hospital is located, for actions brought by a harmed individual or a hospital which suffers a financial loss. The language allowing courts to grant "other appropriate relief" was also modified to read "other equitable relief as appropriate", to give the courts clearer direction that such relief should be within the courts regular equitable powers and should be granted for the purpose of remedying the violation or deterring subsequent violations.

c. Definitions

(1) Emergency medical condition

House bill

The House bill defines "emergency medical condition" to mean a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that lack of immediate medical attention could result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Senate amendment

The Senate amendment contains an identical definition.

(2) Active labor

House bill

The House bill defines "active labor" to mean labor when delivery is imminent, there is inadequate time to safely transfer the patient to another hospital, or a transfer could threaten the health and safety of the patient or the unborn child.

Senate amendment

The Senate amendment includes a similar definition, except provides that there is inadequate time to safely transfer the patient prior to delivery, and does not include that a transfer could threaten the health and safety of the patient or the unborn child.

Conference agreement

The conference agreement includes the House bill provision concerning the threat to the health and safety of the patient or unborn child and the Senate amendment provision regarding inadequate time to transfer prior to delivery.

(3) Participating hospital

House bill

The House bill defines "participating hospital" to mean a hospital that has a provider agreement under section 1866 of medicare and has obligated itself to comply with the requirements of this provision.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House definition of "participating hospital."

(4) To stabilize

House bill

The House bill defines "to stabilize" to mean, with respect to a medical condition, to provide such medical treatment of the condition as may be necessary to assure that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

Senate amendment

The Senate amendment defines "to stabilize" to mean, with respect to an emergency medical condition, to provide such medical treatment of the condition as may be necessary under the circumstances and within the capability of the hospital (A) so that the transfer of the individual will not, within reasonable medical probability, result in substantial risk of death or serious impairment as a direct result of the transfer, or (B) in order to determine that the benefits obtained from providing appropriate medical treatment at another medical facility, taking into account potential risks in-

volved in the transfer, outweigh the potential benefits to the individual's medical condition from not affecting the transfer.

Conference agreement

The conference agreement includes the House bill with two modifications from the Senate amendment: the condition must be an emergency medical condition, and the assurance that no material deterioration of the medical condition is likely to result must be within reasonable medical probability.

(5) Stabilized

House bill

The House bill defines "stabilized" to mean, with respect to a medical condition, that no material deterioration of the condition is likely to result from the transfer of the individual from a facility.

Senate amendment

The Senate amendment defines "stabilized" to mean, with respect to an emergency medical condition, that such medical treatment has been provided as may be reasonably necessary under the circumstances and within the capability of the hospital (A) so that the transfer will not, within reasonable medical probability, result in substantial risk of death or serious impairment as a direct result of the transfer, or (B) in order to determine that the benefits obtained from providing appropriate medical treatment at another medical facility, taking into account potential risks involved in the transfer, outweigh the potential benefits to the individual's medical condition from not affecting the transfer.

Conference agreement

The conference agreement includes the House bill with the same two modifications described in Item (4) above.

(6) Transfer

House bill

The House bill defines "transfer" to mean the movement (including discharge) of a patient outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such movement of a patient who has been declared dead or leaves the facility without the permission of any such person.

Senate amendment

The Senate amendment contains an identical definition.

d. Preemption

House bill

The House bill provides that this provision does not preempt State or local law requirements respecting hospitals, except if such requirements directly conflict with a requirement of this provision.

Senate amendment

The Senate amendment contains a similar provision, except does not specify that the State or local law requirements must apply only to hospitals.

Conference agreement

The conference agreement includes the Senate amendment.

e. GAO study

House bill

No provision.

Senate amendment

The Senate amendment requires the Comptroller General to conduct a study, and report to Congress within 2 years after enactment, on problems created by hospitals that transfer patients without providing necessary emergency medical treatment. The study must include a survey and assessement of the extent of the problems; a survey of the available remedies to such problems and an assessment of the frequency and effectiveness with which such remedies are utilized; an assessment of the effectiveness of the remedy provided by this new provision; and recommendations for changes in Federal law, including medicare and possibly medicaid.

Conference agreement

The conference agreement does not include the Senate amendment.

f. Regulations

House bill

No provision.

Senate amendment

The Senate amendment requires the Secretary of HHS to promulgate final regulations to implement this new provision within 180 days of enactment, and to report to Congress on the methods to be used for monitoring and enforcing compliance with this provision.

Conference agreement

The conference agreement does not include the Senate amendment regarding regulations, but does include the Senate amendment requiring the Secretary to report to Congress on monitoring and enforcement within 6 months after the enactment date.

g. Effective date

House bill

The House bill provides an effective date of October 1, 1985.

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Senate amendment

The Senate amendment provides an effective date of April 1, 1986.

Conference agreement

The conference agreement includes the modification that the effective date would be 90 days after enactment.

23. Improve access to skilled nursing facilities (sec. 722)

Present 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 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 noncovered 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 100 percent of all claims which were judged to be uncovered after HCFA review.

House bill

No provision.

Senate amendment

The Senate amendment provides that SNFs providing 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 SNFs 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 if medicare pays SNFs for a return on equity capital. 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. The Secretary would be required to reduce the number of intermediaries to ten by April 1, 1987. The Secretary would be required to maintain the five percent favorable presumption waiver of liability until 30 months after enactment of this legislation. This provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment, with the following modifications. The prospective per diem rates will be adjusted to reflect wage differences between urban areas and between rural areas within each region. The prospective urban or rural regional per diem rate for a skilled nursing facility cannot exceed the per diem cost limit otherwise applicable to that facility, adjusted to include average urban or rural per diem capital costs and return on equity if medicare pays SNFs for a return on equity capital under the normal reimbursement rules. Thus, the SNF's prospective rate cannot exceed its cost limit adjusted for capital costs. Prospective payment on this basis will take effect for facilities that elect such payment for cost reporting periods beginning on or after October 1, 1986. The conference agreement does not require the Secretary to reduce the number of fiscal intermediaries serving skilled nursing facilities.

24. Limitation on direct medical education payments (sec. 107)

Present law

On July 5, 1985, the Administration issued final regulations freezing the amount medicare reimburses providers for their direct costs of approved medical education activities, for cost reporting periods beginning on or after July 1, 1985.

The freeze permits payment based on the lesser of a provider's allowable direct medical education costs for the current cost reporting period or for a base year (the provider's cost reporting period beginning on or after October 1, 1983), adjusted for changes in medicare utilization.

House bill

The House bill would retroactively prohibit implementation of the regulations imposing the one-year freeze.

Senate amendment

a. Payment level

The Senate amendment 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 medical educational activities which took place between the end of the prior accounting period and the beginning of the freeze accounting period.

b. Residency year limitation

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 expire July 1, 1991.

c. Limitations regarding certain foreign medical graduates

Also beginning with a hospital's first cost reporting period 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 of osteopathy, dentistry, or podiatry will be considered for allowable cost determinations. 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.

d. 1986-1987 payments

For the year beginning July 1, 1986, the amounts recognized as reasonable would include, on an average cost per intern and resident basis, the lesser of (1) two-thirds the number of interns and residents who are not graduates of such accredited schools but who began their formal training required for initial board eligibility in their specialty prior to July 1, 1986, or (2) two-thirds the number of interns and residents who are not graduates of such accredited schools but for whom the hospital received direct medical education payments from medicare for the year beginning July 1, 1985.

e. 1987-1988 payments

For the year beginning July 1, 1987, the amounts recognized as resonable would include, on an average cost per intern and resident basis, the lesser of (1) one-third the number of interns and

residents who are not graduates of such accredited schools but who began their formal training required for inital board eligibility in their specialty prior to July 1, 1986, or (2) one-third the number of interns and residents who are not graduates of such accredited schools but for whom the hospital received direct medical education payments from medicare for the year beginning July 1, 1985.

f. Special 50 percent foreign medical graduate rule

Hospitals whose unaccedited 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. The provision would be effective for cost reporting periods beginning on or after July 1, 1985.

g. Nursing and other health professions study

The Senate amendment would require the Secretary to conduct a study and report to Congress prior to December 31, 1986, on approved nursing and other health professions educational activities for which medicare reimburses hospitals. The study must address data on the types of such programs and the number of programs and students; relationships between hospitals and the schools with which the programs are affiliated; the types and amounts of expenses for which reimbursement is made; and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

h. Geriatric fellowship study

The Senate amendment would require the Secretary to conduct a study and report to Congress prior to July 1, 1990, on (1) the advisability of continuing the exemption for geriatric fellowships from the limitation on years of training for purposes of determining medicare payments for direct medical education costs, (2) the advisability of expanding the exemption to cover other educational activities, and (3) the adequacy of the supply of faculty in the field of geriatrics.

i. GAO study

The Senate amendment would require the General Accounting Office to conduct a study and report to Congress prior to December 31, 1986, on differences in medicare payments to teaching versus nonteaching hospitals, identifying the components of such payments and accounting, to the extent feasible, for any differences between the amounts of the payment components in teaching and nonteaching settings. It would provide that GAO may use a sample of teaching hospital patients and other data sources deemed appropriate, and would require GAO to control to the extent feasible for differences in a number of factors which could affect the comparability of patients and of payments between teaching and nonteach-

ing settings. It would require that this study be coordinated with the study of teaching physicians' services required under section 2307(c) of the Deficit Reduction Act of 1984.

j. Waiver of Paperwork Reduction Act

The Senate amendment would provide that Chapter 35 of Title 44, U.S. Code (Paperwork Reduction) would not apply to information required to carry out this provision.

Conference agreement

a. Payment level

The conference agreement includes the Senate amendment with a modification as follows.

Hospital-specific approved FTE resident amounts will be determined based on data on direct graduate medical education (GME) costs and numbers of interns and residents, from hospital cost reporting periods beginning in fiscal year 1984. These amounts will then be updated according to the specifications described in the July 5, 1985 regulation (amending 42 CFR Parts 405 and 412) limiting medicare payments for direct medical education costs; and will then be increased by an additional one percent.

This methodology replaces the current reasonable cost methodology for determining hospitals allowable costs, in calculating hospitals' medicare payments for graduate medical education activities. (Medicare will continue to reimburse hospitals on a cost basis for the direct medical education costs associated with nursing and allied health training activities. This amendment prohibits the Secretary from placing limitations on the allowable costs of such activities.)

A hospital's medicare payments will be determined by multiplying its approved FTE resident amount by the number of its full-time equivalent residents, and then by multiplying that product by the proportion of total inpatient days used by medicare patients.

For those hospitals whose cost reporting periods do not coincide with the normal July 1 through June 30 residency year, the hospital's FTE count will be determined by multiplying the number of FTE residents in the first residency year falling within the cost reporting period by the proportion of the residency period falling within that cost reporting period, and adding to this the number of FTE residents in the second residency year falling within the cost reporting period multiplied by the proportion of that residency year falling within the cost reporting period.

For hospitals' cost reporting periods beginning on or after July 1, 1986, the approved FTE resident amounts will be determined by applying the increase in the Consumer Price Index for Urban Consumers to the amounts allowed in the previous cost reporting period.

b. Residency year limitations

The conference agreement includes the Senate amendment with a modification as follows.

Limitations are placed on the way in which residents are counted toward full-time equivalency, once they have reached a specified point in their training. On or after July 1, 1986, hospitals will receive 100 percent of their approved FTE resident amounts for each year of a resident's training that is within the minimum number of years of formal training necessary to satisfy specialty requirements for initial board eligibility, plus one year, to a maximum of five years.

On or after July 1, 1986, and before July 1, 1987, medicare payment for training years exceeding these limits will be made at 75 percent of the rate that would otherwise be recognized. On or after July 1, 1987, payment will be made at 50 percent of the rate that would otherwise be recognized. Up to two years of training in a geriatric residency or fellowship program will be paid for at 100 percent of the rate that would otherwise be recognized, and will be excluded from the 5-year limit.

c. Limitations regarding certain foreign medical graduates

The conference agreement includes the Senate amendment with a modification as follows.

No limitations are applied with respect to medicare payment for approved FTE resident amounts for FMGs, except as follows. Effective July 1, 1986, an FMG will not be counted as a resident unless the individual has passed the Foreign Medical Graduate Examination in Medical Sciences (FMGEMS), except under specified circumstances. A one-year transition period is provided for current FMG residents. From July 1, 1986 through June 30, 1987, such an FMG will be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted. An FMG who does not pass the FMGEMS during that year would not be counted at all during subsequent years, unless he or she later passed the test.

d. 1986–1988 payments

The conference agreement does not include the Senate amendment.

e. 1987–1988 payments

The conference agreement does not include the Senate amendment.

f. Special 50 percent foreign medical graduate rule

The conference agreement does not include the Senate amendment.

g. Nursing and other health professions study

The conference agreement includes the Senate amendment.

h. Geriatric fellowship study

The conference agreement includes the Senate amendment with a modification as follows.

The conferees note that the Secretary is required by Public Law 99–158 to conduct a study of Health Personnel Needs for the Elderly. The conferees direct the Secretary to coordinate that study with the one mandated by this act.

i. GAO study

The conference agreement includes the Senate amendment with a modification as follows.

The GAO is required to study the differences in the amounts of medicare payments made with respect to patients in teaching and nonteaching hospitals, and also to study variations in such payments across teaching hospitals, taking into account the same variables and factors.

j. Waiver of paperwork reduction act

The conference agreement includes the Senate amendment.

k. Part B billing

The conference agreement includes a requirement that the Secretary establish by July 1, 1987, a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under medicare. This system is required in order to enable the Secretary to effectively enforce the current law prohibition on part B billing by interns and residents in approved training programs for services within the scope of those programs. This capability is of particular importance in light of the limits on allowable direct GME costs established by this legislation.

l. Report on uniformity of approved FTE resident amounts

The conference agreement includes a requirement that the Secretary report to Congress before December 31, 1987, on the advisability of revising approved FTE resident payment amounts across hospitals to provide for greater uniformity, and on how such revisions should be implemented if advised.

m. Study on foreign medical graduates

The conference agreement includes a requirement that the Secretary study and report to Congress by December 31, 1987 on the use of FMGs for the provision of health care services to medicare beneficiaries. The study should evaluate cost, quality and access issues with respect to services provided by FMGs, and should address the impact on costs of and access to these services in the event of a phase-out of medicare direct GME payments for FMGs.

n. Changes in cost allocation methods

Certain hospital reimbursement systems that received waivers from medicare have used methods of allocating administrative and general costs that are different from those required by the medicare hospital cost reporting forms. The conferees are concerned that, where these alternative allocation methods are in use, the base year direct GME costs used to determine the approved FTE

resident amounts established by other provisions of this legislation, may be understated.

The conferees direct the Secretary to permit changes in these alternative allocation methods. The conferees further direct the Secretary to adjust the regional standardized payment amounts and the hospital-specific amounts to account for the overstatement of these amounts due to the method of allocation of overhead used by teaching hospitals in the base period.

25. Moratorium on medicare laboratory payment demonstration

Present 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. Independent laboratories have expressed the concern that under the experiments, unsuccessful bidders might not be eligible to participate in the medicare program.

House bill

No provision.

Senate amendment

The provision would postpone the demonstrations until 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. This provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment. It is the intent of the conferees that if a study is conducted the Secretary will assist the industry in the conduct of the study by providing data and technical assistance as necessary. The GAO's role is intended to be consultative rather than participatory with respect to the conduct of the industry study.

26. Extend home health waiver of liability

Present law

Present 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 of 2.5 percent or less are paid for these denied services.

In a proposed rule published Feburary 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 claims which were judged to be uncovered after HCFA review.

House bill

No provision.

Senate amendment

The provision would require the Secretary to maintain the 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. This provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment.

27. Home health regulation moratorium

Present 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.

House bill

No provision.

Senate amendment

The provision would delay implementation of the July 5 regulations until July 1, 1986. The provision would become effective July 1, 1985.

Conference agreement

The conference agreement includes the Senate amendment with a modification as follows:

The modification specifies that for cost reporting periods beginning on or after July 1, 1985, the limits are set at 120 percent of the mean. For cost reporting periods beginning on or after July 1, 1986, the limits are to be set at 115 percent of the mean and for cost reporting periods beginning on or after July 1, 1987 the limits are to be set at 112 percent of the mean. The statute also directs the Secretary to provide for an adjustment to these limits as they apply to hospital-based home health agencies, to account for the higher administrative and general costs incurred by such agencies.

The Secretary is precluded from applying the limits separately for each type of service. Instead, the Secretary would be required to continue to allow agencies to aggregate these limits and apply them to aggregated costs. The Comptroller General is required to report to Congress by September 1, 1986 on the appropriateness of applying the cost limits discipline-by-discipline, rather than through aggregation. The conferees expect to examine this issue after submission of the GAO report.

28. Studies relating to physical therapists and other professionals

a. Study of physical therapists' office requirements

Present 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.

House bill

No provision.

Senate amendment

The Senate amendment 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. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification that specifies the report is due to Congress prior to October 1, 1986.

b. Study of home health agency supervision

Present law

The medicare law requires that a physician or registered nurse supervise patient care services provided by a home health agency.

House bill

No provision.

Senate amendment

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. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification that specifies the report is due to Congress prior to October 1, 1986.

29. Extension of working aged provisions to individuals over 69

Present law

The Age Discrimination in Employment Act (ADEA) requires employers of 20 or more people to offer employees and their spouses age 65–69 the same health insurance coverage they offer to younger employees and under the same conditions.

If the older employee chooses the employer's plan, medicare becomes the secondary payor if the employer plan does not pay full benefits.

If the older employer chooses not to participate in the employer's plan, medicare will be the primary payor. The employer is prohibited from offering a health plan designed to supplement medicare (i.e. fill in medicare's deductible and coinsurance).

Currently, ADEA applies only to persons between the ages of 40 and 70.

House bill

The House bill would extend the health insurance requirements of ADEA to persons over the age of 69, thereby removing the upper age limit, and makes corresponding changes in medicare law.

The House bill would amend ADEA to provide that the group health insurance requirement be exempted from the age limits.

The House bill would make other conforming amendments regarding special enrollment periods and the effective date of enrollment.

The House bill generally would be effective January 1, 1986 with certain exceptions.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the Senate amendment with a technical modification.

30. Health maintenance organizations and competitive medical plans

a. Finanical responsibility for patients hospitalized on the effective date of an enrollment or disenrollment.

Present law

Under current law it is unclear who is responsible for payment when a medicare beneficiary is an inpatient of a hopital under the prospective payment system on the effective date of his/her TEFRA HMO/CMP enrollment. A similar problem exists for disenrollment. A TEFRA HMO/CMP is a health maintenance organization or competitive medical plan with a risk contract under Section 1876 of the Social Security Act, authorized under the Tax Equity and Fiscal Responsibility Act of 1982.

House bill

Enrollment—a TEFRA HMO/CMP is not financially responsible for reimbursing covered inpatient stays in a PPS hospital for inpatient stays beginning before the effective date of the beneficiary's enrollment in the TEFRA HMO/CMP. Medicare will reimburse for the inpatient stay, if otherwise covered, as if the beneficiary were not enrolled in a TEFRA HMO/CMP. The TEFRA HMO/CMP will be responsible for any other services covered under medicare (i.e., all services except the inpatient stay, such as physician services provided to the patient during the inpatient stay) and any additional or supplemental services which would otherwise be due an enrollee, effective with the date of his/her enrollment in the TEFRA HMO/CMP.

Disenrollment—if the enrollee is an inpatient in a PPS hospital on the effective date of his/her disenrollment from the TEFRA HMO/CMP, the TEFRA HMO/CMP will be responsible for reimbursing for the full inpatient stay. Medicare will not make a monthly capitation payment nor will it pay for the inpatient stay under the regular medicare program after the effective date of disenrollment. The TEFRA HMO/CMP is not responsible for any other covered medicare services, or any additional or supplemental services to the enrollee, beginning on the effective date of disenrollment. This provision would apply only if the enrollee is an inpa-

tient of a PPS hospital provided for or arranged by the TEFRA HMO/CMP, or if the services were emergency or urgently needed services. The provision is effective for enrollments and disenrollments effective on or after October 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with a modification changing the effective date to enactment.

b. Disenrollment procedures

Present law

Present law specifies the effective date of disenrollment from a TEFRA HMO/CMP to be the first calendar month following a full calendar month after the request is made for termination.

House bill

Disenrollments would be effective with the first day of the first month following the month in which the disenrollment request was made. The provision would require that the beneficiary receive a copy of the disenrollment form and that materials be provided to the beneficiary explaining how long he/she must continue to use the HMO/CMP facilities in order to have the services covered. The House bill requires that information be provided to beneficiaries clearly delineating when they may begin to use the regular medicare benefit. The provision is effective for requests for termination of enrollment submitted on or after October 1, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with a modification changing the effective date to February 1, 1986.

c. Review of marketing material

Present law

There are no present law provisions relating to marketing materials.

House bill

The House bill would require all TEFRA HMO/CMPs to submit all brochures, application forms, and promotional and informational material to the Health Care Financing Administration (HCFA) for approval, at least 45 days before issuance. HCFA would be required to review all these materials. If the HMO did not hear from the HCFA within the 45-day period, the organization could assume approval. The provision would apply to material for distribution on or after November 15, 1985. This provision would not apply to material which has been distributed prior to November 15, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with two modifications. The effective date is changed to April 1, 1986 and the provision would not apply to materials distributed prior to April 1, 1986.

d. Prompt publication of the AAPCC

Present law

In order to establish the payment amounts to TEFRA HMO/CMPs the Secretary has developed a measure called the Average Adjusted Per Capita Cost (AAPCC). There are no current law requirements relating to the specific date of publication of the AAPCC.

House bill

The House bill would require the Secretary to publish the AAPCC no later than September 7 of each year. The provision would apply to determinations of per capita rates of payment for 1987 and subsequent years.

Senate amendment

The Senate amendment would require the Secretary to publish the AAPCC no later than 10 days after publication of the hospital prospective payment rates.

Conference agreement

The conference agreement includes the House bill.

31. Evaluation of preadmission and pre-procedure certification programs

Present law

Peer review organizations (PROs) have the general responsibility of reviewing the quality and utilization of inpatient hospital services provided to medicare beneficiaries. PROs have been directed specifically by the Secretary of the Department of Health and Human Services to reduce the rate of inappropriate admissions. As a method to accomplish this goal, all PROs do preadmission screening on some elective surgery. Four PROs are currently conducting 100% preadmission review of non-emergency surgery.

House bill

The House bill would require the Secretary of HHS to evaluate the efficacy of PRO programs with 100% preadmission elective surgery review compared with programs that include less comprehensive review.

The Secretary would be required to evaluate the feasibility of extending PRO pre-procedure certification activities to outpatient and ambulatory settings. The Secretary would also be required to

consider whether other organizations, including medicare carriers, could more effectively conduct such pre-procedure screening.

The Secretary would be required to submit a report to Congress by December 31, 1986.

Senate amendment

No provision.

Conference agreement

The Conference agreement does not include the House bill.

32. Prohibition of administrative merger of renal disease networks with other organizations

Present law

Present law required the Secretary to establish network organizations to assure effective and efficient administration of the end stage renal disease (ESRD) program. The network organizations are responsible for coordinating and evaluating ESRD Services provided within assigned geographic areas. Thirty-two network organizations have been established.

House bill

Under the House bill, the Secretary is prohibited from merging any renal disease network organization into a utilization and quality control peer review organization or any other entity without express statutory authorization.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the Senate amendment with modifications. The Secretary is permitted to consolidate the network areas and organizations in order to achieve efficiencies in the administration and operation of these organizations, provided the number of network organizations is not reduced to less than fourteen.

33. Extension of certain medicare municipal health services demonstration projects

Present law

Current law permits waiver of certain medicare requirements when the Health Care Financing Administration enters demonstrations under its general demonstration authority.

House bill

Under the House bill, the Secretary would be required to extend for three additional years, the three municipal health services health maintenance organization demonstration projects (Milwaukee, San Jose and Cincinnati) currently authorized under medicare demonstration authority. These demonstrations were authorized under authority provided in the Social Security Amendments of

1967 and 1972. The provison would be effective upon the date of enactment.

Senate amendment

Similar provision, except it includes an additional project in Baltimore.

Conference agreement

The conference agreement includes the Senate amendment.

34. Technical corrections

Present law

Current medicare law contains an number of technical errors.

House bill

(a) The House bill would correct problems with the medicare special enrollment period and the premium penalty forgiveness for the working aged. The anomaly under which certain individuals who are working and covered by an employer group health plan receive only one special enrollment period and others receive more would be corrected.

(b) In addition, the House bill would clarify that an individual would be eligible for forgiveness of the medicare penalty for any period during which he or she was over 65 and covered by an employer group health plan.

The provision requiring a person to meet the eligibility requirements of part A, and to have filed for part A, would be repealed.

(c) The House bill would make certain corrections in spelling, language and indentation.

Paragraph (a) would apply to the first month that begins more than 90 days after the date of enactment with certain exceptions.

Paragraph (b) would apply to months beginning January 1983 as they effect premiums for months beginning with the first month that begins more than 30 days after the date of enactment.

Paragraph (c) generally would be effective as though they had been included in the public laws that they correct.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill.

35. Coverage of respiratory care services for ventilator-dependent individuals

Present law

Medicare provides limited outpatient and home services to ventilator dependent individuals.

In order 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.

House bill

No provision.

Senate amendment

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 relating to medicare would be effective for services performed on or after October 1, 1988.

Conference agreement

The conference agreement does not include the Senate amendment.

36. Increase audit effort and medical claim review (sec.)

Present 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.

House bill

No provision.

Senate amendment

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 specfically for provider cost audits and medical review activities. The provision would be effective October 1, 1985.

Conference agreement

The conference agreement includes the Senate amendment with a technical modification. The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) earmarked $45 million through FY85 for intensified review activities. This authorization is extended for three

years through FY88. The $105 million under the Senate amendment represents an additional $60 million above this amount.

The conferees intend that the Secretary has the flexibility to utilize the funding amounts in whatever manner the Secretary determines would be most cost-effective.

37. Charges by physicians for services billed to an HMO

Present 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 nonparticipating 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).

House bill

No provision.

Senate amendment

The provision would provide that participating and nonparticipating physicians cannot charge HMOs more for emergency services rendered to a medicare beneficiary than they could charge the beneficiary. The provision would be effective for items and services provided on or after October 1, 1985, and before October 1, 1986.

Conference agreement

The conference agreement does not include the Senate amendment.

38. Sense of the Senate with respect to coverage of liver transplant procedures for persons over 18 years of age under medicare

Present law

Section 1862 excludes from medicare coverage any items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. This section has been interpreted to exclude from coverage items and services that are considered to be experimental and that do not have a proven medical benefit. On February 9, 1984, the Secretary announced that liver transplants for persons under 18 years of age with certain specified conditions were no longer considered experimental and would, therefore, be covered under medicare.

House bill

No provision.

Senate amendment

The Senate amendment specifies the sense of the Senate, given available information regarding liver transplant services, that liver transplant services are to be covered under medicare and that the Secretary reconsider coverage of liver transplant services for individuals over 18 years of age.

Conference agreement

The conference agreement includes the Senate amendment with the understanding that the provision expresses only the sense of the Senate.

39. Extension of physician fee freeze for nonparticipating physicians and improvements in the participating physician program

a. Physician payments

Present law

Medicare pays for physicians' services on the basis of medicare-determined "reasonable charges". The reasonable charge for a service is the lowest of 1) a physician's billed charge; 2) the charge customarily made by the physician; or 3) the prevailing charge limit, derived from the charges made by all physicians in the geographic area for the service. The customary and prevailing charge screens are generally updated annually, on October 1. Increases in prevailing charge levels are limited by an economic index that reflects general inflation and changes in physicians' office practice costs.

Under the Deficit Reduction Act of 1984 (P.L. 98–369), the medicare customary and prevailing charges for all physicians' services provided during the 15-month period beginning July 1, 1984 were frozen at the levels that applied for the 12-month period ending June 30, 1984. The actual charges of nonparticipating physicians were also frozen during the 15-month period, at the levels in effect during April–June 1984.

The Deficit Reduction Act (DEFRA) also instituted a medicare participating physician and supplier program. Participating physicians and suppliers agree to accept assignment on all medicare claims for the 12-month period beginning on October 1 of a year. Nonparticipating physicians and suppliers can decide on a claim-by-claim basis whether or not to accept assignment.

The carriers responsible for paying medicare claims are required to monitor nonparticipating physicians' actual charges during the 15-month freeze. Physicians who knowingly and willfully bill beneficiaries in excess of what they charged during April–June 1984 can be subject to civil monetary penalties and/or exclusion from participation in medicare.

Public Law 99–107, Public Law 99–155 and Public Law 99–181 extended through December 18, 1985 the payment terms established in DEFRA. Physicians are bound during the extension period by the decisions they made regarding participation for the year beginning October 1, 1985, and are subject to the corresponding payment rules.

House bill

(Section 141)

Under the bill, an update in customary and prevailing charges would be provided on October 1, 1985 to all physicians who, as of that date, are participating physicians. The same prevailing charge screens would apply to all physicians who are participating as of that date, regardless of their prior participation status.

For any physician who is not covered by a participation agreement as of October 1, 1985, the current freeze on customary and prevailing charges would be extended through September 30, 1986. The current freeze on the actual charges of nonparticipating physicians would also be extended, for the same period. Formerly participating physicians who withdraw from the participation program for the year beginning October 1, 1985 would be required, like continuing nonparticipating physicians, to limit their actual charges to no more than the levels they charged during April-June 1984. The monitoring of nonparticipating physicians' actual charges would be continued through FY 1986.

On October 1, 1986, physicians covered by participation agreements effective for the year beginning October 1, 1986 would receive customary and prevailing charge updates. Nonparticipating physicians for the year beginning October 1, 1986 would also receive customary and prevailing charge updates. However, they would be subject to the prevailing charge limits applied to participating physicians during the prior participation period. This one-year differential would apply in future years, establishing a permanent gap between the prevailing charge screens to which participating and nonparticipating physicians are subject.

(Section 151)

The provision is identical to the one outlined for section 141, with the following exceptions:

Physicians who participated or took assignment on 100 percent of medicare claims during the year beginning October 1, 1984, but who are not participating as of October 1, 1985, would receive increases in their customary and prevailing charges on October 1, 1985, equal to one-half the increases they would have received had they been participating as of that date.

In addition, previously participating physicians who are not participating as of October 1, 1985 would be allowed to increase their actual charges by one-half the percentage increase in their actual charges during the July 1, 1984-September 30, 1985 period over their charges during the period April 1, 1984-June 30, 1984. These physicians' actual charges would then be monitored against these new levels. Charges in excess of the new freeze levels would not be recognized in computing customary charge updates on October 1, 1986.

Beginning October 1, 1986, the prevailing charge screens of physicians who participated or always accepted assignment in the immediately preceding year, but who do not participate in the current year, would lag behind those of participating physicians by

one-half the amount that other nonparticipating physicians' prevailing charges lag.

Senate amendment

The Senate amendment is similar to section 141 of the House bill with the following modifications. Physicians who were participating in fiscal year 1985, but who withdrew from the participating program in fiscal year 1986 would have their actual charges during the 12-month period ending March 31, 1985 reflected in the calculation of their customary charges for fiscal year 1986.

The Senate amendment would afford all physicians a second opportunity to exercise their option to enter into or terminate participation agreements for fiscal year 1986, during a 30-day period following enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification as follows.

The payment rates now in effect will be extended from December 19, 1985 through January 31, 1986. The freeze on nonparticipating physicians' actual charges to beneficiaries, and the monitoring of these charges, will also be extended during this period.

During the month of January 1986, physicians will have the opportunity to decide whether or not to participate for the 11-month period beginning February 1, 1986. New participation agreements can be signed or old ones terminated during January. In order to make existing participation agreements (which apply on a fiscal year basis) consistent with the new update and participation cycles (which will be on a calendar year basis), and in order to expedite implementation of the fee screen update for participating physicians, the agreement provides that existing participation agreements will be deemed to be in effect through December 31, 1986, unless terminated by the physician during January 1986. Therefore, physicians covered by agreements effective through September 30, 1986 who, during the month of January 1986, elect to continue participation do not have to sign new agreements; and the automatic renewal clause in the existing agreements will apply on a calendar year basis. Those physicians covered by participation agreements who wish to withdraw from participation for the 11-month period beginning February 1, 1986 must notify the carrier in writing during the month of January of their wish to do so.

On February 1, 1986, physicians who are covered by participation agreements on that date will receive customary and prevailing charge updates. The prevailing charges will reflect the updated customary charges of all physicians. With respect to most nonparticipating physicians, customaries will be updated solely for the purpose of updating participating physicians' prevailing charges. However, updated customaries will be used for payment purposes for nonparticipating physicians for the 11-month period beginning February 1, 1986 if they participated during fiscal year 1985.

For physicians who are neither participating on February 1, 1986 nor were participating during fiscal year 1985, the existing freeze on customary and prevailing charges will be extended through De-

cember 31, 1986. In addition, the freeze on actual charges (at April-June 1984 base period levels) will be extended through December 31, 1986 for all nonparticipating physicians, including those who were participating during fiscal year 1985. Monitoring of these physicians' actual charges continues for the same period.

The customary and prevailing charge screens applied on February 1, 1986 for participating physicians will be those that would have been applied for the October 1, 1985 update, had they not been frozen at the levels in effect on September 30, 1985. These October 1, 1985 charge screens reflect physicians' actual charges made during the 12-month period ending March 31, 1985. Use of these screens, rather than new ones based on a more recent period of charges (July 1, 1984 through June 30, 1985), will enable the carriers to apply the payment increases to participating physicians as expeditiously as possible. Construction and application of new screens would result in delaying the update significantly.

In order to compensate participating physicians for the prevailing charge increases that they will lose during the 4-month period beginning October 1, 1985 due to the freeze, the medicare economic index (MEI) applied to prevailing charges for services provided during the 11-month period beginning February 1, 1986, will be increased by one percentage point, approximately one-third of the total MEI increase due these physicians over the 12-month period beginning October 1, 1985. This one percentage point increase is a one-time increase to be applied only during the 11-month period, and is not built into the prevailing charge levels on a permanent basis. It is to be excluded in determining nonparticipating physicians' prevailing charges for the year beginning January 1, 1987.

Beginning January 1, 1987, participation agreements will be effective on a calendar year basis. Similarly, future customary and prevailing charge updates will be moved permanently from October 1 to January 1. Following February 1, 1986, the next participation period will begin and the next payment update will occur on January 1, 1987 and on each January 1 thereafter. The data base used to calculate the fee screens will also be moved forward by one quarter, to the period July 1 through June 30; thus, updates will continue to reflect physicians' actual charges made during the 12-month period ending six months prior to the update.

During the 45-day period (November 15 through December 31) immediately preceding a new participation period, physicians will have the opportunity to enter into participation agreements effective for the year beginning January 1, or to withdraw from existing agreements.

On January 1, 1987, and on each January 1 thereafter, physicians who are participating on that date will receive customary and prevailing charge updates, based on actual charges made during the preceding July 1 through June 30. Nonparticipating physicians will also receive customary charge updates, based on their actual charges made during that period.

For purposes of the January 1, 1987 customary charge update, actual charges exceeding the April-June 1984 base period levels, billed from October 1, 1985 through January 31, 1986 by a physician who was not participating during that four-month period, will not be recognized. Likewise, for purposes of the January 1, 1987

and January 1, 1988 customary charge updates, actual charges in excess of the April-June 1984 base period levels, billed from October 1, 1985 through December 31, 1986 by a physician who was not participating at the time of providing the service, will not be recognized.

For the year beginning on January 1, 1987, physicians who elect not to participate will be subject to the prevailing charges that were applied to participating physicians during the preceding participation period, excluding the temporary one percentage point increase in the MEI. For years beginning on January 1, 1988, and each January 1 thereafter, physicians who elect not to participate will be subject to the prevailing charges that were applied to participating physicians during the preceding participation period. This permanent one-year lag or differential in prevailing charges is intended to provide an incentive to physicians to participate, and reflects the priority the conferees attach to increasing participation.

b. Transfer of funds for carriers

Present law

The Deficit Reduction Act of 1984 provided for transfer from the Federal Supplementary Medical Insurance Trust Fund to carriers of at least $8 million in fiscal year 1984 and $15 million in fiscal year 1985 to implement the freeze and participating physician and supplier program.

House bill

The bill would extend for one year (FY 1986) the current law provision for the transfer of $15 million from the Federal Supplementary Medical Insurance trust fund. The bill would require that a significant proportion of those funds be used for the expansion of the participation program and for the development of professional relations staffs dedicated exclusively to addressing the billing and other problems of participating physicians and suppliers.

Senate amendment

Identical provision.

Conference agreement

The Conference agreement includes the House provision with a modification as follows.

In addition to the $15 million provided for in the House and Senate bills, a further $3 million (total $18 million) will be transferred from the part B trust fund to the carriers in fiscal year 1986, and will be available for obligation through December 31, 1986. These funds are intended to cover the costs of additional mailings by the carriers to physicians and suppliers explaining the changes in the fee freeze and participation program, and to cover the carriers' costs of implementing the fee freeze and participation program during the last three months of 1986.

The conferees intend that the Secretary devote sufficient funds to the carriers for maintenance of their toll-free telephone lines so that they are useful to beneficiaries seeking information about par-

ticipating physicians and suppliers. Sufficient resources should also be devoted to ensure that participating physicians and suppliers enjoy the benefit of the carriers' direct lines for the electronic receipt of claims.

c. Participating physician directory

Present law

DEFRA required the Secretary to publish annually a directory identifying participating physicians by name, address, and specialty. The directory is to be organized to make the most useful presentation of information.

House bill

The Secretary would be required to publish participating physician and supplier directories (rather than a single directory) for appropriate local geographic areas, and to provide for their distribution to each participating physican located in each such area.

Senate amendment

Identical provison.

Conference agreement

The Conference agreement includes the House provision. The conferees note that the directories of participating physicians and suppliers should be organized so as to be meaningful and useful to beneficiaries. For example, if, in especially large metropolitan areas, local medical markets can be identified, these should serve as the basis of organizing the directories. The requirement that the directories be sent to all participating physicians in an area is intended to faciliate and encourage the development of referral networks among participating physicians and suppliers.

d. Physician assignment rate list (PARL)

Present law

DEFRA required the Secretary to publish annually a list of physicians and suppliers serving medicare beneficiaries. The list is to include, for each physician and supplier name, address, specialty, and percent of claims accepted on assignent during the preceding year.

House bill

The House bill eliminates the requirement for the PARL directory.

Senate amendment

Identical provision.

Conference agreement

The Conference agreement includes the House provision.

e. Explanation to benefits

Present law

Medicare carriers inform beneficiaries of actions taken on their claims through Explanation of Medicare Benefits (EOMB) notices.

House bill

The bill would reqiure that, for all unassigned claims, the Explanation of Medicare Benefits (EOMB) include a reminder to beneficiaries of the participating physician and supplier program, and provide them with the toll-free number for information in their area. The message would also remind beneficiaries of the limitation on the charges that participating physicians and suppliers may impose.

Senate amendment

Identical provision.

Conference agreement

The Conference agreement includes the House provision with the deadline moved to July 1, 1986. The conferees note that this provides the Secretary with ample time to pilot-test messages, if necessary, to ensure that they convey information to beneficiaries in a meaningful and appropriate fashion.

f. Inapplicability of penalties

Present law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment 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.

Conference agreement

The Conference agreement does not include the Senate amendment.

40. Physician payment assessment group and development of relative value scales

Present law

There currently exists no advisory body whose purpose it is to make recommendations regarding medicare physician payment.

House bill

(Section 142)

The Director of the Congressional Office of Technology Assessment would appoint to the Prospective Payment Assessment Commission (ProPAC) two additional members to provide representation for rural hospitals and four nurses. In addition, the Director would appoint six new members to comprise a physician payment unit, which would function as a subcommittee of ProPAC.

The mission and ongoing duties of the physician payment subcommittee would be to make recommendations regarding medicare physician payment. Recommendations would address, among other issues, adjustments to reasonable charge levels for physicians' services, and changes in the medicare physician payment mechanism. The physician payment subcommittee would advise the Secretary on the development of a fee schedule based on a relative value scale (RVS), to be implemented by October 1, 1987.

(Section 152)

The section would provide for establishment of a physician payment review commission of 11 members, separate from and independent of ProPAC. The duties and activities of the commission are largely identical to those of the physician payment subcommittee of ProPAC outlined in section 142.

Senate amendment

No provision.

Conference agreement

The conference agreement includes section 152 of the House bill with a modification to conform the required functions to those specified in section 142 of the House bill.

41. Part B premium

Present law

The Secretary is required to calculate and announce each September the amount of the monthly premium that will be charged in the following calendar year for people enrolled in the Supplementary Medical Insurance (part B) portion of medicare. A temporary provision of law requires that for 1986 and 1987 the premium amount be calculated so as to produce premium income equal to 25 percent of program costs for enrollees age 65 and over.

Beginning in 1988, the premium calculation would revert to an earlier method under which the premium amount is the lower of: (1) an amount sufficient to cover one-half of program costs for the aged; or (2) the current premium amount increased by the percentage by which cash benefits were most recently increased under the cost-of-living adjustment (COLA) provisions of the social security program.

House bill

The House bill would extend for one additional year the existing temporary provision whereby the portion of part B costs financed by enrollee premiums equals 25 percent of program costs. If there is no social security cost-of-living adjustment, the monthly premium would not be increased that year.

Senate amendment

Same provision.

Conference agreement

The conference agreement includes the Senate amendment with a technical modification. There is no intent to change any policy other than to extend the date to 1988.

42. Inherent reasonableness determinations and customary charges for certain former hospital-compensated physicians

a. Inherent reasonableness

Present law

Payment for items and services under part B is generally made on the basis of reasonable charges. The law provides for some flexibility in the determination of reasonable charges; the regulations at 42 CFR 405.502(a)(7) allow the use of "other factors that may be found necessary and appropriate with respect to a specific item or service . . . in judging whether the charge is inherently reasonable."

House bill

The bill would require the Secretary to promulgate regulations which specify explicitly the criteria of "inherent reasonableness." The Secretary would be required to correct both excessive and deficient charges in accordance with these regulations.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

b. Hospital-compensated physicians

Present law

Carriers established compensation-related customary charges (CRCCs) for certain hospital-based physicians when combined-billing arrangements were eliminated, effective October 1, 1983. The CRCC provision was intended to be transitional; hospital-based physicians would have received customary charge updates on July 1, 1984 based on their actual charges had it not been for the general freeze on medicare customary and prevailing charges for physicians' services instituted by the Deficit Reduction Act.

House bill

In FY 1986, participating hospital-based physicians (HBPs) whose compensation-related charges were frozen as part of the general medicare fee freeze would, like other participating physicians, receive increases in their medicare payment based on their actual charges. Participating HBPs would receive increases that reflect charges that they made during the same base period used to update other participating physicians' charges (April 1984–March 1985). Nonparticipating HBPs would receive payments that reflect their charges during April 1984–March 1985, but deflated to approximate 1982 charges. This is the same period on which other nonparticipating physicians' payment is based.

Senate amendment

The Senate amendment would provide for the recalculation of the compensated-related customary charges (CRCCs). For services rendered between October 1, 1985, and September 30, 1986, the customary charges of 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. The provision would be effective for services rendered on or after October 1, 1985, and before October 1, 1986.

Conference agreement

The conference agreement includes the House bill with a modification as follows.

Hospital-compensated physicians who, between October 31, 1982 and January 31, 1985 were in (and within the same period terminated arrangements by which they were compensated by a hospital for part B services furnished to its patients, will have customary charges calculated based on their actual charges. On February 1, 1986, physicians covered by this provision who are participating on that date will have their customary charges updated based on their actual charges billed during the 12-month period ending March 31, 1985. Physicians who are not participating on February 1, 1986 but who participated during fiscal year 1985 will have their customary charges updated in the same fashion. Physicians who were nonparticipating in fiscal year 1985 and who are not participating on February 1, 1986 will have their customary charges updated, and then deflated by .85 to approximate 1982 charge levels, on which other continuing nonparticipating physicians' customary charges are based.

Physicians who come off compensation arrangements between February 1, 1985 and December 31, 1986 will be treated as new physicians for purposes of establishing their customary charges. However, if a group or other entity continues to bill for or on

behalf of a physician who came off a compensation arrangement before January 31, 1985, the customary charges (as well as the actual charges, in the case of a nonparticipating physician) of the group or the entity billing for or on behalf of the physician would be imputed to the physician.

43. Occupational therapy services

Present law

Medically necessary occupational therapy services are covered under part A of medicare when provided as a part of covered inpatient or post-hospital extended care services in a skilled nursing facility, or as part of home health services or hospice care.

Part B coverage of occupational therapy services is limited to treatment in a hospital outpatient department, comprehensive outpatient rehabilitation facility, home health agency or when incident to a physician's service.

House bill

The House bill would extend reimbursement under part B of medicare for occupational therapy services. This therapy would be covered when provided in a skilled nursing facility (when part A coverage is exhausted), in a clinic, or a rehabilitation agency. Payment would be made on a reasonable cost basis.

The House bill would provide part B coverage of occupational therapy services when furnished in a therapist's office or a beneficiary's home. The independently practicing therapist would have to meet licensing and other standards prescribed by the Secretary. No more than $500 in incurred expenses would be eligible for coverage in a calendar year per beneficiary. Payment would be based on 80 percent of reasonable charges.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill.

The conferees believe that the value of occupational therapy services to beneficiaries merits a modest expansion of the program. Further, the conferees find that such services have the potential to reduce and avoid the need for institutional care while enabling the beneficiary to function more independently.

44. Payment for durable medical equipment and other nonphysician services

Present law

Payment for durable medical equipment (DME) is paid under part B on the basis of reasonable charges. In the past, payment for DME was made for both rented and purchased items, depending on the beneficiary's decision to either rent or purchase. As a result, the majority of DME was rented, even when purchase would have been more economical.

Beginning February 1, 1985, the Secretary implemented three methods for reimbursing DME under medicare: lease-purchase, lump sum purchase or rental charges. Equipment costing less than $120 is considered inexpensive equipment and payment is made only on the basis of purchase. 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. Used equipment that is purchased and that meets certain standards is reimbursed at 100 percent rather than 80 percent of the reasonable charges (applicable copayment amounts are waived).

House bill

(Section 146)

a. Fiscal year 1986 payment level

The House bill would set new reimbursement limits on rented durable medical equipment (DME). In determining medicare's customary and prevailing charges for rented DME during FY 1986, the Secretary would allow an increase of no more than one percent over the level set for rented DME furnished beginning July 1, 1984.

b. Mandatory assignment

The House bill would provide that payment for DME provided on a rental basis would only be made on the basis of assignment.

c. Limits on annual increase in prevailing charges

For DME items furnished during fiscal years beginning on or after October 1, 1986 the House bill would limit the annual percentage increase in prevailing charges for rental and purchase to no more than the increase in the Consumer Price Index for all urban consumers for the 12-month period ending the preceding March.

d. Clarification of DEFRA effective date

The bill clarifies that the DEFRA provision moving updates of customary and prevailing charges to October 1 also applies to DME.

Effective Date

Paragraph (a) would be effective with respect to items or services furnished on or after October 1, 1985.

Paragraph (b) would be effective with respect to supplies or items furnished on or after January 1, 1986.

Paragraph (c) would be effective with respect to items or supplies furnished on or after October 1, 1986.

Paragraph (d) effective as though included in DEFRA.

(Section 153)

a. Fiscal year 1986 payment level

This section is similar except that it would freeze both customary and prevailing charges for rented DME and for purchases of oxygen supplies during FY 1986 at the same level for supplies furnished during the 15-month period beginning July 1, 1984.

b. Mandatory assignment

This section is similar except that payment for purchases of oxygen supplies, in addition to DME provided on a rental basis, would only be made on the basis of assignment.

c. Limits on annual increase in prevailing

This section is similar except that future increases in payment for purchases of oxygen supplies, in addition to DME provided on a rental basis, would be limited to the CPI.

d. Clarification of DEFRA effective date

Same provision.
Same effective dates.

Senate amendment

a. Fiscal year 1986 payment level

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. 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.

b. Mandatory assignment

No provision.

c. Limit on annual increase in prevailing

For items and services furnished in fiscal year 1987 and thereafter, medicare prevailing charges could rise no faster than the increase in the Consumer Price Index. The provision would be effective October 1, 1985.

Conference agreement

The conference agreement includes section 153 of the House bill with modifications. Customary and prevailing charges and lowest charge levels will be frozen for the period October 1, 1985 through January 31, 1986 for nonphysician and nonlaboratory supplies and services. This means that medicare fee screens for all nonphysician services paid for on a reasonable charge basis under Part B are

frozen at the level which was in effect for such services for the 15-month period beginning July 1, 1984.

The agreement provides that the freeze is extended for the eleven-month period February 1, 1986–December 31, 1986 for rented durable medical equipment and consumable oxygen. Beginning April 1, 1986, and thereafter, payment for those items and services would be made only on the basis of assignment; that is, suppliers would have to accept the medicare reasonable charge as payment in full (except for the deductible and copayment).

The agreement specifically precludes extension of the freeze after February 1, 1986 for purchased DME and other nonphysician services paid for on a reasonable charge basis. Thus, other nonphysician suppliers and services would receive the full update in customary and prevailing charge screens for the 11-month period beginning February 1, 1986. This is the update that would have been effective on October 1, 1985, but for regulations issued by the Secretary which froze the rates.

Future updates of customary, prevailing, and lowest charge level screens for DME and other nonphysician services will occur on January 1 of each year beginning in 1987. Beginning January 1, 1987, the annual increase in the prevailing charge screens for rented DME and consumable oxygen will be limited to the increase in the Consumer Price Index for all urban consumers (U.S. city average). Beginning January 1, 1988, the annual increase in the prevailing charge screens for purchased DME will be subject to the same limit. For the purpose of this section, purchased DME includes DME furnished on a lease-purchase basis.

The base period for calculation of customary and prevailing charge screens is the 12-month period ending the preceding June 30. The base period for the lowest charge levels is the three-month period ending the preceding September 30.

The conference agreement for the DEFRA effective date provision includes the House provision, with a modification to specify that the provision applies for all, rather than some, part B nonphysician services except lab tests.

45. Payment for assistants at surgery for certain cataract operations and other operations

Present law

Currently, medicare covers assistants at surgery during routine cataract operations. Their services are considered reasonable and necessary if it is 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.

House bill

The House bill would deny medicare payment for assistants at surgery for routine cataract operations. In cases where complicating medical conditions exist, the Secretary would be required to establish procedures by which the primary surgeon could request prior approval from the PRO for the use of an assistant.

The House bill would prohibit the assistant at surgery (or someone on his or her behalf) from billing medicare or the beneficiary for services which did not receive prior approval. 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 if prior approval had not been received. In order to enforce this provision, the House bill would provide the Secretary authority to impose civil monetary penalties or assessments, or exclusion for up to five years from the medicare program.

The House bill would require the Secretary, after consultation with the physician payment review group, as constituted under section 142 or 152 the House bill, 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. The Secretary would be required to include in this report procedures by which the primary surgeon could request prior approval from an appropriate entity for the use of an assistant at surgery when prior approval is required for those surgical procedures.

The House bill would be effective with respect to services performed on or after October 1, 1985.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the Senate amendment with a modification to allow the Secretary discretion to require the carrier or PRO to be the entity from which the primary surgeon requests prior approval for the use of an assistant at surgery. It is the intent of the conferees that this modification would facilitate timely implementation of the provision.

The conferees reviewed the findings of the Office of the Inspector General, HHS, which stated that the use of an assistant at surgery has not medically necessary in most situations. In addition, several medicare carriers currently restrict coverage of assistants at surgery, and there has been no indication that this has an adverse effect on patients.

The agreement further specifies that the provision applies to services performed on or after April 1, 1986. The Secretary's report to Congress on the recommendations and guidelines is due no later than January 1, 1987.

46. Limitation on medicare payment for post-cataract surgery patients (sec. 148)

Present law

Medicare part B pays for certain combinations of prosthetic lenses for post-cataract surgery patients, if determined to be medically necessary by the physician, i.e. cataract contact lenses and eyeglasses. Generally, part B carriers are authorized to replace prosthetic lenses without a physician's prescription in cases of loss or irreparable damage and when supported by a physician's prescription in cases of a change in the patient's condition. Currently,

there are not 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 service.

House bill

The House bill would limit medicare reimbursement with respect to replacement of lost or damaged prosthetic lenses as follows:

(1) cataract eyeglasses; one replacement each year;

(2) cataract contact lenses; one original and two replacements per eye the first year after surgery and two replacements per eye each subsequent year.

The House bill would require the Secretary to provide for separate payment amount determinations for the prosthetic lenses and for the related professional services, and to apply inherent reasonableness guidelines, in accordance with the bill, in determining the reasonableness for charges for prosthetic lenses.

The House bill would be effective for items or services furnished on or after October 1, 1985.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the Senate amendment with respect to payment limitations with a modification specifying that the provision applies to items and services furnished on or after April 1, 1986. The conference agreement does not include the limitations on replacements of eyeglasses and contact lenses.

47. Demonstration of preventive health services under medicare

Present law

Medicare does not generally provide coverage of preventive health services.

House bill

The House bill would require the Secretary of HHS to fund at least five demonstrations, under the auspices of schools of public health, to determine whether and how it would be cost-effective to include preventive services as a medicare benefit.

The House bill would require that certain preventive health services be made available to medicare beneficiaries. Such services 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 reduction.

The Secretary would be required to submit a report to Congress describing the demonstrations in progress within three years. Within five 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.

The House bill would be effective October 1, 1985.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the Senate amendment with a modification that specifies that the demonstrations be conducted under the auspices of schools of public health and medical schools with preventive medicine departments accredited by the Council on Education for Public Health. It is the intent of the conferees that at least one of the projects include cancer screening (including breast cancer screening).

48. Ambulatory surgery

Present 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) Physican'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.

House bill

No provision.

Senate amendment

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 payments 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 PROs 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.

The provisions relating to the updating of payments and lists of procedures would be effective January 1, 1986. Payment amounts for ambulatory procedures that are furnished in ASCs and physicians' offices would be updated prior to January 1, 1986. Other provisions would be effective October 1, 1985.

Conference agreement

The conference agreement does not include the Senate amendment.

49. Payment for clinical laboratory services

Present law

Outpatient clinical diagnostic laboratory services are reimbursed according to fee schedules established by medicare carriers. The initial fee schedules, which went into effect on July 1, 1984, were established at a percentage of the prevailing charges that would have gone into effect on that date. The fee schedules are to be updated on July 1 of each year by the percentage change in the Consumer Price Index for all urban consumers (CPI–U).

The fee schedules are currently calculated and applied on the basis of a statewide or substate geographical area. Beginning July 1, 1987, a national fee schedule is to be established for tests performed in a physician's office, by a freestanding laboratory, or by a hospital (if the test is for a person who is not a patient of that hospital). The fee schedules are to expire July 1, 1987 for hospital laboratory tests performed for outpatients of the hospital; payment for these services would revert to cost-based reimbursement. Payment may only be made to the person or entity who performed such test.

Hospital laboratories and independent laboratories are subject to standards designed to protect the health and safety of patients and to monitoring of compliance with such standards. Laboratories located in physicians' offices are not subject to such standards or monitoring.

House bill

The House bill moves the timing of the annual update to October 1, beginning in 1986. The annual update which would take effect on October 1, 1986 would take into account the change in the CPI–U occurring over the preceding 15-month period. The expiration date for the fee schedules for tests done by hospital-based laboratories would be delayed 3 months, to October 1, 1987.

The Secretary of Health and Human Services would be required to establish a ceiling on the maximum amount medicare would pay under the current fee schedules. A different ceiling would be set for each test and would be applied nationwide. The ceiling would be set at 115 percent of the median fee for each procedure beginning on January 1, 1986, and at 110 percent of the median beginning on October 1, 1986.

The Secretary would also be required to report to Congress, within one year after the date of enactment, on standards which could be established to protect the health and safety of patients of clinical laboratories which are part of, or associated with, a physician's office. In recommending standards, the Secretary is to consider such factors as scope, type and complexity, which may indicate a need for different standards for laboratories with different characteristics.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with the following modifications. The annual update of the fee schedules will occur January 1 of each beginning in 1987. The annual update which will take effect on January 1, 1987 will take into account the change in the CPI–U occurring over the preceding 18-month period. The fee schedule for laboratory tests furnished by hospitals for outpatients is extended through December, 1987.

The conference agreement further modifies the House bill to specify that the ceilings would be set at 115 percent of the median fee for the respective tests beginning on April 1, 1986 and 110 percent of the median beginning on January 1, 1987. The national fee schedule for laboratory services would go into effect on January 1, 1988.

It is the conferees understanding that there may be a limited number of lab tests where there is some discrepency in the service reported for the procedure code (such as organ or disease oriented panel tests). In these isolated cases, a reasonable delay in application of the limits on fee schedules may be appropriate.

The conference agreement further specifies that beginning January 1, 1987, medicare payments for laboratory services performed in a physician's office will only be made on the same basis as pay-

ments to independent clinical labs. Payment will be made only on the basis of assignment, and the patient's deductible and coinsurance will be waived.

The conferees continue to be concerned about the Secretary's lack of progress is simplifying the current billing requirements for laboratory services. Such simplification may include eliminating requirements that a patient diagnosis appear on a clinical laboratory bill, mechanisms to ensure prompt payment, minimizing the amount of information required for claims processing and facilitating bulk or periodic billing for multiple beneficiaries.

The conference agreement reinstates section 1123 of the statute regarding proficiency testing, through September 30, 1987.

50. Vision care

Present law

Medicare pays for eye examinations furnished by a physician to a patient with a complaint or symptom of eye disease or injury. Medicare does not pay for eyeglasses or for eye examinations for the purpose of prescribing, fitting, or changing eyeglasses (except for prosthetic lenses for aphakic patients; that is, those without the natural lens of the eye). Payment is also denied for procedures performed to determine the refractive state of the eye. An optometrist who is legally authorized by the State to practice optometry is defined as a physician, but only with respect to services related to the treatment of aphakic patients.

House bill

Payment would be made under medicare for vision care services performed by optometrists, if the services are among those already covered by medicare when furnished by a physician and if the optometrist is authorized by State law to provide the services.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House bill with an effective date of July 1, 1986. The conferees are concerned that many beneficiaries are either foregoing covered eye care or are paying out-of-pocket for eye care services furnished by optometrists, because they do not have ready access to an ophthalmologist. The bill would not expand or change the current coverage and reimbursement rules in any other manner. It is the conferees' expectation that the medicare carriers, with guidance from HCFA, would use information regarding payments they make for optometrists' services under their own health plans, or other appropriate information, to establish the initial customary and prevailing charge screens.

51. Second opinions

Present law

Medicare payment will be made for medical and other health services if the services are reasonable and necessary. Although a medicare beneficiary may seek a second opinion prior to undergoing surgery, a second opinion is not required as a precondition to payment.

Utilization and quality control peer review organizations (PROs) are authorized to determine whether services and items furnished in connection with medical care are reasonable and medically necessary. PROs conduct pre-admission reviews with respect to a limited number of elective surgical procedures, but are not authorized to require a second opinion as part of the pre-admission review process.

House bill

a. Mandatory second opinions

Payment for certain elective surgeries would be denied under both part A and part B, unless the patient obtained a second opinion from a qualified physician. Payment would not be denied if the second opinion did not agree with the first.

b. Required procedures

The Secretary of Health and Human Services would be required to designate at least ten surgical procedures for which second opinions would be required, chosen from those that can be postponed without undue risk, that are high volume or high cost procedures, and that have a high rate of nonconfirmation. The Secretary could vary the list for each geographic area if available data on volume and costs suggest that it would be cost-effective to do so. The Secretary would also be required to specify which type of specialist must be consulted for each of the listed procedures.

c. PRO functions

Utilization and quality control peer review organizations (PROs) would serve as referral centers to assist patients in obtaining second opinions. The PRO would maintain a list of qualified physicians and would tell the patient which physicians are participating physicians and which have agreed to accept assignment for second opinions. At the patient's request, the PRO would refer the patient to an appropriate physician for a second opinion. The patient could choose any physician of the proper specialty to provide the second opinion, as long as the physician was not affiliated with or did not have any common financial interest with the physician who rendered the first opinion. The Secretary could enter into an agreement with a State or local agency or appropriate private entity (other than a PRO) under certain circumstances.

d. Waiver of requirements

The requirement for a second opinion would be waived if (1) delay would pose a risk to the patient; (2) no physician is reasonably available who is (a) an appropriate specialist, and (b) a participating physician or a physician who has agreed to accept assignment for the second opinion; or (3) the patient is enrolled in a health maintenance organization or competitive medical plan with a medicare risk-sharing contract.

e. Beneficiary notification responsibilities

Physicians, hospitals, and ambulatory surgical centers would be obligated to inform patients about the requirement for a second opinion and would be subject to civil monetary penalties and exclusion from the program for failing to do so.

f. Secretarial notification requirements

The Secretary would be required to notify all physicians, hospitals with medicare agreements, and ambulatory surgical centers with medicare agreements, of these second opinion requirements, including the applicable list of surgical procedures and a description of the penalties for failure to notify a patient about the requirement for a second opinion.

The Secretary would also be required to provide periodic notice to medicare beneficiaries of the second opinion requirements, including the applicable list of the surgical procedures and information about the availability of the second opinion referral services.

g. Deductible and coinsurance waiver

The deductible and coinsurance would be waived for the second opinion (and for a third opinion, if the second was in disagreement from the first).

h. Conforming amendments

The bill makes conforming amendments regarding exclusions from coverage, provider agreements, and functions of PROs.

i. Contingency procedures list

If the Secretary did not establish a list or lists of surgical procedures requiring second opinions within six months after enactment, a statutory list of procedures would go into effect.

j. Study

The Secretary would be required to conduct a study of the results of the amendments made by this section. The study must include any changes in utilization of surgical procedures, changes in nonconfirmation rates of second opinions, and outcomes in cases where surgery is not done after a second opinion failed to confirm the necessity of the surgical procedure.

The provision would become effective the first month which begins more than 6 months after enactment. The Secretary must

promulgate final regulations necessary to implement the amendments made by this section within six months after enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with modifications as follows.

a. Mandatory second opinions

PROs would be required to perform 100 percent pre-procedure review on at least 10 elective surgical procedures whether the procedure is performed on an inpatient or outpatient basis. Pre-procedure review would be required as a condition of payment except that review would be waived in the case of a medical emergency or under other circumstances as the Secretary may specify. PROs would be authorized to require a second opinion for these procedures as part of the pre-procedure review process if a second opinion is warranted to assist the beneficiary regarding the need for the procedure.

b. Required procedures

The procedures that would be subject to pre-procedure review by a PRO pursuant to this provision would be specified in a contract negotiated between the PRO and the Secretary. Existing contracts (which are on a 2-year cycle) will expire during 1986. New contracts will be signed between June and October 1986. Therefore, implementation of this provision will require renegotiation of signed contracts.

The Secretary would be required to develop guidelines for determining whether a surgical procedure is appropriate for inclusion in the pre-procedure review program. These guidelines would be based on three general requirements. First, the procedure must be one which generally can be postponed without undue risk to the patient. Second, the procedure must be sufficiently costly, or of sufficient volume, as to make it probable that savings to the medicare program would result from effective review. Third, there must be a basis for concluding that pre-procedure review of that procedure is likely to be cost-effective. Such a basis could appropriately include data regarding the frequency with which a second opinion results in a recommendation against surgery and data regarding small area (or regional) variations in the incidence of the procedure. The Secretary is expected to apply these criteria flexibly in developing an appropriate list of procedures.

The Secretary would also be required to develop a list of procedures appropriate for inclusion in the program. The list would include substantially more than ten procedures. PROs would not be bound to include only procedures listed by the Secretary. Subject to negotiation, a PRO could include other procedures when cost-effective and consistent with general criteria specified in the provision. A PRO could review different sets of procedures in various regions of its service area. It is expected that a PRO will identify proce-

dures for inclusion in this program based, in part, on information pertaining to patterns of medical practice within the PRO's service area.

Finally, the Secretary would be required to develop criteria specifying the type of specialist that must be consulted for each procedure, and the circumstances under which a physician may not provide a second opinion because of a common financial interest with the physician who rendered the first opinion.

c. PRO functions

A PRO could approve or disapprove a procedure as reasonable and necessary without requiring a second opinion. In addition, the PRO could require a second opinion and allow the beneficiary to decide among conflicting opinions. A second opinion should not be required if additional information could be obtained from the first physician which would resolve outstanding uncertainties as to medical necessity. Second opinions also should not be required in instances in which it is clear on the basis of available information that the procedure is not needed.

If the PRO requires a second opinion, the beneficiary generally would be free to choose any appropriately qualified physician. However, physicians with a possible conflict of interest, or physicians who have been disqualified by the PRO, would be prohibited from providing second opinions. A physician could be prohibited from providing second opinions if the PRO determines that the physician has rendered grossly unreliable second opinions.

The PRO would be required to assist the patient in identifying a qualified physician for a second opinion and would be required to forward medical records to the physician providing the second opinion. The PRO would not be required to transmit the records in a manner that would conceal the identity of the physician who rendered the first opinion.

d. Waiver of requirements

The conference agreement accepts the House provision regarding waiver of the requirement for a second opinion.

e. Beneficiary notification requirements

The detailed beneficiary notification requirements set forth under the House provision are replaced in the conference agreement by more general notice requirements. It is understood that general requirements with respect to beneficiary notification under the PRO program will apply to pre-procedure reviews under this section.

f. Secretarial notification requirements

Under the conference agreement, the Secretary would be required to arrange for appropriate notice to physicians, hospitals, ambulatory surgery centers, and beneficiaries regarding the pre-procedure review program.

g. Deductible and coinsurance waiver

The conference agreement accepts the House provision.

h. Conforming amendments

The conference agreement accepts the House provision.

i. Contingency procedures list

The conference agreement does not include the House provision.

j. Study

The conference agreement includes a study to be conducted by the Secretary. The study is to evaluate the results of the program on utilization of surgical procedures, changes in nonconfirmation rates and, where possible, outcomes. It is also to evaluate the appropriateness of the procedures actually selected for reviews and PRO patterns with respect to requiring second opinions. Finally, the study is to assess the effectiveness of reviews mandated under this section as compared with other methods of ensuring the medical necessity of surgical procedures. The study is due 36 months after enactment.

The conferees agreed that the effective date would be January 1, 1987.

52. Changing medicare appeal rights

Present law

Beneficiaries dissatisfied with a carrier's disposition of a part B claim are entitled to a review by the carrier. A fair hearing by the carrier is then available if the amount in controversy is $100 more. The law does not provide for any further administrative appeal or judicial review for a part B claim.

Since the inception of the program, beneficiaries with disputes over claims could be represented by providers in their administrative appeals. In 1984, the Health Care Financing Administration issued a manual instruction prohibiting such representation.

House bill

The House bill provides that beneficiaries may obtain an administrative law judge hearing for part B claims if the amount in controversy is $500 or more, and a judicial review if the amount in controversy is $1,000 or more. In determining the amount in controversy, the Secretary, under regulations, must allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. The current carrier hearing would be retained for amounts in controversy between $100 and $500.

The bill also clarifies that beneficiaries taking appeals under part A or part B could be represented by the provider who furnished the services or items in question.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision with a modification to specify that a national coverage determination made pursuant to section 1862(a)(1)(A) of the Act may not be reversed upon appeal. These determinations are made by the Health Care Financing Administration (HCFA), generally after consultation with the National Center for Health Service Research and Health Care Technology Assessment, and are contained in the Coverage Issues Appendix (now called Medicare Coverage Issues Manual) to the intermediary and carrier manuals.

With the additional workload that would be established under the bill, it is the conferees' expectation that HHS will give serious consideration to establishing a separate office of hearings and appeals for HCFA or otherwise creating a group of hearing officers devoted exclusively or predominately to medicare appeals.

53. Extension of On Lok waiver

Present law

The On Lok Community Care Organization for Dependent Adults provides health care services to frail elderly patients at risk of institutionalization. On Lok conducted a demonstration project from February 1979 to October 1983, with the aid of waivers of compliance with certain medicare and medicaid requirements. P.L. 98–21 required the Secretary to approve waivers for a new three-year, risk-sharing, capitated payment demonstration to be conducted by On Lok from November 1983 to November 1986.

House bill

The Secretary would be required 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. The waivers would 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 would remain in effect until the Secretary found that the applicant no longer complied with those terms and conditions. The provision would be effective upon enactment.

Senate amendment

Similar provision.

Conference agreement

The conference agreement includes the House bill.

54. Remove restriction on actuarial opinion

Present 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), this certification may not refer to the economic assumptions underlying the trustees report.

House bill

No provision.

Senate amendment

The provision would allow the actuaries to comment on the economic assumptions underlying the trustee's report. It would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment.

55. Extend GAO reporting date

Present law

The Deficit Reduction Act of 1984 (DEFRA) required the General Accounting Office (GAO) 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.

House bill

No provision.

Senate amendment

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).

The provision would be effective as if originally included in the Deficit Reduction Act of 1984.

Conference agreement

The conference agreement includes the Senate amendment with a modification specifying that the GAO report is due May 1, 1986.

56. Allow greater HMO membership on PRO boards

Present 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 (PROs). 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.

House bill

No provision.

Senate amendment

The provision would allow PROs with more than one HMO board member to qualify as a PRO on the same basis as other organizations. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment.

57. Peer Review Organization Reimbursement

Present 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).

House bill

No provision.

Senate amendment

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. This change is to address the concern that current law provisions could be used to restrict PRO reimbursement. The provision would be effective on enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification specifying that fiscal year 1986 is the base year against which aggregate expenditures are compared.

58. PRO review of Health Maintenance Organization Services

Present law

Current law requires the Secretary of Health and Human Services to contract with Peer Review Organizations (PROs) for the review of the medical necessity, quality, and appropriateness of services provided to medicare beneficiaries. The PROs 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 (HMOs) and competitive medical plans (CMPs) contract provisions with medicare. The final regulation includes a provision that requires HMOs and CMPs with contracts under section 1876 to comply with the requirement for PRO review of services furnished to medicare enrollees.

House bill

No provision.

Senate amendment

The provision would require the Secretary to implement peer review of part A and part B services furnished by HMOs and CMPs. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification and changes the effective date of the provision to January 1, 1987. This clarifies an ambiguity that had been raised about current law. The conferees intend that the Secretary allocate sufficient additional funds to the PROs for the performance of the required functions and to recognize the unique features of HMO and CMP delivery of services in implementing this provision.

The conferees understand that the HMO/CMP industry is in the process of developing its own quality assurance capabilities. Conferees intend to review this approach prior to the effective date of this provision.

59. Substitute review pending termination of a PRO contract

Present law

A Peer Review Organization (PRO) which has 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 proce-

dures 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 panel's 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.

House bill

No provision.

Senate amendment

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. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment.

60. Authorize peer review organizations to deny payment for substandard care

Present law

Peer Review Organizations (PROs) 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 PROs are required to conduct quality reviews, they are not authorized to deny payment for care of substandard quality.

House bill

No provision.

Senate amendment

The provision would authorize PROs to deny payment for care of substandard quality that is identified through criteria developed according to a plan approved by HCFA. The provision would be effective upon enactment.

Conference agreement

The conference agreement includes the Senate amendment with a modification specifying that beneficiaries are to be protected by the waiver of liability provisions against being charged for services for which medicare payment is denied. Further, the agreement requires the criteria to be developed pursuant to guidelines established by the Secretary.

TITLE IX

SUBTITLE B—MEDICAID AND MATERNAL AND CHILD HEALTH PROVISIONS

1. Services for Pregnant Women (Section 9501)

Present law

The Deficit Reduction Act of 1984 (P.L. 98-369) requires the States to cover under Medicaid, from the date of medical verification of pregnancy, certain pregnant women, if they meet State AFDC income and resource requirements, as follows: (a) pregnant women who would be eligible for AFDC and Medicaid if their child were born; and (b) pregnant women in two-parent families where the principal breadwinner is unemployed.

House bill

(a) *Mandatory coverage.* Requires States to cover under Medicaid pregnant women in two-parent families that meet AFDC income and resource standards even where the principal breadwinner is not unemployed.

(b) *Targeted services.* Specifies that States are not required to extend comparable benefits to other beneficiaries when they provide additional services related to pregnancy (including prenatal, delivery, and post-partum services) or its complication to all covered pregnant women.

(c) *Post-partum coverage.* Requires States to provide post-partum coverage to eligible pregnant women until the end of the 60-day period beginning on the last day of their pregnancy.

Senate amendment

(a) *Mandatory coverage.* No provision.

(b) *Targeted services.* Similar provision.

(c) *Post-partum coverage.* Permits a State to provide such coverage if it does so for all pregnant women covered under the plan. Covered services for this population group may be limited to post-partum care.

Conference agreement

(a) *Mandatory coverage.* The conference agreement follows the House bill.

(b) *Targeted services.* The conference agreement follows the Senate amendment with a clarification that services relating to any other condition which may complicate pregnancy are included in this exception to the general comparability requirement.

(c) *Post-partum coverage.* The conference agreement follows the House bill.

Effective dates. The mandatory coverage provision applies to Medicaid payments for calendar quarters beginning on or after April 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date. Delay is permitted where State legislation (other than legislation appropriating funds) is required. All other provisions take effect on the date of enactment.

2. Modifications of Home and Community-Based Waiver (Section 9502)

Present law

(a) *Eligibility for Ventilator-Dependent Persons.* 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 long-term care 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.

(b) *Needs Allowances.* Regulations require the income of beneficiaries of home and community-based care to be applied to the cost of this care, after deductions have been made for maintenance needs.

(c) *Habilitation Services.* States may cover the following services under waivers: case management, homemaker/home health aid services, personal care, adult day health, habilitation services, respite care, and such other services requested by the State and approved by the Secretary. With regard to habilitation services, final regulations excluded prevocational and vocational training and educational activities from services which may be covered.

(d) *Waiver Approval.* 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 waiver for those receiving waivered services in any fiscal year not exceed the average per capita expenditure that the State reasonably estimates would have been incurred in that year for that population if the waiver had not been granted. This has been interpreted to require a showing by States that estimated average per capita expenditures under the waiver will not exceed 75 percent of the average per capita expenditures the State estimates would have been incurred in the absence of the waiver. Final implementing regulations published March 13, 1985, also require States to assure that the actual total expenditures for home and community-based services under the waiver will not exceed the State's approved estimated expenditures and that the State will not claim Federal matching payments for expenditures exceeding the approved estimate.

(e) *One Year Waiver Extension.* 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 3-year periods, unless the Secretary determines that certain assurances have not been met.

(f) *Five Year Waiver Renewals.* Same as (e).

(g) *MCH Block Grant Coordination.* Under the waiver authority, States are providing home and community-based services to a number of groups of individuals, including children. Title V of the Social Security Act, known as the Maternal and Child Health (MCH) Block Grant, authorizes grants to the States for a variety of maternal and child health services, including services for children with special health care needs.

(h) *Substitution of Participants.* Under the waiver authority, a State may provide a variety of home and community-based services to individuals who would otherwise require the level of care provided in an SNF or ICF, 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. This has been interpreted to mean that individuals who receive services in a given year and who die, enter a nursing home, or otherwise drop out of the home and community-based care program during that year, cannot be replaced in that year with other individuals who would be eligible to receive such services.

House bill

(a) *Eligibility for Ventilator-Dependent Persons.* Includes ventilator-dependent individuals who receive inpatient hospital services among those individuals eligible for expanded home and community-based services.

(b) *Needs Allowances.* Allows States to establish for individuals receiving waivered services in the community higher maintenance needs allowances than maximum amounts allowed under regulations in effect July 1, 1985.

(c) *Habilitation Services.* Defines habilitation services as services designed to assist individuals to acquire, retain, and improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings, and includes prevocational, educational, and supported employment services. Habilitation services would not include special education and related services as defined in the Education of the Handicapped Act which otherwise are available through a local educational agency, nor would they include vocational rehabilitation services which otherwise are available through a program funded under the Rehabilitation Act of 1973.

(d) *Waiver Approval.* Clarifies that the estimated average per capita expenditure for medical assistance under the program in any fiscal year must not exceed 100 percent of the average per capita expenditures that the State reasonably estimates would have been incurred in that year if the waiver had not been granted.

Prohibits the Secretary from requiring that the actual total expenditures for home and community-based services under the waiver, and the associated claim for Federal matching payments, can not exceed the approved estimates for these services.

Prohibits the Secretary from denying Federal matching payments for home and community-based services on the ground that

a State has failed to limit actual total expenditures for home and community-based services under the waivers to the approved estimates for these expenditures.

Allows States, in estimating the average per capita expenditures for physically disabled individuals in ICFs, to use only the expenditures associated with that group of patients and not expenditures associated with non-disabled individuals.

(e) *One Year Extension.* No provision.

(f) *Five Year Waiver Renewals.* No provision.

(g) *MCH Block Grant Coordination.* No provision.

(h) *Substitution of Participants.*—No provision.

Senate amendment

(a) *Eligibility for Ventilator-Dependent Persons.* No provision; however, section 720 of Senate amendment amends Medicaid to require States to cover respiratory services for qualified respiratory care patients.

(b) *Needs Allowance.* No provision.

(c) *Habilitation Services.* No provision.

(d) *Waiver Approval.* No provision.

(e) *One Year Waiver Extension.* Requires the Secretary to extend, for a period of 1 year at a minimum or 5 years at a maximum, any waiver that expires during the 12-month period beginning September 30, 1985, if the State requests an extension.

(f) *Five Year Waiver Renewals.* Requires the Secretary, beginning September 30, 1986, to renew home and community-based services waivers for additional 5-year periods if the Secretary approves the waiver renewal request.

(g) *MCH Block Grant Coordination.* Amends the waiver authority to require the State Medicaid agency, whenever appropriate, to enter into cooperative arrangements with the State agency administering the MCH Block Grant program of services for children with special health care needs. 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 program for children with special health care needs.

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.

(h) *Substitution of Participants.* Amends 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 for any individuals who die or become ineligible for services.

Conference agreement

(a) *Eligibility for Ventilator-dependent Persons.* The conference agreement follows the House bill.

(b) *Needs Allowances.* The conference agreement follows the House bill.

(c) *Habilitation Services.* The conference agreement follows the House bill.

(d) *Waiver approval.* The conference agreement follows the House bill.

(e) *One Year Waiver Extension.* The conference agreement follows the Senate amendment. The conferees intend that waivers extended under this provision are subject to the same Secretarial monitoring and compliance procedures as all other home and community-based services waivers.

(f) *Five Year Waiver Renewals.* The conference agreement follows the Senate amendment.

(g) *MCH Block Grant Coordination.* The conference agreement follows the Senate amendment. The conferees intend that the use of cooperative arrangements be optional with the States and that the use of MCH agencies as case managers be optional with beneficiaries covered under the waiver.

(h) *Substitution of Participants.* The conference agreement follows the Senate amendment.

Effective dates

(a) *Eligibility for Ventilator-dependent Persons.* Effective for services furnished on or after October 1, 1985.

(b) *Needs Allowances.* Effective for waiver or renewal applications filed before, on, or after the date of enactment.

(c) *Habilitation Services.* Effective for services furnished on or after enactment.

(d) *Waiver Approval.* Effective for waiver or renewal applications filed before, on, or after the date of enactment, and for services furnished on or after August 13, 1981.

(e) *One Year Waiver Extension.* Effective for waivers expiring on or after September 30, 1985, and before September 30, 1986.

(f) *Five Year Waiver Renewals.* Effective on September 30, 1986.

(g) *MCH Block Grant Coordination.* Effective on the date of enactment.

(h) *Substitution of Participants.* Effective on the date of enactment.

3. Home and Community-based Services Demonstrations. (Section 9513)

Present law

No comparable provision.

House bill

No provision.

Senate amendment

Requires the Secretary of HHS 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-eligible individuals can reduce expenditures for society as a whole, the Federal government, and/or the States. Under the demonstrations, expenditures would exceed the amounts which would otherwise be expended

under the States' Medicaid plans for services provided to the same individuals by not less than $85,000,000 nor more than $88,000,000 for all four projects over the 3-year period of the projects. These additional amounts may be used to provide additional services such as habilitative services not otherwise covered under the State's Medicaid plan or care provided in small facilities not otherwise eligible for payments under the State plan, but all standards for quality of care otherwise applicable under the State plan would apply. In selecting the four States to carry out the demonstration projects, the Secretary would be required to select programmatically and demographically disparate States.

Requires the Secretary to evaluate the demonstration projects and to submit a preliminary report during the third year of the projects. Requires that the evaluation be funded at a level of not less than $1,500,000 nor more than $2,000,000.

Conference agreement

The conference agreement follows the Senate amendment with a modification providing that at least one of the four demonstration projects include the provision of home and community-based services for a substantial number of persons with Alzheimer's and related disorders, and that at least one of the other demonstration projects address services for mentally retarded and developmentally disabled Medicaid beneficiaries. The conference agreement also clarifies that beneficiaries participating in these demonstration projects will not experience any reduction or delay in benefits or services to which they are entitled under the regular State Medicaid plan. In addition, the conference agreement clarifies that the funding provided for these demonstrations is Medicaid entitlement funding, subject to regular State matching requirements.

The purpose of these demonstration projects is to determine the cost of expanding the availability of home and community-based services as an alternative to institutional long term care. The conferees recognize that the budget neutrality requirement of the current home and community-based waiver provision does not allow the States the flexibility to determine the cost of expansion of services because current waiver programs must be designed within existing spending levels. Under these demonstrations, however, a State's expenditures can exceed the amounts which would otherwise be spent under the State's Medicaid plan for services to the same individuals.

With regard to the demonstration concerning Alzheimer's and related disorders, the conferees intend that the project should specifically address the criteria for determining who is eligible for services as an Alzheimer's or related disorder patient, the range of services needed, and the cost of care for such patients. The conferees expect that the project relating to the mentally retarded and developmentally disabled population will address the cost, range and quality of services needed and the appropriateness of home and community-based care for this population.

Since the individuals participating in these demonstrations are otherwise eligible for Medicaid, the funds provided under this section are intended to support new and expanded benefits that are otherwise unavailable to these individuals under the State's Medic-

aid plan, such as habilitation services and respite care. The conferees do not intend the conduct of these demonstrations to restrict the benefits available under the State's plan, or otherwise impair and entitlement of any Medicaid-eligible individual participating in the demonstration. This section does not authorize the demonstration of a block grant for ICF/MR services.

The conferees are particularly concerned that these demonstrations attempt to assess the extent to which there are individuals in need of long-term care services who are not now receiving care, but would seek care if services in the community were expanded. The question of induced demand for services (the so-called "woodwork effect") is a major unresolved issue in current policy debates regarding the cost of expanding the availability of home and community-based services for the frail elderly and disabled. The conferees expect that one of the research objectives of these demonstrations will be to test whether a "woodwork effect" exists and, if so, to estimate its size and cost.

In determining whether and to what extent home and community-based waivers reduce expenditures, the conferees intend that the demonstration project evaluation will assess the impact of such services on the utilization and cost of both acute care and long term care services. For those participants eligible for both Medicare and Medicaid, the conferees intend that the costs and/or savings to both programs be separately evaluated.

The conferees are also interested in determing whether home and community-based services under Medicaid are newly offered services or whether they substitute for service currently available under other programs, such as Title XX of the Social Security Act. The conferees expect that the evaluation will determine whether expanding Medicaid home and community-based care improves access to such services or merely changes the financing for existing services.

Effective Date. Effective on enactment.

4. Task Force on Technology-Dependent Children. (Section 9520)

Present law

No comparable provision.

House bill

Requires the Secretary to establish, within 6 months after enactment of this Act, a task force concerning alternatives to institutional care for technology-dependent children. Requires 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.

Senate amendment

Identical provision.

Conference agreement

The conference agreement follows the House bill.

Effective Date. Effective on enactment.

5. Medicaid Coverage of Respiratory Care Services for Ventilator-Dependent Individuals. (Section 9504)

Present law

States are required to cover home health services for Medicaid beneficiaries over 21 who are categorically needy. In addition, a State must provide home health services to (1) categorically needy beneficiaries under 21 if such individuals are eligible to receive skilled nursing facility services under a State's Medicaid plan, or (2) medically needy beneficiaries if SNF services are offered to that group. States may provide such services to other program beneficiaries if they are offered to all eligible beneficiaries.

House bill

No provision.

Senate amendment

Requires States to cover respiratory services in the home for individuals who (1) are medically dependent on a ventilator for life support at least 6 hours per day; (2) have been so dependent for at least 30 consecutive days or the maximum number of days authorized under the State plan, whichever is less, as inpatients in one of more hospitals, SNFs, or ICFs, and who, but for home respiratory care, would require respiratory care in these institutions; (3) have adequate social support services to be cared for at home; and (4) wish to be cared for at home.

Conference agreement

The conference agreement follows the Senate amendment with a modification providing that respiratory care services are an optional Medicaid benefit. Respiratory care services are defined as services provided on a part-time basis at the home of the eligible ventilator-dependent individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State) for which payment is not otherwise made under the State plan within the payments for other items or services. The conferees expect that the Secretary, in regulations implementing this provision, will take particular care to assure that payment is not made twice for the respiratory care services, either because this service is already covered in the charge for ventilator or related equipment, or because the patient is also receiving nursing or other home care services that include the provision of respiratory care services.

Effective Date. Effective with respect to services furnished on or after April 1, 1986.

6. Optional Hospice Benefits (Section 9505).

Present law

States may cover some services that make up the hospice benefit package, such as home health care and prescription drugs. However, hospices are not recognized as providers for payment purposes, and States may not pay for comprehensive hospice services as a package. In addition, States may not offer services in the hospice package to terminally ill beneficiaries without offering those same services to all beneficiaries.

House bill

Allows States to cover hospice care as an optional Medicaid benefit. Hospice services could be provided to terminally ill individuals who have voluntarily elected to receive hospice care instead of certain other benefits. 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. States choosing to cover hospice would be required to use Medicare's prospective payment methodology and reimburse at Medicare's rates. Beneficiary elections of hospice care could be for a period or periods as the State may establish. Beneficiaries could revoke election. States could apply the same eligibility standards for patients receiving hospice care outside of institutions as they apply to institutionalized patients. Cost sharing would not be imposed on hospice patients.

Senate amendment

Similar provision. However, contains no further requirements with respect to: the nature of the hospice organization; the amount, duration, or scope of benefits; reimbursement; election periods; income eligibility standards; or cost sharing.

Conference agreement

The conference agreement follows the House bill with a modification to delete the limitation on participation by otherwise qualified for-profit entities. The agreement also clarifies that, if an eligible individual who is a patient in an SNF or ICF elects hospice coverage, the payment for that individual's care in the institution during the period covered by the election will be made by the responsible hospice. The State's payment rate to the responsible hospice for each day the patient resides in an SNF or ICF must be increased by the amount attributable to the cost of room and board in the SNF or ICF; the facility will be paid by the responsible hospice, not by the State.

Effective Date. Effective for services furnished on or after enactment.

7. Medicaid Payments of Direct Medical Education Costs of Hospitals

Present law

State Medicaid payments for inpatient hospital services must be reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to meet State and Federal laws and regulations and quality and safety standards.

House bill

(a) *Basis of payment.* Requires State Medicaid programs to pay hospitals for their direct medical education costs associated with approved medical residency training programs on the basis of a fixed amount per fulltime equivalent (FTE) resident.

(b) *Calculation of payment.* Provides that the payment to each hospital would equal the hospital's approved FTE resident amount, time the hospital's number of FTE residents, times the proportion of total inpatient days attributable to Medicaid patients.

(c) *Payment limitation.* Requires the Secretary to determine each hospital's allowable average cost per FTE resident by using data on the average reasonable direct medical education cost per FTE resident from the hospital's most recent audited Medicare cost report, updated by the actual and estimated change in the Consumer Price Index. Provides that a hospital's FTE resident amount may not exeed the following percentages of the national average FTE resident amount: 175 percent for the residency year beginning July 1, 1986; 150 percent for the residency year beginning July 1, 1987; and 125 percent for residency years beginning on or after July 1, 1988.

(d) *Counting of residents.* Requires the Secretary to establish rules for the computation of FTE residents which provide that only time spent in patient care activities be counted, that time spent in an outpatient setting be counted, and that residents who serve only a portion of their year with one or more hospitals be taken into account.

(e) *Weighting factors.* Requires that for residency years beginning July 1, 1987, a weighting factor be applied in calculating the number of FTE residents as follows:

WEIGHTING FACTORS

Residency year beginning in	Primary care residents	Other residents	
		During initial residency period	During any other period
1987	1.10	0.90	0.75
1988	1.20	.80	.50
1989 or later	1.30	.70	.50

Authorizes the Secretary, beginning July 1, 1989, to change the weighting factors or to establish an alternative method for calculat-

ing the number of FTE residents, based on recommendations of the Physician Payment Review Commission (as authorized by Section 152 of the House bill).

(f) *Primary care residents.* Defines "primary care resident" to mean an individual in the first 3 years of postgraduate medical training in the fields of internal medicine, pediatrics, or family medicine, and an individual in up to 2 years of training in geriatric medicine, health, or preventive medicine.

(g) *Initial residency period.* Defines "initial residency period" to mean the minimum number of years of formal residency training necessary to satisfy the requirements for initial board eligibility in a particular medical specialty, not to exceed 5 years; excludes up to 2 years of residency in the fields of geriatric medicine, public health, and preventive health.

(h) *Foreign medical graduates.* Provides that foreign medical graduates (i.e., graduates of medical schools not accredited by a body or bodies approved by the Secretary of Education) may not be counted as residents beginning July 1, 1986, unless they have passed parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS). Foreign medical graduates who began serving as residents before July 1, 1986, and serve as residents during that year but have not passed the FMGEMS examination before July 1, 1986, would be counted at one-half the rate at which the resident would otherwise have been counted. Authorizes the Secretary to treat an individual as having passed the FMGEMS examination if the individual is unable to take that examination because they previously received certification from the Educational Commission for Foreign Medical Graduates.

(i) *Report.* Requires the Secretary to report to Congress, not later than Dec. 31, 1986, on whether the new Medicaid payment methodology for direct medical education costs should be revised to provide for greater uniformity in the approved FTE resident amounts and, if so, how such revisions should be implemented.

Senate amendment

No provision directly amending the Medicaid statute.

Conference agreement

The conference agreement does not include the House provision. See section 9202, concerning Medicare payments to hospitals for direct costs of medical education, which affects State Medicaid programs that elect to follow Medicare principles.

8. Treatment of Potential Payments from Medicaid Qualifying Trusts (Section 9506)

Present law

Under Medicaid, only income and resources actually available to an individual are considered in determining eligibility. The law contains no specific provision pertaining to income from trusts.

House bill

(a) *Definition of available amounts.* Specifies that for purposes of Medicaid eligibility, the distributions from certain Medicaid quali-

fying trusts would be considered available to the individual establishing the trust whether or not the distributions are actually made. The amount deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust assuming the full exercise of discretion by the trustee or trustees.

(b) *Definition of trust.* Defines a "Medicaid qualifying trust" as a trust or similar legal device established by an individual (or his or her spouse) under which the the individual is the beneficiary of all or part of the payments from the trust and the amount of such distribution is determined by one or more trustees who are permittted to exercise any discretion with respect to the amount to be distributed to the individual. Clarifies that the provision applies: (1) whether or not the Medicaid qualifying trust is irrevocable or is established for purposes other than to enable the individual to qualify for Medicaid; and (2) whether or not the trustee(s) actually exercise discretion with respect to the amount of funds distributed.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification authorizing States to refrain from applying this provision to individuals in cases where undue hardship will result. While the conferees intend to discourage the establishment of the specified grantor trusts for the purpose of shielding assets from the State, the conferees also would expect States to waive application of this provision in cases where undue hardship would occur. For example, the conferees do not expect a State to deny Medicaid coverage to an individual under this section if he or she would be forced to go without life-sustaining services altogether because the trust funds could not be made available to pay for the services.

This provision addresses only eligibility for Medicaid, not eligibility for Supplemental Security Income or Aid to Families with Dependent Children. The conferees do not intend that the enactment of this provision be interpreted to have any bearing on eligibility policy in either of those cash assistance programs. It is also the understanding and intent of the conferees that this provision will have no effect on current law with regard to the treatment of such trusts in the context of estate proceedings.

In those States where, pursuant to section 1634 of the Social Security Act, the Secretary is making Medicaid eligibility determinations with respect to Supplemental Security Income beneficiaries, the conferees expect that the Secretary and the States will integrate the determinations required under this section into their current arrangements in a manner satisfactory to the Secretary.

Effective Date.—Applies to medical assistance furnished on or after the first day of the second month beginning after the date of enactment.

9. Written Standards for Provision for Organ Transplants (Section 9507)

Present law

No provision.

House bill

Denies Federal matching payments for organ transplant services provided to Medicaid beneficiaries unless the State plan provides for written standards for the coverage of such services and unless the standards treat similarly situated individuals alike. If such standards impose restriction on the facilities or practitioners who may provide such services, the restrictions must be consistent with the accessibility of high quality care by Medicaid patients.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective Date.—Applies to medical assistance furnished on or after January 1, 1987.

10. Extension of MMIS Deadline. (Section 9518)

Present law

States are generally required to have mechanized claims processing and information retrieval systems, known as "Medicaid management Information Systems" (MMIS), that are annually reviewed and approved by the Health Care Financing Administration. The systems are designed to improve the capability of State Medicaid agencies to process claims on an accurate and timely basis and to provide data for administration of the Medicaid program.

The current deadline for a State to operate such a system is the earlier of (a) September 30, 1982, or (b) the last day of the sixth month following the date specified for operation of such systems in the States most recently approved advance planning document submitted before the enactment of P.L. 96-398 (October 7, 1980).

House bill

The deadline for State compliance with Federal performance standards for the operation of a Medicaid management information system is extended to September 30, 1985.

Senate Amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

Effective Date.—Applies to payments to States for calendar quarters beginning on or after October 1, 1982.

11. Extension of Certain Texas Waiver Project. (Section 9523)

Present 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 of the Elderly: Alternatives to the Institutionalized Aged," for the period January, 1980, through December, 1985.

House bill

Requires the Secretary to extend until 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. Also specifies that approval remain in effect until such time as the Secretary finds that the applicant no longer complies with these terms and conditions.

Senate amendment

Similar provision, except requires the Secretary to extend approval of the waiver for this demonstration until January 1, 1989. Does not require the Secretary to continue the approval on the same terms and conditions as applied to the project on date of enactment of the Act.

Conference agreement

The conference agreement follows the House bill with a modification that the waiver be extended until January 1, 1989.

Effective Date.—Effective on enactment.

12. Report on Adjustment in Medicaid Payments for Hospitals Serving Disproportionate Numbers of Low Income Patients. (Section 9519)

Present law

The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) required States, in developing their payment rates for inpatient hospital services, to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs.

House bill

Requires the Secretary to submit to Congress a report (1) describing the methodology used by States to take into account the situation of disproportionate share hospitals when determining their Medicaid payments to hospitals, (2) identifying hospitals that have received a disproportionate share adjustment, and (3) specifying the proportion of low income and Medicaid patients at such hospitals.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with a modification providing that the Secretary transmit the report to Congress no later than October 1, 1986.

13. References to Provisions of Law Providing Coverage Under, or Directly Affecting, the Medicaid Program. (Section 9526)

Present law

No provision.

House bill

A section is added to Title XIX (the Medicaid title) of the Social Security Act which provides references to laws directly affecting the Medicaid program. This allows readers of the title to more easily locate provisions of law that make additional individuals eligible for Medicaid, and that establish additional requirements for State plans to be approved under Medicaid.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

14. Third Party Liability Collections. (Section 9503)

Present law

(a) State Plan Requirements

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. The law requires the State plan to provide that:

(1) the State of local agency administering the plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care;

(2) that where such agency knows that a third party has legal liability it will treat the liability as a resource of the individual for purposes of eligibility determinations; and

(3) the agency will seek reimbursement from liable third parties where payment has already been made where the expected amount of recovery exceeds the costs of recovery.

(b) Mechanized Claims Processing Systems

States are generally required to have Medicaid management information systems (MMIS) that are reviewed and approved by HCFA each year. The Secretary is required to develop performance standards, system requirements and other conditions for use in approval of such systems.

(c) Regulations

No provision.

(d) Conditions of Medicaid Eligibility

Current law requires Medicaid beneficiaries to assign their rights to medical support payments and other payments for medical care to the State.

(e) Penalties for Erroneous Excess Payments

If a State makes erroneous excess payments exceeding allowable rates, Federal financial participation is reduced.

House bill

No provision.

Senate amendment

(a) State Plan Requirements

(1) Amends the law to specify that reasonable measures for ascertaining the legal liability of third parties include:

(i) collection of sufficient information (as specified in regulations) to enable the State to pursue claims with such information collected at the point of eligibility determinations, and

(ii) submission of a plan to the Secretary for pursuing claims. This plan is to be monitored by the Secretary as part of the review of the claims processing system and be subject to penalties for failing to meet conditions of approval, and

(iii) all other penalties, such as audit disallowances for third-party liability, are prohibited.

(2) Clarifies that the person furnishing the service to a Medicaid eligible may not collect cost-sharing amounts if total third-party liabilities at least equal the amount otherwise payable under Medicaid. Cost-sharing may not exceed the lesser of the amount the beneficiary would be required to pay in the absence of third-party liability or the difference between such liability and the Medicaid payment amount. Violation of this provision could subject the person to a sanction equal to up to three times the amount sought to be collected.

(3) Clarifies that a person furnishing services may not refuse to furnish services to a Medicaid eligible because of a third-party's potential liability.

(b) Mechanized Claims Processing Systems

(1) Requires the Secretary to develop performance standards for assessing States' third-party liability collection efforts which are to be integrated with and monitored as part of the Secretary's review of each State's MMIS.

(2) Provides that reviews of MMIS may be conducted once every three years and may, at the Secretary's discretion, be either total reviews or focused reviews.

(c) Regulations

Requires issuance of regulations to implement (a) and (b) above within six months of enactment.

(d) Conditions of Medicaid Eligibility

Requires individuals, as a condition of eligibility, to cooperate with the State in identifying and pursuing liable third parties unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary.

(e) Penalties for Erroneous Payments

Disregards, for purposes of this calculation, errors resulting from failure of an individual to cooperate or give correct information relating to third-party liability.

Conference agreement

(a) State plan requirements

The conference agreement follows the Senate amendment with a modification that third party payments for preventive pediatric care, including Early and Periodic Screening, Diagnosis, and Treatment services, as well as those for prenatal care, must be pursued by the State, not by the provider. The conferees are concerned that the administrative burdens associated with third party liability collection efforts not discourage participation in the Medicaid program by physicians and other providers of preventive pediatric and prenatal care, since the beneficiaries in need of such services already have difficulty finding quality providers in many communities. The conference agreement therefore provides that, in the cases where preventive pediatric and prenatal services are rendered to a beneficiary for whom a third party is potentially liable, the State make payment to the provider according to the normal payment schedule and pursue the third party payment itself.

The conference agreement further provides that, in the case of beneficiaries on whose behalf a child support enforcement is being carried out by a State agency under Title IV-D, the State Medicaid agency will seek to collect from the third party if, after 30 days of delivering the services in question, the provider has not received payment. The intent of the conferees is to protect the mother and her dependent children from having to pursue the absent spouse, or his employer or insurer, for third party liability.

(b) Mechanized claims processing systems

The conference agreement follows the Senate amendment.

(c) Regulations

The conference agreement follows the Senate amendment.

(d) Conditions of Medicaid Eligibility

The conference agreement follows the Senate amendment with a modification clarifying that individuals are required to identify, to the extent they are able, potentially liable insurers and other third parties, and to provide information to assist the State in pursuing third parties. Beneficiaries are not required to pursue the collec-

tions themselves. Pursuit is the responsibility of the provider or the State as provided elsewhere in this section.

The conferees note that the fact that an insurer or other third party is potentially liable for the costs of an individual's care does not, of course, mean that this coverage constitutes a resource for purposes of Medicaid eligibility. If the applicant or beneficiary actually receives a cash payment from a third party by way of indemnification for a medical expense, and if this payment were not somehow already assigned to the State, then the payment so received would be considered a resource for Medicaid eligibility purposes. In all other circumstances, the health insurance or benefits coverage is not to be considered a resource.

(e) Penalties for Erroneous Payments

The conference agreement follows the Senate amendment.

Effective Date.—The requirement that the Secretary promulgate regulations is effective on the date of enactment. All other requirements take effect with respect to calendar quarters beginning on or after the date of enactment, except that delay is permitted where State legislation (other than appropriations legislation) is required. No penalty may be applied against a State for violations of State plan requirements occurring before the effective date of these amendments.

15. Optional Targeted Case Management Services (Section 9508)

Present law

"Case management" is commonly understood to be a system under which responsibility for locating, coordinating, and monitoring a group of sevices 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-base 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 beneficiaries in all areas of the States.

House bill

No provision.

Senate amendment

Allows States to cover case management services without regard to requirements that Medicaid services be available throughout a State and that covered services be equal in amount, duration, and scope for certain Medicaid beneficiaries. Defines case management services as services which will assist individuals eligible under Medicaid in gaining aecess to needed medical, social, educational, and other services.

Conference agreement

The conference agreement follows the Senate amendment with a modification clarifying that beneficiaries cannot be locked into designated providers under targeted case management services, whether for the case management services themselves or other services. The conferees expect that the Secretary will assure that payments made for case management services under this section do not duplicate payments made to public agencies or private entities under other program authorities for this same purpose. The conference agreement also provides that, with respect to family planning services, the right of Medicaid beneficiaries to choose their own providers may not be restricted under any waivers granted under section 1915(b) of the Social Security Act.

Effective Date.—Effective for services furnished on or after enactment.

16. Modify Revaluation of Assets Provision (Section 9509)

Present law

Under section 2314 of the Deficit Reduction Act of 1984, the "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 based on the lesser of (1) the allowable acquisition cost to the prior owner (i.e., the historical cost, net of depreciation), or (2) the acquisition cost to the new owner. Medicaid payments are subject to a similar limit with States required to provide assurances, satisfactory to the Secretary, that methodologies used to establish rates paid to nursing homes can reasonably be expected not to increase those rates more than they would under Medicare policy as a result of a change in ownership.

House bill

No provision.

Senate amendment

Amends 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 revaluation, however, would be limited to the acquisition costs of the previous owner increased by one-half the percentage increase in the Dodge Construction Index for Nursing Homes applied in the aggregate to those facilities which have changed ownership, or one-half the percentage increase in the CPI, whichever is lower.

Requires GAO to conduct a study of the effects of these amendments and to report the results of the study two years after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment. It is the understanding of the conferees that the Senate report language

regarding reduction by the previously allowed depreciation does not govern.

Effective Date.—October 1, 1985, but only with respect to changes in ownership occurring on or after such date.

17. Beginning Date of Optional Coverage for Individuals in Medical Institutions (Section 9510)

Present law

States may provide Medicaid coverage 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 or her own home who has no other income or resources. Implementing regulations specify that the State Medicaid agency shall apply the special income standard beginning with the first full calendar month of institutionalization.

House bill

No provision.

Senate amendment

Substitutes for the full calendar month test a requirement that payment begins at the beginning of any 30 consecutive-day period of institutionalization.

Conference agreement

The conference agreement follows the Senate amendment.

Effective Date.—Applies to services furnished on or after January 1, 1985.

18. Optional Coverage of Children (Section 9511)

Present law

States are able to cover under Medicaid all, or reasonable categories of, poor children under age 18 or 19 or 20 or 21 living in two parent families. These are known as "Ribicoff children." The Deficit Reduction Act required States to cover all children born on or after October 1, 1983, up to age 5, who meet AFDC income and resources requirements. The law requires 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 other than those added by the Deficit Reduction Act provision.

House bill

No provision.

Senate amendment

Allows States to cover and receive Federal matching funds for all Ribicoff children under age 5 immediately.

Conference agreement

The conference agreement follows the Senate amendment.

Effective Date.—Applies with respect to payments for services furnished on or after October 1, 1985.

19. Overpayment Recovery Rules (Section 9512)

Present law

State Medicaid agencies are allowed to pay nursing homes and hospitals at interim rates until final rates are established. The State is responsible for the collection of any "overpayment" and must refund the Federal share of such overpayment to the Federal Government. Under current program administrative instructions, the State must refund the Federal share immediately upon discovering the overpayment. Refunds must be made for all overpayments even where they are not collectible because the providers have gone into bankruptcy or out-of-business.

House bill

No provision.

Senate amendment

Allows States up to sixty days (from the date of discovery) to recover overpayments from providers and refund the Federal share. Provides that a State is not liable for the Federal share of overpayments which cannot be collected from bankrupt or out-of-business providers.

Conference agreement

The conference agreement follows the Senate amendment.

Effective Date.—Applies to overpayments for quarters beginning on or after October 1, 1985.

20. Expansion of Services Under Demonstration Waivers (Section 9522)

Present law

Section 1903(m)(2) 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, 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 Secretary may not waive these requirements under the freedom-of-choice waivers under section 1915(b).

House bill

No provision.

Senate amendment

Authorizes the Secretary, with respect to entities providing services under a freedom-of-choice waiver, to waive the specified standards under section 1903(m)(2) if the entity does not provide more than five of the mandatory services and does not provide inpatient hospital services.

Conference agreement

The conference agreement follows the Senate amendment with an amendment limiting applicability to the State of Oregon. The conferees view this waiver as a demonstration program which will be reviewed and evaluated.

Effective Date.—Enactment.

21. Life Safety Code Recognition (Section 9515)

Present law

The Secretary of the Department of Health and Human Services may establish "standards of safety and sanitation" applicable to intermediate care facilities for the mentally retarded (ICFs/MR). Section 1905(c) of the Social Security Act requires intermediate care facilities (ICFs) to meet such standards prescribed by the Secretary as he/she finds appropriate for the proper provision of care and to meet such standards of safety and sanitation as established under regulation of the Secretary. These regulations refer to the 1981 Edition of the Life Safety Code of the National Fire Protection Association.

House bill

No provision.

Senate amendment

Requires the Secretary for purposes of section 1905(c) to specify the 1985 edition of the Life Safety Code of the National Fire Protection Association until such time as a new edition is published.

Conference agreement

The conference agreement follows the Senate amendment with an amendment limiting the provision to fire safety code requirements for ICF/MR and allowing the Secretary to use an updated life safety code or higher standards.

Effective Date.—Enactment.

22. Publication of ICF/MR Regulations (Section 9514)

Present law

At their option, States may cover in their Medicaid plans intermediate care facility services for the mentally retarded. These facilities must meet such standards as may be required by the Secretary. These standards were published in 1974 (42 CFR Subpart G).

House bill

No provision.

Senate amendment

Requires the Secretary to publish, within 60 days of enactment, proposed revisions to the standards for intermediate care facilities for the mentally retarded (ICFs/MR).

Conference agreement

The conference agreement follows the Senate amendment.

Effective Date.—Enactment.

23. Modifying Application of Medicaid HMO Provisions for Certain Health Centers (Section 9517)

Present law

(a) *Eligibility to Contract on a Risk Basis.* States can contract with certain organizations to provide health care services to Medicaid beneficiaries on a prepaid capitated basis. Among these organizations are: Community Health Centers and Migrant 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.

(b) *Lock-in Provision.* States can restrict Medicaid beneficiaries from disenrolling without cause from certain organizations offering services on a prepaid capitated basis for periods of up to six months. This restriction is known as "lock-in." Organizations eligible to participate in the lock-in provisions include federally qualified HMOs, and Community, Migrant and Appalachian Health Centers that are receiving, and had received in each of the two preceding years, at least $100,000 under the appropriate sections of the Public Health Service or Appalachian Regional Development Acts. In either case, the organizations must also meet the requirement that less than 75 percent of their enrolled members are receiving benefits under either Medicaid or Medicare.

(c) *Continuation of Benefits.* In the case of Medicaid beneficiaries who are enrolled in a federally qualified HMO contracting with a State Medicaid program and who would otherwise lose their Medicaid eligibility, States may deem these individuals eligible for Medicaid with respect to the services provided by the HMO for a period of up to 6 months.

House bill

No provision.

Senate amendment

(a) *Eligibility to Contract on a Risk Basis.* Allows States to contract on a risk basis with Community and Migrant Health Centers and Appalachian Health Centers that are receiving, and for the past two years have received, at least $100,000 in grants under the appropriate sections of the Public Health Service and Appalachian Regional Development Acts.

(b) *Lock-in Provision.* Permits Community and Migrant Health Centers and Appalachian Health Centers that are contracting with the Medicaid program on a risk basis, and are receiving, and had received in each of the two preceding years, at least $100,000 in grants under the appropriate sections of the Public Health Service and Appalachian Regional Development Acts to participate in the lock-in provision without regard to the 75 percent rule.

(c) *Continuation of Benefits.* Allows States to provide for continuation of benefits to individuals enrolled in certain Community, Migrant and Appalachian Health Centers on the same basis as individuals enrolled in federally qualified HMOs. The eligible Community, Migrant, and Appalachian Health Centers are those that are contracting as HMOs with the Medicaid program and are receiving, and had received in each of the two preceding years, at least $100,000 under the appropriate sections of the Public Health Service and Appalachian Regional Development Acts.

Conference agreement

The conference agreement follows the Senate amendment with an amendment clarifying the applicability of current prepayment rules to Health Insuring Organizations (HIOs). According to a recent GAO Fact Sheet, "Medicaid Requirements: Health Insuring Organizations" (HRD-86-42FS, November, 1985), current HHS regulations and guidelines do not specify minimum qualifications for an HIO that arranges for the provision of services to Medicaid eligibles; do not specify the quality assurance methods that such an HIO must employ; do not specify the standards that an HIO must meet to assure access by program beneficiaries to services to which they are entitled; do not specify the amount of savings an HIO may retain for its own financial benefit; and do not specify the frequency or content of the utilization or financial reports that an HIO must submit with regard to the services for which its has arranged. In addition, the GAO Fact Sheet states that HIOs which arrange for the provision of services to Medicaid patients are not subject to specific regulatory requirements regarding financial reporting or ownership information. The conference agreement clarifies that where an HIO does more than simply act as a fiscal agent to review and process claims for payment, but actually arranges with other providers (through subcontract or otherwise) for the delivery of services to Medicaid eligibles (even though the HIO does not itself deliver services), it is subject to all of the regulatory requirements to which any health maintenance organization or similar prepaid entity is subject under current law.

Effective Date.—Enactment. The clarification with respect to HIOs applies to entities that first become operational after January 1, 1986.

24. Use of Sampling for Medical Review in Mental Hospitals, Skilled Nursing Facilities, and Intermediate Care Facilities

Present law

Requires that the care of each person receiving medical assistance in mental hospitals, SNFs, and ICFs be reviewed annually for the adequacy of services available, the necessity and desirability of continued placement in the facility, and the feasibility of alternative institutional or noninstitutional services.

House bill

No provision.

Senate amendment

Provides that medical reviews could be limited to a sample group of individuals receiving medical assistance in mental hospitals, SNFs, and ICFs, as permitted by the Secretary.

Conference agreement

The conference agreement does not include the Senate provision.

25. Wisconsin Health Maintenance Organization Waiver (Section 9524)

Present law

The Secretary of Health and Human Services may no longer waive the one-month disenrollment requirements for certain HMOs participating in a freedom-of-choice waiver.

House bill

No provision.

Senate amendment

Upon request by the State of Wisconsin, the Secretary of Health and Human Services is required to reinstate the waiver granted to the State of Wisconsin relating to HMO participation in the lock-in provision for renewable terms of 2 years, subject to the general requirements of such waivers.

Conference agreement

The conference agreement follows the Senate amendment.
Effective Date.—Enactment.

26. Clarification of Medicaid Moratorium Provisions of Deficit Reduction Act of 1984 (Section 9521)

Present law

(a) *Clarification.* The Deficit Reducation Act of 1984 prohibits the Secretary of the Department of Health and Human Services from taking any regulatory action against a State because the State uses less restrictive standards or methodologies in determining the eligibility of Medicaid beneficiaries who do not receive cash assistance than it does for those who do. The prohibition applies during a moratorium period that will end 18 months after the Secretary submits to the Congress her recommendations on the application of cash assistance eligibility standards and other methodologies to the "medically needy" and other non-cash Medicaid eligibles.

(b) *Restoration.* When it is determined that a Medicaid beneficiary who owns his or her own home could never return home, the value of his or her residence becomes a resource that can increase his or her resources beyond the permitted level. In the past, Federal Medicaid policy gave such an individual time to dispose of the property if he or she was making a bona fide effort to do so. Recent interpretations of these policies would tend to force premature sale of the homes of institutionalized Medicaid applicants and beneficiaries.

House Bill

No provision. (An identical provision regarding clarification was included in H.R. 1868 as passed by the House, H. Rept. 99-80, Part 2).

Senate amendment

(a) *Clarification.* Clarifies that the moratorium applies whether or not the less restrictive standards or methodologies applied by the State were explicitly stated and approved as part of a State's Medicaid plan.

(b) *Restoration.* Restores for the duration of the moratorium the previous Medicaid policy governing the period when home owner-

ship by an institutionalized individual is permitted and the period of time given for the sale of a home.

Conference agreement

(a) *Clarification.* The conference agreement follows the Senate amendment.

(b) *Restoration.* The conference agreement follows the Senate amendment with a technical amendment.

Effective Date.—Apply as though included in DEFRA as originally enacted.

27. New Jersey Demonstration Project Relating to Training of AFDC Recipients as Home Health Aides (Section 9525)

Present law

The "Omnibus Reconciliation Act of 1980" authorized the Secretary to enter into agreements for the purpose of conducting demonstration projects to train formally AFDC recipients as homemaker-home health aides. The bill authorized 90 percent Federal matching for the reasonable costs of conducting the projects. The projects were limited to a maximum of 4 years plus an additional period of up to 6 months for planning and development and a similar period for final evaluation and reporting. Several States, including New Jersey, conducted such demonstration projects.

House bill

No provision.

Senate amendment

Extends for one additional year, at 50 percent Federal matching, the demonstration project in the State of New Jersey.

Conference agreement

The conference agreement follows the Senate amendment.

Effective Date.—Enactment.

28. Correction plans for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) (Section 9516)

Present law

Section 1910(c) of the Social Security Act authorizes the Secretary 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, he/she is empowered to cancel the facility's provider agreement.

House bill

No provision.

Senate amendment

Provides that if the Secretary finds that an intermediate care facility for the mentally retarded (ICF/MR) has substantial deficiencies which do not pose an immediate threat to the health and safety of residents, the State may elect to submit a written correc-

tion plan. The plan must provide for (1) a timetable for completion of necessary steps to correct staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months, or (2) a timetable for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected.

If the Secretary finds at the conclusion of an initial 6-month period, or any subsequent 6-month period, that a State has substantially failed to meet its obligations established under a plan of correction, the Secretary may (1) terminate the facility's provider agreement, or (2) disallow (in the case of a planned reduction in a facility's population) an amount of Federal financial participation equal to 5 percent of allowable Medicaid cost for all eligible facility residents for each month the State fails to meet its interim goals.

Conference agreement

Under the conference agreement, if the Secretary finds that an ICF/MR has substantial deficiencies which do not pose an immediate threat to the health and safety of residents, the State has two options. It may either (1) implement a plan of correction, approved by the Secretary, to remedy any staffing and/or physical plant deficiencies within 6 months, or, (2) implement a plan, approved by the Secretary, to permanently reduce, within a maximum of 36 months, the number of certified beds in the noncomplying facility (or distinct parts thereof). If a State which has elected option (1) fails to make the necessary corrections within the 6-month period, the Secretary may terminate the provider agreement, as under current law. The conferees expect that prompt action will be taken to terminate the facility's provider agreement in such circumstances. If a State which has elected option (2) substantially fails to meet its interim reduction goals during any given 6-month period, the Secretary must either terminate the facility's provider agreement or disallow, for each month the State remains out of compliance, 5 percent of the Federal matching payments the State would otherwise receive for the cost of care of all residents in the facility.

The Secretary's authority to approve reduction plans under this section is effective only with the promulgation of final regulations implementing this provision. The Secretary is directed to publish, in the Federal Register, a notice of proposed rulemaking implementing this provision within 60 days of enactment. The notice must allow a 30-day comment period. The Secretary's authority to approve permanent reduction plans extends for 3 years from the effective date of the final regulations. States could continue implementation of permanent reduction plans approved during this 3-year period beyond the expiration date of the Secretary's authority to approve such plans, provided of course that the State continued to comply with the terms and conditions of plans as approved. The Secretary's responsibility to monitor and enforce compliance by the States with the terms of the approved plans does not lapse with the expiration of his authority to approve new plan applications.

No later than 6 months before the expiration of the Secretary's approval authority, the Secretary is directed to report to the Congress on the implementation and results of this section. The conferees expect that the Secretary will provide the Congress with information on the impact of both the correction plans and the reduc-

tion plans on the quality of life and the availability of active treatment for the Medicaid-eligible individuals who remain in the facilities in question and for those who are placed in community settings. The conferees also expect that the Secretary's report will detail the involvement of resident's families in the process of developing the correction or reduction plans and in the placement of affected patients.

During each of the 3 years that the Secretary's authority to approve reduction plans is in effect, the Secretary may approve, on a first come, first served basis, 15 plans that meet the requirements of this section. Thereafter, the Secretary may approve reduction plans that otherwise comply with this section only if the State can demonstrate, to the satisfaction of the Secretary, that the State would have to spend at least $2,000,000 in State or local funds in order to remedy the substantial physical plant deficiencies found by the Secretary. There is no limit on the number of otherwise qualified plans that the Secretary may approve where the State meets the $2,000,000 compliance cost threshhold.

When the Secretary finds that an ICF/MR has substantial deficiencies, the State has the same period allowed under current law within which to submit a written plan of correction with the Secretary. If the State chooses to submit a written plan to permanently reduce the number of certified beds, it has the same period allowed under current law plus 35 days to accommodate the public hearing requirement described below. The Secretary must allow not less than 30 day after the submission of a proposed reduction plan by the State before approving or disapproving the proposal. During this period, interested residents, family, staff, and members of the public may comment directly to the Secretary on the State's proposal. The conferees expect that the Secretary will give careful consideration to these comments in connection with his decision.

The conference agreement imposes a number of requirements on States that elect to implement reduction plans rather than correct the deficiences cited at the facility in question. The general purpose of these requirements is to assure that any such plan is well conceived; that it has had the benefit of resident, family, staff, and public input; and that the quality of life for both the residents remaining in the facility and those receiving community placements is adequately protected. While the conferees wish to allow the States some flexibility in the allocation of capital and staff resources between institutional and community settings, the conferees intend that fiscal concerns not compromise the accessibility or quality of services to Medicaid-eligible clients. Above all, it is the primary intention of the conferees that the Secretary, in administering this provision, take extreme care that reduction plans approved under this section do not lead to the "dumping" of affected residents into substantard settings.

As a condition of approval of a reduction plan, a State must provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice to the staff and residents, the residents' families, and the general public. The purpose of this hearing is to facilitate discussion of a State's proposed plan by those most directly affected.

As a condition of approval, a State must also demonstrate to the Secretary that it has successfully provided home and commuity services similar to the services proposed to be provided under the

reduction plan for similar Medicaid-eligible individuals. The purpose of this provision is to assure that the State, from direct experience, developed the technical and administrative capacity to implement a reduction plan without harming the affected residents. The conferees expect that, at a minimum, the Secretary will review carefully the experience of the mentally retarded and developmentally disabled under the State's relevant home and community-based services waivers, if any.

In addition, any reduction plan must meet the following requirements. First, the plan must identify the number of existing facility residents that are to be provided home or community services, must describe their individual services needs, and must specify the timetable for providing such services, in 6-month intervals, within the 3-year period.

A reduction plan must describe the methods to be used (1) to select such residents for home and community services and (2) to develop the alternative home and community services to meet their needs effectively. The conferees intend that, in selecting the residents and meeting their service need, the States will use an interdisciplinary team process that provides an opportunity for participation by the resident's family.

A reduction plan must describe the necessary safeguards that will be applied to protect the health and welfare of the residents of the facility who are to be placed in community settings. These safeguards must include, at a minimum, participation by residents and family members and providers. In addition, the State must assure that community residences in which affected residents are placed meet all applicable State licensure requirements and all applicable State and Federal certification requirements. The conferees are particularly concerned that any community settings to which Medicaid-eligible residents are transferred comply fully with Federal certification requirements. The purpose of a reduction plan is to move Medicaid-eligible residents out of deficient facilities into complying settings.

A reduction plan must provide that residents of the affected facility who are eligible for Medicaid while in the facility shall, at their (or their legal guardian's) option, be placed in another setting, or another part of the affected facility, that is in full compliance with Federal Medicaid requirements and therefore allows then to retain their Medicaid eligibility. It is the firm intent of the conferees that a reduction plan not impair the Medicaid eligibility of an affected resident without their consent. It the resident would have remained eligible for Medicaid had the State opted to eliminate the deficiencies in the affected facility, then the State may not, at any time, involuntarily place the resident in a setting where he or she loses the entitlement to Medicaid. The resident may elect to be placed in a setting where he or she does not retain entitlement to Medicaid. Of course, if the resident, or the resident's guardian, voluntarily chooses to move to a setting—for example, back home with his or her family—that causes the resident's countable income or resources to exceed the State's eligibilty standards, then the resident's Medicaid eligibility would be subject to termination under the same terms and procedures as applicable to all Medicaid beneficiaries.

A reduction plan must specify the actions that will be taken to protect the health and safety of the residents who remain in the affected facility while the reduction plan is in effect. The conferees

wish to avoid a situation in which a State, rather than correct the deficiencies in a facility within 6 months, attempts to use the reduction plan option to delay making needed improvements for an additional 3 years. The reduction plan is intended as an alternative compliance mechanism, not a tool for avoiding compliance. The conferees expect that, before approving any reduction plan, the Secretary will satisfy himself that the health and safety of the residents remaining in the facility will be assured during the entire phase-out period.

In this connection, a reduction plan must also provide that the ratio of qualified staff to residents at the affected facility (or part thereof) will be the higher of (1) the ratio which the Secretary determines is necessary in order to assure the health and safety of the remaining residents, or (2) the ratio which was in effect at the time that the Secretary made the finding of substantial deficiencies. A State may use temporary staff to satisfy these staffing ratio requirements, but only if the staff are qualified for the patient treatment responsibilities that they are assigned.

Finally, a reduction plan must provide for the protection of the interests of employees affected by the reduction plan, including (1) arrangements to preserve employee rights and benefits; (2) training and retraining of such employees where necessary; (3) redeployment of such employees to community settings under the reduction plan; and (4) making maximum efforts to guarantee the employment of such employees. This requirement is not to be construed to guarantee the employment of any employee.

Substantial failure to meet any of these reduction plan requirements subjects the State to one of two sanctions; termination of the facility provider agreement, or disallowance of Federal Medicaid matching payments equal to 5 percent of the cost of care for all eligible individuals in the facility for each month of noncompliance. The Secretary has discretion as to which sanction to apply, but must apply one or the other. The conferees expect that the Secretary will vigorously enforce these requirements for the protection of the resident population affected by a reduction plan.

Effective Date.—Enactment.

29. Annual Calculation of Federal Percentage (Section 9428)

Present law

Between October 1 and November 30 of each even-numbered year the Secretary of HHS is required to promulgate the Federal percentage that will be in effect for 2-year period beginning the following October. The Federal percentage is used to determine the Medicaid matching rate. Each State's AFDC program may use the Medicaid rate or a separate rate derived from the Federal percentage. The percentages are based on the average per capita income of each State and the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. The Federal percentage for the fiscal years 1986–1987 is based on State and national per capita income for calendar years 1981–1983.

House bill

No provision.

Senate amendment

Provides for annual, rather than biennial, calculation of the Federal percentage.

Conference agreement

The conference agreement follows the Senate amendment with a modification moving the effective date forward to fiscal year 1987. The conferees recognize that this modification will cause several States to receive substantially less in Federal Medicaid and AFDC matching payments than they otherwise would have received under current law for fiscal year 1987 only. However, the conferees expect that, over the long run, the greater sensitivity to State economic conditions will benefit all States. A "hold harmless" provision was considered by the conferees, but its estimated cost of $155 million precluded its adoption. The conferees agree that the committees of jurisdiction will explore ways to relieve the hardship that may be suffered by the States that will receive substantially less in matching payments as a result of this provision.

30. Medicaid for Children Whose Adoption is Federally Aided (Section 9429)

Present law

The law extends Medicaid coverage to AFDC- or SSI-eligible children with special needs for whom Title IV-E adoption assistance payments are made. The State which entered into the adoption assistance agreement is responsible for providing Medicaid coverage to the child, even if the child and adoptive parents live in a different State. Similarly, children in foster care for which Federal funding is provided under Title IV-E are eligible for Medicaid coverage. The Medicaid coverage is provided by the State responsible for the foster care placement.

House bill

Specifies that, for purposes of Medicaid eligibility determinations, children receiving adoption assistance or foster care payments under Title IV-E of the Social Security Act are considered to be residents of the State in which they are placed even if this is not the State making the IV-E payment.

Senate amendment

In the case of children receiving adoption assistance, makes 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.

Conference agreement

The conference agreement follows both the House bill and the Senate amendment. The conference agreement also clarifies that children with special medical or rehabilitative needs who are receiving Medicaid and who are adopted by parents under a publicly-funded adoption program (other than a program funded under Title IV-E of the Social Security Act) are eligible for Medicaid regardless of the income and resource levels of the adoptive parents.

States could, at their option, extend Medicaid coverage to such children if (1) an adoption assistance agreement (other than one under Title IV-E) is in effect; (2) the child was eligible for Medicaid under the State's plan before the adoption assistance agreement was entered into; and (3) the responsible State agency has determined that, because of the child's special needs for medical or rehabilitative care, the child would be difficult to place with adoptive parents without Medicaid coverage.

With the respect to the second requirement, the States may use either Title IV-A methodologies and standards, or Title IV-E methodologies and standards, in determining Medicaid eligibility for this population. With respect to the third requirement, the conferees note that it is not necessary that the State Medicaid plan cover all of the services necessary to treat the child's special medical needs; the issue is simply whether, absent Medicaid coverage, the child would be difficult to place.

Effective Date.—The provision concerning residency is effective beginning with medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of enactment. The provision relating to coverage of children with special needs who receive State adoption assistance applies to adoption assistance agreements entered into before, on, or after enactment.

31. Elimination of 2-Year Limit for Obligation of Funds Under Maternal and Child Health Block Grants.

Present law

Under the Maternal and Child Health (MCH) Services Block Grant, States must obligate a fiscal year's allotment prior to the close of the following fiscal year.

House bill

No provision.

Senate amendment

Would repeal the requirement that States obligate their MCH allotments within a 2-year time frame.

Conference agreement

The conference agreement does not include the Senate provision.

32. Children With Special Health Care Needs (Section 9527)

Present law

The Maternal and Child Health Services Block Grant provides funds to States to deliver services and care for children who are crippled or who are suffering from conditions leading to crippling.

House bill

No provision.

Senate amendment

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 Services Block Grant.

Conference agreement

The conference agreement follows the Senate amendment. The conferees have agreed to strike the words "crippled children" and "crippled children's services" from Title V of the Social Security Act and to substitute in their place "children with special health care needs" and "services for children with special health care needs." In so doing, the conferees have simply made technical changes in the statutory language which more appropriately describe the populations to be served under the Title V program. No substantive changes in the program are intended.

Effective Date.—Enactment.

TITLE IX

SUBTITLE C—TASK FORCE ON LONG TERM CARE HEALTH POLICIES (SECTION 9601)

Present law

No comparable provision.

House bill

The House bill requires the Secretary of the Department of Health and Human Services to establish, in consultation with the National Association of Insurance Commissioners, an 18-member Task Force on Long Term Health Care Policies. It further requires that the Task Force develop guidelines for long term health care policies. Within eighteen months after its establishment, the Task Force is to report to the Secretary and to the Congress on both the guidelines it has developed and on recommendations for any additional activities it finds appropriate. The report is to be distributed to the States through a cooperative effort between the Secretary and the National Association of Insurance Commissioners. The Secretary is required to report annually to the Congress on various activities related to the guidelines.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment making changes in the statutory language, terminating the Task Force upon completion of its report, limiting the number of secretarial reports to two and clarifying that the recommendations do not preempt State law.

The conference agreement replaces "guidelines" with "recommendations" in each instance where it appears. In making this change, the Conferees wish to emphasize their intent that these recommendations be used only at the option of each State. Under the conference agreement, States are not required to consider, refer to, or otherwise use the recommendations of the Task Force if they do not think it appropriate to do so.

The Conferees intend the Task Force to complete its report 18 months after enactment of this legislation and to be discharged within 90 days of completion of the report. The Conferees also intend that the Department distribute the recommendations to the States in cooperation with the National Association of State Insurance Commissioners. Adoption of the recommendations is entirely voluntary.

In order to assess the usefulness of the work of the Task Force and the actions taken by the States in response to the Task Force recommendations, the conference agreement requires the Secretary of the Department of Health and Human Services to provide two reports to both the House Committee on Energy and Commerce and the Senate Committee on Labor and Human Resources on State efforts in utilizing the recommendations. The first report is due 18 months after the Task Force completes its work and the second report 18 months thereafter. The conference agreement limits the number of secretarial reports to two instead of the annual reporting required in the House bill.

Effective Date.—The Task Force is to be established not later than 60 days after enactment of this legislation.

TITLE X

CONTINUED HEALTH COVERAGE

a. Employers required to provide continuation coverage; sanction for noncompliance

Present law

There is no requirement in the Internal Revenue Code or other Federal law that an employer-provided group health plan must include continuation or conversion options in order for favorable tax rules to apply or in order to comply with other statutory requirements.

House bill

H.R. 3128

Covered Employers

The bill amends the Internal Revenue Code to require that an employer-provided group health plan must provide continuation coverage for qualified beneficiaries. Although the bill includes no explicit exclusions for churches, or tax-exempt or governmental employers, the applicable sanction—denial of the employer's tax deduction—has no impact on such employers.

H.R. 3500

This bill amends the Employee Retirement Income Security Act (ERISA), rather than the Internal Revenue Code, to cover all employee welfare benefit plans. Although the bill includes no explicit exclusions for churches or governmental employers, its amendment of ERISA effectively excludes churches (but not other tax-exempt entities), as well as Federal, State and local governments.

Sanction for Noncompliance

If any group health plan maintained by an employer fails to provide continuation coverage, H.R. 3128 denies a tax deduction for employer contributions to any health plan; and H.R. 3500 permits employees, beneficiaries and the Secretary of Labor to sue the employer to enforce compliance. In addition, an employer may be liable under ERISA for certain monetary penalties.

Senate amendment

Covered Employers

Title VII of the Senate amendment generally follows H.R. 3128 by amending the Internal Revenue Code although it does include tax-exempt employers because of the additional sanction imposed on highly compensated employees. However, this provision of the Senate amendment provides explicit exclusions for churches, Federal, State and local governments and small employers. For this purpose, a small employer is defined as an employer that normally employs 25 or fewer employees.

Title IX of the Senate amendment amends the Public Health Services Act to require that each employer subject to the Fair Labor Standards Act must provide continuation coverage. This title provides explicit exclusions generally following Title VII of the Senate amendment. Despite the exclusion, no State or political subdivision with more than 25 employees could receive Federal funds under certain public health service programs unless plans maintained by such entities provide continuation coverage.

Sanction for Noncompliance

In addition to following H.R. 3128, Title VII of the Senate amendment denies an income exclusion to any highly compensated employee. An employee is considered highly compensated if the employee is one of the 5 highest paid officers, a 10-percent shareholder, or among the highest paid 25 percent of all employees.

Title IX generally permits suits for injunctive relief and imposes civil penalties on employers who fail to provide continuation coverage.

Conference agreement

Covered Employers

The conference agreement generally follows the House bill and the Senate amendment, by amending ERISA, the Code, and the Public Health Service Act. Under the agreement, the changes to the Code and ERISA do not apply to churches, Federal, State and local governments, and small employers. Small employers are defined as those with fewer than 20 employees. In addition, the amendments to the Public Health Service Act apply only with respect to State and local governments (other than those with fewer than 20 employees.)

To avoid the issuance of duplicate and perhaps inconsistent regulations, the conferees authorized the Secretary of Labor to promulgate regulations implementing the disclosure and reporting re-

quirements, and the Secretary of the Treasury to issue regulations defining required coverage, deductions, and income inclusions. The Secretary of Health and Human Services is to issue regulations regarding the requirement that State and local governments provide continuation coverage for qualified beneficiaries. The conferees intend that any regulations issued by the Secretary of Health and Human Services will conform (in terms of actual requirements) with those regulations issued by the Secretary of the Treasury and Labor. Under the agreement, enforcement of the requirements imposed through the Public Health Service Act will be through suits for equitable relief filed by qualified beneficiaries. Of course, as under present law, all affected agencies will have the opportunity to comment before regulations are issued.

Sanctions for Noncompliance

Any regulations issued pursuant to these changes are to be effective after the date of issuance. However, pending the promulgation of regulations, employers are required to operate in good faith compliance with a reasonable interpretation of these substantive rules, notice requirements, etc.

The conference agreement generally follows H.R. 3500 and the Senate amendment except that the only sanction imposed on covered State and local governments under the Public Health Service Act are suits for equitable relief.

b. Required coverage

Present law

Otherwise deductible expenses paid or incurred by an employer for a group health plan are disallowed if the plan differentiates in benefits between individuals having end stage renal (kidney) disease and other individuals (Code sec. 162(i)).

House bill

Qualified beneficiaries

Both H.R. 3128 and H.R. 3500 provide that qualified beneficiaries include widows, divorced spouses and persons whose spouse becomes eligible for Medicare, as well as dependent children of such beneficiaries.

Type of benefit coverage

House bill

Both H.R. 3128 and H.R. 3500 require that the continuation coverage for which a qualified beneficiary must be offered an election is coverage identical to the coverage provided under the plan to similarly situated beneficiaries.

Period of coverage

Both H.R. 3128 and H.R. 3500 require that continuation coverage be provided for 5 years. However, no coverage need be provided

after the qualified beneficiary becomes eligible for coverage under another plan as a result of reemployment or remarriage.

Cost of coverage

Both H.R. 3128 and H.R. 3500 provide that some or all of the cost of continuation coverage 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 the total 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).

Senate amendment

Qualified beneficiaries

In addition to those classes of qualified beneficiaries described in the House bill, Title VII of the Senate amendment provides that (1) employees are qualified beneficiaries upon termination of employment (voluntary and involuntary) and (2) dependent children are also separately considered to be qualified beneficiaries when they cease to be covered as dependents under the plan.

Title IX of the Senate amendment further expands the classes of qualified beneficiaries listed to include employees whose hours are reduced, resulting in a loss of coverage. It provides that no coverage is required for employees who are terminated for cause.

Title VII of the Senate amendment requires that 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. 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.

Title IX of the Senate amendment follows the House bill.

Duration of coverage

Title VII of the Senate amendment provides that continuation coverage must be provided for 18 months.

Title IX of the Senate amendment provides that continuation coverage must be provided for 3 years (18 months with respect to terminated employees and reduced hour workers), and provides cutoff dates similar to those in the House bill.

Cost of coverage

Although Title IX of the Senate amendment follows the House bill, Title VII provides that the cost must not exceed 102 percent of the applicable premium and provides specific rules for calculating the "cost" of the applicable premium in self-insured plans.

Conference agreement

Qualified Beneficiaries

The conference agreement generally follows the House bill and the Senate amendment except that no continuation coverage is required for terminated employees if the termination occurs by reason of the employee's gross misconduct.

Type of benefit coverage

The conference agreement generally follows the House bill with a modification so that the type of benefit coverage is identical, as of the time the coverage is being provided, to the coverage provided under the plan to similarly situated beneficiaries under the plan with regard to whom a qualifying event has not occurred.

Duration of Coverage

The conference agreement generally follows Title IX of the Senate amendment, requiring that continuation coverage provided to widows, divorced spouses, spouses of Medicare-eligible employees, and dependent children who become ineligible for coverage under the plan be provided for 3 years, while coverage for terminated employees and employees with reduced hours must be provided for 18 months. The agreement provides that the coverage period begins with the date of the qualifying event. As under the House bill and Title IX of the Senate amendment, no coverage need be provided after (1) failure to make timely payment under the plan, (2) the qualified beneficiary is covered under another group health plan as a result of employment, reemployment, or remarriage, and (3) the qualified beneficiary becomes entitled to Medicare benefits. In addition, as under the House bill and Title VII of the Senate amendment, no coverage need be provided after the employer ceases to maintain any group health plan.

Cost of Coverage

The conference agreement generally follows Title VII of the Senate amendment. For a self-insured plan, the conferees agreed that the "applicable" premium for any year generally is equal to a reasonable estimate of the cost of providing coverage for such period for a similarly situated beneficiary. The cost is to be determined on an actuarial basis and takes into account such factors as the Secretary may prescribe in regulations. Alternatively, unless 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 may elect to use as the applicable premium, the cost for a similarly situated beneficiary for the preceding year, adjusted to reflect cost-of-living increases as measured by the GNP deflator.

In general, similarly situated individuals are those individuals defined by the plan (consistent with Treasury regulations) to be similarly situated and with respect to which no qualifying event has occurred. The Secretary of the Treasury is to define similarly situated individuals by taking into account the plan under which

the coverage is provided (e.g., high or low option), the type of coverage (single or family coverage) and, if appropriate, regional differences in health costs. The conferees do not intend that similarly situated mean medically identical (for example, all employees with heart problems); nor do the conferees intend that plans can define similarly situated beneficiaries by reference to classifications that are in violation of Title VII of the Equal Pay Act.

In addition, the conferees intend that Treasury regulations defining a plan should preclude an employer from grouping employees to inappropriately increase the cost of continuation coverage for qualified beneficiaries who are rank-and-file employees (or their beneficiaries).

c. Notice requirements; election period

Present law

No provision.

House bill

Both H.R. 3128 and H.R. 3500 require that notice of the option to continue health coverage be provided in the summary plan description. In addition, the bills require that notice of a qualifying event be given to the plan administrator (1) by the employer, in the event of the employee's death; (2) by the employee, in the event that the employee is divorced, separated, or becomes eligible for Medicare.

Under both bills, the period during which a qualified beneficiary may elect continuation coverage does not expire before 60 days after the later of (1) the termination date of coverage, or (2) the date the beneficiaries receive notice of the right to elect.

Senate amendment

Title VII of the Senate amendment provides that the Secretary of the Treasury is to prescribe notice requirements pursuant to regulations and establishes a 60-day notice period commencing with the qualifying event.

Title IX

Title IX of the Senate amendment provides that the Secretary of Health and Human Services is to prescribe notice requirements pursuant to regulations. Such regulations are to prescribe notice consistent with that required by the House bill.

Conference agreement

The conference agreement generally follows the House bill. Thus, notice of the option to continue health coverage must be provided in the summary plan description. In addition, in the event of an employee's death, separation from service, or Medicare eligibility, the employer is required to notify the plan administrator within 30 days of the qualifying event who will in turn notify the qualified beneficiary within 14 days.

In the event of other qualifying events (e.g., divorce, legal separation, or the child's becoming ineligible) the employee or qualified beneficiary affected by that event is required to notify the plan ad-

ministrator. Unless the qualified beneficiary is the party providing notice, the plan administrator is in turn required to notify the qualified beneficiary. The election period begins not later than the later of (1) the date on which coverage terminates, or (2) the date on which the qualified beneficiary receives notice of the right to elect continuation coverage. Any election by a qualified beneficiary is considered an election by other qualified beneficiaries who would otherwise lose coverage by reason of the same qualifying event.

The conferees intend that the Secretary of Labor will issue regulations defining what notice will be adequate for this provision. The conferees intend that notice by mail to the qualified beneficiary's last known address is to be adequate; however, mere posting is not to be adequate. In addition, in applying these requirements to multiemployer plans, the conferees intend that the Secretary of Labor should take into account the special problems faced by those plans.

d. Conversion option

Present law

No provision.

House bill

Both H.R. 3128 and H.R. 3500 require that a conversion option be offered to qualified beneficiaries if under the plan the conversion option is otherwise available.

Senate amendment

Although Title IX of the Senate amendment follows the House bill, Title VII does not require that a conversion option be offered.

Conference agreement

The conference agreement generally follows the House bill and Title IX of the Senate amendment. Under the agreement, a qualified beneficiary must be offered a conversion option from any plan (including a self-insured plan) only if such an option is otherwise available under the plan to other participants.

Effective Date.—These provisions are effective 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 later of (1) the date the last of the collective bargaining agreements terminate, or (2) January 1, 1987.

Title XI. Pension Benefit Guaranty Corporation Provision [1]

1. Insurance Premiums

Present law

A private defined benefit pension plan must generally pay to the Pension Benefit Guaranty Corporation ("PBGC") an annual per

[1] Note: H.R. 3500 as passed by the House was added as an amendment to H.R. 3128 as amended by the Senate. The PBGC provisions of both H.R. 3128 and H.R. 3500 as passed by the House

Continued

participant premium of $2.60. The Employee Retirement Income Security Act of 1974 (ERISA) permits the PBGC to provide for a risk-related premium (within limits).

House bill—H.R. 3128

The premium is increased to $8.00 for plan years beginning after December 31, 1985, and before January 1, 1989. For plan years beginning after December 31, 1988, the premium level returns to $2.60. The bill also provides for a study by the Treasury Department with respect to risk-related premiums.

House bill—H.R. 3500

The premium is increased to $8.50 for all plan years beginning after December 31, 1985.

Senate amendment—Title VII

The premium is increased to $8.10 for all plan years beginning after December 31, 1985. The bill also provides for a study by the Department of Labor (DOL) with respect to risk-related premiums.

Senate amendment—Title IX

No provision.

Conference agreement

The conference agreement follows H.R. 3500 except that the conferees agreed generally to require the PBGC to study the premium structure (including the feasibility of a risk-related premium) and make recommendations for change, if necessary. An advisory group appointed by the Chairman of the House Committees on Education and Labor and Ways and Means and the Senate Committees on Labor and Human Resources and Finance is required to analyze and critique the study. The study is to be filed with the Congress no later than one year from the date of enactment and the advisory group's report is due no later than six months after the PBGC submits its report to the Advisory Council.

2. Single Employer Pension Plan Amendment Act

a. Clarification of authority to freeze plans

Present law

Under present law, a plan may be amended to freeze future benefit accruals and to freeze other factors used to calculate benefits, such as compensation taken into account. In the absence of a contractual obligation, an employer is not required to provide participants with advance notice of a freeze.

House bill—H.R. 3128

No provision.

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are mentioned separately to indicate the legislative background of the separate House bill provisions.

House bill—H.R. 3500

Under the bill, an amendment freezing accruals is not effective unless, subsequent to the adoption of the amendment and at least 60 days prior to the effective date of the amendment, the plan administrator gives written notice to each affected party. The term "affected party" is defined under the bill as each participant in the plan, each beneficiary of a deceased participant, each beneficiary who is an alternate payee under a qualified domestic relations order, and each employee organization representing participants in the plan and the PBGC.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

Although the bill contains no specific provisions covering plan freezes, the proposed first stage of plan termination covers similar situations (see Voluntary plan terminations—Senate amendment).

Conference agreement

The conference agreement provides that an amendment to reduce significantly future benefit accruals under a plan is not effective unless, subsequent to the adoption of the amendment and at least 15 days prior to the effective date of the amendment, the plan administrator gives written notice of the reduction to each participant in the plan, each beneficiary under the plan who is a beneficiary of a deceased participant, each beneficiary who is an alternate payee under a qualified domestic relations order, and each employee organization representing participants in the plan. This notice does not apply to any amendment (or portion thereof) to retroactively reduce plan benefits (Sec. 412(c)(8) of the Code and Section 302(c)(8) of ERISA).

The conference agreement does not affect the requirements for qualification of a plan under the Code. For example, the agreement does not change the requirement of minimum benefit accruals under a frozen top-heavy plan.

b. Voluntary plan terminations

Present law

Restrictions on plan termination.—Under present law, an employer's continued maintenance of a defined benefit pension plan is not required by statute. Thus, subject to contractual obligations, the employer generally may terminate a plan at any time upon satisfaction of the procedural requirements described below.

Employer liability under a terminated plan.—If a single-employer defined benefit pension plan is terminated with assets sufficient to pay benefits at the level guaranteed by the PBGC (described below), the employer has no further liability to the PBGC.

If a single-employer defined benefit pension plan is terminated with insufficient assests to pay benefits at the level guaranteed by the PBGC, then the employer is liable to the PBGC for the insufficiency. However, the employer's liability is limited to 30 percent of

the employer's net worth (determined as of the date of termination). The 30-percent limit applies whether or not the employer remains in business after the plan is terminated. All trades or businesses under common control are treated as a single employer.

In computing the extent to which assets are insufficient to pay guaranteed benefits, the value of any accumulated funding deficiency or outstanding waived liability under the minimum funding standard of the plan (discounted for likelihood of payment) is treated as a receivable of the plan and, thus, as a plan asset. An employer' liability for amounts due to the plan under the minimum funding standards of ERISA is not limited to 30 percent of net worth.

The full amount of the employer's liability to the PBGC is generally due and payable as of the date of plan termination. However, the PBGC, in its discretion, may grant deferred payment terms for employer liability.

PBGC guaranteed benefits.—Subject to limits, the PBGC guarantees basic benefits under a plan. Basic benefits consist of nonforfeitable retirement benefits other than those benefits that become nonforfeitable solely on account of the termination of the plan. Guaranteed benefits are limited to basic benefits of $750 per month adjusted for inflation since 1974 ($1,687.50 for 1985).

Guarantees do not apply with respect to benefits in effect for fewer than 60 months at the time of plan termination unless the PBGC finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of securing increased guaranteed benefits for participants. In cases in which they apply, guarantees are phased in at the rate of $20 per month or 20 percent per year (whichever is greater) for (1) basic benefits that have been in effect for less than 60 months at the time the plan terminates, or (2) any increase in the amount of basis benefits under a plan resulting from a plan amendment within 60 months before the date of plan termination.

Notice of termination.—Under present law, an employer must file a Notice of Intent to Terminate (NOIT) a plan with the PBGC not less than 10 days prior to the proposed date of termination. Participants and beneficiaries must be notified of the termination no later than the date that the NOIT is filed with the PBGC.

Distribution.—Under present law, at least 30 days prior to the proposed date of distribution, the plan administrator must submit projected asset and liability data demonstrating that the plan holds sufficient assets to pay guaranteed benefits as of the propose date of distribution. Under certain circumstances, the plan administrator also has the option of establishing the plan's sufficiency by certification of an enrolled actuary.

Within 90 days after the proposed termination date, the PBGC is to notify the plan administrator as to whether plan assets are sufficient to satisfy plan obligations. This period may be extended by mutual agreement of the plan administrator and the PBGC. The plan administrator may distribute plan assets 30 days after the notice of sufficiency is issued. If the PBGC fails to issue a notice of sufficiency during the 90-day statutory period and the parties fail to agree to extend the 90-day period, the employer may distribute plan assest upon the expiration of the 90-day period.

Post-distribution audit.—Within 60 days of the date of distribution, the plan administrator must certify to the PBGC that plan assets have been allocated and distributed in accordance with the requirements of ERISA. The PBGC may, in its discretion, conduct a post-distribution audit of a terminated plan.

House bill—H.R. 3128

Restrictions on plan termination.—No provision.

Employer liability upon plan termination.—Unless the employer terminating a plan goes out of business, the employer is liable to the PBGC for (1) the full amount of any funding deficiency, plus (2) the full amount of any unfunded guaranteed benefits (determined by treating any funding deficiency as an available plan asset of the terminated plan). A funding deficiency consists of any acumulated funding deificiency and the outstanding balance of any waived funding deficiency. If an employer goes out of business, its liability for the unfunded guaranteed benefits described in (2) is limited to 30 percent of the employer's net worth.

The bill also provides that the liability of an employer to the PBGC upon plan termination is the joint and several liability of all members of the controlled group of the employer. "Controlled group" is defined as all persons who are treated as a single employer under subsections (b), (c), (m) or (o) of section 414 of the Internal Revenue Code ("Code").

The bill generally provides that the full amount of the liability to the PBGC is normally due and payable as of the date of plan termination, unless the employer elects a deferred payment schedule. An employer may pays it liability to the PBGC (1) in a lump sum payment, (2) over a period of five years, or (3) over a period of 15 years. If the employer elects deferred payments over a 5- or 15-year period, liability payments include interest. Security is required in the 15-year schedule is elected and can be required if the 5-year schedule is elected. In addition, as under present law, the employer and the PBGC may agree to a special schedule of payments. The schedule may, for example, reflect the ability of the employer to pay the liability, as well as the hazards of litigation.

Procedural requirements.—No provision.

House bill—H.R. 3500

Restrictions on plan termination.—Under the bill, an employer may only terminate a single-employer defined benefit pension plan under which benefits are guaranteed by the PBGC in a "standard termination" or in a "distress termination." A standard termination is permitted only if the plan holds assets sufficient to pay all benefit entitlements.

Under the bill, "benefit entitlements" include all guaranteed benefits and all benefits that would be guaranteed but for the insurance limits on the amount or value of the benefit, or the length of time that the benefit has been in effect. In addition, benefit entitlements include certain additional benefits for which a participant has satisfied all conditions of entitlement piror to termination, irrespective of whether those benefits are guaranteed. These additional benefits are (1) early retirement supplements or subsidies, (2) plant closing benefits, and (3) death benefits. The general definition of

benefit entitlements excludes those benefits have become nonforfeitable solely by virtue of the plan's termination.

A plan with assets insufficient to provide benefit entitlements may be terminated in a "distress termination" only if the PBGC determines that (1) funding waivers have been granted with respect to the terminating plan for three of the five plan years preceding the termination date, and such a waiver has been granted to each other single employer plan maintained by each contributing sponsor (as that term is defined in the bill) of the terminating plan and each substantial member (as defined in the bill) of each contributing sponsor's controlled group in any one of the three plan years preceding the termination date; (2) a petition has been filed in bankruptcy or state insolvency proceedings seeking liquidation of each contributing sponsor of the plan and each substantial member of their controlled groups, and has not been dismissed or converted to a petition for reorganization; (3) unless a distress termination occurs, each contributing sponsor of the plan and each substantial member of each contributing sponor's controlled group will be unable to pay its debts when due and will be unable to continue in business; or (4) as a result of the decline in the number of employees covered as participants under all of the plans maintained by the contributing sponsors of the terminating plan and members of each contributing sponsor's controlled group, the costs of providing pension coverage have become unreasonably burdensome. The bill contains an objective test of "burdensomeness" relating to plan costs, payroll costs, and gross income level of contributing sponsors and members of their controlled groups.

Employer liability under a terminated plan.—If an employer terminates a plan pursuant to a standard termination, with assets sufficient to fund all benefit entitlements, the employer has no further liability to the PBGC or plan participants.

Liability to the PBGC.—If a plan is terminated pursuant to a distress termination (or if the termination is instituted by the PGBC), each contributing sponsor of the plan and each member of the controlled group of a contributing sponor is jointly and severally liable to the PBGC for (1) any unfunded guaranteed benefits, plus (2) the full amount of any funding deficiency. A funding deficiency consists of any accumulated funding deficiency and the balance of any waived funding deficiency.

Under the bill, the full amount is normally due and payable to the PBGC as of the date of plan termination. However, where the amount of unfunded guaranteed benefits exceeds 30 percent of the collective net worth of the persons subject to liability, liability for the excess amount may be satisfied by payments to the PBGC each year, over a 10-year period (specified in the bill) following the plan's termination. The required payment in any year is 10 percent of the sum of the individual annual pretax profits (if any) of all persons subject to liability in connection with the plan termination. Liability to the PBGC ceases after the earlier of the tenth annual payment or the time when the liability to the PBGC is paid in full.

Liability to participants.—If a plan has assets insufficient to fund nonguaranteed benefit entitlements, each contributing sponsor to the plan and each member of the contributing sponsor's controlled group is jointly and severally liable for payments for a 10-year

period (specified in the bill) following the plan's termination, of 5 percent of the sum of the individual annual pretax profits (if any) of all persons subject to liability in connection with the plan termination. The payments are to be made to a special trustee appointed by the PBGC. Employer liability to the special trustee ceases after the earlier of the tenth annual payment or the time when the nonguaranteed benefits are fully funded. The special trust makes benefit payments to participants and beneficiaries.

Notice of termination.—Not less than 60 days prior to a proposed plan termination date, a plan administrator is required to give written notice of the proposed termination to the PBGC, plan participants and beneficiaries, and unions representing the participants.

Related adjudicatory proceeding.—If, during the period between the date notice is given and the proposed termination date, the plan administrator learns of a "related adjudicatory proceeding" (as defined in the bill), the plan administrator is required to suspend the termination or to structure the termination so that the plan could be restored if it were later determined that the termination violated the contractural or statutory right of any affected person. The payment of benefits is restricted during the suspension period.

Distribution.—As soon as practicable after the proposed termination date, the plan adminstrator is required to provide the PBGC with certification by an enrolled actuary of the plan's sufficiency as of the plan's proposed date of distribution.

The plan administrator is permitted to distribute plan assets upon the expiration of the 60-day period following the date the certification of sufficiency is filed with the PBGC, provided that the PBGC has not issued a notice of noncompliance with respect to the plan, and the parties have not agreed to extend that period. The plan administrator is also required to notify each participant and beneficiary of such person's benefit entitlement at least 60 days prior to the plan's proposed date of distribution.

Post-distribution audit.—The plan administrator is required, within 30 days after the final distribution of assets, to file a notice with the PBGC certifying that assets have been allocated and distributed in accordance with the requirements of ERISA.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

Restrictions on plan termination.—Under the bill, an employer may only terminate a single employer defined benefit pension plan under which benefits are guaranteed by the PBGC in a "standard termination" or in a "distress termination."

A standard termination consists of two distinct stages: (1) a cessation of accruals stage, and (2) a liquidation or "closeout" stage. If the plan has sufficient assets to fund all "final benefit obligations" of the plan, the two stages may occur simultaneously. If assets are insufficient to fund final benefit obligations the plan may not complete the second stage until such obligations are fully funded or the plan qualifies for liquidation under the distress termination rules.

A plan in the first stage of termination is a frozen plan to which the present-law rules regarding vesting apply. The bill also provides that the required annual contribution, during the stage-one period, is an amount not less than benefits currently due.

Under the bill, final benefit obligations include all "benefit entitlements" as defined under H.R. 3500, plus, (1) benefits which come nonforfeitable solely by virtue of the plan's termination, and (2) certain ancillary benefits for which a participant satisfies the conditions of entitlement subsequent to the plan's termination.

In order to terminate a plan in a distress termination, a plan administator is required to demonstrate that (1) a petition in bankruptcy or other State insolvency proceedings has been filed seeking liquidation of each contributing sponsor (as defined in the bill) of the plan and each substantial member (as defined in the bill) of the contributing sponsors' controlled groups, and that the petition has not been dismissed or converted to one seeking reorganization; (2) a petition in a bankruptcy or State insolvency proceeding has been filed seeking reorganization of each contributing sponsor of the plan and each substantial member of their controlled groups, and the bankruptcy court has approved the plan termination; or (3) unless a distress termination occurs, each of the contributing sponsors and the substantial members of their controlled groups will be unable to pay its debts when due, and will be unable to continue in business.

Employer liability under a terminated plan.—These provisions of the bill are substantially the same as H.R. 3500, except that the contributing sponsors and members of their controlled groups are liable to plan participants for unfunded nonguaranteed "final benefit obligations" rather than benefit entitlements, and payment of those benefits is made directly by the employer to plan participants and beneficiaries, rather than through a special termination trust.

Notice.—Not less than 10 days prior to a "stage one" termination, a plan administrator is required to give written notice of the termination to the PBGC, plan participants and beneficiaries, and unions representing the participants.

Notice to the same parties is required at least 30 days prior to the second, closeout stage. If stages one and two occur simultaneously, the 30-day notice applies. In any event, if the plan is maintained pursuant to a collective bargaining agreement, the plan administrator is required to notify unions representing participants at least 30 days prior to a stage one freeze or a stage two closeout filing.

Related adjudicatory proceeding.—No provision.

Distribution.—At least 30 days prior to the distribution of plan assets, the plan administrator is required to provide the PBGC with certification by an enrolled actuary of the plan's sufficiency as of the plan's proposed date of distribution. The plan administrator is permitted to distribute plan assets upon the expiration of the 30-day period, provided that the PBGC has not issued during that period a notice of noncompliance with respect to the plan.

Notice of benefit computations to participants.—At the same time as the plan administrator notifies each participant or beneficiary of the benefits to which the participant or beneficiary is entitled, the plan administrator must also notify the participant or beneficiary

of the information used in computing the amount of such benefits, including (1) the length of service, (2) the age of the participant or beneficiary, (3) wages, and (4) such other information as the PBGC may require.

Post-distribution audit.—The PBGC is required to audit annually all participants in terminated plans after the final distribution of assets.

Conference agreement

The conference agreement generally follows the structure of H.R. 3500.

Restrictions on terminations.—Under the agreement, as under H.R. 3500, an employer may only terminate a single-employer defined benefit pension plan under which benefits are guaranteed by the PBGC in a standard termination or in a distress termination. An employer is permitted to terminate a plan in a standard termination only if the plan holds sufficient assets to pay all "benefit commitments" under the plan. Benefit commitments are defined under the conference agreement as all guaranteed benefits (including qualified preretirement survivor annuities) and all benefits that would be guaranteed but for the insurance limits on the amounts or value of the benefit, or the length of time that the benefit has been in effect. In addition, benefit commitments include certain additional benefits for which a participant has satisfied all conditions of entitlement prior to termination. These additional benefits, irrespective of whether they are guaranteed, are (1) early retirement supplements or subsidies, and (2) plant closing benefits.

With respect to the circumstances under which an employer may terminate a plan in a distress termination, the bill generally follows Title IX of the Senate amendment except that it provides an additional criteria permitting "distress" termination if pension costs become unreasonably burdensome due to a declining workforce. In addition, the conference agreement makes it clear that different members of a controlled group may separately satisfy different criteria for distress termination.

As under present law, to the extent a pension plan is an executory contract included within the scope of Section 365 (11 USC 365) or is included within the scope of Section 1113 of the Bankruptcy Code (11 USC 1113), these Bankruptcy Code Provisions are applicable to the court's decision on whether to approve the termination of the pension plan. The distress termination criteria are not intended to make any substantive changes in the bankruptcy laws. The conferees take no position on when or whether a pension plan is an executory contract.

Employer liability under a terminated plan.—Upon the termination of a plan, pursuant to a standard termination in which all benefit commitments are fully funded, the employer has no further liability to the PBGC or to plan participants.

Liability to PBGC.—Upon the termination of a plan pursuant to a distress termination, if the PBGC determines that plan assets are insufficient to fund guaranteed benefits, the PBGC is required to institute trusteeship proceedings for the plan. Each contributing sponsor of the plan and each member of the controlled group of each contributing sponsor is jointly and severally liable to the

PBGC for the sum of (1) the total amount of all unfunded guaranteed benefits, up to 30 percent of the collective net worth of those persons liable to the PBGC; (2) an amount equal to the excess (if any) of (a) 75 percent of the total amount of all unfunded guaranteed benefits over (b) the amount described in (1); and (3) interest on the amount due calculated from the termination date. The total amount of unfunded guaranteed benefits is computed by treating any accumulated funding deficiency and the balance of any waived funding deficiency as a receivable of the plan and, thus, as a plan asset.

The full amount of the liability to the PBGC is generally due and payable as of the date of plan termination. However, if the liability to the PBGC for unfunded guaranteed benefits exceeds 30 percent of the collective net worth of the parties that are liable to the PBGC, the payment of that excess amount is to be made under commercially reasonable terms prescribed by the PBGC. The parties are to make a reasonable effort to reach agreement on such terms. Under the conference agreement, any terms prescribed by the PBGC must provide for the deferral of 50 percent of any amount of liability otherwise payable for any year if the PBGC determines that no person subject to such liability has individual pretax profits for the fiscal year ending during such year.

If a plan terminates pursuant to a distress termination and is subject to PBGC trusteeship proceedings, then each contributing sponsor and each member of their controlled groups is liable to the PBGC for the sum of (1) the outstanding balance of any accumulated funding deficiency, and (2) the balance of the amount of any waived funding deficiencies. The full amount of such liability is due and payable to the PBGC as of the date of plan termination.

The conferees take no position with respect to the treatment in bankruptcy of PBGC claims and liens. Deletion of the amendments to section 4068 that appeared in S. 1730 is not intended to express any view on the meaning of the present language in section 4068. Section 4068 has been amended, however, to assure that it applies only to the liability that was covered by section 4068 prior to these amendments, i.e., the value of unfunded guaranteed benefits up to 30 percent of the employer's net worth. Section 4068 does not apply to liability being added to section 4062 by these amendments for amounts in excess of the 30 percent of net worth cap.

Liability to participants.—If the PBGC determines that there is an outstanding amount of benefit commitments, the PBGC is required to appoint a fiduciary with respect to the termination trust. The fiduciary must be independent of the contributing sponsors (and members of a controlled group including sponsors) and generally is subject to the fiduciary requirements of ERISA (other than the prohibited transaction rules). The "outstanding amount of benefit commitments" under a plan is defined as the excess of (1) the actuarial present value of the benefit commitments of each participant and beneficiary over (2) the actuarial present value of the benefits of each participant and beneficiary that are guaranteed by the PBGC or to which assets of the plan have been allocated under the distribution procedures of section 4044 of ERISA. Each contributing sponsor of the plan and each member of the controlled group of a contributing sponsor is jointly and severally liable to the ter-

mination trust for the lesser of (1) 75 percent of the total amount of outstanding benefit commitments under the plan, or (2) 15 percent of the total amount of benefit commitments under the plan. The termination trust generally will be administered by the PBGC except in cases in which PBGC determines that delegation of this responsibility is cost effective.

Under the conference agreement, payment of liability is to be made under commercially reasonable terms prescribed by the fiduciary of the termination trust. The parties are required to make a reasonable effort to reach agreement on such terms. In addition, the conference agreement provides that if liability to the termination trust is less than $100,000, the payment of liability to the trust over 10 years in equal annual installments (with interest at the applicable rate determined under sec. 6621(b) of the Code) will satisfy this requirement even if the terms are not commercially reasonable. The PBGC is permitted to increase, by regulation, the $100,000 ceiling. To phase in this $100,000 rule, the conference agreement provides that no payment under this provision is required before January 1, 1989.

The conference agreement also provides that any payment schedule is to provide for the deferral of 75 percent of the liability otherwise payable to the termination trust for any year if no person subject to liability to the termination trust has any individual pre-tax profits for such person's fiscal year ending during such year. However, the conferees intend that the fact that one person has minimal profits should not make the benefits of deferral totally unavailable. The required payments in any year should not exceed 50 percent of the otherwise payable amount plus profits. The amount of liability so deferred is payable only after payment of any liability to the PBGC arising in connection with the terminated plan.

The conference agreement provides rules governing the allocation and distribution of assets of the termination trust to participants and beneficiaries.

Under the conference agreement, a participant or beneficiary who receives distributions from a termination trust is, subject to certain requirements, permitted to roll over the distributions to an IRA or qualified plan.

Deductibility of payments.—The conference agreement provides rules as to the deductibility of payments to the PBGC and the termination trust.

Notice.—The conference agreement follows H.R. 3500.

Related adjudicatory proceedings.—The conference agreement contains no provision dealing with related adjudicatory proceedings. However, the conference agreement provides that the PBGC is not to proceed with the voluntary termination of a plan if the termination would violate the terms and conditions of a collective bargaining agreement.

Distributions.—The conference agreement generally follows H.R. 3500. As under H.R. 3500, the conference agreement provides that the assets of a terminated plan may be distributed if the PBGC fails to issue a notice of noncompliance within 60 days after receipt of a NOIT. As under H.R. 3500, the conference agreement provides that the 60-day period may be extended by PBGC and the plan administrator and that the extension may be subject to conditions to

which they have agreed. The conference agreement does not change the rules of the Code for determining the qualified status of a plan (or of a trust forming a part of a plan), or the application of the minimum funding standard to a plan. Accordingly, the conference agreement does not authorize the PBGC to waive, or otherwise modify, the requirements of the Code.

Notice of benefit computations to participants.—The conference agreement generally follows Title IX of the Senate amendment except that, in addition to the other information specified in the Senate amendment, the plan administrator must supply to participants and beneficiaries the actuarial assumptions used in computing plan benefits (including, but not limited to, the interest rate assumption).

Post-distribution audit.—The conference agreement generally follows H.R. 3500. In addition, under the conference agreement the PBGC is required to perform annually an audit of a statistically significant sample of terminated plans to determine whether participants and beneficiaries have received the benefits to which they are entitled. For each plan selected for audit, the benefits of a statistically significant sample of participants and beneficiaries are to be verified.

In addition, the conference agreement authorizes the Comptroller General of the General Accounting Office to examine certain plan documents. Any information gathered under this authority shall not be available to the public.

3. Involuntary Plan Termination

Present law

Under present law, the PBGC is permitted, but not required, to commence proceedings to terminate a plan under a variety of circumstances including the inability of the plan to pay benefits when due.

House bill—H.R. 3128

No provision.

House bill—H.R. 3500

Under the bill, the PBGC is required to commence termination proceedings if the plan does not have assets available to pay benefits that are currently due under the terms of the plan.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

As under present law, the PBGC is permitted, but not required, to terminate a plan under certain circumstances. In addition, the PBGC may appoint a temporary receiver if the plan fails to meet minimum funding requirements, is not able to pay current benefits when due, or has been abandoned.

Conference agreement

The conference agreement follows H.R. 3500.

4. Waiver of Funding Standard

Present law

Present law authorizes the Internal Revenue Service to waive the requirements of the minimum funding standard no more frequently than 5 times in any 15-year period. In addition, the amortization period for liabilities under defined benefit pension plans may be extended, and a waiver previously granted by the IRS may be modified.

The IRS may grant a waiver on condition that appropriate requirements are met.

House bill—H.R. 3128

The IRS is authorized to require that security be provided as a condition of granting a waiver of the minimum funding standard, an extension of an amortization period and modifications of a previously granted waiver. The IRS is required to notify the PBGC before granting a waiver and is to consider the comments of the PBGC. The PBGC has a 15-day comment period after the date of receipt of notice.

The new provisions apply to waivers, extensions, and modifications granted on or after the date of enactment of the bill.

House bill—H.R. 3500

The bill is similar to H.R. 3128, except that (1) a "reasonable period" rather than a 15-day comment period is provided, and (2) the security, notice, and comment provisions do not apply to cases involving less than $1 million of outstanding waived liability. The bill requires that an employer that submits a request for a waiver of the minimum funding standard notify each affected party. The term "affected party" is defined under the bill as a plan participant, a beneficiary of a deceased participant, a beneficiary that has been designated as an alternate payee pursuant to a qualified domestic relations order, an employee organization representing participants in the plan and the PBGC.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

No provision.

Conference agreement

The conference agreement clarifies that the IRS is authorized to require that security be provided as a condition of granting a waiver of the minimum funding standard, the extension of an amortization period, or modification of a previously granted waiver of the minimum funding standard with respect to a single employer defined benefit plan. The conference agreement requires that, before granting an application for a waiver, extension or modification to a single employer defined benefit plan, the IRS notify the PBGC of the receipt of a completed application for a waiver, extension, or modification, and consider the views of any interested party, including the PBGC, submitted in writing. The PBGC has a

30-day period after the date of receipt of notice to submit to the IRS comments on the application.

The conference agreement provides that the notice of the application and any other information or materials relating to the application that is sent to the PBGC by the IRS constitutes tax return information and is subject to the safeguarding and reporting requirements of section 6103(p) of the Code.

Under the conference agreement, the security, notice, and comment provisions do not apply if, with respect to the plan for which a waiver is requested, the sum of (a) the accumulated funding deficiencies (including the amount of any increase in the accumulated funding deficiency that would result if the request for a waiver were denied); (b) the outstanding balance of any previously waived funding deficiencies; and (c) the outstanding balance of any decreases in the minimum funding standard allowed under section 303 of ERISA, is less than $2 million. As under current law, the mere creation of a security interest at the direction of the Secretary of the Treasury as a condition for granting a waiver does not by itself constitute a prohibited transaction. The provisions of the conference agreement relating to security are intended by the conferees to provide appropriate rules for the future. The conferees intend that no inference is to be drawn from this provision with respect to the application of present law to such transactions.

The conference agreement also contains an amendment to the Code requiring that if the IRS grants a request for a waiver, extension, or modification, the interest on the waived amount must be computed by using a rate prescribed in section 6621(b) of the Code.

Finally, under the conference agreement, an employer that submits an application for a waiver of the minimum funding standard is required to notify any employee organization representing participants in the plan of the application.

5. Special Enforcement Rules

House bill—H.R. 3128

A nondeductible excise tax applies if termination liability payments are not made as required.

The initial tax is 5 percent of any payment not made when due. The tax increases by an additional 5 percent of any portion of such payment that is not made within 90 days of the payment's due date, and increases by an additional 5 percentage points for each 30-day period thereafter that the amount remains unpaid. The total additional tax imposed on any unmade payment is limited to the amount of such payment that has not been made within 90 days of the payment's due date.

There is allowed as a credit against the excise tax (up to the amount of the excise tax) any amount paid by the employer to the PBGC, with respect to the employer's termination liability, no later than two years after the final determination of that liability. Liability for the excise tax is the joint and several liability of the controlled group.

House bill—H.R. 3500

The bill adds a new section to ERISA that would expressly confer, upon an adversely affected plan fiduciary, employer, employee organization representing plan participants, contributing sponsor, participant or beneficiary, a private right of action to enjoin certain acts or practices of any party in violation of the employer liability provisions. Other appropriate equitable relief could also be provided by a court.

Under the bill, district courts have exclusive jurisdiction over these actions. A plan could be sued as an entity under these provisions. The bill also provides for venue and for awards of attorney's fees and expenses under certain circumstances.

A copy of the complaint in any action under these provisions would be served on the PBGC. The PBGC could intervene in the action.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

No provision.

Conference agreement

The conference agreement generally follows H.R. 3500.

6. Evasion of Employer Liability

House bill—H.R. 3128

Certain transactions undertaken by a person would not be treated as transferring employer liability away from that person or any member of a controlled group including that person. This treatment would apply to transactions undertaken within 10 years before the date of termination of single-employer defined benefit pension plan if a principal purpose of the transaction was to fraudulently evade any employer liability to the PBGC.

House bill—H.R. 3500

If a principal purpose of any person in entering into any transaction is to evade employer liability in connection with the termination of a single-employer defined benefit pension plan, and the transaction becomes effective within 5 years before the termination date, then that person and the members of that person's controlled group (determined as of the termination date) are subject to employer liability in connection with the termination as if that person were a contributing sponsor of the terminated plan as of the termination date. Post-transaction benefit increases or improvements would not be taken into account in computing the liability of such an entity.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

Rules would be provided for tracing liability in the case of certain corporate reorganizations.

Conference agreement

The conference agreement generally follows H.R. 3500, except that the conference agreement provision is effective only with respect to transactions occurring on or after the earlier January 1, 1986, or the date of enactment. The provisions of the conference agreement relating to evasive transactions are intended by the conferees to provide appropriate rules for the future. The conferees intend that no inference is to be drawn from these provisions with respect to the application of present law to such transactions. In addition, the conference agreement makes it clear that only contributing sponsors (and members of a controlled group including the contributing sponsors) are affected by this provision.

7. Special Rule for Pending Cases

House bill—H.R. 3128

No provision.

House bill—H.R. 3500

No provision.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

In the case of an employer that (1) had filed an NOIT with the PBGC prior to the date of enactment and had not yet received a notice of sufficiency or (2) files an NOIT in a standard termination subsequent to the date of enactment and prior to March 1, 1986, the bill requires that the processing of the plan be delayed if the lesser of 10 or 10 percent of plan participants file complaints with respect to the termination.

The plan administrator of such a plan is not permitted to distribute plan assets until final benefit obligations are fully funded and the PBGC issues a notice of sufficiency with respect to the plan. The PBGC generally is not permitted to issue a notice of sufficiency to the plan until 90 days subsequent to the date that the PBGC determines the plan to be sufficient, except if the employer demonstrates that it is experiencing substantial business hardship. During this additional 90-day period, the PBGC is required to consider and respond to participants' complaints. (Under a special rule, the processing of a plan can be delayed no more than 14 days if the PBGC was previously granted an extension of the period in which to determine the plan's sufficiency because of circumstances wholly within the control of the PBGC.)

Conference agreement

The conference agreement generally follows Title IX of the Senate amendment, except that (1) the processing of a plan is delayed only if the employer is to receive a reversion of surplus

assets in excess of $1 million, and the lesser of 200 or 10 percent of plan participants file complaints with respect to the termination; and (2) the PBGC is not permitted to issue a notice of sufficiency for 90 days after the plan is determined to have assets sufficient to fund all benefit commitments, even if an extension period within which PBGC must determine the plan's sufficiency was granted at the request of the PBGC and because of circumstances wholly within the control of the PBGC.

8. Plan Assets

Present law

As a general rule, the assets of an employee benefit plan must be held in trust for the exclusive benefit of plan participants. Those individuals or entities with discretion over the management and disposition of plan assets are subject to a number of fiduciary duties enumerated in ERISA. In addition, ERISA prohibits any transaction in which the assets of a plan inure to the benefit of the employer, plan fiduciaries or other interested parties enumerated in ERISA.

Proposed regulations issued by DOL define plan assets for purposes of the fiduciary duty and prohibited transactions rules of ERISA. Under the regulations, if a plan acquires an equity interest in certain types of entities, the investing plan's assets are considered to include both its investment and an undivided interest in each of the underlying assets of the enttity. The regulation is effective for purposes of identifying plan assets on or after 90 days after publication of the final regulation.

House bill—H.R. 3128

No provision.

House bill—H.R. 3500

No provision.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

The bill provides to certain publicly held real estate entities transitional relief from final regulations, to be issued by DOL, defining "plan assets."

Conference agreement

The conference agreement generally follows Title IX of the Senate amendment. Except as a defense, no rule or regulation adopted after date of enactment that defines the term plan assets for purposes of ERISA shall apply to any asset of certain public real estate programs if investments by plan investors in such programs occur prior to the expiration of a specified period of time following the issuance of such rule or regulation. A plan investor is any plan, account, or arrangement (including an individual retirement account).

The conference agreement does not contain a substantive amendment to ERISA but, rather, provides transitional relief in connection with plan asset regulations that are to be issued under ERISA. This will enable public real estate programs to avoid the disruption of normal business arrangements during the development of final regulations by the DOL.

The transitional relief provided in the conference agreement for certain real estate entities is limited to regulations which the DOL currently has under consideration. The conferees have instructed, and expect, the Secretary to adopt final regulations pursuant to the proposal by December 31, 1986.

The transitional relief provided applies to a real estate program that meets certain conditions, including the requirement that the economic rights of ownership with respect to a security issued by such program are "freely transferable." Whether a particular security is "freely transferable" is to be determined based upon all the facts and circumstances; however, the conference agreement also lists several kinds of restrictions which, absent unusual circumstances, will not (either alone or in any combination) cause a security to fail to be freely transferable. The categories are based upon restrictions commonly found in public offerings of securities of real estate entities which are imposed in order to comply with State and Federal laws, to assure continued eligibility for favorable tax treatment, and to avoid certain practical administrative problems. The conferees understand that such restrictions do not, alone or in combination, present any substantial impediment to the ability of investors to readily dispose of their investments and do not prevent such securities from being described as "freely transferable" in prospectuses required under the Federal securities laws. Such a description need not be included in a prospectus in order for a security offered or acquired thereunder to be considered "freely transferable" for purposes of this section.

One of the factors listed is the requirement that transfer or administrative fees be resonable. It is intended that a fee will not be unreasonable if it does not exceed the cost of effecting transfers of interest on the program's books and the cost of complying with State filing requirements.

It is the intention of the conferees that the requirement that every interests in a real estate entity must be registered under Federal securities laws shall not apply to interest issued to initial limited partners solely for partnership organizational purposes in compliance with State limited partnership laws, provided that such interests are nominal in amount when compared to all other interests in the partnership as of the date of the completion of the offering of such entity, and such partnership was organized prior to enactment. Generally, an interest will be considered nominal if the interest has a value as of the date of issue of less than $20,000 and represents less than one percent of the total interests outstanding as of the completion of the offering period.

Although this section only covers certain public real estate entities, no inference should be drawn concerning the status of any other entity.

9. Additional studies

House bill.—H.R. 3128

No provision.

House bill—H.R. 3500

No provision.

Senate amendment—Title VII

No provision.

Senate amendment—Title IX

The bill requires that DOL conduct a study of terminations of overfunded pension plans. DOL is required to submit a report on the study, together with any recommendations for statutory changes, to the House Committee on Education and Labor, the Senate Finance Committee, and the Senate Committee on Labor and Human Resources by February 1, 1986.

The bill also requires that the PBGC conduct a study on the purchase of insurance contracts from an insurer in satisfaction of all final benefit obligations under ERISA. The PBGC is required to submit a report on the study to various committees of Congress by one year from the date of enactment.

Conference agreement

The conference agreement requires the Secretary of Labor to conduct a study of terminations of overfunded pension plans. The report, together with any recommendations for statutory change, must be submitted to the Committees named above by February 1, 1986.

10. Effective dates

The provisions of the conference agreement relating to amendments to reduce significantly future benefit accruals apply to amendments adopted on or after the earlier of January 1, 1986, or the date of enactment.

The provisions of the conference agreement relating to voluntary plan terminations apply to terminations for which a NOIT is filed on or after the earlier of January 1, 1986, or the date of enactment. The provisions relating to involuntary plan terminations apply to terminations for which termination proceedings are instituted on or after the earlier of January 1, 1986, or the date of enactment.

The provisions relating to waivers of the minimum funding standard apply to applications for waivers, extensions of an amortization period, and modifications of a previously granted waiver, submitted to the IRS on or after the earlier of January 1, 1986, or the date of enactment.

The provisions of new ERISA section 4070 relating to enforcement apply to actions filed on or after the earlier of January 1, 1986, or the date of enactment.

As noted above, the provisions of the conference agreement relating to evasion of liability apply to transactions becoming effective on or after the earlier of Janaury 1, 1986, or the date of enactment.

Special effective dates, as described above, are provided for the provisions of the conference agreement relating to PBGC premiums, the special processing rule for pending cases, the DOL plan asset regulations, and the studies authorized.

TITLE XII—INCOME SECURITY AND RELATED PROGRAMS

1. Minor and Federal amendments

(a) Demonstration Projects Involving the Disability Insurance Program (Section 760 of the Senate amendment)

Present law

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 of various ways to facilitate and encourage the return to employment of individuals who would otherwise remain dependent on disability benefits. 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 waiver authority the Secretary is unable to carry out demonstration projects that have not yet been implemented.

House bill

No provision.

Senate amendment

Extends the waiver authority for 5 years. The deadline for a final report on the OASDI projects is extended to June 9, 1990. Since this requirement is made applicable only to OASDI, the provision could be interpreted to grant a permanent extension of authority to waive the Supplemental Security Income program rules.

Effective date.—Requires a final report to Congress by June 9, 1990.

Outlay effect (in millions):

Fiscal years:	
1986	$3
1987	5
1988	5
3-year total	13

Conference agreement

House recedes to the Senate amendment.

(b) Disability Advisory Council (Section 761 of the Senate amendment)

Present law

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 disability amendments enacted in 1984 re-

quire that the Council to be appointed in 1985 make recommendations on the medical and vocational aspects of disability.

House bill

No provision.

Senate amendment

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 December 31, 1986.

Outlay effect.—None

Conference agreement

House recedes to the Senate amendment.

(c) Taxation of Social Security Benefits Received by Certain Citizens of Possessions of the United States (Section 762 of the Senate amendment)

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.

House bill

No provision.

Senate amendment

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.

Effective date.—Applies to benefits received after December 31, 1983, in taxable years ending after such date.

Revenue effect (in millions):

Fiscal years:	
1986	−$1
1987	−1
1988	−1
3-year total	−3

Conference agreement

House recedes to the Senate amendment.

(d) Application of Dependency Test to Adopted Great-Grandchildren for Purposes of Child's Insurance Benefit (Section 763 of the Senate amendment)

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.

House bill

No provision.

Senate amendment

Extends the provision to great-grandchildren of the beneficiary.
Effective date.—Applies with respect to benefits for which an application is filed after the date of enactment.
Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.
(e) Elimination of Requirement for Publication of Revisions in Pre-1979 Benefit Table (Section 764 of the Senate amendment)

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 to those eligible for benefits in 1978 or earlier.)

House bill

No provision.

Senate amendment

Eliminates the requirements to publish the revised tables, but would not affect the revisions themselves.
Effective date.—The month after the month of enactment.
Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.
(f) Notification Formula Clarification (Section 765 of the Senate amendment)

Present law

Under the 1983 Amendments, the Board of Trustees is required to notify Congress whenever it determines that the reserves in any of the trust funds at the beginning of any calendar year may become less than 20 percent of expenditures

House bill

No provision.

Senate amendment

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.
Effective date.—The month after the month of enactment.
Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.
(g) Extension of 15-month Reentitlement Period to Childhood Disability Beneficiaries Subsequently Entitle (Section 766 of the Senate amendment)

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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.

House bill

No provision.

Senate amendment

Extends the subsequent 15-month reentitlement periods to reentitled childhood disability beneficiaries.

Effective date.—Applies to individuals who are disabled on or after December 1, 1980.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

(h) Charging of Work Deductions Against Auxiliary Benefits in Disability Cases (Section 767 of the Senate amendment)

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. As a result of a technical error in the 1980 amendments, this 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.

House bill

No provision.

Senate amendment

Requires the use of the disability family maximum limit for computing the individual's deductions as well as for computing the total family entitlement.

Effective date.—Effective with respect to benefits payable for months after December 1985.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

(i) Perfecting Amendments to Disability Offset Provision (Section 768 of the Senate amendment)

Present law

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.

House bill

No provision.

Senate amendment

(a) Clarifies that all disability benefits paid under a Federal or State workers' compensation law or plan would continue to be subject to the disability offset.

(b) 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.

Effective date.—(a) is effective as if it were in effect upon implementation of the Omnibus Budget Reconciliation Act of 1981. (b) is effective for persons becoming disabled after the month of enactment.

Outlay effect (in millions):

Fiscal years:	
1986	(*)
1987	−$1
1988	−1
3-year total	−2

*Less than −$500,000.

Conference agreement

House recedes to the Senate amendment.

(j) State Coverage Agreements (Section 769 of the Senate amendment)

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.

House bill

No provision.

Senate amendment

Makes all agreements and modifications of agreements effective on the date the agreement is mailed or delivered by other means to the Secretary.

Effective date.—For agreements or modifications mailed or delivered on or after the date of enactment.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

(k) Effect of Early Delivery of Benefit Checks (Section 769A of the Senate amendment)

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 effect the amount of cost-of-living increases. This could also result in exaggerated beneficiary tax liability in the earlier year and reduced tax liability in the later year.

House bill

No provision.

Senate amendment

Eliminates 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.

Effective date.—For benefit checks issued for months ending after the date of enactment.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

2. Exemption from Social Security coverage for retired Federal judges on active duty (Section 769C of the Senate amendment)

Present law

The 1983 Social Security Amendments (Public Law 98-21) provided that the wages of all active Fedeal 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.)

House bill

No provision.

Senate amendment

Excludes, from the definiton of wages for Social Security purposes, the amounts received by Federal judges who meet the criteria for retirement on salary (e.g., age 65 with 15 years of service or 70 with 10 of service), who retire, and who perform active duty. 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.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

3. Recovery of overpayments (Section 769D of the Senate amendment)

Present 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, benefts erroneously paid to a deceased individual by means of direct deposit are recovered by the Department of the Treasury from the financial organization which accept the deposit. In most cases, the financial organization debits the account to which the amounts were finally credited. When an account is debited, the financial organization is required to provide concurrent notice to any individuals shown as owners.

House bill

No provision.

Senate 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.

Effective date.—Applies to deaths of which the Secretary of Health and Human Services is first notified on or after the date of enactment.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

4. Study of benefit formula notch (Section 769E of the Senate amendment)

Present 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 than the old one, a transitional provision was included in the 1977 amendments to smooth the differnces between benefits computed under the two systems in the early years of the new system. 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, it does not eliminate it.

House bill

No provision.

Senate amendment

Directs the Secretary of HHS 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.

Outlay effect.—None.

Conference agreement

Senate recedes to the House bill.

5. Coverage of Connecticut State police (Section 769H of the Senate amendment)

Present law

Under the Social Security Act, only States specifically listed in the Act may extend social security coverage to policemen who are

covered under other retirement programs. Connecticut is not listed. Listed States may only extend coverage in one of two ways: (1) by covering all current and future employees of the affected group; or (2) by covering all future employees and those current employees who desire coverage.

House bill

No provision.

Senate amendment

Allows Connecticut, if the Governor so requests, to cover State police hired on or after May 8, 1984 without conducting a referendum.

Effective date.—Applies to individuals hired on or after May 8, 1984 who are members of the Tier II plan of the Connecticut State Employee Retirement System, with respect to services performed after enactment of this Act.

Revenue effect (in millions):

Fiscal years:	
1986	[1]
1987	$1
1988	1
3-year total	2

[1] Less than $500,000.

Conference agreement

House recedes to the Senate amendment.

6. Removal of comment prohibition by Social Security and Medicare actuaries relating to economic assumptions (Section 735 of Senate amendment) (See also item 54 in Part I Medicare provisions)

Present law

Requires Board of Trustees annual report on the financial status of the Social Security trust funds (including the Medicare trust funds) to include an actuarial opinion certifying that the assumptions and cost estimates used in the report are reasonable. According to Section 154 of the Social Security Amendments of 1983 (P.L. 98–21), that certification may not refer to the economic assumptions underlying the Trustees' reports.

House bill

No provision.

Senate amendment

Eliminates the language of current law prohibiting Social Security and Medicare actuaries from commenting on the economic assumptions underlying the Trustees' reports.

Effective date.—Enactment.

Outlay effect.—None.

Conference agreement

House recedes to the Senate amendment.

7. Restoration of trust fund investments (Section 769G of the Senate amendment) [Related measures are contained in House and Senate amendments to H.J. Res. 372]

House bill

No provision.

Senate amendment

For Social Security Trust Funds and other retirement funds:

(a) Requires the Secretary of the Treasury, on the basis as if H.J.Res. 372 (as deemed passed by the House on August 1, 1985) had been enacted on August 1, 1985, to:

(1) immediately reissue securities redeemed on or after September 1, 1985 that would not have been redeemed;

(2) pay the interest that would have accrued but for "non-investment, redemptions, and disinvestments" on or after September 1, 1985;

(b) Requires the Secretary to pay to the trust funds the present value of the permanent interest loss resulting from limitations on the public debt from September 1, 1984 to September 1, 1985.

The determinations of interest loss for Social Security and Medicare would be made by the Secretary of the Treasury and the Commissioner of Social Security, and by the Secretary and Chairman of the Railroad Retirement Board for railroad retirement. All determinations would be certified by the Comptroller General, and also by the public members of the Board of Trustees with respect to Social Security and Medicare.

(c) Requires the Secretary to provide 15 days prior notice to Congress and to each member of the Board of Trustees of any planned action to disinvest or not invest trust fund assets due to debt limit constraints.

Effective date.—Immediately with respect to reissuance of trust fund holdings; by June 30, 1986 with respect to the payment of lost interest (with April 1, 1986 or earlier notice to Congress of any disagreements in making the interest determinations).

Outlay effect.—None.

Conference agreement

Senate recedes with amendment to restore the 1984 losses of the Civil Service Retirement trust funds.

Civil Service

On December 31, 1985, the Secretary of the Treasury shall pay to the Civil Service Retirement and Disability Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by the Secretary to be equal to the sum of—

(i) the excess of the amount of interest which would have been earned by such fund, during the period beginning with September 28, 1984 and ending with December 31, 1984 on all moneies transferred to such fund on September 28, 1984, if all such monies had been invested on September 28, 1984, over the amount of interest actually earned by such fund on such monies during such period;

(ii) interest that would have been earned on the amount described in clause (i) during the period starting with January 1, 1985 and ending with June 30, 1985;

(iii) the excess of the amount of interest which would have been earned by such fund, during the period beginning on January 1, 1985 and ending on June 30, 1985, on all monies transferred to such fund on September 28, 1984, if all such monies had been invested on September 28, 1984, over the amount of interest actually earned by such fund on such monies during such period; and

(iv) the interest that would have been earned on the amounts described in clauses (i), (ii) and (iii) during the period starting with July 1, 1985 and ending with December 31, 1985.

Military

On March 31, 1986, the Secretary of the Treasury shall pay to the Department of Defense Military Retirement Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by the Secretary of the Treasury, in consultation with the Secretary of Defense, to be sufficient to compensate such fund, to the maximum extent practicable, for losses arising from the inability to invest, on October 1, 1984, all monies transferred to such fund on such date.

SUBTITLE B—SSI PROGRAM

1. Amendments relating to State supplementation under the SSI program

Present law

When there is an increase in the Federal SSI benefit standard, States which supplement the Federal standard are required to "passthrough" the Federal increase by not decreasing State supplementary payments. States are allowed to meet this requirement under two different options. Under the payment level option, a State can meet the passthrough requirement by not reducing the State supplementary payment levels (the net State payment over and above the Federal payment) below those in effect in March, 1983 but with a reduction in State payment levels allowed after July, 1983 to provide only a cost-of-living increase instead of the full $20 individual and $30 couple increase in the Federal SSI supplementary payment levels below their December, 1976 levels. As an alternative to the payment level option, a State can meet the passthrough requirement by spending as much in total for State supplementary payments in the 12-month period following the Federal increase as the State spent in the previous 12-month period.

House bill

No provision.

Senate amendment

The passthrough requirement under the payment level option would be modified to allow a State to meet the passthrough requirement by using either the current law's 1983 payment level

base or the previous law's December, 1976 State supplementary payment level base but with a full passthrough of the July, 1983 $20/$30 increase. This would allow any State that has increased its State supplementary payment levels above those in effect in December, 1976 to reduce those levels (but not below those in effect in December, 1976). This change would be effective for months beginning after March, 1983.

Conference agreement

The Conference agreement follows the Senate bill but with the following modifications. In addition to the current methods of compliance with the passthrough requirement, a State would be found to be in compliance with the passthrough requirement for calendar years 1984 and 1985 if in calendar year 1986, the State supplementary payment levels are such that, since December, 1976, the State has increased its State supplementary payment levels (other than for residents of medical facilities) by no less than the total percentage increase in the Federal SSI benefit standard between December, 1976 and February, 1986 including the cost-of-living increase for 1986.

The Conference agreement also provides that the Social Security Administration shall, at the request of a State, administer State supplementary payments provided to residents of medical institutions who are eligible for the $25 a month Federal SSI personal needs allowance.

2. Third-party liability collections (SSI eligibility)

Present law

Medicaid recipients are required, as a condition of eligibility for Medicaid, to assign their rights to medical support payments and other payments for medical care to the State.

House bill

No provision.

Senate amendment

Requires applicants and recipients, as a condition of SSI eligibility, to cooperate with the Secretary of HHS in identifying and pursuing third parties liable for health coverage unless such individual has good cause for refusing to cooperate as determined in accordance with standards prescribed by the Secretary.

Conference agreement

The Conference agreement follows the House bill.

3. Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula

Present law

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.

House bill

No provision.

Senate amendment

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 eligibility. The provision further directs the Secretary to inform the States of the identities of affected individuals, solicit their applications for Medicaid coverage and process their applications promptly. Effective for months starting at least 2 months after enactment.

Conference agreement

The conference agreement follows the Senate bill.

Part VI: AFDC, Adoption Assistance, and Foster Care

1. AFDC and Medicaid quality control

(Section 301 of House bill)

Present law

AFDC: Federal regulations outline AFDC quality control procedures for measuring errors in eligibility and payment, identifying causes of error, and taking corrective action. A State's error rate is determined annually from the State's full sample and a Federal subsample.

Before enactment of P.L. 97-248, regulations required States to reach a 4 percent AFDC error tolerance level, in phased stages between fiscal years 1981 and 1984. Starting in FY 1984, the law reduced the tolerance level to 3 percent for erroneous excess payments (overpayments to eligibles and payments to ineligibles).

The law prescribes fiscal sanctions (withholding of some program matching funds) for State AFDC payment error rates that exceed tolerances. Fiscal sanctions have been assessed, but not collected. By regulation, the payment error rate tolerance is 4 percent for Puerto Rico, Guam, and the Virgin Islands. The statute allows fiscal incentives to be paid to those jurisdictions for dollar error rates (including underpayments) that are below 4 percent.

The law permits the HHS Secretary to waive all or part of fiscal sanctions if a State is unable to reach the target despite a good faith effort. This finding is limited to extraordinary circumstances.

Medicaid: Federal regulations require States to operate a Medicaid quality control eligibility system that identifies, on a sample basis, erroneous payments resulting from ineligibility, incorrect beneficiary liability, or third-party liability. States are required to take action to correct any eligibility, third-party liability, or other errors found in the sample cases. A State's error rate is determined annually from a State's full sample and a Federal subsample.

Effective with calendar quarters beginning April 1, 1983, P.L. 97-248 required States to keep their Medicaid payment error rates at or below 3 percent. Payment errors are Medicaid payments made for individuals or families in the sample subject to quality control review who were ineligible or who had not met beneficiary liability requirements prior to receiving services.

Technical errors that do not affect the amount of medical assistance paid are excluded from the calculation of a State's erroneous payments. Payments made on behalf of aged, blind or disabled individuals whose eligibility determinations were made exclusively by the Social Security Administration are excluded from the calculation of a State's erroneous payments.

States with Medicaid payment error rates in excess of 3 percent are subject to a disallowance of Federal Medicaid matching funds. These reductions are imposed prospectively, using an anticipated error rate projected by the Health Care Financing Administration (HCFA) based upon a State's previous error rates. At the end of each annual period, when actual payment error rates have been determined, the appropriate adjustment in Federal matching payments is made. Fiscal sanctions have been assessed and collected.

Puerto Rico, Guam, the Virgin Islands and American Samoa are not subject to a Medicaid payment error rate standard.

The Administrator of HCFA is authorized to waive all or part of the fiscal sanctions if the State is unable to meet the 3 percent standard despite a good faith effort. This finding is limited to extraordinary circumstances.

House bill

AFDC: Establishes basic AFDC quality control procedures in law. Permits States to use 6-month or annual samples, but not to reduce sample size.

Sets a national tolerance level of 3.5 percent for erroneous AFDC payments (payments to ineligible and overpayments to eligibles). Requires individual tolerance rates for States, which can range as high as 5 percent depending on the existence of the AFDC-UP program in the State, the share of earners among the State's AFDC families and the State's population density.

Revises calculation of a State's error rate by: excluding technical errors that do not affect the AFDC payment levels and by setting a State's error rate at the lower bound rather than the midpoint of the range within which its true error rate falls in cases where the sample size is sufficient to produce a lower bound that is no more than 2.5 percentage points below the midpoint.

Sets a State's fiscal sanction equal to the Federal portion of AFDC benefits paid above the State tolerance level, using the adjusted State error rate. Reduces a State's sanction by the Federal share of overpayments collected by the State in the fiscal year to which the sanction applies.

Requires the HHS Secretary to take into account factors beyond the State's control and other matters in replying to waiver requests. Requires the Secretary to waive fiscal sanctions if a State submits a corrective action plan that would increase its administrative costs by as much as 50 percent of the sanction. These expenditures would be a Federally-matched administrative expense.

Bill provisions would not apply to Puerto Rico, Guam and the Virgin Islands.

The legislation would be effective for quarters in fiscal 1983 and later, except at State option and in accordance with regulations to be prescribed by the HHS secretary, changes may take effect for quarters in FY 1981 and 1982, or in FY 1982.

Medicaid: No provision.

Senate amendment

AFDC and Medicaid: Prohibits collection of AFDC or Medicaid fiscal sanctions, including any as yet uncollected sanctions for 1981 and later years, for 2 years after enactment. Requires sanctions for the 2-year moratorium period and for earlier times to be subsequently calculated on the basis of rules in the restructured program.

During the 2-year moratorium of fiscal sanctions, continues data collection and calculation of error rates as under current law.

Requires the HHS Secretary to conduct a study of quality control systems for AFDC and Medicaid, examining how best to operate them to improve administration and obtain reasonable data on which to base fiscal sanctions. Requires the Secretary to contract with the National Academy of Sciences to conduct a concurrent study. Sets one year after enactment as the deadline for reports on both studies.

Requires the Secretary, not later than 18 months after enactment, to publish regulations to restructure the quality control systems for AFDC and Medicaid to the extent he determines appropriate and to establish criteria for adjusting fiscal sanctions calculated for quarters before the new systems so as to eliminate penalties that would not have been imposed had the new rules been in effect then. Requires the Secretary to take into account the prescribed quality control studies in revising the systems. Requires the Secretary to implement the revised systems beginning with the first calendar year after the two-year moratorium.

The provision would be effective on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. Grants for teenage pregnancy program

(Section 302 of House bill)

Present law

Although some States operate pilot pregnancy service programs for teenage families, there is no specific block grant program designed to provide these services to AFDC recipients in each State.

House bill

Authorizes $50 million in fiscal year 1986 and $100 million in 1987 for grants to State AFDC agencies to operate teenage pregnancy programs for children and young parents up to age 25 who are eligible for AFDC. Limits funds to areas with high rates of teenage pregnancy or infant mortality. Requires each site receiving

funds to act to discourage teenage pregnancy and to give services to teenage mothers and fathers.

Goals of pregnancy prevention program include: encouraging children to postpone sexual activity and child bearing and to develop education and employment goals; identifying factors that determine teenage contraceptive use and sexual activity.

Makes eligible for services to help them become self-sufficient: AFDC-eligible persons under age 25 who are pregnant or are parents of children under 6 and who have not completed high school (or its equivalent) and who volunteer for the program. Requires participants to seek a high school diploma (or equivalent). Requires State programs to provide each participant with academic or vocational training, job counseling, employment readiness and job placement services, and an individualized assessment and plan. Provides that States could obtain permission from the Secretary to require participation if funds are sufficient to provide all necessary services for all eligible persons.

Prohibits use of these grant funds for abortions or counseling to have an abortion except when the mother's life would be endangered if the fetus were carried to term.

Allocates funds to States on the basis of their share of national AFDC benefit spending. Provides that unused funds would be reallocated where needed.

Requires applicant States to submit a program plan with provision for specified services. Requires participating States to report on progam activities by March 1, 1987.

Requires the HHS Secretary to report to Congress on program evaluation and recommendations for the future by July 1, 1987.

Specifies that payments made and services given to program participants shall not be considered income or resources by AFDC.

The program would be effective from October 1, 1985 until September 30, 1987. (However, funds allocated to States before September 30, 1987 could be carried over to fiscal year 1988.)

Senate amendment

No provision.

Conference agreement

The conference agreement folllows the Senate amendment.

3. AFDC for families with unemployed parents

(Section 303 of House bill)

Present law

States have the option to provide AFDC to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

For eligibility, the law requires that the unemployed parent have worked 6 or more quarters in any 13-calendar quarter period ending within 1 year before applying for AFDC-UP.

States without an AFDC-UP program are: Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Nevada, New Hampshire, New

Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming.

House bill

Requires all State AFDC programs to offer coverage to financially eligible two-parent families in which the principal earner is "unemployed," defined as working fewer than 100 hours per month.

Permits States to substitute for 4 of the 6 quarters of work, quarters of full-time attendance in elementary or secondary school or full-time participation in vocational training, but sets a lifetime limit of 4 quarters creditable to vocational training.

The provision would be effective October 1, 1986.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with an amendment establishing January 1, 1988 as the effective date for the mandate.

4. Recovery of excess funding for incomplete automated AFDC systems

(Section 771 of Senate amendment)

Present law

A Federal matching rate of 90 percent is paid for the development and installation of automated claims processing and information retrieval systems for AFDC. Systems must be designed and developed in accordance with a planning document approved by the Secretary of Health and Human Services.

House bill

No provision.

Senate amendment

Requires the Secretary to recover 40 percent of the amounts spent on automated systems from any State that fails to implement those systems by the implementation date called for in the approved planning document. Authorizes the HHS Secretary to extend the deadline if the failure to meet the deadline occurs for reasons which the State cannot control. The provision would be effective on the date of enactment, but applicable only to funds spent after that date.

Conference agreement

The House recedes. The managers intend that the Secretary of Health and Human Services extend any deadlines and waive any penalty if the deadline is not met for reasons which the State cannot control. Specifically, this would include extending the deadline for contractor delays and delays in hardware delivery which cause implementation delays. The conferees also recognize that the

deadlines set in the advanced planning document are established very early in the system development process. Frequently, these deadlines are unrealistic given the system design that is eventually chosen. States should be permitted to revise these deadlines, subject to the approval of the Secretary.

5. Counting certain payments to Indians as income

(Section 772 of Senate amendment)

Present law

A 1973 law, as amended in 1982, generally exempts from taxation certain per capita distributions to Indian tribal members from Indian trust funds and provides that such payments will be disregarded by Federally-funded benefit programs. As an exception to this rule, per capita payments in excess of $2,000 can be counted as income for Federally-assisted programs other than those under the Social Security Act.

House bill

No provision.

Senate amendment

Applies the $2,000 limit on uncounted income to Social Security Act programs. Calculates (for purposes of all Federally-assisted programs) the $2,000 limit on the aggregate of all per capita payments received in a year by all members of a family unit. The amendment would be effective January 1, 1986.

Conference agreement

The Conference agreement generally follows the House bill. The Conference committee believes that there is need for a thorough review and evaluation of the current provisions of law concerning the manner in which various forms of per capita income received by members of Indian tribes and organizations is taken into account in determining the eligibility for and the amount of income and medical assistance under the Social Security Act and other federal programs.

Such an evaluation needs to take into account the unique responsibility that the Federal government has to members of Indian tribes and organizations. The evaluation also needs to consider how such responsibilities should fit within the broader Federal responsibilities to provide income and medical assistance to low income individuals and in an equitable manner irrespective of membership in a particular group or historical circumstances.

The Conferees, therefore, direct the General Accounting Office (GAO) to conduct a study of the extent, size, nature and frequency of payments to Indians from various funds which are based on their status as a member of an Indian tribe or organization. The study should also describe how these payments are treated under current law for purposes of eligibility for programs authorized under the Social Security Act and other means tested programs. As part of the study, the GAO would also gather information on the justification which has been given for special exceptions in the

counting of certain types of income received by members of Indian tribes or organizations.

It is intended that the report would be submitted to the Finance Committee and Agriculture Committee and Select Committee on Indian Affairs of the Senate and the Committee on Ways and Means, Committee on Energy and Commerce, Committee on Agriculture, Committee on Interior and Insular Affairs of the House. The report shall be submitted no later than one year from the date of enactment of this Conference Report.

6. Third-party liability collections (AFDC eligibility)

(Section 746 of Senate amendment)

Present law

Medicaid recipients are required, as a condition of eligibility for Medicaid, to assign their rights to medical support payments and other payments for medical care to the State.

House bill

No provision.

Senate amendment

Requires applicants and recipients, as a condition of AFDC eligibility, to cooperate with the Secretary of HHS in identifying and pursuing third parties liable for health coverage unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary. The provision would be effective for calendar quarters beginning on or after October 1, 1985, except delay is permitted where State legislation is required.

Conference agreement

The conference agreement follows the Senate amendment with a modification clarifying that individuals are required to identify, to the extent they are able, potentially liable insurers and other third parties, and to provide information to assist the State in pursuing third parties. Beneficiaries are not required to pursue the collections themselves. Pursuit is the responsibility of the provider or the State.

The Managers also note that, under current law, State child support enforcement agencies, which are required to enforce the child support obligations on behalf of all AFDC families, must also petition the court for medical support when it is available to the absent parent at a reasonable cost.

The conference agreement also follows the Senate amendment provision which excludes, from the calculation of AFDC fiscal sanctions, errors resulting from the application of this policy.

7. Provisions relating to Medicaid coverage under the adoption assistance and Foster Care Programs

(a) Medicaid Eligibility Related to Adoption Assistance Agreements

Present law

Under the Title IV-E adoption assistance program, only children for whom adoption assistance payment are being made under an Adoption Assistance Agreement are deemed to be receiving AFDC and thus eligible for Medicaid.

House bill

No provision.

Senate amendment

Removes the need for an actual adoption assistance payment to be made for the adopted child to be deemed eligible for Medicaid. If an Adoption Assistance Agreement under Title IV-E is in effect, the child would be deemed eligible for Medicaid. Applies to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of enactment.

Conference agreement

The Conference agreement follows the Senate amendment

(b) Medicaid Eligibility in State of Residence

Present law

The State which entered into the Adoption Assistance Agreement related to a particular child is responsible for providing Medicaid coverage to that child, even if the child and adoptive parents live in a different State. Similarly, for children in foster care the Medicaid coverage is provided by the State responsible for the foster care placement.

House bill

Amends Title XIX to specify that, for purposes of Medicaid eligibility, children receiving adoption assistance or foster care payments under Title IV-E of the Social Security Act are eligible for Medicaid from the State in which they reside even if this is not the State making the Title IV-E foster care or adoption assistance payment.

Senate amendment

Amends the Title IV-E adoption assistance law to provide that in the case of a child for whom an Adoption Assistance Agreement is in effect under Title IV-E, the State of the child's residence would be responsible for providing Medicaid to the child.

Conference agreement

The Conference agreement follows both the House bill and Senate amendment with modifications. The agreement provides that for purposes of Medicaid eligibility, children with respect to

whom there is an Adoption Assistance Agreement in effect under Title IV-E and foster care children for whom payments are being made under Title IV-E would be eligible for Medicaid from the State in which the child resides. The Conference agreement would amend both the Title XIX Medicaid statute and the Title IV-E adoption assistance and foster care program statute to provide for Medicaid eligibility in the State in which the child resides.

The provision is effective beginning with medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of enactment.

(c) Medicaid Eligibility for Children Prior to Decree of Adoption

Present law

Adoption assistance and, therefore, Medicaid—to the extent that it is based on adoption assistance—are available only after a child is placed for adoption and an interlocutory decree of adoption is issued or the adoption is finalized under a judicial order.

House bill

No provision.

Senate amendment

Establishes Medicaid eligibility at the time a child is placed for adoption in accordance with applicable State law and for whom an adoption assistance agreement is in effect whether or not an interlocutory decree of adoption or a judicial decree of adoption has been issued. The amendment would apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of enactment.

Conference agreement

The Conference agreement follows the Senate amendment.

8. Extension of ceiling on AFDC foster care funds and of State authority to transfer funds to child welfare services

Present law

State-by-State ceilings on Federal AFDC foster care maintenance funds were imposed through fiscal year 1985 by Public Law 96-272, as amended, for any year in which Congress appropriated a specified sum of Title IV-B child welfare funds. Each State's ceiling was based on funding for previous years or the State's under-18 population. The mandatory ceilings were not in effect in fiscal years 1983-85 because child welfare funds remained below the trigger level ($266 million). However, many States chose to operate under a voluntary ceiling.

The law provided that through fiscal year 1985, when operating under a foster care funding limit, whether mandatory or voluntary, and under certain conditions, States could transfer at least some of their allocation of unused foster care funds to child welfare services (all unused foster care funds if a mandatory ceiling were in effect).

House bill

No provision.

Senate amendment

Extends through fiscal year 1987 the ceilings on AFDC foster care funds when annual child welfare services appropriations equal at least $266 million. Extends formulas for calculating each State's ceiling and provisions allowing States to transfer unused foster care funds to child welfare services through fiscal year 1987. Effective October 1, 1985.

Conference agreement

The Conference agreement follows the Senate amendment.

9. Extension of authority for AFDC foster care payments on behalf of children placed in foster care under a voluntary placement agreement

Present law

Title IV-E AFDC foster care payments were authorized through fiscal year 1985 by P.L. 96-272, as amended, for children removed from their home under a voluntary placement agreement, provided States met specified protections and procedures.

House bill

No provision.

Senate amendment

Extends through fiscal year 1987 provisions allowing payments for children placed in foster care under a voluntary agreement. Effective October 1, 1985.

Conference agreement

The Conference agreement follows the Senate amendment.

10. Independent living initiatives

Present law

AFDC foster care maintenance payments are intended for such essentials as food and shelter and generally end when the child reaches age 18 (although some States continue aid to high school students under age 19). Specific services to help foster children prepare for independent living as adults must be funded either by the State or by other Federal programs, such as the Title XX block grant or Title IV-B child welfare services.

House bill

No provision.

Senate amendment

Authorizes $45 million each for fiscal years 1987 and 1988 for State entitlement programs to help AFDC foster care children age 16 and over prepare for independent living. Each State's share of funds would equal its proportion of the fiscal year 1984 AFDC

foster care caseload. Provides that any unused funds would be reallocated to States needing them. Requires no State matching funds, but stipulates that program funds shall not replace those already available for the same general purpose.

Cites as examples of services that would promote the program's objective: enabling children to complete high school or receive vocational training; providing training in daily living skills such as budgeting and career planning; counseling; coordinating services; outreach activities; and developing individuals plans for the transition to independent living. The services will be provided directly by the State agency or under contracts with local governmental entities or private nonprofit organizations that have children in their care.

Requires State case plans for Title IV-E foster care children, where appropriate, to include a description of programs and services that will help them prepare for independent living.

Requires States to submit a report by March 1, 1988, on the uses of program funds and the attainment of program goals. Requires the DHHS Secretary to submit to Congress by July 1, 1988, a description and evaluation of the program and recommendations for the future. The effective date except as noted, would be upon enactment.

Conference agreement

The Conference agreement follows the Senate amendment.

SUBTITLE D—UNEMPLOYMENT COMPENSATION

1. Supplemental unemployment compensation for certain individuals

Present law

The Federal Supplemental Compensation program (FSC), which provided additional weeks of unemployment compensation to individuals who had exhausted their regular State benefits, was due to expire on April 6, 1985. Public Law 99-15, enacted on April 4, 1985, allowed individuals who were receiving FSC benefits for the week of March 31-April 6, to continue to receive the remainder of their benefits. No new FSC benefits were payable after April 6, 1985. Under Public Law 99-15, the remaining weeks of FSC benefits had to be collected in consecutive weeks of unemployment. Any interruption of benefits, for whatever reason, ended an individual's eligibility for FSC benefits.

House bill

The bill allows certain individuals in the State of Pennsylvania to collect the remainder of their FSC benefits, notwithstanding the requirement in Public Law 99-15 that such benefits be collected in consecutive weeks. These individuals were receiving FSC for the week of March 31, 1985-April 6, 1985, and were eligible to collect the remainder of their benefits under Public Law 99-15. The collection of their remaining benefits was interrupted. however, when they were called up in the National Guard in early June to provide services during a major disaster.

The provision applies only to individuals who were called up for National Guard duty by the Governor in a disaster declared by the President on June 3. It applies to weeks of unemployment occurring after the individual had completed his Guard duty but during which he may not have met the work search or availability requirements of State law because he failed to file claims believing he was no longer eligible (having failed to file in consecutive weeks). It applies only until an individual's FSC benefits were exhausted or he became employed, whichever occurred earlier.

Effective date.—For weeks of unemployment beginning after March 31, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

2. Recovery of overpayments

Present 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, is permitted only 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 from which he moved. It also happens when a worker's entitlement is extended by reason of trade adjustment assistance or other Federally-financed unemployment programs.

House bill

No provision.

Senate amendment

Allows reciprocal withholding of overpaid unemployment benefits regardless of the funding source. 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. 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. Implementation of this provision would be at the option of each State.

Effective date.—October 1, 1985.

Conference agreement

The conference agreement follows the Senate amendment.

The House Conferees from the Committee on Energy and Commerce were appointed solely for the consideration of issues related to authorization of expenditures from the Superfund and took no part in the consideration of the Superfund revenue aspects of the Senate amendment.

TITLE XIII—TRADE, CUSTOMS, INCOME SECURITY, AND RELATED PROGRAMS

SUBTITLE A—TRADE AND CUSTOMS PROVISIONS

Part 1—Trade Adjustment Assistance

Short title (Section 13001 of Conference Agreement).

House bill

No provision.

Senate amendment

"Trade Adjustment Assistance Reform and Extension Act of 1985."

Conference agreement

House recedes.

A. WORKER ADJUSTMENT ASSISTANCE

1. Petitions (section 13002 of conference agreement; section 778A of Senate amendment)

Present law

Section 221 permits any group of workers or their authorized representative to file a petition with the Secretary of Labor for a certification of eligibility to apply for TAA.

House bill

No provision.

Senate amendment

Provides explicitly that workers in agricultural firms or subdivisions may petition for TAA certification.

Effective date.—1 year after import fee imposed; i.e., 1 year after the earlier of 2 years after enactment or 30 days after the President certifies that the GATT allows such a fee.

Conference agreement

House recedes with an amendment to make the provision effective upon date of enactment.

2. Group eligibility requirements section 13002 of conference agreement; section 201 of House bill; section 778A of Senate amendment)

a. Agricultural workers

Present law

Any group of workers may be certified eligible to apply for TAA if they meet the statutory criteria.

House bill

No provision.

Senate amendment

Provides explicitly that workers in agricultural firms or sudivisions may be certified eligible to apply for TAA (conforms to amendment above).

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes with an amendment to make the provision effective upon date of enactment

b. Component parts, services

Present law

Under section 222, the Secretary of Labor must certify a group of workers as eligible to apply for TAA benefits if he determines (1) a significant number or proportion of the workers in a firm or subdivision have been laid off or are threatened with layoff; (2) sales and/or production of the firm or subdivision have decreased absolutely; and (3) increased imports of articles like or directly competitive with articles produced by the firm or subdivision "contributed importantly" to the layoffs and sales/production declines.

House bill

No provision.

Senate amendment

Expands certification eligibility to encompass those workers in firms that supply essential parts or essential services for articles produced by directly affected firms.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

c. Relocation overseas

Present law

Because increased imports must be an important cause of layoffs and sales/production declines, workers laid off as a result of firm or plant relocations overseas may be certified if increased imports

of the article produced by that firm or plant preceded its closing and move.

House bill

Expands certification eligibility to workers in a firm or subdivision who are laid off or threatened with layoff "by reason of the relocation of the production functions of that firm or subdivision to a foreign country or instrumentality".

Effective date.—Petitions filed after September 30, 1985.

Senate amendment

No provision.

Conference agreement

House recedes.

3. Qualifying requirements for workers (section 13003 of conference agreement; section 202 of House bill; section 778B of Senate amendment)

a. Cash assistance

Present law

Under section 231, individual certified workers who meet the qualifying requirements on pre-layoff employment are entitled to weekly cash payments (trade readjustment allowances) equal to the amount of their unemployment compensation (UC) after they have first exhausted all UC for the balance of 52 weeks of unemployment. Workers may receive up to 26 additional weeks (maximum of 78 weeks) of TRA benefits while in approved training.

House bill

No provision.

Senate amendment

Adds a new requirement for workers to qualify for TRA payments:

1. The worker must be enrolled in a training program approved under section 236(a); or
2. The worker must have completed such approved training after layoff.

Such workers would be entitled to up to the balance of 78 weeks of TRA benefits.

Alternatively, a worker would be entitled to TRA for up to the balance of 52 rather than the balance of 78 weeks if the worker has received a written statement after layoff from the Secretary of Labor certifying that he was unable to approve a training program under section 236(a) (Secretary must review and certify any such determination by a State or State agency). The Secretary must submit an annual report to the Ways and Means and Finance Committees on the number of certifications.

If the Secretary determines the worker has failed to begin or ceased to participate in the training program without justifiable

cause, no TRA may be paid to the worker until he begins or resumes participation.

No TRA would be paid to the worker for any week he receives on-the-job training.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes with amendments: (1) to clarify that the Secretary of Labor is to certify workers for whom it is not feasible or appropriate to approve a training program under section 236(a); and (2) to remove the requirement that certification may be made only by the Secretary and to include State responsibility for such certifications in cooperative agreements under section 239.

The Conferees intend to emphasize that the purpose of the 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. The Secretary will make the finding on the basis of the criteria under section 236(a), taking 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. The Conferees expect the Secretary of Labor to issue regulations setting forth guidelines and a time frame for the States and State agencies to make certifications under cooperative agreements. The Conferees also expect that the terms of any cooperative agreement will provide for prompt termination of this delegation in the event that a State or State agency fails to comply with such guidelines.

b. Employment requirements

Present law

An individual worker must have at least 26 weeks of employment at weekly wages of $30 or more in adversely affected employment during the 52 weeks preceding layoff to be eligible for TRA payments. Qualifying 26 weeks may include:

Up to 3 weeks of employer-authorized leave (e.g., vacation, sickness) or to serve as fulltime union representative;

Up to 7 weeks of disability covered by workmen's compensation; or

Up to 7 weeks combining disability and leave, of which not more than 3 weeks may be employer-authorized or union leave.

House bill

Increases the maximum number of weeks that may be counted as weeks of employment toward the 26-week minimum preceding layoff from 3 to 7 for employer authorized or union leave; from 7 to 26 weeks for disability; and from 7 to 26 weeks combining disability and leave, of which authorized leave cannot exceed 7 rather than the present 3 weeks.

Effective date.—Petitions filed after September 30, 1985.

Senate amendment

Identical provision.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

4. Limitations on trade readjustment allowances (section 13003(d) of conference agreement; section 203 of House bill)

Present law

Under section 233(a)(2) a worker may collect basic TRA only during the 52-week period beginning with the week immediately following the first week covered by the certification with respect to which the worker has first exhausted all rights to regular unemployment compensation.

House bill

Extends the collection period for basic TRA benefits from 52 to 104 weeks following exhaustion of regular unemployment compensation.

Effective date.—October 1, 1985.

Senate amendment

No provision.

Conference agreement

Senate recedes with an amendment to make the provision effective upon date of enactment.

5. Training (section 13004 of conference agreement; section 204 of House bill; section 778C of Senate amendment)

a. Approval standards

Present law

Under section 236(a), if the Secretary of Labor determines that (1) there is no suitable employment available for an eligible worker; (2) the worker would benefit from appropriate training; (3) there is a reasonable expectation of employment after such training; (4) training approved by the Secretary is available; and (5) the worker is qualified to undertake and complete such training, then the Secretary may approve training for the worker.

House bill

Adds the stipulation that a "reasonable expectation of employment" does not require that employment opportunities for a worker be available or offered immediately upon the completion of training.

Effective date.—Certifications issued after September 30, 1985.

Senate amendment

Clarifies that "no suitable employment available" criterion refers to adversely affected workers.

Amends "training approved by the Secretary" criterion to be "reasonably" available.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes to the Senate provision and Senate recedes to the House provision with amendments to make the provisions effective upon date of enactment.

b. Training approval

Present law

The Secretary may, but is not required, to, approve training for a certified worker if the five criteria are met. Upon approval the worker is entitled to have the costs of training paid by the program.

House bill

No provision.

Senate amendment

Requires approval of training for a certified worker if the five criteria for approval are met.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

c. Types of training

Present law

Under section 236(a), training approved by the Secretary may be available from either governmental agencies or private sources, insofar as possible on-the-job.

House bill

No provision.

Senate amendment

Includes list of types of training that may be approved, including but not limited to, on-the-job, training provided by States or approved by a private industry council under JTPA, or any other training program approved by the Secretary.

Amends section 247 to include a definition of "on-the-job training."

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes with an amendment to make the provision effective upon date of enactment.

d. Training direct payment or voucher

Present law

If training is approved, the worker is entitled to have payment of costs of training paid on his behalf by the Secretary of Labor, through reimbursements to the States under cooperative agreements.

House bill

No provision.

Senate amendment

Directs the Secretary of Labor to pay training costs, up to $4,000, either directly or through a new voucher mechanism, for each worker for whom training has been approved. (There may be one or more vouchers to a qualified worker with respect to a particular separation.) Prohibits double Federal reimbursement of training costs.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

e. On-the-job training

Present law

Section 236(a) requires the Secretary to provide or assure training on-the-job insofar as possible, including related education necessary for occupational skills.

House bill

No provision.

Senate amendment

Applies section 143(b) of JTPA to TAA training (provisions for no displacement or infringement of promotion opportunities of currently employed workers, etc.). Permits payment of on-the-job training only if the training is not for the same occupation from which the worker was laid off and certified, the employer certifies he will employ the worker for at least 26 weeks after training completion if the worker desires and the employer does not have due cause to terminate, and the employer has not violated section 143(b) of the JTPA or any other certification of paid on-the-job training.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes with amendments: (1) to adopt actual language of the provisions of section 143(b) of the JTPA; and (2) to make the provision effective upon date of enactment.

6. Job search allowances (section 13005 of conference agreement; section 778D of Senate amendment)

Present law

Under section 237, the Secretary of Labor may provide reimbursement for 90 percent of the costs of necessary job search by a certified worker, up to $800, if the worker has been laid off, cannot reasonably be expected to secure suitable employment within his commuting area, and applies within specified time limits.

House bill

No provision.

Senate amendment

Adds a benefit of reimbursement for necessary expenses of a job search program approved by the Secretary, available to any certified worker regardless of whether the worker has enrolled in an approved training program or meets the eligibility criteria for existing job search allowances. A reimburseable job search program includes either a job search workshop (short seminar to provide participants with knowledge, e.g., interview techniques, resume writing, to enable them to find jobs) or a job finding club (the same except it includes a one-two week period of supervised activity in which participants attempt to obtain jobs).

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

7. Agreements with States (section 13004 of conference agreement; section 205 of House bill; section 778C of Senate amendment)

Present law

Section 239(a) authorizes the Secretary of Labor to enter into cooperative agreements with any State or any State agency to receive applications, make payments of TAA benefits, and afford adversely affected workers who apply for payments testing, counseling, referral to training, and placement services.

House bill

Adds requirements that each cooperating State agency (1) advise each adversely affected worker to apply for training at the time the worker applies for TRA benefits; and (2) within 60 days after the worker applies for training, to interview and review with that worker suitable training opportunities available under section 236.

Effective date.—October 1, 1985.

Senate amendment

Adds provision that agreements may be made with one or more State or local agencies, including State employment service agencies, State agencies carrying out the JTPA dislocated worker program, or any other State or local agency (e.g., private industry council) administering job training or related programs.

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes to the Senate provision and Senate recedes to the House provision with amendments to make the provisions effective upon date of enactment.

B. FIRM ADJUSTMENT ASSISTANCE

8. Petitions and determinations (section 13006 of conference agreement; section 211 of House bill; section 778A of Senate amendment)

a. Agricultural firms

Present law

Section 251 permits any firm or its representative to file a petition with the Secretary of Commerce and be certified eligible to apply for TAA if they meet the statutory criteria.

House bill

No provision.

Senate amendment

Provides explicitly that any agricultural firm may petition and be certified for TAA eligibility (conforms to amendment for agricultural workers).

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes with an amendment to make the provision effective upon date of enactment.

b. Component parts, services

Present law

Under section 251, the Secretary of Commerce must certify a firm eligible to apply for TAA benefits if (1) a significant number or proportion of the workers in such firm have been laid off or are threatened with layoff; (2) sales and/or production of such firm have decreased absolutely; and (3) increased imports of articles like or directly competitive with articles produced by that firm contributed importantly to the layoffs and sales/production declines.

House bill

No provision.

Senate amendment

Expands certification eligibility to encompass firms that supply essential parts or essential services to directly affected firms (conforms to amendment for workers).

Effective date.—1 year after import fee imposed.

Conference agreement

House recedes.

c. Significant product lines

Present law

Under present criteria, total sales and/or production of the firm must have decreased absolutely for the firm to be certified eligible to apply for TAA.

House bill

Includes an alternative sales/production criterion if sales and/or production of an article that accounts for not less than 25 percent of the firm's total sales or production decline absolutely during the 12 months preceding the most recent 12-month period for which data are available.

Effective date.—Petitions filed after September 30, 1985.

Senate amendment

No provision.

Conference agreement

Senate recedes with an amendment to make the provision effective upon date of enactment.

9. Financial assistance (section 13006 of conference agreement; section 214 of House bill; section 778E of Senate amendment)

Present law

Section 252 authorizes the Secretary of Commerce to provide a certified firm either technical assistance, financial assistance, or both, if he determines that the firm's application (including an economic adjustment proposal) meets the statutory approval criteria.

Financial assistance under section 254 consists of direct loans and/or loan guarantees to be used for fixed asset 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 or the private capital market and that there is a reasonable assurance of repayment, he may provide direct loans up to $1 million per firm and/or loan guarantees up to $3 million per firm.

House bill

Clarifies that single loans or a combination of loans or loan guarantees may be made for mixed uses.

Effective date.—October 1, 1985.

Senate amendment

Eliminates financial assistance, i.e., authority to provide any new direct loans or loan guarantees; conforming amendment eliminates approval criterion that the firm has no reasonable access to financing through the private capital market.

Effective date.—Enactment.

Conference agreement

House recedes.

10. Technical assistance (section 13006 of conference agreement sections 212,213 of House bill)

a. Types of technical assistance

Present law

Section 252(b) authorizes technical assistance to certified firms to implement acceptable adjustment proposals; section 252(c) authorizes technical assistance to certified firms to help them prepare adjustment proposals Section 253 authorizes technical assistance to assist firms in preparing petitions for certification, as well as to certified firms to prepare and implement adjustment proposals.

House bill

Amends section 252 to clarify that three forms of technical assistance are available to firms, consistent with section 253.
Effective date.—October 1, 1985.

Senate amendment

No provision.

Conference agreement

Senate recedes with amendment: (1) to make conforming changes; and (2) to make the provision effective upon date of enactment.

b. Matching requirements

Present law

Section 253(b)(2) limits the U.S. Government share to 75 percent of the cost of technical assistance provided by private individuals, firms, or institutions.

House bill

Removes the 75 percent limitation on the U.S. Government share of the cost of technical assistance to assist firms in preparing petitions for certification or in preparing economic adjustment proposals (including diagnostic surveys). The matching share requirement would continue to apply to assistance for implementing economic adjustment proposals.
Effective date.—October 1, 1985.

Senate amendment

No provision.

Conference agreement

Senate recedes with amendments: (1) to retain the 75 percent limitation on the U.S. Government's share of the cost of preparing economic adjustment proposals; and (2) to make the provision effective upon date of enactment.

11. Protective provisions (section 215 of House bill)

Present law

Section 258(d) prohibits the provision of financial assistance to any firm unless the owners, partners, or officers execute an agreement binding them and the firm for 2 years after the assistance is provided not to employ or retain for professional services any person who on the date the assistance was provided or within one year prior thereto occupied a position or engaged in activities involving discretion in providing the assistance.

House bill

Requires that the agreement bind the owners, partners, or officers on behalf of the firm, but not themselves individually.
Effective date.—October 1, 1985.

Senate amendment

No provision.

Conference agreement

House recedes.

C. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE

12. Termination date (section 13007 of conference agreement; section 221 of House bill; section 778F of Senate amendment)

Present law

Section 285, as amended in 1983, terminated the worker and firm TAA programs on September 30, 1985. Public Law 99-107 extended the termination date until November 14, 1985; Public Law 99-155 further extended the programs through December 14, 1985.

House bill

Amends the termination date in section 285 to reauthorize the worker and firm TAA programs for 4 years through September 30, 1989.

Senate amendment

Reauthorizes worker and firm TAA for 6 years from date of enactment.

Conference agreement

House recedes.

D. FUNDING OF TRADE ADJUSTMENT ASSISTANCE

13. Program funding (section 13009 of conference agreement; section 778H of Senate amendment)

Present law

Worker and firm TAA are funded from general revenues.

House bill

No provision.

Senate amendment

Imposes a small fee on all imports into the United States, up to a maximum one percent, to be set at a uniform ad valorem rate sufficient to provide the necessary funding for the TAA programs and for allowable payment of drawbacks and refunds of such fee. The fee is to be assessed regardless of any duty-free treatment accorded articles under other provisions of law, except on goods or belongings of returning tourists or Americans living abroad. One year after imposition of the import fee, the entire program would be funded by the fee, rather than by general revenues.

Effective date.—Earlier of 2 years after enactment or 30 days after President certifies that GATT allows import fee.

The President is directed to undertake negotiations to achieve changes in the GATT to allow any country to impose such a small uniform fee on all imports to fund any program which assists adjustment to import competition. The President must report to Congress on the progress of negotiations within 6 months of enactment and submit a statement of certification on the date the GATT allows such a fee.

Effective date.—Enactment.

Conference agreement

House recedes with amendments to exempt from the import fee: (1) most articles treated as duty free under schedule 8 of the Tariff Schedules of the United States; and (2) entries valued at less than $1,000.

14. Authorization of appropriations (section 13008(a) of conference agreement; section 778G(a) of Senate amendment)

Present law

Sections 245 and 256(b) authorize to be appropriated to the Secretaries of Labor and Commerce such sums as may be necessary to carry out their program functions.

House bill

No provision.

Senate amendment

Authorizes appropriations of such sums as necessary for worker and firm TAA for fiscal year 1986 through the earlier of 1 year after imposition of the import fee or fiscal year 1989.

Conference agreement

House recedes.

15. Trust fund (section 13008(b) of conference agreement; section 778G(b) of Senate amendment)

Present law

No provision.

House bill

No provision.

Senate amendment

Establishes 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 receipts from the import fee at least quarterly, adjusted for any shortfall or overage in previous transfers. The Secretary must submit an annual report to the Ways and Means and Finance Committees on the actual and expected financial condition and operation of the Fund. The Secretary must invest such portion of the Fund which is not required to meet current withdrawls; interest and proceeds would be credited to the Fund.

Effective date.—Same date as import fee is imposed.

Conference agreement

House recedes.

16. Annual appropriations (section 13008(b) of conference agreement; section 778G(b) of Senate amendment)

Present law

The program is funded from general revenues under annual appropriations bills for the Departments of Labor and Commerce.

House bill

No provision.

Senate amendment

Payments out of the Trust Fund would be subject to the annual appropriations process.

Effective date.—Same date as import fee is imposed.

Conference agreement

House recedes.

17. Taxation of training benefits (section 13010 of conference agreement; section 778I of Senate amendment)

Present law

Section 85 of the Internal Revenue Code provides a limited exclusion from gross income for amounts received by a taxpayer that are in the nature of unemployment compensation. There is no express provision exempting training cost from income.

House bill

No provision.

Senate amendment

Expressly excludes payments of training costs or vouchers entirely from gross income for purposes of income taxation.

Effective date.—Taxable years ending on or after 1 year after imposition of the import fee.

Conference agreement

House recedes.

Part 2—Authorization of Appropriations for Trade and Customs Agencies

18. U.S. International Trade Commission (sec. 13021 of conference agreement; sec. 241 of House bill)

Present law

Section 330(e), Tariff Act of 1930, restricts sums to be appropriated to the ITC to the amount authorized by law; no authorization exists beyond October 1, 1985. (H.R. 2965, as agreed in conference, appropriates $28,600,000 for fiscal year 1986, including not be exceed $2,500 for official reception and representation expenses).

House bill

Authorizes appropriations of $28,901,000 for fiscal year 1986 (including for rental of conference rooms), of which not to exceed $2,500 may be used, subject to the Chairman's approval, for reception and entertainment expenses.

Senate amendment

No provision. (S. 1146, as reported but not included in this bill, authorizes appropriations of $28,901,000 for fiscal year 1986).

Conference agreement

The conferees agreed to the House Provision.

19. U.S. Customs Service (sec. 13022 and 13024 of conference agreement; sec. 242 of House bill, section 799A of Senate amendment)

Present law

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 requires annual enactment of an authorization of appropriation to the U.S. Custom Service.

House bill

For fiscal year 1986 the House bill authorizes appropriations for salaries and expenses of the U.S. Customs Service of an amount not to exceed $769,067,000 of which $50,425,000 is for the operation of the air interdiction program and not to exceed $14,000,000 is for the implementation of "Operation Exodus" and related programs. The authorization level approved by the House not only would restore the proposed cut of 887 positions but would also allocate $27.9 million for the hiring of 800 new frontline customs officers.

The House bill also includes provisions relating to the use of savings from administrative consolidation, criteria for closing ports, the Customs air program, consolidation of drawback liquidation centers, sureties on customs bonds, appropriations for the Customs Forfeiture Fund, and user fees at certain small airports.

Senate amendment

Although the Senate amendment has no provision for overall authorization of appropriations for the U.S. Customs Service, it does provide for an additional authorization of appropriations of $27.9 million for each of fiscal years 1986, 1987 and 1988 to hire 800 additional front-line customs officers. The Commissioner of Customs is directed to ensure that sufficient resources are devoted to customs headquarters in newly created customs districts. (S. 1146, as reported but not included in this bill, would also restore Customs' proposed cut of 887 positions.)

Conference agreement

The conferees agreed to the House provision with several modifications. First, the overall authorization level and air program authorization level were changed to $772,141,000 and $53,500,000 respectively. Provisions were also added providing for the allocation of resources to statutorily created district headquarters offices; extending the application of users fees at certain small airports provided for in section 236 of the Trade and Tariff Act of 1984 to additional airports and continuing a provision requiring Customs to notify the Committees before taking certain actions. The conferees also agreed to continue the funding for new Customs personnel in fiscal years 1987 and 1988.

With regard to the provision extending the application of section 236 of the Trade and Tariff Act, the conferees urge the Secretary to give favorable consideration to the application on behalf of the airport at Pontiac/Oakland, Michigan for designation as an airport subject to this provision.

The provision relating to the allocation of resources to Customs district headquarters offices was added to provide explicit and detailed instructions to the Customs Service in the administration of a customs district designated by statute, such as the Columbia Snake Customs district designated by the Trade and Tariff Act of 1984.

20. U.S. Trade Representative (sec. 13023 of conference agreement; sec. 243 of House bill)

Present law

Section 141(f), Trade Act of 1974, authorizes to be appropriated to the USTR such sums as are provided by law (H.R. 2965, as passed by the House and Senate, appropriates $13,158,000 for fiscal year 1986, of which not to exceed $72,000 is available for official reception and representation expenses).

House bill

Authorizes appropriations of $13,582,000 for fiscal year 1986, of which not to exceed $68,000 may be used for official entertainment and representation expenses.

Senate amendment

No provision. (S. 1146, as reported but not included in this bill, authorizes appropriations of $13,582,000 for fiscal year 1986, including $80,000 for official entertainment and representation expenses.)

Conference agreement

The conferees agreed to the House provision with an amendment increasing the ceiling for official entertainment and representation expenses from "$68,000" to "$80,000".

Part 3—*Customs Fees* (Sec. 13031 of conference agreement; Sec. 251 of House bill; section 777 of Senate amendment)

1. Schedule of fees

Present 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. They do, however, have authority to charge fees under certain limited circumstances, such as when they are providing services (such as pre-clearance of passengers and private aircraft) which are of special benefit to a particular individual. They also have the authority to assess fees on operators of bonded warehouses and foreign trade zones and on the entry of vessels into ports and are authorized to receive reimbursement from carriers for overtime for services provided during non-business hours and reimbursement from local authorities for services provided to certain small airports.

House bill

Amends section 214 of the Customs Procedural Reform Act (19 U.S.C. 58a) to establish the following fee structure to cover the costs of Customs processing of arrivals of:

Commercial vessels (100 tons or over)	$425
Railroad cars	5
Commercial trucks	5
Private aircraft and boats (per year)	25
Passengers (on commercial vessels, aircraft or train):	
From Canada, Mexico, Insular Possessions and adjacent Islands	1
From all other countries	5

Such fees would be applicable 180 days after enactment.

Senate amendment

As a free-standing provision establishes the following fee structure in addition to any other fees authorized by law:

Commercial vessels (100 net tons or more)	$397
Commercial vessels, less than 100 net tons	25
Commercial trucks	5
(Total fees not to exceed $100 per truck in calendar year)	
(Would not apply if train originates and terminates in same country)	
Private aircraft and boats	[1] 25
(Total fees not to exceed $500 per aircraft or boat in calendar year)	
Passengers (commercial vessel or aircraft):	
From Mexico, Canada, Insular possessions and adjacent islands	0
From all other countries	5
Informal entries prepared by customs officer	5
(No fee if passenger arrival fee collected)	
Dutiable mail entries prepared by customs officer	5
In-bond shipments	10
Customs broker permits (per year)	125

[1] On arrival.

Such fees would be applicable 90 days after the date of enactment.

Conference agreement

The conferees agreed to the House provision on vessels under 100 net tons and private aircraft and boats, the Senate provisions on vessels over 100 net tons, trucks, railroad carts, passengers, broker permits and dutiable mail entries and agreed to drop the Senate provision on in-bound shipments and informal entries. The conference agreement fee schedule is as follows:

Commercial vessels (100 net tons or more)	$397
Commercial trucks	5
(Total fees not to exceed $100 per truck in calendar year)	
Railroad cars	5
(Total fees not to exceed $100 per car in calendar year)	
(Would not apply if train originates and terminates in same country)	
Private aircraft and boats (per year)	25
Passengers (commercial vessel or aircraft):	
From Mexico, Canada, Insular possessions and adjacent islands	0
From all other countries	5
Dutiable mail entries prepared by customs officer	5
Customs broker permits (per year)	125

The conferees agreed to the Senate effective date provision except that with respect to passengers fees, such fees would apply to customs services rendered to passengers using transportation for which documents or tickets were issued more than 90 days after the date of enactment.

The processing fee imposed on commercial vessels weighing 100 net tons or more is in addition to existing fees on commercial vessels. The conferees expect the Customs Service to consolidate the new processing fee with existing fees to the extent an existing fee represents a standard charge on every vessel. Overtime should not be included in such a consolidated fee since overtime charges vary according to each vessel's schedule.

Although the conferees agreed to "cap" the annual fee paid by each train car, or turck, they expect the Customs Service to administer this fee as a one-time fee. Thus, the Customs Service should develop regulations for the prepayment of such fees so that those subject to the fee may choose between paying the fee at the time of each entry, or once annually.

The fee on each truck entry is intended to apply to self-propelled vehicles designed and used for the transportation of property.

The annual fee authorized to be imposed by this legislation on private boats, like the other fees, is intended to cover Customs' processing costs in clearing such boats. The conferees recognize, however, that in border states, there are many owners of small pleasure boats (i.e., less than 30 feet) who frequently travel across the border without carrying imported goods. Since Customs processing costs are not incurred in the clearance of such boats, it is the conferees' intention that such pleasure boats should not be subject to this fee. The Secretary is therefore directed to issue regulations exempting such boats from the application of this fee so long as they are not carrying imported goods required to be declared to the U.S. Customs Service.

The conferees further agreed that the users fees provided for under section 13031 shall not apply to crew members on commer-

cial aircraft or commercial vessels or to diplomats entering the United States.

Finally, with regard to the application of the annual fee imposed on permits for customs brokers it is noted that in Public Law 98-573, Congress provided for the imposition of fees on customs brokers to defray the costs of administration. Every individual, corporation, association, or partnership wishing to conduct customs business for those other than themselves must hold a valid customs broker's license. Every person granted a license will be subsequently issued a permit to conduct business in a particular Customs district. Thus, a license holder may have several permits depending upon the number of districts in which he conducts business. Additionally, every person granted a license must file a triennial report pursuant to the Act.

The conferees have agreed to a provision imposing an annual fee for each permit that is issued pursuant to Public Law 98-573. It is through a fee on permits that the bill will help to defray the costs of regulating the customs brokerage industry. The number of permits is a measure of the cost of regulating these brokers.

The conferees anticipate that Customs will also charge a one-time fee for the issuance of a broker's license and accompanying permits, as well as an administrative fee to accompany each filing of the triennial report. The purpose of the latter fees are exclusively to defray the costs of issuing licenses and permits and of processing the receipt and storage of the triennial reports. We understand, for example, that Customs will charge a one-time fee of $300 for licenses and $100 for permits.

The conferees expect that Customs will confine itself to these fees on brokers and avoid arbitrarily increasing the amount charged.

a. Collection of passenger fees

Present law

No provision.

House bill

Provides for passenger fees to be collected by the commercial carriers and separately identified on the ticket as a Federal inspection fee. Fees are to be remitted to the Secretary of the Treasury on a quarterly basis.

Senate amendment

Same provision in substance but also provides for the collection of the fee at the time of departure from the U.S. if the ticket is issued in a foreign country and the fee was not collected as part of the original ticket price.

Conference agreement

The conferees agreed to merge the two provisions together and clarify that whoever issues the ticket is authorized to collect the fee. The Senate language was agreed to with regard to tickets issued in foreign countries and the House language was accepted on remittance of the fees.

b. Status of fees

Present law

Section 214 of the Customs Procedural Reform Act (19 U.S.C 58a) authorizes the collection of specified fees for certain customs services.

House bill

Authorizes Secretary to continue to collect fees to cover the cost of services provided for under 19 U.S.C 58a, as in effect before this Act to the extent not covered in the new fee schedule.

Senate amendment

Since Senate provision is a free-standing provision which does not amend 19 U.S.C. 58a, the authority to collect the fees set out in 19 U.S.C. 58a would continue to exist.

Conference agreement

The conferees agreed to merge two provisions by accepting the Senate free-standing approach and by specifically providing that the Secretary continues to have the authority to charge fees under 19 U.S.C. 58a.

c. Treatment of scheduled airline flights

Present law

No provision.

House bill

With regard to scheduled airline flights, requires customs services to be adequately provided without additional costs (such as for overtime) to airlines or passengers other than the fees set out in the bill.

Senate amendment

Similar provision except an exception is made with respect to designated airports under section 236(c) of the Trade and Tariff Act of 1984, which provides for reimbursement for Customs services.

Conference agreement

The conferees agreed to accept the Senate provision.

d. Deposit and disposition of proceeds

Present law

Section 524 of the Tariff Act (19 USC 1524) provides for receipts for any reimbursable charges or expenses to be deposited as a refund to Customs' appropriation.

House bill

Repeals section 524 and provides for all receipts for reimbursable charges and expenses to be covered into the Treasury as miscellaneous receipts and placed in a proprietary account.

Senate amendment

Retains section 524 and provides for all the fees collected under this Act to be deposited in a separate "Customs Users Fee Account" within the general fund of the Treasury.

The Secretary is authorized and directed to refund out of this account to its appropriation an amount to cover Customs overtime inspectional services for which a reimbursement is not required. Such refunds should be made at least quarterly with appropriate adjustments, as needed.

Conference agreement

The conferees agreed to accept the Senate provision.

e. Definitions

Present law

No provision.

House bill

No provision.

Senate amendment

Defines terms "vessel" (to exclude ferry), "arrival", "customs territory of the United States", and "customs broker permit".

Conference agreement

The conferees agreed to the Senate provision.

22. Promulgation of rules and regulations

Present law

Secretary has general authority (19 USC 66) to prescribe rules and regulations in carrying out provisions of law.

House bill

No provision.

Senate amendment

Grants Secretary explicit authority to prescribe rules and regulations to carry out this provision.

Conference agreement

The conferees agreed to the Senate provision.

23. Advisory Committee

Present law

No provision.

House bill

Provides for the establishment of an advisory committee to meet on a periodic basis and to advise the Secretary on issues relating to performance of Customs' services. The committee is to be made up of representatives from the airline, shipping and other transporta-

tion industries, the general public, and others who may be subject to the fees authorized by section 13031. It is contemplated that the advice include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection offices and the level of fees. The Secretary is directed to give substantial consideration to the views of this Committee in the exercise of his duties.

Senate amendment

No provision.

Conference agreement

The conferees agreed to the House provision.

1. Railroad unemployment repayment tax

Present law

Loan authority.—The railroad unemployment insurance (RRUI) program, which provides unemployment and sickness benefits, is funded by unemployment taxes paid by rail employers. The RRUI program can borrow from the railroad retirement program as needed to pay benefits. Such loans are repaid when the Railroad Retirement Board determines that the RRUI account has sufficient funds to make such a repayment. The program's authority to borrow additional funds from the railroad retirement program is scheduled to expire after December 19, 1985.

Loan repayment tax.—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 (Code secs. 3321-3323). The present-law tax rate, applicable to the first $7,000 in wages paid annually to a rail employee, is as follows (sec. 3321):

	Percent
1986	2.0
1987	2.3
1988	2.6
1989	2.9
1990	3.2

House bill

Loan authority.—The House bill makes permanent the authority of the RRUI program to borrow from the railroad retirement program.

Loan repayment tax.—The rate of the present-law loan repayment tax is modified under the House bill to be as follows, beginning July 1, 1986 and expiring September 30, 1990:

	Percent
1986	4.3
1987	4.7
1988	6.0
1989	2.9
1990	3.2

Loan surtax.—Under the House bill, an automatic surcharge of 3.5 percent on the loan repayment tax base will be levied if the RRUI program must borrow from the retirement program. The surtax proceeds are to be used to repay such loans made after September 30, 1985, and is in effect for any year if on September 30 of

the prior year any principal or interest from a loan after September 30, 1985 remains unpaid.

Effective date.—The tax provisions will apply to remuneration paid after June 30, 1986. The extension of borrowing authority is effective on enactment.

Senate amendment

The Senate amendment includes the same provisions on loan authority, loan repayment tax, and loan surtax as in the House bill.

In addition, under the Senate amendment a portion of the tier 2 railroad retirement tax equal to one percent of the payroll subject to that tax will be diverted from the railroad retirement program to the RRUI program. These revenues would then be returned to the railroad retirement program to help repay the principal and interest on loans made prior to October 1, 1985. This diversion provision will apply effective January 1, 1986 and will terminate on April 1, 1990.

Conference agreement

The conference agreement is the same as the House bill.

2. Extension of Medicare coverage, hospital insurance tax to State and local government employees

Present law

State and local government employees are covered for social security and Medicare benefits, and such employees and their employers are subject to the FICA tax (including the hospital insurance portion), only pursuant to voluntary agreement between the State and the Secretary of Health and Human Services (Code sec. 3121(b)(7)). Governmental units whose employees have such coverage pursuant to voluntary agreement may not later withdraw their employees from coverage.

Medicare coverage (and the corresponding hospital insurance payroll tax) is mandatory for Federal employees.

For wages paid after 1985, the employer-employee hospital insurance tax rate will be 2.9 percent of the first $42,000 of wages (sec. 3101, 3111, and 3121(a)).

House bill

The House bill extends Medicare coverage on a mandatory basis to State and local government employees hired after December 31, 1985, for service performed after that date. These employees and their employers will be liable for the hospital insurance portion of the FICA tax.

Under the House bill, Medicare coverage and the hospital insurance tax are not extended to individuals hired by a State or political subdivision to relieve unemployment; patients or inmates working in a hospital, home, or other institution; temporary workers hired for certain emergencies; or certain students working in District of Columbia hospitals.

The House bill makes technical changes relating to payment of hospital insurance taxes and definition of Medicare-qualified government employment.

Senate amendment

The Senate amendment extends Medicare coverage on mandatory basis to all current and new State and local government employees, effective for service performed after September 30, 1986. These employees and their employers will be liable for the hospital insurance portion of the FICA tax. Under the Senate amendment, employees who perform State or local government service during and before October 1986 will be given credit toward Medicare eligibility for such past State or local government employment.

The Senate amendment provides that hospital insurance taxes for Medicare-qualified State or local government employment are to be collected in the same manner as in the case of such taxes paid by nongovernmental employers.

Conference agreement

The conference agreement follows the House bill, except that a State may extend Medicare coverage (without extending coverage under social security cash benefits) to State and local government employees hired prior to 1986 by voluntary agreement with the Secretary of Health and Human Services. Such employees and their employers would also be liable for the hospital insurance portion of the FICA tax. Under this provision, the collection of Medicare contributions for State and local government employees who are newly covered by this bill will be carried out by the State social security office in cases where the local jurisdiction (or State government) currently has in effect an agreement covering some employees of the jurisdiction under social security. Those jurisdictions (e.g., a city, county, or other government subdivision) within a State that have no employees currently covered under a section 218 agreement will be required to make their payments for Medicare coverage of their employees under the same procedures as private employers currently follow.

3. Tobacco excise tax provisions

a. Extension of present cigarette excise tax rates

Present law

A manufacturers' excise tax equal to $8 per thousand is imposed on small cigarettes; this produces a tax of 16 cents on a pack of 20 cigarettes. Large cigarettes (those weighing more than 3 pounds per thousand) are taxed at $16.80 per thousand. These tax rates are scheduled to decrease by one-half after December 19, 1985.

House bill

The House bill makes permanent the present cigarette excise tax rates (e.g., 16 cents per pack of 20 small cigarettes).

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

b. Excise taxes on smokeless tobacco

Present law

Present law does not impose any excise taxes on smokeless tobacco products (e.g., chewing tobacco and snuff).

House bill

No provision.

Senate amendment

The Senate amendment imposes an excise tax of 8 cents per pound on chewing tobacco and 24 cents per pound on snuff, effective for taxable products removed after September 30, 1985.

Conference agreement

The conference agreement follows the Senate amendment with a modification providing that the excise taxes on chewing tobacco and snuff are effective for taxable products removed after March 31, 1986.

c. Tobacco Equalization Trust Fund

Present law

Revenues from the cigarette excise tax are deposited in the Treasury as part of general revenues.

House bill

The House bill dedicates a portion of the cigarette excise tax revenues to a new trust fund to assist in defraying the costs of the tobacco price support program, through September 30, 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment.

4. Coal excise tax; Black Lung Disability Trust Fund repayable advances

a. Coal excise tax

Present law

A manufacturers excise tax is imposed on domestically mined coal (other than lignite) sold or used by the producer (Code secs. 4121, 4218).

The tax rate is the lesser of (1) $1 per ton for coal from underground mines and 50 cents per ton for coal from surface mines, or (2) four percent of the price for which the coal is sold. These rates are to revert to pre-1982 rates (50 cents/25 cents per ton; two percent ceiling) on January 1, 1996, or, if earlier, on the January 1 as of which all principal and interest owed the Treasury by the Trust Fund have been paid.

House bill

The House bill increases the coal excise tax rate and sales price ceiling as follow, effective for sales of taxable coal on or after January 1, 1986:

For calendar years 1986–1990, the tax on underground coal will be $1.50 per ton, the tax on surface coal will be $0.75 per ton, and the ceiling will be six percent of the sales price.

For calendar years 1991–1995, the tax on underground coal will be $1.60 per ton, the tax on surface coal will be $0.80 per ton, and the ceiling will be 6.4 percent of the sales price.

For 1996 and later years, the tax on underground coal will be $1.50 per ton, the tax on surface coal will be $0.75 per ton, and the ceiling will be six percent of the sales price. However, the 1985 rates ($1/0.50 per ton; four percent ceiling) will be reinstated for 1996 or any later calendar year if throughout the two most recent fiscal years ending before the beginning of such calendar year there was no balance of repayable advances made to the Trust Fund, and no unpaid interest on such advances.

Senate amendment

No provision.

Conference agreement

The conference agreement will increase the coal excise tax rate, effective January 1, 1986 through December 31, 1995, to the lesser of (1) $1.10 per ton for coal from underground mines and 55 cents per ton for coal from surface mines, or (2) 4.4 percent of the sales price.

b. Black Lung Disability Trust Fund repayable advances

Present law

Amounts equal to the coal excise tax revenues are automatically appropriated to the Black Lung Disability Trust Fund. The Trust Fund pays black lung disability benefits to coal miners (or their survivors) who have been totally disabled by black lung disease in cases where no coal mine operator is found responsible for the individual miner's disease.

Present law includes an unlimited authorization for advances, repayable with interest, from general revenues to the Trust Fund (sec. 9501(c)).

House bill

No provision.

Senate amendment

Under the Senate amendment, no further advances from general revenues to the Black Lung Disability Trust Fund may be made 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.

Conference agreement

The conference agreement follows the House bill, except that a one-time, five-year forgiveness of the current interest payments on the cumulative indebtedness of the Trust Fund is provided.

6. Certain exemptions from FUTA tax

a. Certain nonresident farm workers

Present law

An exemption from FUTA is provided for wages paid for agricultural labor performed by aliens admitted to the United States pursuant to section 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act (Code sec. 3306(c)(1)(B)). This exemption is scheduled to expire on December 31, 1985.

House bill

No provision.

Senate amendment

The FUTA exemption for certain nonresident farm workers is extended on a permanent basis for wages paid on or after January 1, 1986.

Conference agreement

The conference agreement follows the Senate amendment, except that the FUTA exemption is extended only for wages paid before January 1, 1988.

b. Summer camp counselors

Present law

A one-year exemption from FUTA was provided for wages paid for 1983 by certain summer camps for employees who were full-time students (sec. 276(b) of P.L. 97–248).

House bill

No provision.

Senate amendment

The Senate amendment provides a permanent FUTA exemption for wages paid to summer camp counselors who are full-time students, effective for wages paid after September 19, 1985.

Conference agreement

The conference agreement follows the Senate amendment.

c. Fishing boat crew members

Present law

An exemption from FUTA was allowed for remuneration paid during 1981–84 to certain fishing boat crew members. This exemption applied only if the remuneration depended on the boat's catch

and the crew normally consisted of fewer than 10 members (sec. 822(b) of P.L. 97-34).

House bill

No provision.

Senate amendment

The Senate amendment provides a permanent FUTA exemption for wages paid to certain fishing boat crew members, effective for wages paid after December 31, 1980.

Conference agreement

The conference agreement follows the Senate amendment.

7. Tax treatment of railroad retirement benefits

Present law

Under present law (Code sec. 86), a portion of Railroad Retirement system benefits computed by using the social security benefit formula (tier 1) is subject to Federal income tax in the same manner as social security benefits, i.e., for individuals whose incomes exceed certain levels (generally, $25,000 for unmarried individuals and $32,000 for married individuals filing a joint return). These benefits may be available at an earlier age under the Railroad Retirement system than under the social security system. Other benefits under the Railroad Retirement system are subject to Federal income tax for all recipients to the extent the payments exceed the amount of the individual's previously taxed contributions to the plan.

House bill

The portion of tier 1 Railroad Retirement benefits that is taxable in the same manner as social security benefits will be limited to the portion of tier 1 benefits that equals the social security benefits to which the individual would have been entitled if all of the individual's employment on which the annuity is based had been employment for social security benefit purposes. In addition, a minimum monthly annuity benefit (described in sec. 3(f)(3) of the Railroad Retirement Act of 1974) will be taxed in the same manner as social security benefits. Other tier 1 Railroad Retirement benefits will be taxed under the rules that apply to all other payments under the Railroad Retirement system.

These provisions will be effective for monthly benefits for which the generally applicable payment date is after December 31, 1985.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill. The conferees expect that the IRS will exercise its authority to waive penalties for failure to make estimated tax payments for 1986, to the extent such failure is solely attributable to increased tax liability of the taxpayer resulting from the amendments made by this provision,

in light of the short time between enactment of this bill and the effective date of this provision.

8. Income averaging for former full-time students

Present law

An individual whose income in a year is more than 40 percent higher than his or her average income during the prior three years may use income averaging to reduce tax liability (Code sec. 1301).

To be eligible for income averaging, the individual must have been self-supporting during each of the prior three years. Subject to this requirement, an individual beginning full-time employment after completing college or graduate school is eligible for income averaging.

House bill

No provision.

Senate amendment

The Senate amendment provides that an individual is not eligible for income averaging for a year if he or she was a full-time student during any of the prior three years.

This rule does not apply to a married individual who files a joint return if 25 percent or less of the adjusted gross income of the return is attributable to that individual. Thus, income averaging will remain available where one spouse had been a full-time student during the base period, but did not contribute substantially to the current-year income to be averaged.

This provision is effective for taxable years beginning after December 31, 1985.

Conference agreement

The conference agreement follows the Senate amendment.

9. Fringe benefit provisions

a. Parents of airline employees; airline affiliate employees

Present law

Under the Deficit Reduction Act of 1984, the value of "no-additional-cost" services provided by an employer for use by the employee, or the employee's spouse or dependent children, is excluded from income and wages if certain conditions are met, including a line-of-business limitation (Code sec. 132).

House bill

No provision.

Senate amendment

Parents.—Under the Senate amendment, the value of the use of free or discounted airline passes by parents of an airline employee is excluded from the employee's income and wages on the same basis as where such benefits are used by the employee's spouse or dependent children, effective January 1, 1985.

Airline affiliates.—The Senate amendment excludes from income and wages the value of the use of airline passes by certain individuals who are directly engaged in providing airline-related services. This treatment applies to employees of a corporation predominantly engaged in airline-related services that is a member of an affiliated group which includes an airline. The exclusion applies on the same basis as in the case of employees of the airline corporation who perform airline services. The term airline-related service means (i) catering; (ii) baggage handling; (iii) ticketing and reservations; (iv) flight planning and weather analysis; (v) restaurants located at an airport; (vi) gift shops located at an airport; and (vii) such other similar services provided to and directly benefiting airlines as may be prescribed by Treasury regulations.

Also, a grandfather exception is provided to the line-of-business limitation for tax-free treatment of airline passes furnished (after 1984) to individuals employed, as of September 12, 1984, by Pan American World Services, Inc.

These provisions relating to certain airline affiliate employees are effective January 1, 1985.

Conference agreement

The Conference agreement follows the Senate amendment, with a modification to reflect the House airline affiliate technical corrections provision (in H.R. 3838).

b. Faculty housing

Present law

Several court cases have held that on-campus housing furnished to faculty or other employees by an educational institution does not qualify for the exclusion under Code section 119 (certain lodging furnished for the convenience of the employer), and that therefore the rental value of the housing (less any amounts paid by the employee) is includible in income and wages.

The Deficit Reduction Act of 1984 prohibits Treasury from issuing, prior to 1986, regulations treating as income the excess of the value of qualified campus lodging over the greater of (1) the operating cost paid in furnishing the lodging, or (2) the rent received, in the case of such lodging furnished in 1984 or 1985.

House bill

No provision.

Senate amendment

The Senate amendment provides that the rental value of qualified campus lodging for a year may 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 value of the lodging will be excluded from the employee's income and wages if the rent paid by him or her to the educational institution equals or exceeds (on an annualized basis) five percent of the appraised value. Also, rents charged by an educational institution to nonemployees for comparable lodging may be used to define fair rental value.

This safe-harbor valuation rule will apply for post-1985 taxable years. For prior years, the IRS also is to follow the valuation rule, except that the assessed valuation of the property for local real estate tax purposes would be treated as meeting the requirement of a qualified appraisal.

Conference agreement

The conference agreement follows the House bill.

10. Minimum tax on certain capital gains of insolvent individuals

Present law

Individuals are subject to an alternative minimum tax (Code sec. 55), 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). The minimum tax preference items include the portion of net capital gain excluded for regular tax purposes under section 1202.

House bill

No provision.

Senate amendment

The Senate amendment provides that an insolvent individual who transfers real property used in the active conduct of a trade or business of the taxpayer is not required to treat certain capital gain on the transfer as a minimum tax preference if the transfer was made to a creditor in cancellation of indebtedness or to a third party under threat of foreclosure. The amount of the capital gain exclusion that is not treated as a preference item pursuant to the new rule may not exceed the amount of the individual's insolvency immediately prior to the transfer.

The amendment is effective for transfers of real property occurring after December 31, 1981.

Conference agreement

The conference agreement generally follows the Senate amendment, except that the provision will apply only to farmers and not to other taxpayers. For this purpose, a farmer is defined as an individual more than 50 percent of whose gross income over the past three years was derived from farming. In addition, the provision applies only to transfers of farmland, not of all real property.

11. Tax-exempt bonds for a regional pollution control authority

Present law

Tax-exempt industrial development bonds (IDBs) generally may not be used to acquire a facility, if a substantial user of the facility before acquisition remains as such thereafter (Code sec. 103). Additionally, under a rule enacted in the Deficit Reduction Act of 1984, IDBs may not be used to acquire any existing facilities unless a rehabilitation requirement is satisfied.

A provision enacted in 1982 permitted the Gulf Coast Waste Disposal Authority to acquire certain existing air or water pollution control facilities with the proceeds of IDBs.

House bill

No provision.

Senate amendment

The Senate amendment authorizes up to $200 million of IDBs for acquisition of 23 specific pollution control facilities for the Gulf Coast Waste Disposal Authority. This provision perfects the authorization for these bonds as originally enacted in 1982.

Conference agreement

The conference agreement follows the Senate amendment.

12. Netting of gains and losses by cooperatives

Present law

Cooperatives may exclude from their taxable income amounts distributed to patrons in the form of patronage dividends, and certain other amounts paid or allocated to patrons, to the extent of the net earnings of the cooperative from business done with or for patrons, provided that there is a pre-existing obligation to distribute such amounts (Code sec. 1382). Cooperatives that qualify as tax-exempt farmers' cooperatives also may exclude such amounts from income to the extent of all net income, and also may deduct to a limited extent dividends paid on common stock (sec. 521).

The Code does not contain any explicit provisions regarding whether a cooperative may offset the earnings and losses of its various allocation units in computing its net earnings for the purpose of determining the amounts to be distributed or allocated to patrons, or providing that a cooperative that so computes its net earnings may qualify as a tax-exempt farmers' cooperative. Under present law, the Code does not require a cooperative to notify its patrons that it has offset earnings and losses of its various allocation in computing its net earnings.

House bill

No provision.

Senate amendment

Netting.—The Senate amendment 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 and losses are derived from business done with or for patrons. Such 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 Senate amendment also provides that the offsetting of earnings and losses may be used, at the option of the cooperative, for computing its net earnings in determining the amount of patronage dividends to be paid or allocated to patrons. In addition, the Senate amendment provides that if a cooperative acquires the assets of another cooperative in a transaction specified in section 381(a) and exercises its option to offset earnings and losses, the acquiring cooperative may not, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of one or more of the allocation units of the acquiring or the acquired cooperative against earnings of the acquired or acquiring cooperative, respectively, to the extent that (a) the earnings that are offset are not properly allocable to periods after the date of acquisition, and (b) such earnings and losses could not have been offset if derived from allocation units of the same cooperative.

The provisions relating to netting generally are effective for taxable years beginning after December 31, 1962.

Notice requirement.—Cooperatives that engage in the practice of offsetting earnings and losses are required to notify their members that the amount of the member's distribution or allocation may have been affected by the cooperative's netting, effective for taxable years beginning after the date of enactment of the bill. The notice also must specify the identity of the allocation units whose earnings and losses have been offset, as well as what additional information the member is entitled to under governing law.

Conference agreement

The conference agreement generally follows the Senate amendment with modifications.

The conference agreement clarifies that if a cooperative acquires the assets of another cooperative in a transaction described in section 381(a) and exercises its option to offset earnings and losses, the acquiring cooperative may, in computing its net earnings for taxable years ending after the date of acquisition, offset losses of one or more allocation units of the acquiring or acquired cooperative against earnings of the acquired or acquiring cooperative, respectively, but only to the extent that (a) such earnings are properly allocable to periods after the date of acquisition,[1] and (b) such earnings could have been offset by such losses if such earnings and losses had been derived from allocation units of the same cooperative.

13. Extension of moratorium on application of research and experimental expense allocation regulation

Present law

The foreign tax credit is limited so that it cannot offset U.S. tax on U.S. source taxable income. In general, the Code requires allocation of all expenses between U.S. and foreign source gross income to determine U.S. and foreign source taxable income. A Treasury

[1] Where an acquisition takes place during a taxable year, the conferees intend that the cooperative's earnings for the entire year are to be allocated pro rata between the pre-acquisition and post-acquisition periods.

Regulation (sec. 1.861-8) rule generally requires taxpayers with foreign source income from products in a product area in which the taxpayers do U.S. research to allocate part of their U.S. research and experimental expense against their foreign source income. In 1981, the Congress suspended this rule for two years, so that research expenditures made for research conducted in the United States were allocated against U.S. source gross income only. In 1984, the Congress extended the moratorium for two additional years. The moratorium generally expired for taxable years beginning after August 1, 1985.

House bill

No provision.

Senate amendment

The Senate amendment effectively extends for one year the moratorium on the application of the research and experimental expense allocation rules of Treas. Reg. sec. 1.861-8. For taxable years beginning on or before August 1, 1986, all of a taxpayer's research and experimental expenditures attributable to research activities conducted in the United States will be allocated to U.S. source gross income for purposes of computing U.S. source and foreign taxable income and taxable income from sources partly within and partly without the United States. The extension of the moratorium applies only to the allocation of research expenses for the purpose of geographic sourcing of income. It does not apply for other purposes, such as the computation of combined taxable income of a FSC (or DISC) and its related supplier.

Conference agreement

The conference agreement follows the Senate amendment.

14. Limitation on issuance of U.S. bonds

Present law

U.S. bonds have a maturity when issued of more than 10 years. The interest rate paid on U.S. bonds may not exceed 4¼ percent, except for $200 billion of bonds specified by statute that may be issued for sale to the public, at interest rates above 4¼ percent. This exception is expected to be exhausted during the first calendar quarter in 1986.

House bill

No provision.

Senate amendment

The Senate amendment increases the exception from the interest rate limitation on U.S. bonds from $200 billion to $250 billion. The increase is expected to meet Treasury's anticipated needs through calendar year 1986.

Conference agreement

The conference agreement follows the Senate amendment.

15. Awards of attorneys fees and other court costs in tax litigation

Present law

Attorneys fees for tax litigation and other court costs of up to $25,000 may be awarded to a taxpayer who prevails in the litigation in a Federal court if the taxpayer shows that the Government's position in the litigation was unreasonable (Code sec. 7430). Under present law, this provision will not apply to court proceedings commenced after December 31, 1985.

House bill

No provision.

Senate amendment

The Senate amendment makes permanent the authorization of attorneys fees and other court costs for tax litigation under section 7430. Also, the Senate amendment makes the following modifications which would apply to court proceedings commencing after December 31, 1985:

(1) If it is determined that the taxpayer prevailed in the tax litigation, the burden is on the Government to show that its position was substantially justified or that special circumstances exist that make an award of litigation costs unjust;

(2) Whether an award is made is determined based upon a "substantially justified" standard;

(3) No award is allowed to a prevailing party who unreasonably protracted the proceedings;

(4) The $25,000 cap of present law is eliminated (as under present law, recoverable costs would not include costs of the administrative process); and

(5) Limits are imposed on hourly charges by attorneys and expert witness fees recoverable under the provision.

Conference agreement

The conference agreement follows the House bill (i.e., contains no provision).

16. Increase in IRS budget

Present law

The Administration's initial budget request for fiscal year 1986 recommended a decrease in IRS funding levels as compared with fiscal year 1985. The conference report on H.R. 3036 (the Treasury, Postal Service and General Government Appropriations Act for fiscal year 1986) would have restored that decrease and provided for an increase in fiscal year 1986 of $76 million over the Administration's revised budget request. The President vetoed H.R. 3036 on November 15, 1985.

House bill

The House bill provides a sense of the Congress resolution that both the restoration of the funding cuts initially proposed by the Administration to the IRS budget for fiscal year 1986 and the further increase in the IRS budget as recommended by the House

Committee on Appropriations in H.R. 3036 as reported are necessary for the efficient operation of the Government and to carry out the purposes of the budget reconciliation bill.

Senate amendment

The Senate amendment authorizes to be appropriated $46.5 million for each of fiscal years 1986, 1987, and 1988 for the use of the IRS to employ 1,550 additional agents and examination employees. This appropriation is in addition to any other amounts authorized to be appropriated to the IRS for those fiscal years.

Conference agreement

The conference agreement includes the provisions of both the House bill and the Senate amendment.

5. Superfund revenue provisions

Present law

Trust fund provisions.—Amounts equivalent to taxes on petroleum and feedstock chemicals (described below) were deposited in the Hazardous Substance Response Trust Fund ("Superfund"). These taxes expired on September 30, 1985.

In addition to taxes, $44 million was authorized to be appropriated to the Superfund from general revenues for each of fiscal years 1981-85 (an aggregate of $220 million). Total tax and general revenue appropriatons were intended to equal $1.6 million over the five-year period.

Amounts in the Superfund are available for cleanup and certain other expenditures in connection with hazardous substance releases.

Petroleum taxes.—An excise tax of 0.79 cent per barrel was imposed on (1) crude oil received at a U.S. refinery, and (2) imported petroleum products. The tax expired on September 30, 1985.

Tax on feedstock chemicals.—A tax was imposed on the sale of 42 organic and inorganic substances ("feedstock chemicals") by a manufacturer, producer, or importer. The tax rates ranged from 22 cents per ton to $4.87 per ton of the specified feedstock chemical. The tax expired on September 30, 1985.

Exceptions to the tax were provided for:

(1) butane or methane used as a fuel;

(2) nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia, if used to produce fertilizer;

(3) surfuric acid produced solely as a by-product of (and on the same site as) air pollution control equipment;

(4) any taxable feedstock to the extent derived from coal;

(5) petrochemicals used to manufacture or produce motor fuel, diesel fuel, aviation fuel, or jet fuel, and

(6) certain compounds which exist in transitory form in the process of refining non-taxable metal ores or compounds into other (or purer) non-taxable compounds.

Post-closure Liability Trust Fund and tax.—A separate trust fund, the Post-closure Liability Trust Fund, is to assume completely the liability of owners and operators of hazardous waste disposal facilities that have been granted permits and have been properly

closed under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The Fund also may be used to pay certain monitoring and maintenance costs.

An excise tax of $2.13 per dry weight ton was imposed on the receipt of hazardous waste at a qualified facility, in order to finance the Post-closure Fund.

The authority to collect the Post-closure tax expired on September 30, 1985.

Tax-exempt bonds for hazardous waste treatment facilities.—Tax-exempt industrial development bonds (IDBs) may be issued to financial solid waste disposal facilities (sec. 103(b)(4)(E)). Facilities for the disposal of liquid or gaseous waste (including most hazardous wastes) do not qualify for this financing.

Hazardous waste removal costs treated as qualifying distributions by private foundations.—To avoid penalty excise taxes, a private foundation must annually make expenditures or grants for charitable purposes in an amount (the "distributable amount") equal to five percent of the fair market value of its investments (sec. 4942).

House bill

No provision in H.R. 3128. On December 10, 1985, the House passed H.R. 2005, which included Superfund revenue provisions (title V). (The Committee on Ways and Means reported H.R. 2817 on October 26, 1985 (H. Rpt. 99-253, Pt. 2), which included Superfund revenue provisions (title IV).)

Senate amendment

Trust fund provisions.—The Senate amendment reauthorizes revenues for the Superfund program for five years, and generally retains present law trust fund provisions, except:

(1) amounts equivalent to revenues from the Superfund Excise Tax are appropriated to the Trust Fund;

(2) no further appropriations are authorized from general revenues; and

(3) Trust Fund provisions are placed in the Internal Revenue Code.

Cumulative Superfund revenues are intended to be $7.5 billion over the five-year period (including interest on trust fund balances).

Petroleum tax.—The Senate amendment extends the prior law for five years, through September 30, 1990, effective October 1, 1985.

The tax would be suspended or terminated earlier than September 30, 1990, if cumulative Superfund receipts from taxes and interest during the 5-year period reach $7.5 billion. The tax also would expire under certain circumstances if the unobligated balance of the Superfund exceeds $2.225 billion on September 30, 1988 or $3 billion on September 30, 1989.

Tax on feedstock chemicals.—The Senate amendment extends the present law tax for five years, through September 30, 1990 (with the same termination date provisions as for the petroleum tax).

Additional exceptions to the tax are provided for:

(i) exported feedstocks,

(ii) substances used to produce animal feed, and

(iii) domestically recycled nickel, chromium, or cobalt.

Certain inventory exchanges of chemicals are not treated as sales.

This provision generally is effective October 1, 1985. The amendment regarding inventory exchanges applies as of the original effective date of the feedstock chemicals tax. Exchanges before January 1, 1986, do not qualify for this treatment if the exchange was treated as a taxable sale by the taxpayer. Registration requirements apply to inventory exchanges on or after January 1, 1986.

Manufacturers' excise tax.—The Senate amendment imposes an excise tax on the sale, lease, or transfer of tangible personal property by the manufacturer of the property, in connection with a trade or business. The tax equals 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).

The tax also is imposed (at a 0.08 percent rate) on importers of tangible personal property based on the customs value plus duties (or, if no customs value is available, the fair market value) of the imported property.

The tax is deductible from Federal income taxes.

Under the Senate amendment, a credit equal to 0.08 percent of the taxpayer's qualified inventory costs is allowed against the tax. Credits may be carried forward but are not refundable. "Qualified inventory costs" are amounts paid or incurred for purchases of tangible personal property and which are allocable to the inventory of a manufacturer using the full absorption accounting method (unless otherwise provided in regulations). Property manufactured for lease is treated in the same manner as property manufactured for sale. In lieu of any allowance for depreciation or amortization, qualified inventory costs include amounts paid or incurred for depreciable or amortizable property (i.e., expensing treatment).

A manufacturer with $5 million or less of annual taxable receipts is effectively exempt from tax via a minimum $4,000 allowable credit. (The minimum credit is not available to importers, is nonrefundable, and may not be carried over).

Exemptions from the tax are provided for:

(1) Import shipments with an aggregate value of $10,000 or less.

(2) Items sold or leased (but not imported) by governmental units or organizations exempt from taxation under section 501(a) (Other than in unrelated trades or businesses).

(3) Exports from the United States.

"Manufacturing" includes mining, raw material production, and the production of tangible personal property. Manufacturing does not include services incidental to storage or transportation of property; preparation of food in a resturant or other retail establishment; or incidental preparation of property by a wholesaler or retailer.

"Tangible personal property" includes natural gas and other gaseous products and materials. Tangible personal property does not include electricity, unprocessed agricultural products, or unprocessed food products.

The tax is effective on January 1, 1986 and terminates after December 31, 1990. The tax would be suspended or terminated earlier

under similar conditions as the petroleum and feedstock chemical taxes.

GAO study.—The Senate amendment directs GAO to report to the Finance Committee by January 1, 1988, its findings on various mechanisms for financing the Superfund, including a study of the effect of a tax on hazardous waste on the generation and disposal of such waste.

Post-closure Liability Trust Fund and tax.—The Senate amendment repeals the Post-closure Liability Trust Fund and the associated waste disposal tax, effective October 1, 1985. Amounts in the Post-closure Trust Fund at that time are appropriated to the Superfund. Refunds of the tax (without interest) would be paid out of the Superfund, effective March 1, 1989, unless certain Congressional action has been taken prior to March 1, 1989.

IDB's for hazardous waste treatment facilities.—The Senate amendment allows tax-exempt IDBs to be issued to finance facilities for the treatment of hazardous waste, as these terms are defined under sec. 1004 of the Solid Waste Disposal Act. This exemption is limited to facilities which are subject to permitting requirements under RCRA.

Bonds issued under this provision would be subject to the income and other restrictions applicable to solid waste IDBs. The provision applies to bonds issued after the date of enactment.

Hazardous waste removal costs.—The Senate amendment provides that, subject to certain limitations, the distributable amount of a private foundation (under sec. 4942) is to be reduced by amounts paid or incurred by the foundation for removal or remedial action with respect to a hazardous substance release at a facility owned or operated by the foundation. This provision is effective for taxable years beginning after December 31, 1982.

Conference agreement

a. Hazardous Substance Superfund

The conference agreement redesignates the "Hazardous Substance Response Trust Fund" as the "Hazardous Substance Superfund" and continues and expands the Superfund by allocating to the fund amounts equivalent to revenues derived from expanded taxes on petroleum and chemical feedstocks; a new Superfund excise tax on manufacturers; and a tax (beginning in 1987) on imported substances derived from taxable chemical feedstocks or petroleum. Other amounts allocated to the Fund under present law (including penalties, punitive damages, amounts recovered on behalf of the fund, and interest on Trust Fund balances) are not affected by the conference agreement, Superfund revenues from taxes, general revenues, interest on Fund balances, and recoveries are estimated to total $9.5 billion over the reauthorization period.

Under the conference agreement, the expenditure purposes of the Superfund generally are amended to conform to the expanded list of Superfund activities under section 111 of CERCLA.

Termination provisions.—The petroleum tax, chemical feedstock tax, and the Superfund excise tax that finance the Superfund would terminate under either of two trigger mechanisms. First, these taxes would terminate at the end of the calendar quarter in

which the Secretary estimates that the amount collected under these taxes exceeds $10 billion. Second, these taxes would terminate on September 30, 1988 (or September 30, 1989) if the Secretary determines that the unobligated balance of the Superfund exceeds $3 billion ($4 billion) and if the taxes were terminated the unobligated balance of the Superfund on September 30, 1989 (September 30, 1990) would exceed $3 billion ($4 billion).

The conference agreement generally continues the present law provisions regarding administration of the Superfund, and authorizes the Fund to borrow amounts from the Treasury as repayable advances for any authorized fund purpose. Any such advances are required to be repaid before September 30, 1990. The conference agreement also transfers the trust fund provisions to the Internal Revenue Code.

The conference agreement specifies that no funds raised for the Superfund, the Leaking Underground Storage Tank Trust Fund, or the Oil Spill Liability Trust Fund under the provisions of this agreement may be spent until authorization of these programs. The amendments to the Superfund trust fund provisions are effective on January 1, 1986 Special effective date provisions apply for certain of the Superfund taxes (as described below).

b. Excise tax on petroleum

The conference agreement re-enacts the prior law environmental excise tax on petroleum and increases the tax from 0.79 cents per barrel tax to 3.85 cents per barrel. This tax is to apply from January 1, 1986 through September 30, 1990. Thus, the conference agreement repeals the termination provisions of present law (sec. 4611(d)), which would have terminated the tax if the unobligated balance in the Superfund exceeded specified amounts, and section 303 of CERCLA, which provided for termination of the environmental excise taxes when aggregate tax collections exceed $1.38 billion.

In addition to re-enacting the petroleum tax as a Superfund financing source, the conference agreement imposes a new 1.3-cent per barrel tax on crude oil and imported petroleum products to finance the Oil Spill Liability Trust Fund (discussed below).

c. Excise tax on chemical feedstocks

Tax rates.—The conference agreement generally re-enacts the prior law environmental excise tax on chemical feedstocks. Specifically, the conference agreement generally provides that specified organic and inorganic substances sold by the manufacturer, producer, or importer are to be taxed in accordance with the following table (Table 1).

TABLE 1.—*Chemical feedstock tax rates under conference agreement, 1986*

[Dollars per ton]

Substance	*1986*
Organic Substances:	
Acetylene	4.87
Benzene	4.87
Butadiene	4.87
Butane	4.87

Substance	1986
Butylene	4.87
Ethylene	4.87
Methane	3.44
Naphthalene	4.87
Propylene	4.87
Toluene	4.87
Xylene	9.81
Inorganic Substances:	
Ammonia	2.64
Antimony	4.45
Antimony trioxide	3.75
Arsenic	4.45
Arsenic trioxide	3.41
Barium sulfide	2.30
Bromine	4.45
Cadmium	4.45
Chlorine	2.70
Chromite	1.52
Chromium	4.45
Cobalt	4.45
Cupric oxide	3.59
Cupric sulfate	1.87
Cuprous oxide	3.97
Hydrochloric acid	0.29
Hydrogen fluoride	4.23
Lead oxide	4.14
Mercury	4.45
Nickel	4.45
Nitric acid	0.24
Phosphorus	4.45
Potassium dichromate	1.69
Potassium hydroxide	0.22
Sodium dichromate	1.87
Sodium hydroxide	0.28
Stannic chloride	2.12
Stannous chloride	2.85
Sulfuric acid	0.26
Zinc chloride	2.22
Zinc sulfate	1.90

Beginning in calendar year 1987, the rates specified in Table 1 are to be adjusted for inflation. In the case of organic substances, the inflation adjustment for any year is to be the percentage by which the average producer price index for basic organic chemicals, published by the Bureau of Labor Statistics, for the 12-month period ending in September of the preceding year, exceeds the comparable average of the index for the 12 months ending in September 1985. In the case of inorganic substances the inflation adjustment for any year is to be the percentage by which the average producer price index for basic inorganic chemicals for the 12-month period ending in the preceding September exceeds the comparable average for the 12 months ending in September 1985. Tax rates would not be reduced below the levels shown in Table 1, even if the producer price index declines relative to 1985; however, if this occurs, the conferees expect to consider whether such a reduction is appropriate. It is anticipated that the Treasury Department will publish annual tables setting forth increased tax rates resulting from the inflation adjustment.

The conference has addressed a technical problem under prior law concerning the appropriate point at which to levy the tax on the production of xylene. Under the conference agreement, for purposes of this tax, xylene includes separated isomers of xylene only

in the case of imported or exported xylene. The conference adopted this rule because it understands that the separated isomers of xylene (meta-xylene, ortho-xylene, and para-xylene) are isolated from a mixed stream of xylenes produced in a reformation process. Accordingly, separated isomers will have been previously taxed (when the mixed stream of xylene is used in the reformation process) except when those separated isomers are imported; thus, the conference expects that no future loss of revenue will occur as a result of this provision. The conference agreement also repeals the prior law tax on xylene for periods before October 1, 1985. Manufacturers, producers, and importers of xylene who paid the tax under prior law will be permitted to obtain a refund of those taxes together with interest. To offset the resulting revenue loss, the tax rate on xylene in Table 1 incorporates an increase over the rates that would otherwise apply, in order to recapture the tax liability that had been expected under prior law for periods before October 1, 1985.

The conference agreement also includes a special rule with respect to nitric acid consumed by the manufacturer in the production of nitrocellulose. Under this rule, nitric acid used in this manner will continue to be taxed at not more than the prior law rate (24 cents per ton) applicable to that substance.

Exemptions.—The conference agreement repeals the prior law exemption for coal-derived feedstocks. The remaining prior law exemptions are retained.

In addition to prior law exceptions, the conference agreement provides three new exceptions to the chemical feedstocks tax:

Exports of taxable chemicals.—The conference agreement provides that the tax on chemical feedstocks does not apply to feedstocks that are exported from the United States. In particular, any feedstock that is sold by the manufacturer or producer for export, or for resale to a second purchaser for export is exempt from tax.[2] If the purchaser cannot certify in advance that a feedstock will be exported, or if a tax has otherwise been paid on the exported feedstock, the person who paid the tax could claim a refund or credit (without interest) for the amount of the tax previously paid. Such person would be required to pay the amount refunded or credited to the exporter, or to obtain the exporter's written consent to his receiving the credit or refund. The Treasury is authorized to prescribe necessary regulations for administering these provisions.

Substances used to produce animal feed.—An exemption from the feedstock tax is provided for nitric acid, sulfuric acid, or ammonia (or methane used to produce ammonia) used in a qualified animal feed use by the manufacturer, producer, or importer, or sold for use (or for resale for ultimate use) in a qualified animal feed use. Qualified animal feed use means any use in the manufacture or production of animal feed or animal feed supplements, or of ingredients used in animal feed or animal feed supplements. Under Treasury regulations, if tax is paid and a qualifying substance is subsequently used in a qualified animal feed use, the person so using the substance is entitled to a credit or refund (without inter-

[2] Rules similar to the rules of section 4221(b) (regarding proof of export for excise tax purposes) would apply for this purpose.

est) of the tax paid. Conversely, if an exemption is allowed and a substance is subsequently sold or used for a non-animal feed purpose, the person so selling or using the substance is to be subject to tax as if such person had manufactured the substance.

Certain recycled metals.—An exemption is provided under the conference agreement for nickel, chromium, or cobalt which is diverted or recovered in the United States from solid waste (as defined under section 1004 of the Solid Waste Disposal Act) as part of a recycling process (and not as part of the original manufacturing or production process). The exemption does not apply to metals which are diverted recovered from the byproduct, coproduct, or other waste of a metal refining, smelting, or other extraction process.

The recycling exemption does not apply for any period during which the taxpayer has failed to complete a corrective action required by EPA (or an authorized State program) under CERCLA or the Solid Waste Disposal Act. The exemption also does not apply to taxable substances which are recycled outside the United States.

For purposes of the credit for previously taxed chemical feedstocks, recycled metals that are exempt under this provision are treated as previously taxed (effectively preventing the imposition of further tax on the metal).

Exchanges of taxable chemicals.—The conference agreement provides that, when a manufacturer, producer, or importer exchanges a taxable chemical, as part of an inventory exchange with another person, the exchange is not to be treated as a taxable sale for purposes of the feedstock tax. Instead, the person receiving the chemical in the exchange is to be treated as the manufacturer, producer, or importer (as appropriate), and the tax is to be imposed upon the later sale (or use) by such person. Further, beginning January 1, 1986, the rule would apply only if (1) both parties to the exchange have registered with the Treasury Department as manufacturers, producers, or importers of taxable chemicals, and (2) the person receiving the chemical has notified the person exchanging the chemical of the recipient's registration number and Internal Revenue district.

For purposes of this provision, an inventory exchange is defined as an exchange of properties each of which is property described in section 1221 of the Code (relating to inventory, stock-in-trade, and property held primarily for sale to customers in the ordinary course of trade or business) with respect to both the transferor and transferee of the property. A transaction may be treated as an exchange although one or both parties pay reasonable transportation or similar costs in connection with the exchange.

The provision regarding tax-free exchanges is retroactive to the original effective date of the feedstock tax. However, for exchanges before January 1, 1986, the provision does not apply unless (1) the manufacturer, producer, or importer treated the exchange as a tax-free transaction for purposes of the feedstock tax, and (2) there was an agreement (including a blanket agreement covering a series of transactions) that the person receiving the taxable chemical would be treated as the manufacturer, producer, or importer of the chemical for purposes of the tax.

Termination date.—The chemical feedstocks tax expires after September 30, 1990.

Effective date.—The re-enactment of and modifications to the chemical feedstocks tax are effective January 1, 1986.

d. Tax on imported chemical derivatives and credit—for exported deviations

The conference agreement imposes a new tax on imported substances more than 50 percent of the value of which is derived from taxable feedstocks (as defined under sec. 4662) that are used as feedstock materials or as process fuels. The 50-percent test is determined using the predominant method of production for the product. The Treasury Department is directed to issue regulations identifying the specific products which are subject to the tax based on this criterion. The Treasury is to have authority to change this list at any time; however, only items identified in the regulations at the time of sale or use by the importer would be subject to the tax.

The amount of tax imposed on any taxable imported substance is to be equal to the amount of tax which would have been imposed (under secs. 4662) on the component taxable feedstocks (that are used as feedstock materials or process fuels in the manufacture of the import), had these components been sold in the United States for an equivalent use. If the importer does not furnish sufficient information (as established by Treasury regulations) to determine the amount of tax under this method, then the tax is to be imposed at a rate determined by the Treasury based on the composition of imported derivatives determined by using the predominant method of production. These rates will be adjusted annually to account for indexing. If no such rates are published by Treasury and the importer does not furnish sufficient information, a rate of 5 percent of the appraised value of the imported substance at the time of import applies.

The tax is imposed on the sale or use of taxable substances by the importer thereof. Importers subject to tax include any person entering a taxable substance into the United States for consumption, use, or warehousing. The term "United States" is defined as it is for purposes of the petroleum and feedstocks taxes. If an importer uses a taxable substance, tax is imposed on the importer as if he had sold the substance. Revenues from the tax are not to be paid to Puerto Rico and the Virgin Islands under the cover over provisions of section 7652 of the Code. The tax on imported chemical derivatives does not apply to any substance if the petroleum tax (sec. 4611) or the chemical feedstock tax (sec. 4661) is imposed on the sale or use of such substance.

A credit would be provided for exports of substances more than 50 percent of the value of which is derived from taxable feedstocks (as defined in sec. 4662) that are used as feedstock materials or process fuel. The amount of credit for any exported substance is to be equal to the amount of tax which was imposed under section 4662 on the component taxable feedstocks. If the exporter does not furnish sufficient information, then the amount of credit is to be determined by Treasury based on the composition of derivatives using the predominant method of production.

The tax on imported chemical derivatives and the credit for exports is effective on January 1, 1987.

e. Study of trade impact of waste management tax

The Department of the Treasury and GAO are instructed to evaluate the effect of a waste management tax on the generation and disposal of hazardous waste and the ability of domestic manufacturers to compete in international trade, and to deliver recommendations for mitigating any adverse trade impacts to the House Committee on Ways and Means and the Senate Finance Committee by October 1, 1987. The study is to include recommendations regarding an export credit, an import equalization fee, and a cap on the amount of tax for economically distressed industries.

f. Superfund excise tax

General rules

The conference agreement establishes a new Superfund Excise Tax on manufacturers and importers. The tax, which is at a 0.1 percent rate, is imposed on the sale, lease, or import of tangible personal property by the manufacturer or importer of property. Exports of tangible personal property are exempt. In addition, unprocessed agricultural products, food, fertilizer, and unprocessed timber are exempt. To avoid the imposition of duplicative taxes in multistage production, manufacturers will be allowed a credit based on their purchases of tangible personal property (e.g., materials and equipment) allocable to the manufacturers of tangible personal property. Small manufacturers (with less than $10 million of otherwise taxable receipts) and small import shipments (under $10,000) are exempt from the tax.

Imposition of the tax

Under the conference agreement, the Superfund Excise Tax is imposed on the sale or lease (in connection with a trade or business) of tangible personal property by the manufacturer. The tax is generally imposed on the sale or leasing of tangible personal property for use, consumption, or disposition in the United States.[3] The tax is not imposed on sales or leases of tangible personal property for use outside the United States. The tax rate is 0.1 percent ($10 per $10,000 of taxable amount). The taxable amount in the case of a sale is the price (in money or the fair market value of other consideration) charged to the purchaser by the seller, including consideration) charged to the purchaser by the seller, including items payable to the seller during the taxable period with respect to the transaction (including Federal, State, and local sales and excise taxes, other than the Superfund Excise Tax and certain other specified Federal excise taxes on manufacturers, imposed on the transaction). A transfer or exchange, other than a gift within the meaning of sections 102 or 170 of the Code, is treated as a sale for purposes of the Superfund Excise Tax.

[3] For these purposes, the United States includes the 50 States, the District of Columbia, and any Commonwealth or possession of the United States.

In the case of a lease by the manufacturer of the taxable property, the taxable amount is the gross lease payments received during the taxable period (including Federal and State sales and excise taxes, other than Superfund Excise Tax and certain other specified Federal excise taxes on manufacturers, imposed on the lease). The tax applies to lease payments received (or considered received under the partial year proration rules described below) during the period the Superfund Excise Tax is in effect, regardless of when the lease was entered into. The manufacturer is liable for the tax.

The sale or lease of tangible personal property by a person who included the cost of such property in qualified inventory cost is treated as a sale or lease by the manufacturer. Thus, the tax applies to the resale or sublease of tangible personal property in the same manner that the tax applies to the originalsale or lease of the tangible personal property. This rule prevents the claiming of excess credits with respect to resales or subleases.

The tax is also imposed on the import of tangible personal property into the United States by the importer of the tangible personal property. The taxable amount is the customs value plus customs duties (and any other duties) that may be imposed. The tax on imports is to be collected in the same manner as duties by the customs service. Shipments for which the taxable amount is less than $10,000 are exempt from the tax. The importer is liable for the tax.

The Superfund Excise Tax is deductible in determining Federal income tax liability.

Definitions and special rules

Manufacturer.—"Manufacturer" includes any producer of tangible personal property, including raw materials. The conferees intend that the term "manufacturer" be read broadly to include mining and extraction. The categories of mining and manufacturing establishments set forth in Divisions B and D of the Standard Industrial Classification ("SIC") Manual, published by the Office of Management and Budget, generally reflect the conferees' intent as to the proper line separating manufacturing from nonmanufacturing activity. The SIC Manual generally excludes from manufacturing agriculture, forestry, fishing and construction. The production of films, videos, tapes, discs, and records would be treated as manufacturing for purposes of the Superfund excise tax.

The following activities are not taken into account for purposes of determining whether a person is a manufacturer. Manufacturing does not include services furnished incidental to the storage or transportation of property or the incidental preparation of property by a retailer or wholesaler, including routine assemblage. For example, the incidental preparation of property would include the routine preparation of an automobile for the retail customer by a retail automobile dealer.

Tangible personal property.—Tangible personal property, for purposes of this tax, generally includes all property that is not either real property or intangible property. It includes gases, such as natural gas, and other gaseous materials, but does not include electricity.

Tangible personal property does not include mineral rights (including oil or gas rights), since these interests are themselves considered to be real property. Minerals (or oil or gas) are, however, considered to be tangible personal property after they have been mined or otherwise extracted. Additionally, tangible personal property does not include rights to or interests in intellectual property, such as copyrights or royalty payments on property such as books. These interests are considered to be intangible property. Tangible personal property does, however, include the actual property produced, such as the books or other printed material produced by the manufacturer.

Containers, transportation charges, constructive sales price.—The Secretary of the Treasury is to issue regulations specifying that charges for coverings, containers, and packing are included in the taxable amount. The regulations are also to provide that (1) transportation (including pipeline transportation) and related charges (including insurance and installation) and (2) the Superfund Excise Tax and certain other specified Federal excise taxes imposed on manufacturers (but no other excise tax) are excluded from the taxable amount (but only to the extent the amount of the transportation and related charges is established to the satisfaction of the Secretary in accordance with regulations).

The regulations are also to provide rules establishing a constructive sales price when, for example, a manufacturer sells directly at retail or sells only or primarily to related persons. If a natural gas pipeline company sells natural gas that it has produced itself ("pipeline-owned" production), these Treasury regulations should provide that the constructive sales price for purposes of the Superfund Excise Tax is the price established under the Natural Gas Policy Act and Federal Energy Regulatory Commission (FERC) regulations. These FERC regulations treat pipeline-owned production in the same manner as natural gas produced by an affiliated company. The natural gas is considered sold, for purposes of the Superfund Excise Tax, when it is transferred from the well to the pipeline.

These regulations are to be similar to the rules of sections 4216 (a) and (b) (relating to containers, packing, and transportation charges, and constructive sales prices for excise tax purposes).

Timing of receipt and expenses.—In computing the taxable amount and qualified inventory costs of a taxpayer, an amount shall be treated as recognized, paid, or incurred at the time it is recognized, paid, or incurred under the taxpayer's method of accounting for Federal income tax purposes.

A special rule applies to installment sales. The taxable amount of the seller includes, for a taxable period, only the principal payments received during that taxable period. The qualified inventory costs of the buyer includes, for a taxable period, only the portion of the costs corresponding to the principal paid during the taxable period. Thus, the seller is taxed, and the buyer obtains credit for the item purchased, over the term of the installment sale. This rule matches the timing of the seller's tax with the timing of the buyer's credits.

Credit against tax

The conference agreement provides manufacturers a credit against the Superfund Excise Tax that is the greater of two amounts:

(1) The first amount is equal to the Superfund Exicse Tax imposed on sales and leases (but not imports), to the extent it does not exceed $10,000.[4] Persons under common control (whether corporations, partnerships, proprietorships, or other entities) are to be treated as one taxpayer for purposes of the standard $10,000 credit. The rules of section 52 (originally drafted for purposes of the targeted jobs credit) apply to determine whether persons are under common control. Thus, a manufacturer (but not an importer) with a taxable amount of $10 million or less would be exempt from the tax ($10 million times 0.1 percent equals $10,000).

(2) The second amount is equal to the qualified inventory costs of the taxpayer multiplied by 0.1 percent.

The conferees recognize that these rules may provide the taxpayer with a credit against tax that is larger than the tax actually paid. (For example, sellers with less than $10 million of receipts are exempt, and buyers include Superfund and other manufacturers' excise taxes as well as wholesale margins in computing credits.) Excess credits could be avoided by limiting the credit to the amount of tax shown on invoices; however, the desire of the conferees to make administration of the tax as simple as possible, in conjunction with the low rate of tax, outweighs concerns about the technical perfection of the credit mechanism.

Qualified inventory costs are direct material and other costs (including the Superfund Excise Tax on such materials) of tangible personal property that are allocable to the manufacturer's inventory and are paid or incurred during the taxable period for which the manufacturer is liable for the Superfund Excise Tax. Thus, the inventory tax accounting rules used in the definition of qualified inventory costs identify the items includible in qualified inventory costs, but not the time when the cost of these items is recognized for purposes of the Superfund Excise Tax. The cost is recognized at the time it is paid or incurred by the manufacturer.

Qualified inventory costs for any taxable period are amounts paid or incurred during the taxable period for tangible personal property (other than exempt products and property used to manufacture exempt products) which is allocable to the inventory of a manufacturer under the full absorption method of accounting (sec. 471). Exempt products include food, fertilizer, and unprocessed agricultural, fishery, and timber products (see below). Taxpayers that do not use the full absorption method of inventory accounting for income tax purposes are, nevertheless, required to use the standards of full absorption accounting for purposes of determining qualified inventory costs.

In lieu of any allowance for depreciation and amortization, with respect to tangible personal property, qualified inventory costs in-

[4] This amount is prorated for taxable periods that do not include 12-full months. Thus, for example, a manufacturer subject to this tax for 6 months of a 12-month taxable year would be entitled to a maximum credit of $5,000 under this provision. The amount is also prorated for short taxable periods.

clude the amount paid or incurred for such property in the year placed in service.[5] In the case of any tangible personal property purchased under the installment method, the cost of such property shall be taken into account, for purposes of determining qualified inventory costs, only when paid (see above).

Qualified inventory costs generally include the cost of utilities subject to the Superfund Excise Tax. Thus for example, the cost of natural gas, but not the cost of electricity would be included in qualified inventory costs. Qualified inventory costs include lease payments on qualifying equipment paid or incurred during the period the Superfund Excise Tax is in effect. Qualified inventory costs do not, however, include any cost or amount with respect to an item acquired before the effective date of the tax. Additionally, qualified inventory costs do not include the inventory costs of any non-manufacturing operation. For purposes of computing qualified inventory costs, tangible personal property that is manufactured for lease is treated in the same manner as property that is manufactured for sale.

The amount of the credit allowed to be claimed for a particular taxable period may not exceed the liability for the Superfund Excise Tax. The amount by which the credit for qualified inventory costs exceeds the liability for a particular taxable period may be carried to the next taxable period and added to the credit potentially allowable for that period. No carryover is permitted for the excess, if any, of the standard $10,000 credit over the tax liability for any taxable period.

The conference agreement also provides that the amount of the Superfund Excise Tax credit for any particular item of tangible personal property must be subtracted from the income tax basis of that item. The amount of the basis adjustment is determined as 0.1 percent of the cost of the property included in qualified inventory costs. (In the case of an installment sale, the basis adjustment is computed as 0.1 percent of the principal amount of the installment obligation). Taxpayers not otherwise required to file returns for this tax must file returns and make this basis adjustment to claim the item of tangible personal property in qualified inventory costs.

The credits will carry over in a corporate reorganization in any situation in which there is a carryover of credits under section 381.

Exempt transactions

The conference agreement exempts several types of transactions from the Superfund Excise Tax. First, the Superfund Excise Tax is not imposed on the sale of any property that is to be exported outside the United States, as provided in regulations. The conferees intend that these regulations follow the principles of section 4221(b) (relating to excise taxes), and the regulations thereunder, for purposes of proving that an article has been exported. In particular, the conferees intend that Treasury regulations adopt the rule in section 4221(b) that provides that the exemption from tax ceases to apply to the sale of an article unless, within six months of

[5] If only a portion of depreciation or amortization is allocable to the inventory of a manufacturer, then the same portion of the amount paid or incurred for the property is allocable to qualified inventory costs.

the earlier of either the date of sale or date of shipment by the manufacturer, the manufacturer receives proof that the article has been exported.

The conference agreement exempts from the Superfund Excise Tax the sale or lease of tangible personal property by the United States or any other governmental entity or by an organization that is exempt from the income tax under section 501(a) (unless the transaction is part of an unrelated trade or business within the meaning of section 513). Imports by governmental entities and organizations that are exempt from the income tax are subject to the Superfund Excise Tax.

The conference agreement exempts small imports from this tax. A small import is any shipment (whether formal or informal) the taxable amount of which is less than $10,000. The conferees intend that "shipment" be interpreted for purposes of this tax in the same manner that it is generally interpreted for customs purposes. Thus, a shipment is generally all articles on one carrier for one consignee on one day.

The conference agreement exempts from the tax food (whether for humans or animals), any product used as fertilizer, unprocessed agricultural or fishery products, and unprocessed timber. The term "food" does not include pharmaceuticals or other forms of medicine, whether available over the counter or by prescription only. Food generally includes beverages, except that it does not include alcoholic beverages. Food does include any additives. Any material, component, or packaging of food or fertilizer is considered to be part of the food or fertilizer. The conferees intend that Treasury regulations coordinate the definitions of unprocessed agricultural products and food products with the 5-digit tariff code for purposes of exempting from this tax imports of these items.

Time for filing returns and related administrative matters

Taxpayers are required to file a Superfund excise tax return annually, at the same time they file their regular income tax return. Thus, for example, a corporation that has as its taxable year the calendar year would be required to file the Superfund Excise Tax return by March 15 of the following year, which is the same date that its corporate income tax return (Form 1120) is due. As with other tax returns, the Secretary may grant a reasonable extension of time for filing a Superfund Excise Tax return (*see* sec. 6081).

The conference agreement provides that a manufacturer who has $10 million or less of aggregate receipts from the sale or lease of tangible personal property (excluding exports) is not required to file a Superfund Excise Tax return.[6] These taxpayers have no tax liability because of the credit mechanism (described above). Taxpayers who are under common control are treated as one person for purposes of this exemption from the requirement to file a return. In addition, the Secretary may provide by regulations that certain other taxpayers with more than $10 million of sales or

[6] This exemption is prorated for taxable periods that do not include 12 full months. Thus, for example, a manufacturer subject to this tax 6 months of a 12-month taxable year would not be required to file a return if it had less than $5 million of sales or lease receipts in that taxable year. This exemption is also prorated for short taxable periods.

lease receipts, but who may have no tax liability, need not file returns. Taxpayers not otherwise required to file returns must, however, file returns and make the income tax basis adustment (described above) in order to claim items of tangible personal property in qualified inventory costs to carry forward credits into future years.

The taxable period for which liability for the Superfund excise tax must be determined is the taxable person's taxable year for purposes of the income tax. If the taxpayer does not have a taxable year for purposes of the income tax, then the taxable period for purposes of the Superfund Excise Tax is the calendar year.

The penalties for failure to file a tax return or to pay tax that are applicable to the income tax (sec. 6651) are made applicable to the Superfund Excise Tax. In addition, the civil negligence penalty (sec. 6653(a)) that is applicable to the income tax is made applicable to the Superfund Excise Tax. The criminal penalties of the Code are generally applicable to the Superfund Excise Tax.

The conference agreement generally requires that the Superfund Excise Tax be deposited quarterly after the first taxable period in which a taxable sale or lease occurs. For the first taxable year that a manufacturer is potentially subject to this tax, any manufacturer is potentially subject to this tax, any manufacturer with more than $50 million of sales or lease payments determined in the prior year is required to deposit quarterly. (For this purpose, controlled groups are treated as one taxpayer.) In subsequent taxable years, any manufacturer not previously liable for a payment of Superfund Excise Tax will not be required to deposit quarterly. Thus, for example, a manufacturer who paid Superfund Excise Tax for 1986 would be required to deposit quarterly in 1987, whereas a manufacturer not required to pay any Superfund Excise Tax in 1986 would pay the Superfund Excise Tax (if any) for which the manufacturer is liable for 1987 with the manufacturer's return. The existing penalty for failure to make deposits (Code sec. 6656) applies to failures to deposit the Superfund Excise Tax. This penatly will not apply, however, if the manufacturer deposits at least the lesser of 90 percent of the tax due or 100 percent of the previous year's liability.[7]

The tax on imports is to be collected in the same manner as duties by customs agents. Consequently, the conference agreement does not specify deposit rules for the tax on imports.

Revenues from the Superfund Excise Tax are not paid to Puerto Rico or the Virgin Islands or any other possession or territory under the cover over provisions of section 7652 of the Code or similar provisions.

The Secretary of the Treasury is authorized to issue regulations to carry out the purposes of the Superfund Excise Tax.

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[7] A taxpayer may avoid this penalty with respect to any year the taxpayer is liable for Superfund Excise Tax by depositing at least 90 percent of the tax due for that taxable year. A taxpayer may, however, avoid this penalty with respect to a year the taxpayer is liable for this tax by depositing 100 percent of the previous year's liability for this tax only if the taxpayer prorates this amount for a full 12-month period. Thus, if a taxpayer was liable for $100,000 of Superfund Excise Tax for its taxable year July 1, 1985 through June 30, 1986, the taxpayer would be considered to have deposited 100 percent of the previous year's liability by depositing $400,000.

Effective dates

The Superfund Excise Tax applies with respect to taxable amounts received or accrued after April 1, 1986. The tax will not apply with respect to taxable amounts received or accrued after March 31, 1991.

The conference agreement provides special rules for any taxable period including but not beginning on April 1, 1986 or April 1, 1991. In the case of such a taxable period, the taxpayer must, in computing its taxable amount and credit for the Superfund Excise Tax, prorate its receipts and purchases on a daily basis. For example, a taxpayer whose taxable year runs from May 1 through April 30 must, under this special rule, prorate 30/365 of its receipts and 30/365 of its purchases as representing those amounts for the period for May 1 through April 30, 1986. In addition, the $10,000 standard credit similarly would be prorated.

h. Repeal of Post-Closure Liability Tax and Trust Fund

The conference agreement retroactively repeals the tax on hazardous wastes under section 4681 of the Code, effective October 1, 1983, and terminates the Post-Closure Liability Trust Fund as of that date. Refunds (with interest) would be allowed for taxpayers who paid taxes on hazardous wastes under section 4681.

i. Leaking Underground Storage Tank Trust Fund and Tax

a. Leaking Underground Storage Tank Trust Fund

The conference agreement establishes a new trust fund, the Leaking Underground Storage Tank Trust Fund, under the Internal Revenue Code. The purpose of this trust fund is to pay for the costs of corrective actions involving leaks of petroleum and petroleum products from underground storage tanks. The Trust Fund generally is to be used to pay cleanup and related costs involving tanks where no solvent owner can be found, or the owner or operator refuses or is unable to comply properly with a corrective action order necessary to protect human health and the environment. The Trust Fund would also be available to provide grants to States authorized to carry out corrective actions. Claims filed against the Trust Fund may be paid only out of such Trust Fund. Claims in excess of the Trust Fund balance shall be paid in full (to the extent of such balance) in the order in which the claim was finally determined.

The Trust Fund will be financed by (1) a tax on gasoline, diesel and special motor fuels (described below), (2) interest on balances in the Trust Fund, and (3) amounts recovered from responsible parties for costs incurred by the Administrator of the EPA (or by a State) in undertaking a corrective action with respect to the release of petroleum and petroleum products from an underground storage tank.

The conference agreement provides that amounts in the Trust Fund may not be expended until the Solid Waste Disposal Act (or other provision of law) is amended to authorize a program to clean

up leaks of petroleum and petroleum products from underground storage tanks.

b. Tax on gasoline, diesel and special motor fuels

Under present law, an excise tax is imposed on gasoline sold by a producer or importer thereof (sec. 4081), and on the sale (or use) of diesel fuel and special motor fuels (sec. 4041). Special motor fuels include benzol, benzene, naptha, liquid petroleum gas, casing head and natural gasoline, and any other liquid (other than kerosene, gas oil, fuel oil, or gasoline) sold for use in motor vehicles or motor boats. No tax is imposed on diesel and special motor fuels used for use on a farm for farming purposes. Gasoline, diesel and special motor fuels sold for use as a fuel in an aircraft in noncommerical aviation are taxable. Exemptions are provided for certain aircraft museums and helicopter uses. Gasoline mixed with certain alcohol products is subject to tax at a reduced rate.

Under the conference agreement, an additional tax of 0.2 cent per gallon is imposed on the sale (or use) of gasoline, diesel and special motor fuels subject to tax under sections 4041, 4042 and 4081 of the Code. Tax is also imposed on liquid fuels used in boats, planes, and trains. Revenues from this tax, or equivalent amounts, are to be deposited in the Leaking Underground Storage Tank Trust Fund.

The tax is effective on January 1, 1986. The tax terminates after September 30, 1990. Earlier termination would occur at the end of any month in which the Secretary of the Treasury first determined that cumulative net revenues equal or exceed $850 million.

j. Oil Spill Liability Tax and Trust Fund

a. Oil Spill Liability Trust Fund

Expenditure purposes.—The conference agreement establishes an Oil Spill Liability Trust Fund under the Internal Revenue Code. Amounts in the Trust Fund are available for the payment of removal costs incurred in cleaning up or preventing oil pollution from vessels or offshore facilities, including costs incurred by government officials in carrying out oil pollution cleanup requirements under the Federal Water Pollution Control Act and the Intervention on the High Seas Act. The fund may also be used to pay removal costs the liability for which is transferred to the fund from the Deepwater Port Liability Fund (established under the Deepwater Port Act of 1974) or the Offshore Oil Pollution Compensation Fund (established under the Outer Continental Shelf Lands Act Amendments of 1978). No fund moneys may be used to pay natural resource damage claims or to pay governmental entities for costs incurred other than for removal actions and related administrative costs. Funds could be used for compensating loss of income and private damage claims under certain circumstances. No amounts could be paid for loss of State and local tax revenue.

Amounts in the Trust Fund are available to pay contributions to the fund established by the 1984 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, if this convention (and a related liability con-

vention) comes into force with respect to the United States. Trust Fund moneys may also be used to pay administrative costs. However, such contributions shall be reduced to the extent that the International Fund is used for expenditure purposes that are not permissible uses of the Oil Spill Liability Trust Fund.

The liability of the Trust Fund cannot exceed $200 million for any single incident.

The conference agreement provides that amounts in the Trust Fund may not be expended until a program is authorized to clean up or prevent oil pollution from vessels or offshore facilities.

Claims against the Trust Fund can be paid only out of the Trust Fund. If the fund is unable to pay all claims, claims will be paid in full (subject to the limitations above) in the order in which the claims are finally determined.

Other financing sources

The following amounts are to be deposited in the Trust Fund:

(1) A 1.3-cents-per-barrel tax on crude oil and imported petroleum products (described below),

(2) Amounts recovered, collected, or received from responsible parties under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act, as reported by the authorizing committees,

(3) Amounts remaining in the Deepwater Port Liability Fund and the Offshore Oil Pollution Compensation Fund after the new Trust Fund and petroleum tax become effective,

(4) Income on Trust Fund investments, and

(5) The proceeds of authorized borrowing by the Fund (which is not to exceed $300 million in outstanding indebtedness at any time).

Effective date.—These provisions are effective on January 1, 1986.

b. Tax on petroleum

Imposition of tax.—The conference agreement imposes a new excise tax of 1.3 cents per barrel on domestic crude oil and on petroleum products (including crude oil) imported into the United States. The tax is imposed on the same crude oil and petroleum products, and is subject to the same definitional and other provisions, as is the Superfund petroleum tax (discussed above), and is in addition to that tax. Amounts equivalent to the revenues from the tax are to be deposited in the Oil Spill Liability Trust Fund.

The collection, enforcement, and penalty provisions that are applicable to the Superfund petroleum tax are also applicable to this petroleum tax.

Effective date.—The tax applies from January 1, 1986 through September 30, 1990.

k. Hazardous waste removal costs treated as qualifying distributions by private foundations

Senate recedes to the House (no provision).

l. IDBs for hazardous waste treatment facilities

House recedes to the Senate (Senate provision is included).

TITLE XIV.—GENERAL REVENUE SHARING

Senate amendment

The current authorization of the general revenue sharing program, which provides unrestricted grants totaling $4.6 billion annually to local governments, is scheduled to expire on September 30, 1986. The Senate amendment would terminate the program on October 1, 1986, by a repeal of the Revenue Sharing Act.

Under the Senate amendment, local governments would have until March 1, 1986 to demand an adjustment in future payments for prior underpayments or overpayments. In addition, amounts paid to local governments would have to be used, obligated or appropriated by such governments by April 1, 1987. Only such sums as are necessary for the purposes of administering the provisions of this section and the orderly phaseout of the Revenue Sharing Program are authorized for fiscal year 1987.

House amendment

No provision.

Conference agreement

Generally follows the Senate amendment, but incorporates several changes. Although the current authorization expires on September 30, 1986, the repeal of the Revenue Sharing Act would be delayed until the earlier of December 31, 1986 or adjournment sine die of the 99th Congress. In no event would an early effective date prevent the payment of any allocation for the fiscal year 1986 entitlement period, including any funds held in reserve pursuant to Section 6702(d) of Title 31, U.S.C.

In addition, local governments would be required to have used, obligated or appropriated payments to them by October 1, 1987. This allows local governments six months more to allocate such funds than was available under the Senate amendment.

As under the Senate amendment, only such sums as are necessary to administer the provisions of this section are authorized for Fiscal Year 1987.

TITLE XV.—CIVIL SERVICE, POSTAL SERVICE, AND GOVERNMENTAL AFFAIRS GENERALLY

POSTAL SERVICE ISSUES

1. Reduction of authorization for revenue forgone

House provision

The House bill (Sec. 7104(a)) limits the FY 1986 authorization for the "revenue forgone" appropriation to $749 million. (The revenue forgone appropriation subsidizes the postage rates paid by nonprofit organizations and other "preferred rate" mailers.)

Senate provision

The Senate bill (Sec. 801) contains a substantially similar provision.

Conference agreement

The conference agreement contains the House language.

2. Reduction of transitional appropriation

House provision

The House bill (Sec. 7104(b)) reduces to zero the amount authorized to be appropriated for FY 1986 for the transitional appropriation to the Postal Service. (The transitional appropriation is used by the Postal Service to reimburse the Department of Labor for workers' compensation costs arising from injuries to employees of the pre-1971 Post Office Department). The House bill further provides that the amount which would have been authorized for this appropriation for FY 1986 shall be authorized for FY 1989, in addition to the amount already authorized for FY 1989 pursuant to 39 U.S.C. 2004. The House bill provides further that the Postal Service's obligations for FY 1986 shall be met using any amounts in the Postal Service Fund.

Senate provision

The Senate bill (Sec. 802) provides that no funds shall be appropriated for the FY 1986 transitional appropriation prior to FY 1989.

Conference agreement

The conferees agree to delete both provisions.

3. Delay of step 16 rates to January 1, 1986

Senate provision

The Senate bill (Sec. 803) provides that the increase in postage rates for nonprofit organizations and certain other mailers announced by the Postal Service Board of Governors on September 6, 1985, shall not take effect until January 1, 1986. The Senate bill also amends section 3626(a) of title 39, United States Code, to eliminate the rate "phasing" schedule and provide that effective January 1, 1986, the rates paid by nonprofit organizations and other affected mailers will recover the full costs attributable to their mail.

House provision

The House has no comparable provision.

Conference agreement

The House recedes and concurs with an amendment making it clear that the rate increase announced by the Board of Governors in Resolution No. 85–7 shall not take effect before January 1, 1986 and that any changes in rates shall be established in accordance with chapter 36 of title 39, United States Code. Additionally, in order to obtain needed savings, the conferees agree to eliminate the authorization for that part of the revenue forgone appropriation

which makes possible the "limited circulation" second-class rate. The conferees intend that this rate be eliminated upon enactment.

4. Appropriation ceiling and study concerning third-class commercial material mailed at reduced rates

Senate provision

The Senate bill (Sec. 804) reduces by 50 percent the authorized appropriation for FY 1987 and FY 1988 for third-class nonprofit bulk rate mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements. The Senate bill also directs the Postal Rate Commission to prepare and transmit to Congress within 6 months of enactment a report containing legislative recommendations to achieve the required 50 percent savings. The Commission's study shall also include second-class nonprofit rate and fourth-class library rate mail. The Commission is to invite and consider the views of all interested parties.

House provision

The House has no comparable provision.

Conference agreement

The House recedes and concurs with an amendment striking the mandatory authorization reduction but directing that the Postal Rate Commission conduct an expanded study covering three subject areas. The first subject shall be the use of third-class nonprofit bulk rate mail, second-class nonprofit mail, and fourth-class library rate mail for advertising, promotion, and solicitation purposes (as provided for and defined in the Senate bill). The second subject shall be the general use of the second-class "in-county" publication rate. The focus of the Commission's inquiry in this area shall be the accumulation and synthesis of data and information concerning the number and types of publications which use this subsidized rate, the users' needs for this rate, and the potential impact both on the publications and on their readers of further modification or total elimination of the authorization for this rate. The conferees take specific note of their agreement in section 15104 to amend the Senate bill's provision concerning eligibility for the in-county rate by deleting the limit of 20,000 copies per issue. The conferees hereby direct the Postal Rate Commission to include in its study a specific determination of the number and types of publications which would have been adversely affected had the 20,000 "cap" remained in the new 39 U.S.C. 3626(f). The third subject for the Commission's study is the accuracy, or inaccuracy, of the current method of computing revenue forgone and the development and assessment of alternative methods. The Postal Service is to cooperate fully in the conduct of every phase of the study (including the provision to the Commission of adequate financial, technical, and personnel resources).

5. Restriction on eligibility for in-county second-class rates of postage

Senate provision

The Senate bill (sec. 805) amends 39 U.S.C. 3626 by limiting application of the in-county rate (which is subsidized by the revenue forgone appropriation). The rate shall not apply to an issue of a publication if the number of copies of that issue distributed within the county of publication is less than half of the issue's total paid circulation. This limitation shall not apply if the issue's total paid circulation is less than 10,000 copies. In no case shall the rate apply to more than 20,000 copies of an issue.

House provision

The House has no comparable provision.

Conference agreement

The House recedes and concurs with an amendment striking the Senate provision which would have limited applicability of the subsidized rate to not more than 20,000 copies of any issue. The conferees note that this provision will be a subject of the study to be conducted by the Postal Rate Commission pursuant to section 15103.

6. Curbing of subsidies for advertising-oriented "plus issues" mailed to subscribers at in-county rates

Senate provision

The Senate bill (Sec. 806) further amends 39 U.S.C. 3626 with regard to application of the subsidized in-county rate to nonsubscriber copies of subscription publications. The number of nonsubscriber copies to which the rate is applied in any calendar year may not exceed 10 percent of the number of copies mailed to subscribers in that year.

House provision

The House has no comparable provision.

Conference agreement

The House recedes.

CIVIL SERVICE ISSUES

1. Federal employee pay adjustments

House provision

The House bill (Sec. 7101) freezes civilian pay for FY 1986 and provides 5% pay increases effective Janury 1, 1987, and January 1, 1988. Prevailing rate pay adjustments are limited to 5% and are delayed 90 days in FY 1987 and 1988. Agencies are required to absorb 33% of the cost of the pay increases.

Senate provision

The Senate bill (Sec. 811) 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 1 of each year. In addition, the Senate bill approves legislation, previously done in the appropriations process, that provides Federal Wage System employees with the same pay increases as General Schedule workers and delays those increases for 90 days, similar to the delay for the General Schedule.

The Senate achieves out-year savings in accordance with the conference report on the First Concurrent Budget Resolution for fiscal year 1986. The Senate bill does not mandate a pay raise for fiscal years 1987 and 1988, but, rather, retains the current process for pay increases. 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 budget resolution. The estimates are based on the resolution's pay assumptions of 3.8 percent and 4.7 percent in fiscal years 1987 and 1988, respectively.

Conference agreement

The conference agreement freezes civilian pay for FY 1986 and requires the President to exercise his authority under section 5305 of title 5, United States Code, to limit pay adjustments in FY 1987 and FY 1988 to achieve savings of $746,000,000 in FY 1987 and $1,264,000,000 in FY 1988. These savings are to be computed using the baseline for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, 99th Congress, 1st Session) agreed to on August 1, 1985. The conferees note that these savings could be achieved if FY 1987 and FY 1988 pay increases were each limited to approximately 5 percent and employing agencies were required to absorb approximately one-third of the cost of the pay increases. The conference agreement also delays FY 1987 and FY 1988 civilian pay adjustments until January 1, 1987, and January 1, 1988, respectively. In FY 1987 and FY 1988, prevailing rate pay adjustments are limited to the average percentage adjustment under section 5305 of title 5 and are delayed 90 days.

2. Health insurance program reserves

House provision

The House bill (Sec. 7102(a)) requires OPM to determine minimum level of necessary reserves under the FEHBP and requires each carrier to refund excess reserves to the FEHBP Fund. Required refunds may not be less than $800 million in FY 1986 and $300 million in FY 1987. The House bill prohibits transfer of any amount in contingency reserves to the general fund of the U.S. Treasury as a result of any refund of excess reserves.

Senate provision

The Senate bill (Sec. 814) is similar to the House except that it requires the Government's share of the refunds to be held in the health benefits fund and to be used to pay for future increase in Government's contributions for health insurance premiums.

Conference agreement

The conference agreement requires OPM to determine the minimum level of necessary reserves under the FEHBP and requires each carrier to refund excess reserves to the FEHBP Fund. Re-

quired refunds cannot be less than $800 million in FY 1986 and $300 million in FY 1987. The agreement further provides no funds may be transferred to the general fund of the Treasury of the United States as a result of a refund required by the conference agreement. The conference agreement specifically authorizes the use of the Government's share of refunded amounts to fund the Government's share of subscription charges for annuitants participating in the FEHBP. The conference agreement permits refunds to the Government of the District of Columbia and the United States Postal Service in amounts attributable to the employer's share of subscription charges paid by those entities. Beginning in FY 1987, the Postal Service shall be required to pay all FEHBP costs for future postal annuitants.

3. Health insurance premium cap

Health provision

Under existing law, the Government's health insurance premium contribution may not exceed 75% of the total premium for a particular plan. The House bill (Sec. 7102(b)) suspends application of the 75% cap for the 1986 and 1987 contract years.

Senate provision

The Senate has no comparable provision.

Conference agreement

The conference agreement amends section 8902(b)(2) of title 5, United States Code, to repeal permanently the 75 percent limitation on the Government contribution to FEHBP premiums. The conference agreement further provides that the amendment to section 8902(b)(2) shall be effective with respect to pay periods commencing after March 1, 1986.

4. Pay based on 2,087 hours per year

House provision

The House bill (Sec. 7103) provides for continued use of the 2,087 hour pay computation factor through FY 1988.

Senate provision

The Senate bill (Sec. 812) permanently extends use of the 2,087 hour pay computation factor.

Conference agreement

The House recedes to the Senate and concurs with an amendment which makes the provision effective beginning with pay periods which commence on or after March 1, 1986.

5. Health benefits in medically underserved areas

Senate provision

The Senate bill (Sec. 813) permanently reauthorizes a program that expired on December 31, 1984, which required FEHB plans to provide benefits for the services of any state licensed health care

provider if the service is provided in a state designated as a medically underserved area.

House provision

The House has no comparable provision.

Conference agreement

The Senate recedes to the House. The conferees note that this issue is addressed in other legislation currently pending before the Senate.

6. Retirement benefits for part-time employment

Senate provision

The Senate bill (Sec. 815) provides prospectively that the total service of an employee who has performed part-time service shall be prorated to reflect such part-time service when computing the employee's civil service retirement annuity.

House provision

The House has no comparable provision.

Conference agreement

The House recedes to the Senate and concurs with an amendment making technical and clerical changes.

. Wage rates of certain employees in Tucson, Arizona

Senate provision

The Senate bill (Sec. 816) prohibits any reduction in the wage schedules or rates applicable to prevailing rate employees in the Tucson, Arizona, wage area during FY 1986.

House provision

The House has no comparable provision.

Conference agreement

The House recedes to the Senate and concurs with an amendment which takes into account the fact that reductions in wage schedules for the affected area have already occurred and back payments will be necessary in order to fully implement the conference agreement.

ESTIMATED BUDGETARY IMPACT OF RECONCILIATION PROVISIONS: SUBCONFERENCE 24 [1]

TABLE 1.—SUMMARY BY SECTION OF NET BUDGETARY EFFECTS OF SUBCONFERENCE 24 PROVISIONS

[By fiscal year, in millions of dollars]

Section and program	1986	1987	1988	Total 1986–88
Section 15201. Pay adjustments:				
Budget authority	−1,910	−3,336	−4,039	−9,285
Outlays	−1,940	−3,452	−4,194	−9,587

ESTIMATED BUDGETARY IMPACT OF RECONCILIATION PROVISIONS: SUBCONFERENCE 24 [1]—Continued

[By fiscal year, in millions of dollars]

Section and program	1986	1987	1988	Total 1986–88
Section 15202. Federal Employees Health Benefits Program:				
Budget authority	−973	−148	−105	−1,016
Outlays	−973	−148	−105	−1,016
Section 15203. Computation of hourly rates of pay:				
Budget authority	−72	−145	−154	−371
Outlays	−72	−145	−154	−371
Section 15204. Computation of retirement annuity for part-time Federal employees:				
Budget authority				
Outlays				
Section 15205. Effect of wage survey regarding Federal employees in Tucson, AR:				
Budget authority				
Outlays				
Section 15101–15105. U.S. Postal Service:				
Budget authority	−45	−65	−27	−137
Outlays	−45	−65	−27	−137
Total net budgetary effects:				
Budget authority	−3,000	−3,694	−4,115	−10,809
Outlays	−3,030	−3,810	−4,270	−11,110

[1] Unless otherwise specified by the bill, all estimates assume enactment of provisions by December 31, 1985.

TABLE 2.—BUDGETARY EFFECTS OF PROVISIONS RELATING TO PAY COMPARABILITY ADJUSTMENTS (SEC. 15201)

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Savings: Civilian agency employees (920):				
Budget authority	−1,187	−1,991	−2,394	−5,571
Outlays	−1,232	−2,120	−2,557	−5,908
Department of Defense employees (050):				
Budget authority	−919	−1,693	−2,068	−4,680
Outlays	−904	−1,680	−2,061	−4,645
Subtotal, savings:				
Budget authority	−2,106	−2,684	−4,462	−10,251
Outlays	−2,136	−3,800	−4,618	−10,554
Offsetting receipts (950):				
Budget authority	195	348	423	966
Outlays	195	348	423	966
Net budgetary effect:				
Budget authority	−1,910	−3,336	−4,039	−9,285
Outlays	−1,940	−3,452	−4,194	−9,587

TABLE 3.—BUDGETARY EFFECTS OF INDIVIDUAL COMPONENTS OF PROVISIONS RELATING TO PAY COMPARABILITY ADJUSTMENTS [1]

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Freeze pay in 1986 (920, 050):				
Budget authority	−2,106	−2,405	−2,533	−7,044
Outlays	−2,136	−2,504	−2,636	−7,276
3-month delay in 1987–88 (920, 050):				
Budget authority		−543	−704	−1,247

TABLE 3.—BUDGETARY EFFECTS OF INDIVIDUAL COMPONENTS OF PROVISIONS RELATING TO PAY COMPARABILITY ADJUSTMENTS [1]—Continued

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Outlays		−550	−717	−1,267
Savings of outyear pay adjustments (920, 050):				
Budget authority		−736	−1,224	−1,960
Outlays		−746	−1,264	−2,010
Total budgetary effects:				
Budget authority	−2,106	−3,684	−4,462	−10,251
Outlays	−2,136	−3,800	−4,618	−10,554

[1] Excludes effects of offsetting receipts.

TABLE 4.—BUDGETARY EFFECTS OF PROVISIONS RELATING TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM (SEC. 15202)

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Function 550				
Refund excess carrier reserves:				
Budget authority	−1,067	−300	.....	−1,367
Outlays	−1,067	−300	.....	−1,367
Reimburse Postal Service:				
Budget authority	60	17	.....	77
Outlays	60	17	.....	77
Reimburse District of Columbia:				
Budget authority	6	2	.....	8
Outlays	6	2	.....	8
Require Postal Service to pay health benefits for future annuitants:				
Budget authority		−10	−35	−45
Outlays		−10	−35	−45
Remove limit on Government's share of health insurance premiums:				
Budget authority	88	150	150	388
Outlays	88	150	150	388
Subtotal, Function 550:				
Budget authority	−913	−141	115	−939
Outlays	−913	−141	115	−939
Function 370				
Refund excess carrier reserves: Reimburse Postal Service:				
Budget authority	−60	−17	.....	−77
Outlays	−60	−17	.....	−77
Require Postal Service to pay health benefits for future annuitants:				
Budget authority		10	−10	.....
Outlays		10	−10	.....
Subtotal, Function 370:				
Budget authority	−60	−7	−10	−77
Outlays	−60	−7	−10	−77
Total net budgetary effect:				
Budget authority	−973	−148	105	1,016
Outlays	−973	−148	105	1,016

TABLE 5.—BUDGETARY EFFECTS OF PROVISION TO EXTEND PERMANENTLY METHOD OF CALCULATING CIVILAIN PAY USING 2,087 HOURS PER WORKYEAR (SECTION 15203)

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Savings: Civilian agency employees (920):				
Budget authority	−50	−101	−107	−258
Outlays	−50	−101	−107	−258
Department of Defense employees (050):				
Budget authority	−30	−59	−63	−152
Outlays	−30	−59	−63	−152
Subtotal, savings:				
Budget authority	−80	−160	−170	−410
Outlays	−80	−160	−170	−410
Offsetting receipts (950):				
Budget authority	8	15	16	39
Outlays	8	15	16	39
Net budgetary effect:				
Budget authority	−72	−145	−154	−371
Outlays	−72	−145	−154	−371

Note: Fiscal year 1986 figures assume enactment of this provision on March 1, 1986, as specified in the bill.

TABLE 6.—BUDGETARY EFFECTS OF PROVISIONS RELATING TO THE U.S. POSTAL SERVICE (SECTIONS 15101–15105)

[By fiscal year, in millions of dollars]

Program (budget function)	1986	1987	1988	Total 1986–88
Savings: Cap 1986 revenue forgone (370):				
Budget authority	−83			−83
Outlays	−83			−83
Eliminate phasing (370)				
Budget authority		−38		−38
Outlays		−38		−38
End subsidized rates for 2d class/limited circulation (370):				
Budget authority	−24	−18	−18	−60
Outlays	−24	−18	−18	−60
Restrict 2d class, In-county (370):				
Budget authority	−8	−9	−9	−26
Outlays	−8	−9	−9	−26
Restrict "plus" mail (370):				
Budget authority				
Outlays				
Subtotal, savings:				
Budget authority	−115	−65	−27	−207
Outlays	−115	−65	−27	−207
Costs: Delay step 16 rates (370):				
Budget authority	70			70
Outlays	70			70
Net budgetary effect:				
Budget authority	−45	−65	−27	−137
Outlays	−45	−65	−27	−137

Civilian Agency Multiyear Contracting Authority

Senate provision

The Senate bill contains a provision that amends title 3 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) by adding a new section 306 on Multiyear Contracts. This section, which is identical to S. 678, the Civilian Agency Multiyear Contracting Act of 1985, authorizes civilian procuring agencies to enter into multiyear contracts, not to exceed five years, when it is determined to be in the government's best interest.

House provision

The House bill contains no comparable provision.

Conference agreement

The Senate agrees to recede to the House provision.

Sections 15301–15303. Federal Motor Vehicle Expenditure Control

House amendment

The House amendment contains no provision relating to reduction of Federal motor vehicle expenditures.

Senate amendment

Sections 15301–15313 of the Senate amendment require executive agencies, the Administrator of General Services, and the Director, Office of Management and Budget, to take a number of actions designed to reduce the costs of acquiring, operating, maintaining, and disposing of motor vehicles. Agencies would establish data collection systems, study the costs and benefits of contracting with private fleet management firms, and provide with their budget requests statements of motor vehicle costs. Appropriations otherwise available for motor vehicle expenditures would be reduced $225 million by fiscal year 1988.

Conference agreement

The conferees agreed to the Senate provision with an amendment.

The conferees agree that significant savings can be achieved by finding more efficient means to acquire, operate, maintain, and dispose of motor vehicles in Federal agencies. Therefore, the conferees support establishment of the basic mechanisms in the Senate bill to require executive agencies, the General Services Administration, and the Office of Management and Budget to improve government motor vehicle fleet management. However, the conferees believe there are insufficient data on current costs of fleet management to mandate specific dollar savings. The government's accounts do not separately identify the specific cost of motor vehicles acquisition, operation, maintenance, and disposal.

The amendment agreed to by the conferees requires the President to establish cost reduction goals aimed at reducing outlays for motor vehicle fleet management by fiscal year 1988 to an amount which is $150 million less than the amounts requested for this pur-

pose in the fiscal year 1986 budget. While the agencies would not be required by law to actually reduce their appropriations by that cumulative amount, the conferees expect all agencies to make every effort, while giving consideration to performing their missions, to comply fully with the President's goals. The reporting requirements have been modified to assure that Congress will be fully informed not only of the projected savings in future budgets, but also progress in meeting established goals. Certain other minor changes were made in the Senate bill's study and reporting requirements to eliminate redundancy.

The conference amendment also exempts the Postal Service, the Postal Rate Commission and the Tennessee Valley Authority. These organizations in large part are not normally subject to direct Presidential control and reductions in their motor vehicle costs would not result in significant budgetary savings. In addition, the GSA Administrator is authorized to exempt agencies' special purpose vehicles. The conferees expect this latter authority to be used sparingly. The total savings goal was reduced from $225 million to $150 million in recognition of the exemption of the Postal Service, which bears a large percentage of government motor vehicle costs.

Title XXV—Higher Education Programs

The Senate language requires recall of state agency advances of $75 million in FY 1988. The House recedes on the amount.

The House bill states that agencies less than five years old at the time of the recall are exempt, the Secretary must take into consideration the solvency and maturity of the insurance and reserve funds of the agencies as determined by the Comptroller General in determining how much of their advances to recall. The Senate recedes with an amendment that prohibits repayment from any state if that repayment encumbers the reserve fund requirement mandated by state statute.

Both the House and Senate bills require multiple disbursement of student loans. The House language states that loans are to be multiply disbursed to students on the basis of their academic terms (i.e. semester, quarter, etc.) lenders receive subsidies only on the disbursed portion of the loan and the origination fee is charged proportionately on each disbursement. The effective date is July 1, 1986. The Senate recedes.

The Senate also recedes to the House language on the copayability of GSL checks. The Senate language requires the GSL check to be made copayable to the student and the institution the student is attending. The House language requires the check to be made payable to the student, but sent to the school the student is attending. Because some public schools are required to deposit the GSL checks made copayable to them into their state accounts, this would have resulted in the delay of disbursement of GSL money to the student. By sending the check to the school, the conferees are confident that the goals of copayability will be met, without the administrative problems and delay in giving the GSL proceeds to the student. The Senate conferees receded to the House on this language based on the administrative problem, not because of any other alleged problems with certain schools not disbursing GSL proceeds as required.

The Senate and House bills extend the period that state guarantee agencies are required to attempt to collect defaulted loans before submitting them to the Secretary for reinsurance. The House recedes with an amendment that extends to 270 days the period that loans must be held before reinsurance is collected. This period includes 180 days during which the lender or other holder must attempt to collect the loan and an additional 90 days during which the state guarantee agency must pursue collection efforts. This extends the current time period by 150 days.

Both the House and Senate bills include language to strengthen preclaims assistance activities. Lenders and guaranty agencies may be reimbursed through Federal reinsurance for use of collection agencies in reinstating delinquent loans in repayment status. The maximum allowable reimbursement is the lesser of $100 or 2% of the loan value. This section shall take effect immediately upon enactment rather than waiting until regulations are promulgated in order to accomplish savings in FY '86.

The Senate bill requires mandatory payment of administrative cost allowances. The Secretary is required to pay the full 1% ACA for each fiscal year beginning after September 30, 1984. The House recedes.

The Senate bill requires states to establish lenders-of-last resort. The House recedes with an amendment, clarifying the intent.

The Senate bill includes a new loan consolidation program. Borrowers with indebtedness in excess of $5,000 in loans made under the NDSL or GSL program may consolidate those loans at a rate of 10 percent (unless ALAS loans are also consolidated, then the rate is the rate of the highest ALAS loan). Lenders, Sallie Mae, State guaranty agencies, and secondary markets, and eligible higher education institutions may consolidate loans. The yield to lenders on consolidation loans is T-bill plus 3 percent. The House recedes.

The House bill extends the Guaranteed Student Loan program for two years, through fiscal year 1988. The GSL family contribution section of the Student Financial Assistance Technical Amendments Act of 1982 is also extended. The Senate recedes.

The Senate bill requires acceleration of Sallie Mae's repayment schedule to the Federal Financing Bank in FY 86 by $30 million. The increased FY 1986 repayment cannot be used as credit to reduce its payments in FY 1987 or FY 1988. The House recedes.

Both the House and Senate bills include language to help tighten collection efforts. Collection efforts are to be enhanced by the use of credit bureaus, stiffer penalties for late payments, increased auditing of state agencies; disbursement of gsls through postsecondary education institutions; and a standard federal statute of limitations on collection efforts. The conferees also agreed to language in the credit bureau reporting section that would cover the Secretary of Education, guaranty agencies, eligible lenders, and subsequent holders of loans. The conferees recommend that these entities adhere to the generally accepted standards of credit bureau operations when providing information to and requesting information from these organizations. Nothing in this legislation is intended to regulate the ordinary business practices of a credit bureau.

The House bill includes language requiring discounting income from foreclosures or bankruptcy. Proceeds from the sale of farms

or businesses which results from bankruptcy, foreclosure, or forfeiture cannot be counted in determining family income for the purposes of Pell Grant or GSL eligibility. The Senate recedes.

The House bill requires students to have a determination of their Pell Grant eligibility or ineligibility before applying for a GSL. The Senate recedes with a clarifying amendment.

The Senate, but not the House proposal, reduces special allowance payments by 0.25 percent. The Senate recedes.

The House, but not the Senate proposal, requires a need assessment for all students in the Guaranteed Student Loan program. The House recedes.

The House bill requires that all students be charged a 3 percent insurance premium. The House recedes.

The Senate measure contained a provision amending the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act. The House had no comparable provision.

The Senate recedes because of a similar provision currently contained in Public Law 99-145.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 13, 1985.

Hon. AUGUST F. HAWKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached estimate of the budget impact of the reconciliation provisions within the jurisdiction of subconference 27. Table 1 reflects the budget impact of the provisions assuming an October 1, 1985 date of enactment. The estimates in Table 2 assume a December 31, 1985 date of enactment.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS SUBCONFERENCE 27

TABLE 1.—CHANGE FROM RESOLUTION BASELINE [1]

[By fiscal year, in millions of dollars]

	Total					
	1986	1987	1988	1986-88	1989	1990
Direct spending: Guaranteed Student Loan Program:						
Budget authority	−269	−205	−292	−765	−187	−181
Outlays	−335	−200	−297	−832	−197	−186

[1] Assumes an October 1, 1985 enactment date.

ESTIMATED BUDGET IMPACT OF RECONCILIATION PROVISIONS—SUBCONFERENCE 27

TABLE 2.—CHANGE FROM RESOLUTION BASELINE [1]

[By fiscal year, in millions of dollars]

	Total					
	1986	1987	1988	1986–88	1989	1990
Direct spending: Guaranteed Student Loan Program:						
Budget authority	−254	−200	−287	−741	−182	−181
Outlays	−319	−195	−292	−806	−192	−186

[1] Assumes a December 31, 1985 enactment date.

TITLE XVII—GRADUATE MEDICAL EDUCATION COUNCIL AND TECHNICAL AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT

1. Council on Graduate Medical Education (Section 17001)

Present law

No comparable provision.

House bill

No provision.

Senate amendment

The Senate amendment establishes a permanent Council on Graduate Medical Education. The Council would make recommendations to the Secretary of the Department of Health and Human Services concerning the supply of physicians, physicians needed in primary care and specialties in shortage, foreign medical graduates, appropriate Federal policies concerning graduate medical education, and efforts by schools to meet the recommendations of the Council. Membership of the Council would include Federal officials and private individuals, and would be appointed by the Secretary.

Conference agreement

Section 17001 provides for the establishment of a Council on Graduate Medical Education under Title VII of the Public Health Service Act. This Council would have the responsibility for assessing physician manpower needs on a long-term basis. It would recommend the appropriate Federal and private sector efforts necessary to address these needs and would provide a forum to enable fair consideration of changing medical personnel needs.

Specifically, the Council is charged with providing advice and recommendations to the Secretary and the appropriate House and Senate Committees concerning:

(a) The supply and distribution of physicians in the United States;

(b) Current and future needs in the medical and surgical specialties and subspecialties, in terms of both shortage and excess;

In making these determinations, the Council should consider which disciplines are the most appropriate to provide primary

patient care and the supply of physicians available to fill the needs of rural and low-income inner city areas.

The Council is charged to assure, in cooperation with the Secretary of the Department of Health and Human Services, the availability of a data base for graduate physician education of sufficient detail and accuracy to carry out its mission.

(c) Issues relating to foreign medical graduates;

These include: an analysis of the extent to which the service needs of institutions with a high proportion of foreign medical graduates supersede the educational goals of their graduate medical education programs; the quality of education provided in these programs; the validity of the certification process for foreign medical graduates; the question of establishing an accreditation or approval process for schools located outside the United States and Canada; and, the ability of alien foreign medical graduates to obtain exchange visitor visas to enter U.S. training programs.

(d) Appropriate Federal policies with respect to these issues, including recommended policy changes in the financing of undergraduate and graduate medical education training programs and changes in the types of medical education training in graduate medical education programs; and

(e) Appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathy, and accrediting bodies with respect to the matters outlined in (4), including efforts for changes in undergraduate and graduate medical education programs.

The role of the accrediting bodies and the residency review committees in assuring the quality of programs should be particularly emphasized.

In addition, the Council is expected to encourage entities providing graduate medical education to conduct activities to achieve voluntarily the recommendations of the Council.

Effective date.—Enactment.

2. Technical Amendment to the Public Health Service Act (Sections 17002–17004)

Conference agreement

The conference agreement includes four technical amendments to the Public Health Service Act.

Section 17002(a) of the conference agreement amends Section 208 of the Public Health Service Act providing for compensation and allowances. Section 3 of the Health Services Amendments of 1985 (P.L. 99–117) amended Section 208 of the Public Health Service Act to eliminate additional special pay for National Health Service Corps (NHSC) obligees. The purpose of that amendment was to conform the authorizing law with the language in recent Labor-HHS appropriations acts that prohibited such additional special pay. The Labor-HHS appropriations acts did not, however, prohibit the additional special pay for those NHSC obligees serving in the Indian Health Service. The Conferees agreed to correct this mistake by restoring additional special pay for NHSC obligees serving in the Indian Health Service.

Section 17002 (b) of the conference agreement further amends Section 208, regarding the compensation of civilian employees of the Gillis W. Long Hansen's Disease Center. This provision is intended to ensure that current employees continue to receive the traditional special pay without interruption, rather than being frozen at current pay levels for extended periods. The language does not affect newly hired employees or those employees who cease to work at the Center. Under this arrangement, current workers will suffer no financial hardships and the special pay program will be phased out through the normal attrition of employees.

Section 17003 of the conference agreement provides authority for the Secretary of the Department of Health and Human Services to contract with fiscal agents to perform claims payment, processing and audit functions with respect to services purchased on a contact basis by the Public Health Service on behalf of eligible Indians, in the case of public health emergencies, or in the case of persons detained at the request of the Immigration and Naturalization Service. Fiscal agents must either be entities which could qualify as carriers for Medicare purposes, or Indian tribes or tribal organizations acting under Indian Self-Determination Act contracts. While the fiscal agents need not be Medicare carriers, they must meet the same requirements as Medicare carriers regarding efficiency and effectiveness of operations, surety bonds, and financial controls.

Section 17004 of the conference agreement amends Section 1910 of the Public Health Service Act authorizing grants for emergency medical services for children. This provision is intended to ensure that in addition to States, accredited medical schools may apply for grants and that only one grant may be made to a State (or to a medical school in that State) in any fiscal year.

Effecting date.—Except for Section 17002 (a) which is effective as of October 7, 1985, each of these sections is effective upon enactment.

TITLE XVIII—SMALL BUSINESS PROGRAMS

CBO OUTLAY SAVINGS ESTIMATE FOR FISCAL YEARS 1986–88 RELATIVE TO THE BASELINE

[In millions of dollars]

	Fiscal year—			Total
	1986	1987	1988	
Reconciliation instruction to committees pursuant to Senate Concurrent Resolution 32	−509	−972	−998	−2,479
Total title XVIII outlay savings achieved	−484	−994	−1,049	−2,526
Breakdown of savings achieved by account:				
Salaries and expense	−29	−38	−47	
Pollution control	0	0	0	
Business loan and investment fund	−110	−165	−159	
Surety bond	0	−1	−2	
Business, on-budget	−139	−204	−208	
Federal Financing Bank, SBIC	−203	−189	−159	
Federal Financing Bank, 503	−13	−180	−224	
Business, off-budget	−216	−369	−383	
Total business	−355	−573	−591	
Disaster reforms	−129	−421	−457	
Total outlay savings	−484	−994	−1,048	−2,526

1. 1986 program levels

The amounts of 1986 program levels authorized by the Senate bill, the House amendment, and the Conference substitute are as follows:

[In millions of dollars]

Item	Senate	House	Conference substitute
Regular business direct	0	0	0
Regular business guaranteed	2,650	2,332	2,491
Handicapped direct	15	15	15
Handicapped guaranteed	5	5	5
Economic opportunity direct	0	45	25
Economic opportunity guaranteed	60	60	60
Energy direct	0	0	0
Energy guaranteed	15	15	15
Development direct	0	0	0
Development guaranteed	200	450	400
Small business investment company direct	41	41	41
Small business investment company guaranteed	250	250	250
Veterans loans direct	20	20	20
Veterans loans guaranteed	0	0	0
Total direct	76	121	101
Total guaranteed	3,180	3,112	3,221
Nonphysical disaster loans	0	0	0
Surety bond guarantees	1,115	900	1,050
Pollution control contract guarantees	150	50	75

2. 1987 program levels

The amounts of 1987 program levels authorized by the Senate bill, the House amendment, and the conference substitute are as follows:

[In millions of dollars]

Item	Senate	House	Conference substitute
Regular business direct	0	0	0
Regular business guaranteed	2,766	2,332	2,600
Handicapped direct	15	15	15
Handicapped guaranteed	5	5	5
Economic opportunity direct	0	45	35

[In millions of dollars]

Item	Senate	House	Conference substitute
Economic opportunity guaranteed	63	60	63
Energy direct	0	0	0
Energy guaranteed	16	15	16
Development company direct	0	0	0
Development company guaranteed	200	450	450
Small business investment company direct	41	41	41
Small business investment company guaranteed	261	250	261
Veterans loans direct	20	20	20
Veterans loans guaranteed	0	0	0
Total direct	76	121	111
Total guaranteed	3,311	3,112	3,395
Nonphysical disaster loans	0	0	0
Surety bond guarantees	1,164	900	1,096
Pollution control contract guarantees	157	50	75

3. 1988 program levels

The amounts of 1988 program levels authorized by the Senate bill, the House amendment, and the conference substitute are as follows:

[in millions of dollars]

Item	Senate	House	Conference substitute
Regular business direct	0	0	0
Regular business guaranteed	2,882	2,332	2,709
Handicapped direct	15	15	15
Handicapped guaranteed	5	5	5
Economic opportunity direct	0	45	40
Economic opportunity guaranteed	65	60	65
Energy direct	0	0	0
Energy guaranteed	16	15	16
Development company direct	0	0	0
Development company guaranteed	200	450	450
Small business investment company direct	41	41	41
Small business investment company guaranteed	272	250	272
Veterans loans direct	20	20	20
Veterans loans guaranteed	0	0	0
Total direct	76	121	116
Total guaranteed	3,440	3,112	3,517
Nonphysical disaster loans	0	0	0
Surety bond guarantees	1,213	900	1,142
Pollution control contract guarantees	163	50	75

4. 1986 authorizations

For 1986, the House bill authorizes the appropriation of $593.34 million, of which $376 million is for business loan programs; $12 million is for surety bond guarantees; and $205.34 million is for sal-

aries and expenses; and such sums as may be necessary for disaster loans.

The Senate bill authorizes the appropriation of $534 million, of which $312 million is for business loan programs; $12 million is for surety bond guarantees; $210 million for salaries and expenses; and such sums as may be necessary for disaster loans.

The conference substitute authorizes the appropriation of $515 million, of which $295 million is for business loan programs; $12 million is for surety bond guarantees; $208 million for salaries and expenses; and such sums as may be necessary for disaster loans.

5. 1987 authorizations

For 1987, the House bill authorizes the appropriation of $627.34 million, of which $410 million is for business loan programs; $12 million is for surety bond guarantees; and $205.34 million is for salaries and expenses; and such sums as may be necessary for disaster loans.

The Senate bill authorizes the appropriation of $561 million, of which $331 million is for business loan programs; $16 million is for surety bond guarantees; $214 million for salaries and expenses; and such sums as may be necessary for disaster loans.

The conference substitute authorizes the appropriation of $605 million, of which $381 million is for business loan programs; $14 million is for surety bond guarantees; $210 million for salaries and expenses; and such sums as may be necessary for disaster loans.

6. 1988 authorizations

For 1988, the House bill authorizes the appropriation of $634.34 million, of which $417 million is for business loan programs; $12 million is for surety bond guarantees; and $205.34 million is for salaries and expenses; and such sums as may be necessary for disaster loans.

The Senate bill authorizes the appropriation of $566 million, of which $333 million is for business loan programs; $15 million is for surety bond guarantees; $218 million for salaries and expenses; and such sums as may be necessary for disaster loans.

The conference substitute authorizes the appropriation of $634 million, of which $409 million is for business loan programs; $13 million is for surety bond guarantees; $212 million for salaries and expenses; and such sums as may be necessary for disaster loans.

7. Guaranteed loans—utilization of program guarantee authority

Existing law authorizes SBA to make loans to small businesses through its various guaranteed lending programs as established by annual program ceilings. There is no requirement that SBA utilize the entire guarantee authority provided by law.

The House bill does not change existing law.

The Senate amendment would require the SBA to 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 appropriation Acts.

The conference substitute adopts the Senate provision with an amendment that this provision apply to MESBIC financings and direct loans as well as guaranteed loans, and other guarantees.

8. Guaranteed loans—percent of loan guaranteed

Existing law provides that guaranteed loans of $100,000 and less made under the 7(a) guaranteed loan program must carry at least a 90 percent guarantee; that guaranteed loans over $100,000 receive a guarantee of between 70 percent and 90 percent; and that SBA only reduce such guarantees below 90 percent on a case by case basis.

The House bill does not change existing law.

The Senate amendment would permit SBA to reduce its guarantee for loans of $100,000 and less from 90 percent to 80 percent; and for loans of more than $100,000 reduces the maximum authorized guarantee from 90 percent to 80 percent.

The conference substitute includes the Senate provision, with an amendment that guaranteed loans of $155,000 or less must carry a mandatory 90 percent guarantee. Guaranteed loans of $155,000, or more, may carry a maximum guarantee of 85 percent. Any loan approved as part of the Preferred Lenders Program may carry a lesser guarantee.

9. Guaranteed loans—guarantee fee

Under its current regulations, SBA charges a 1 percent fee for loans it guarantees under the 7(a) guaranteed loan program.

The House bill would require SBA to impose on the small business borrower a 3 percent fee on any guaranteed loan with a term of more than one year.

The Senate bill would require SBA to impose on the small business borrower a 2 percent fee on any guaranteed loan with a term of more than one year.

The conference substitute adopts the Senate provision.

10. SBIC debentures—financing through the Federal Financing Bank (FFB)

Under existing law Small Business Investment Company (SBIC) financings are funded through the Federal Financing Bank (FFB) when SBICs present their 100 percent SBA guaranteed debentures.

The House bill would prohibit the FFB from purchasing all or any part of SBIC debentures, any interest in SBIC debentures, or any obligation secured by an SBIC debenture or a share in an SBIC debenture.

The Senate bill contains an identical provision.

The conference substitute adopts this provision.

11. SBIC debentures—pooling

The House bill would provide authorization for the sale of SBIC government guaranteed debentures under the same terms and conditions established for the SBA secondary market under section 5(g) of the Small Business Act, which permits the pooling of loans for sale into the secondary market and the issuance of trust certificates.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision with an amendment that would enact pooling provisions for SBIC debentures under the Small Business Investment Act of 1958 similar to the statutory pooling provisions for 7 (a) guaranteed loans under Section 5(g) of the Small Business Act. The conferees have established a 60-day time limit within which the Administration shall have selected an agent and issued final rules and regulations. Because of the urgent and compelling need for prompt action by the Administration, the conferees intend that the Administration's actions be exempt from standard federal procurement practices.

12. Section 503 pilot program

Under existing law section 503 development companies receive financing for projects when they present their SBA-guaranteed debentures to the Federal Financing Bank for financing.

The House bill would establish a pilot program for the public or private sale of section 503 debentures up to $235 million and $280 million in fiscal years 1986 and 1987, respectively, and authorizes the sale of these debentures into the secondary market under the same terms and conditions as provided for under section 5(g) of the Small Business Act. SBA would be required to report on the results of the pilot program either 90 days after all pilot program debentures are sold in each year, or October 1st of each year, whichever date occurs first.

The Senate bill contains no comparable provision.

The conference substitute includes the House provision with an amendment authorizing up to $200 million and $155 million in fiscal years 1986 and 1987, respectively, to be financed through the Federal Financing Bank, and authorizing a pilot program for financing of 503 debentures through the private capital markets up to $200 million and $295 million in fiscal years 1986 and 1987, respectively. In addition, the method of financing of debentures through the pilot program is conformed to the secondary market pooling provisions adopted for the financing of SBIC debentures. Utilization of the pilot program authority for Fiscal Year 1988 was not addressed by the conferees. The conferees have established a 60-day time limit within which the Administration shall have selected an agent and issued final rules and regulations. Because of the urgent and compelling need for prompt action by the Administration, the conferees intend that the Administration's actions be exempt from standard federal procurement practices.

13. User fees

The House bill would require SBA to establish user fees as follows: (1) for SBA publications, the lesser of $5 or cost; (2) loan applications, not to exceed $100; and (3) determinations of eligibility of small concerns for assistance or preferential treatment as a small business concern, not to exceed $100. Fees would be used to offset costs to the extent provided by appropriation Acts.

The Senate bill contains no comparable provision.

The conference substitute does not include the House provision.

14. Report on feasibility of other user fees

The House bill would require SBA, within one year, to report on the feasibility of charging fees for management assistance or other counseling.

The Senate bill contains no comparable provision.

The conferees agreed to a substitute amendment requiring SBA to submit a report by September 30, 1986, specifying user fees currently being charged, and making a recommendation as to whether user fees should be charged for services where there is currently no user fee, and whether statutory authority is necessary to impose a fee.

15. Disaster loans—program levels

Existing law authorizes the appropriation of $500 million for fiscal year 1986 for the disaster loan program.

The House bill repeals the $500 million cap on the disaster loan program for FY 1986. (See item 4)

The Senate bill contains an identical provision.

The conference substitute adopts this provision.

16. Disaster loans—eligibility of agricultural enterprises

Existing law permits agricultural enterprises to apply for and receive SBA assistance if they meet eligibility criteria applied to non-agricultural enterprises, except that if the assistance sought is for a disaster loan, the agricultural enterprise must be declined for, or would be declined for emergency loan assistance at substantially similar interest rates from the Farmers Home Administration.

The House bill specifically removes agricultural enterprises from eligibility for any assistance under the disaster loan program.

The Senate bill contains an identical provision.

The conference substitute adopts this provision, with an amendment that SBA should fund qualified applicants for disasters declared in Fiscal Year 1985, both as to applications on file and applications filed in the future.

17. Duplication of assistance of other agencies

Existing law provides (1) that nothing contained in the Small Business Act shall be construed to authorize SBA to duplicate the activity of other agencies unless expressly provided in the Act; and (2) that if loan applications are being refused or loans denied by another agency due to withholding from obligations or apportionment or due to administratively declared moratorium, then no duplication shall be deemed to have occurred.

The House bill does not change existing law.

The Senate bill repeals this language.

The conference substitute does not change existing law.

18. Disaster loans—technical amendment

The House bill removes the undesignated paragraph provisions following 7(c)(4) of the Small Business Act, which have been superseded by section 7(c)(5) of the Act.

The Senate bill contains an identical provision.

The conference substitute adopts this technical amendment.

19. Nonphysical disaster loans—1986 authorization

Existing law authorizes $100 million in 1986 for the nonphysical disaster loan programs authorized by sections 7(b)(3) and 7(b)(4) of the Small Business Act.

The House bill repeals the $100 million authorization for 1986 for the nonphysical disaster loan programs.

The Senate bill contains an identical provision.

The conference substitute adopts this provision, with an amendment that SBA should fund qualified applicants for disasters declared in Fiscal Year 1985, both as to applications on file and applications filed in the future.

20. Elimination of the nonphysical disaster loan programs

Existing law established nonphysical disaster loan programs in subsections 7(b)(3) and 7(b)(4) of the Small Business Act.

The House bill repeals these nonphysical disaster loan programs and provides no new substitute.

The Senate bill contains an identical provision.

The conference substitute adopts this provision.

21. Labor surplus area

The House bill provides for a maximum population criterion of 25,000 when population criteria are used in labor surplus areas for purposes of priority of award of contracts under section 15 of the Small Business Act.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision.

22. Contract fraud

The House bill establishes a criminal violation, permitting imprisonment of up to 5 years, and a fine of up to $50,000, or both, for anyone making an intentional misrepresentation of small business status or disadvantaged status in order to obtain: prime contracts under sections 9 or 15 of the Small Business Act, subcontracts under section 8(a) of the Small Business Act, contracts included in subcontracting plans under section 8(d) of the Small Business Act, or any contract awarded under Federal law that uses criteria of section 8(d) of the Small Business Act for a definition of program eligibility.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provision with an amendment specifying that this fraud provision apply only to a misrepresentation made in writing.

23. Report on 7(a) loan guarantee program

The House bill would require the SBA to report by December 15, 1985, to the Small Business Committees of the Congress on the options available for establishing a non-federal government 7(a) guaranteed loan program, specifically including an evaluation of the establishment of a federal government-owned corporation to make such loans. The House bill also required an evaluation of charging participating financial institutions an annual fee of between ¼ of 1 percent and 1 percent of the outstanding balance of all 7(a) loan

guarantees to that institution, and further the feasibility of using such fees for a loss reserve or the cost of administration.

The Senate bill contains no comparable provision.

The conference substitute adopts the House provisions.

24. Limitation on use of SBA loans

The House bill prohibits loans under section 7(a) of the Small Business Act to any applicant who performs abortions, engages in abortion research, promotes abortions or trains any individual to perform abortions, except that it allows financing of applicants involved in performing, promoting, or recommending abortions in cases where the life of the mother would be endangered if the fetus were carried to term.

The Senate bill contains no comparable provision.

The conference substitute does not include this provision.

25. Surety bond maximum contract guarantee

Existing law permits SBA to issue a surety bond guarantee to qualified applicants on a contract up to $1 million.

The House bill makes no change in existing law.

The Senate bill would increase from $1 million to $1,500,000 the contract amount that SBA may guarantee under the surety bond program.

The conference substitute adopts the Senate provision with an amendment that the maximum contract guarantee amount be set at $1,250,000.

26. Eligibility of Indian tribes as socially and economically disadvantaged small business concerns

Existing law specifically identifies persons who are Black Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans among those individuals who may be considered as socially disadvantaged persons. Existing law also defines what economically disadvantaged means and provides that a "socially and economically disadvantaged small business concern" is any small business concern which is at least 51 percentum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percentum of the stock of which is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of such individuals.

The House bill makes no change in existing law.

The Senate bill amends existing law by adding "Indian Tribes" to the list of groups that are specifically recognized as socially disadvantaged and establishes criteria that should be used and considered in determining the "economic disadvantage" of Indian Tribes and their eligibility for assistance on equal terms with other socially and economically disadvantaged businesses.

The conference substitute adopts the Senate provision. The conferees, recognizing that some tribally-owned businesses may not pay federal taxes due to the sovereign status of tribes, which may provide an advantage over other section 8(a) program participants, direct the Small Business Administration to carefully monitor this

situation and, if SBA finds a problem, report its findings and recommendations to the House and Senate Small Business Committees.

27. Size standard for agricultural enterprises

By regulation, SBA has established a maximum of $100,000 in annual receipts as the size standard for eligibility of agricultural enterprises for assistance under the Small Business Act.

The House bill contains no provision pertaining to the size standard that should be used for agricultural enterprises.

The Senate bill establishes a maximum of $500,000 in annual receipts as the size standard for eligibility of agricultural enterprises for assistance under the Small Business Act.

The conference substitute adopts the Senate provision with a technical amendment. The conferees have agreed on substitute language for the Senate amendment governing eligibility of agricultural enterprises for SBA assistance, including regular business loans under section 7(a). Thus, farms having not more than $500,000 in average annual revenue will be eligible for assistance.

28. Veterans business resource councils

The House bill contains no provision regarding Veterans Business Resource Council.

The Senate bill encourages the Small Business Administration to evaluate the effectiveness of and work toward the formation of Veterans Business Resource Council.

The Conferees have agreed on the Senate amendment urging the Administrator to encourage the establishment of Veterans Business Resource Councils in as many districts as practical, and also to evaulate the usefulness of such councils in meeting the needs of veterans. No additional appropriation is authorized for this purpose, and the Committee expects that the financial commitment by SBA for each council should not exceed $2,000.

TITLE XIX—VETERANS' PROGRAMS

On October 24, 1985, the House passd H.R. 3500, the proposed "Omnibus Budget Reconciliation Act of 1985". Title X of the bill included the provisions of H.R. 1538, ordered reported by the House Committee on Veterans' Affairs on September 11, 1985, to satisfy its reconciliation instructions contained in section 2 of the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32).

On November 14, the Senate passed H.R. 3128, the proposed "Deficit Reduction Amendments of 1985", after striking out the House-passed text and inserting in lieu thereof the text of S. 1730, title XI of which contained the legislation reported by the Senate Committee on Veterans' Affairs to satisfy its reconciliation instructions in section 2 of the FY 1986 budget resolution.

On December 5, the House amended the Senate-passed H.R. 3128 by inserting the House-passed texts of H.R. 3500 and H.R. 3128, and requested a conference with the Senate. Title X of H.R. 3500 as it originally passed the House was redesignated as Title X (sections

1951-1982) of Division A of the House amendment to the Senate amendment to H.R. 3128.

The following material refers to the Senate amendment to H.R. 3128 as the "Senate bill", to the House amendment to the Senate amendment as the "House bill", and to title XIX of the Reconciliation Act conference report as the "conference agreement".

SUBTITLE A—HEALTH CARE

Both the House bill (section 1972) and the Senate bill (sections 1101-07) would, as discussed below, amend chapter 17 of title 38, United States Code, to revise existing eligibilities for health care furnished by the Veterans' Administration, and to establish a "health-care income threshold" for purposes of determinations of eligibility based on "inability to defray" the cost of needed care.

The conference agreement (section 19011) contains such provisions as discussed below.

Hospital Care

House bill

The House bill would amend the eligibility requirements, set forth in present section 610(a) of title 38, for veterans seeking VA hospital care. The six categories of veterans eligible for such health care under current law would be revised and restated as nine separate categories, and the separate basis of eligibility for non-service-connected veterans 65 years of age or older (without regard to income) contained in current law would be eliminated.

Under the House bill, the Administrator would be required to furnish hospital care determined by the Administrator to be necessary to:

(1) any veteran for a service-connected disability;

(2) a veteran discharged for a disability incurred or aggravated in line of duty;

(3) a veteran entitled to receive disability compensation;

(4) a veteran disabled as a result of VA treatment or vocational rehabilitation;

(5) certain Vietnam veterans exposed to certain toxic substances and veterans exposed to ionizing radiation from nuclear explosions;

(6) former prisoners of war;

(7) veterans of the Spanish American war, Mexican border period, or World War I; and

(8) veterans who are unable to defray the expenses of necessary care.

The current limitation on furnishing hospital care "within the limits of Veterans' Administration facilities" would no longer be applicable to these eight categories of eligible veterans.

A veteran would be eligible for necessary medical care under category (8) if the veteran's family's income in the 12 months preceding the application for care was no greater than 3.34 times the maximum annual rate of VA pension payable to totally disabled veterans (referred to below as the "health-care income threshold"). In determining the incomes of veterans for the purpose of this cate-

gory, 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 improved pension eligibility under chapter 15 of title 38, United States Code. The maximum income level for health care would be increased each year by the same percentage increase applicable to the maximum pension rate. Thus, as of the time the House passed the bill, the "health care income threshold" would be $19,068 for a veteran with no dependents and $24,977 for a veteran with one dependent, plus $3,233 for each additional dependent. On December 1, 1985, the VA pension income standard increased by 3.1 percent, by virtue of present section 3112(a) of title 38, United States Code, and reference to the consumer price index.

The House bill would establish, as a ninth category of veterans eligible for hospital care, those seeking care for treatment of non-service-connected disabilities who do not fall into one of the eight other categories. Thus, this last category would consist of those veterans whose income and assets exceed the health-care income eligibility threshold. They would be required to make an annual payment equal to the Medicare deductible ($492 in 1986) in order to receive needed care. Such care could be provided only "within the limits of Veterans' Administration facilities".

The House bill would also provide that nothing in these provisons would (1) require the Administrator to furnish hospital care in a facility other than a VA facility or to furnish care to a veteran to whom another agency of a Federal, State, or local government has a duty to provide care in an institution of that government, or (2) restrict the Administrator's discretion to determine the appropriateness of furnishing medical services, therapies, or programs under chapter 17 of title 38 or in what manner they will be furnished.

Senate bill

The Senate bill would create three categories of eligibiity for hospital care. Under the first category, the Administrator would be required to furnish hospital care determined to be reasonably necessary for service-connected disabilities and for any disability of veterans who have service-connected disabilties rated at 50 percent or more. This care would be required to be furnished through VA facilities or, to the extent authorized, through non-VA facilities except in the case of a veteran under incarceration as to whom the Administrator could (1) decide not to furnish care in a VA facility if to do so would not be feasible in terms of the security that would be necessary and (2) provide care under contract in a non-VA facility to the extent authorized.

Under the second category, which would remain essentially unchanged from current law (except that the separate basis of eligibility for veterans 65 years of age or older would be eliminated), the Administrator would be authorized, through VA facilities or, to the extent authorized, through non-VA facilities, to furnish reasonably necessary hospital care to veterans with service-connected disabilities rated at less than 50 percent; veterans who, but for the receipt of retired pay, would be entitled to disability compensation; veterans who are eligible for compensation for disabilities incurred

as VA patients or as participants in a VA vocational rehabilitation program; veterans who were discharged from military service for disabilities incurred or aggravated in the line of duty; former prisoners of war; Vietnam veterans exposed to certain toxic substances and veterans exposed to ionizing radiation from nucler explosions; Spanish American War, Mexican border period, or World War I veterans; and veterans unable to defray the cost of necessary care.

Under the third category, the Administrator would have the authority, through VA facilities or, to the extent authorized, through non-VA facilities, to furnish, to the extent facilities and resources are otherwise available, reasonably necessary hospital care for the non-service-connected disability of a veteran not included in categories one or two whose annual family income for the calendar year preceding the veteran's application for care exceeds $25,000 and who agrees 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 improved 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.

Conference agreement

The conference agreement (section 19011(a)) generally follows the House provision. It would establish two groups of VA health-care eligibilities. Under the first group, the conference agreement would require the Administrator to furnish needed hospital care through VA facilities, and authorize the Administrator to furnish needed hospital care in non-VA facilities as authorized, to the first eight categories from the House bill except that the third category from the House bill is subdivided into two categories—veterans with service-connected disabilities rated at 50 percent and above and any other veterans who have service-connected disabilities. The ninth category of veterans would consist of veterans who are unable to defray the expenses of necessary care—those who are receiving chapter 15 VA improved pension or are eligible for Medicaid or whose annual family incomes do not exceed the "Category A threshold" ($15,000 for veterans with no dependents and $18,000 for veterans with one dependent with an increase of $1,000—approximately equal to the amount of the VA pension allowance ($999 as of December 1, 1985)—for each additional dependent). These amounts would be increased on January 1 of each year (beginning January 1, 1987) by the same percentage by which VA chapter 15 improved pension benefits are increased on the preceding December 1 (pursuant to section 3112 of title 38).

The conferees intend that, for the categories of veterans specified in section 610(a)(1) of title 38 (as revised by this section)—those to whom the Administrator is required to furnish hospital care—the VA's sole obligation with respect to needed hospital care for these veterans is (1) if a veteran is in immediate need of hospitalization, to furnish an appropriate bed at the VA facility where the veteran

applies or, if none is available there, to furnish a contract bed (as authorized under current law as recodified in new section 603) or to arrange to admit the veteran to the nearest VA medical center (VAMC), or Department of Defense facility with which the VA has a sharing agreement, with an available bed, or (2) if the veteran needs non-immediate hospitalization, to (A) schedule the veteran for admission where the veteran applied, if the schedule there permits, or (B) refer the veteran for scheduling and admission to the nearest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and facilitate the veteran's admission there. The VA, of course, as also noted above, would also retain any existing discretionary authority to furnish health-care to these veterans.

Also, if there are 2 or more veterans applying for the same bed at a particular facility on a non-emergent basis and one is seeking care for a service-connected disability or has a 50-percent-or-more service-connected disability, the conferees intend that that veteran should receive the bed. With respect to the remaining veteran, he or she, as noted above, would be scheduled for the next available bed at the VA facility where the veteran applies or, if none is available there, would be furnished a contract bed (as authorized under current law as recodified in new section 603) or arrangements would be made (1) to admit the veteran to the nearest VA medical center (VAMC), or Department of Defense facility with which the VA has a sharing agreement, with an available bed, or (2) if the veteran needs non-immediate hospitalization, to (A) schedule the veteran for admission where the veteran applied, if the schedule there permits, or (B) refer the veteran for scheduling and admission to the nearest VAMC, or DOD facility with which the VA has a sharing agreement, with an available bed and facilitate the veteran's admission there. The VA, of course, as also noted above, would also retain any existing authority to furnish health-care to that veteran.

The conference agreement (section 19011(a)) would provide for a second eligibility group as to which the Administrator "may", through VA facilities and through non-VA facilities as authorized, furnish needed hospital care to the extent that resources and facilities are available, to non-service-connected veterans with incomes above $15,000 for those with no dependents and $18,000 for those with one dependent, plus $1,000 for each additional dependent. For those non-service-connected veterans with incomes above the "Category B" threshold ($20,000 for those with no dependents and $25,000 for those with one dependent, plus $1,000 for each additional dependent), the Administrator "may", through VA facilities and through non-VA facilities as authorized, and to the extent that resources and facilities are otherwise available, furnish needed hospital care if the veteran agrees to make certain payments to the VA in connection with that care. Each of the amounts would be increased on January 1 of each year (beginning January 1, 1987) in accordance with the VA pension-COLA increase percentage.

The conference agreement further includes a provision specifying that nothing in section 610 of title 38, relating to eligibility for hospital and nursing home care (as revised by the conference agreement), requires the VA to furnish care to a veteran to whom an-

other government entity has a legal duty to provide care in a government institution—for example, this would apply to an incarcerated veteran.

With respect to the revisions in hospital-care eligibility, the conferees intend that care be furnished to service-connected disabled veterans, low-income veterans, and, to the extent resources are available, other eligible veterans.

The conferees note with approval the statements made by the Chairman and Ranking Minority Member of the Senate Committee on Veterans' Affairs during the debate on the Senate bill (pages S 15467 and S 15471, respectively, of the Congressional Record for November 14) with respect to the effect of the use of the word "may" in providing VA health-care eligibility (in current law and the revised eligibility provisions) from the standpoint that the term does not connote discretion, on the part of the Administration, to withhold funds appropriated for the furnishing of care or, on the part of the VA, to withhold needed care that the VA has the capacity to provide. As indicated there, and the conferees agree, the amount of care that the VA provides to eligible veterans necessarily depends upon the level of funds appropriated for that purpose.

The conferees further note that this legislation would not change current law or practice regarding the beneficiary travel program.

The conferees recognize that in some cases it may not be readily determined with certainty, at the time that the veteran first applies for VA care during a calendar year, to which eligibility category the veteran belongs. Thus, where necessary to avoid delaying medical attention beyond the point at which it may be needed, the conferees intend that the VA make tentative eligibility-category determinations based on the available evidence at the time, subject to modification when a final determination can be made.

Also, in light of the uncertainties that may exist at the time of application and in view of the fact that even determinations based on apparently sufficient information may need to be changed on the basis of new evidence, the conferees expect the VA to require at least those veterans applying for VA care for the first time during a calendar year to sign an agreement to make the payments required by law if it is ultimately determined, by reason of their income during the preceding calendar year and any other matters relating to eligibility, that their eligibility is contingent upon their agreeing to make such payments. Of course, the agreement should also state what those payment amounts are.

In a similar vein, the conferees note that veterans with annual incomes above the applicable income threshold for payments 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 furnished. However, 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 the conferees stress 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. What, it any, payments the veteran would ultimately be required to make would, of course, depend on the eligibility determination made after the fact.

The conferees expect that the form used for the agreement to pay would clearly state eligibility criteria as well as potential liability

Nursing Home Care

House bill

The House bill would provide that the VA "may within the limits of Veterans' Administration facilities" furnish nursing home care to the nine categories of veterans eligible for hospital care (as discussed above) under the House bill. Those veterans having incomes above the applicable "health-care income threshold" in the House bill could be furnished nursing home care if they agreed to make certain prescribed payments in connection with their care.

Senate bill

The Senate bill would provide that the Administrator, through VA facilities or through non-VA facilities as authorized, "shall" furnish nursing home care determined to be reasonably necessary for a service-connected disability and "may" furnish nursing home care determined to be reasonably necessary for any veteran having hospital care eligibility under the Senate bill (as discussed above). Those having incomes above the applicable health-care income eligibility threshold in the Senate bill could be furnished nursing home care if they agreed to make certain prescribed payments in connection with their care.

Conference agreement

The conference agreement (section 19011(a)) makes no change in VA nursing home care eligibilities in current law except to provide that non-service-connected veterans with incomes above the "Category B threshold" would be eligible only upon agreeing to make certain payments in connection with their care.

Domiciliary Care

House bill

The House bill contained no provision regarding eligibility for VA domiciliary care.

Senate bill

The Senate bill would authorize the Administrator to furnish reasonably necessary domiciliary care through VA facilities to veterans who are determined by the Administrator to be incapacitated from earning a living and to have no adequate means of support.

Conference agreement

The conference agreement makes no change in VA domiciliary care eligibilities in current law.

In leaving current law intact regarding domiciliary-care eligibility, the conferees are not expressing their satisfaction with the status quo. Both Committees on Veterans' Affairs plan to hold hearings next year to consider appropriate revisions to the eligibility for domiciliary care as provided by section 610(b)(2) of title 38.

Outpatient Treatment and Home Health Services

House bill

The House bill would require the Administrator to furnish outpatient treatment to those veterans with outpatient treatment eligibility under current law, but would also specify that there is no requirement to furnish services to those non-service-connected disabled veterans with incomes that exceed the applicable health-care income eligibility threshold discussed above (under the heading "Hospital Care") unless they agree to make payment in connection with such services.

The House bill would make no change in eligibility for home health services except to provide that the eligibility of a non-service-connected veteran whose income exceeds the health-care income eligibility threshold would be contingent upon the veteran's agreement to make payment in connection with such services.

Senate bill

The Senate bill would amend current law to require the Administrator—"shall" rather than "may" as in current law—to furnish (directly or by contract) outpatient treatment and home health services determined to be reasonably necessary to any veteran for a service-connected disability and for any disability of a veteran with a service-connected disability rated at 50 percent or more, except in the case of a veteran under incarceration as to whom the Administrator could (1) decide not to furnish care in a VA facility if to do so would not be feasible in terms of the security that would be necessary and (2) provide care under contract in a non-VA facility to the extent authorized. Otherwise, the Senate bill would not modify current eligibilities for outpatient treatment and (except to increase the maximum amount that may be expended for home structural alterations from $600 to $2,500 for a veteran with a 50-percent-or-more-service-connected disability) home health services except to specify that non-service-connected disabled veterans with incomes above the applicable health-care income eligibility threshold would be eligible only upon agreeing to make payment in connection with such treatment or services and to the extent that resources and facilities are otherwise available.

Conference agreement

The conference agreement (section 19011(b)) would make no change in current law eligibilities relating to outpatient treatment or home health services (except with respect to the cap on home health structural alterations payments, described above) except to provide that non-service-connected veterans with incomes above the Category B threshold (discussed below under the heading "INCOME THRESHOLDS") would be eligible only upon agreeing to make payment in connection with such treatment or services and to the extent that resources and facilities are otherwise available.

Amount of Payments

Both the House and Senate bills contain provisions to specify the amounts that veterans with incomes above the income thresholds must agree to pay in order to be eligible for VA health care.

House bill

The House bill would establish payment requirements as follows:

Hospital care or nursing home care, or both: During any 12-month period, the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect at the beginning of the applicable 12-month period ($492 in 1986).

Outpatient treatment: For each visit (except for outpatient services furnished to complete treatment following hospitalization), the amount equal to 20 percent of the estimated average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished.

During any 12-month period, a veteran would not be required to pay in total for any mode of care or combination of modes of care an amount greater than the amount of the inpatient Medicare deductible.

Senate bill

The Senate bill would establish payment requirements as follows:

Hospital care or nursing home care, or both: For each 60 days of care during an episode of care (a period beginning on the first day of hospital or nursing home care and ending at the close of the first period of 60 consecutive days thereafter during which the veteran receives neither hospital nor nursing home care), the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect when the care is furnished.

Outpatient treatment: For each visit, the amount equal to a percentage—the percentage that Medicare generally does not pay for such treatment (20 percent at present)—of the estimated average cost of an outpatient visit in a VA facility during the fiscal year in which the treatment is furnished.

Conference agreement

The conference agreement (section 19011(a)(2) and (b)(2)(F)) contains provisions specifying, in the cases of veterans who must agree to make payments in order to be eligible for VA health care (those with incomes above the Category B level), the amounts that they must pay, as follows:

Hospital care: During any 365-day period (1) for the first 90 days of care (or part thereof), the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible in effect at the beginning of the 365-day period, and (2) for each succeeding 90 days of care (or part thereof), the lesser of the cost of furnishing the care or one-half of the amount of that inpatient Medicare deductible.

Nursing home care: During any 365-day period, for each 90 days of care, the lesser of the cost of furnishing the care or the amount of the inpatient Medicare deductible.

Outpatient treatment: For each outpatient or home health visit, the amount equal to 20 percent of the estimated average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished, but not to exceed during any 90-day period the amount of the inpatient Medicare deductible in effect at the beginning of that period.

Combination of hospital and nursing home care: In the case of a veteran who pays the inpatient-Medicare-deductible amount in connection with VA-furnished hospital or nursing home care and who, before using 90 days of the initial mode of care (hospital or nursing home) within a 365-day period, is furnished the other mode of care, the veteran would not be required to make any payment for the second mode until either (1) the number of days of hospital and nursing home care combined exceed 90, or (2) the beginning of the next 365-day period, whichever occurs first. If the veteran pays an amount equal to one-half of the inpatient-Medicare-deductible amount in connection with receiving hospital care (as when the veteran is receiving more than 90 days of hospital care in a 365-day period) and, before using 90 days of hospital care within the applicable 365-day period, receives VA-furnished nursing home care, the veteran would be required to pay one-half of the deductible amount in connection with the number of days of nursing home care that, when added to the hospital days, do not exceed 90 within that 365-day period.

Payments for combinations of outpatient treatment and hospital and nursing home care: A veteran would not be required to pay an amount greater than the inpatient Medicare deductible in connection with any combination of outpatient and inpatient care furnished during any 90-day period.

The conferees stress that the legislation makes no change in current eligibility for contract hospital, nursing home, or outpatient care and the way that eligibility is applied and intend the Administrator to ensure that expenditures for veterans eligible for care by virtue of agreeing to make payment to the VA have the lowest priority for the use of funds available for contract care as well as the lowest priority for inpatient, outpatient, and nursing home care furnished through VA facilities.

Priorities

House bill

The House bill would repeal the provision, section 612(i) of title 38, requiring the Administrator to implement through regulations the priorities specified in that section for the furnishing of outpatient treatment.

Senate bill

The Senate bill would require the Administrator to prescribe regulations to ensure the implementation of priorities specified in the Senate bill in the furnishing of hospital, domiciliary, and nursing home care and medical services and would require the Administrator to ensure that no guideline, regulation, or other VA issuance has the effect of encouraging the furnishing of care or services in

any way inconsistent with such priorities to a veteran whose eligibility is based on agreement to make payments.

Conference agreement

The conference agreement does not contain any such provisions related to priorities except a provision (in section 19011(b)(4)) adding veterans in receipt of VA improved pension under chapter 15 of title 38, as a new, sixth priority for outpatient care under present section 612(i).

Income Thresholds

House bill

The House bill would amend section 622 of title 38, relating to evidence of veteran's "inability to defray the cost of necessary expenses" in connection with establishing eligibility for VA health care, so as to provide that (in addition to veterans in receipt of any VA pension benefits or eligible for Medicaid) a veteran shall generally be presumed to be "unable to defray" the cost of care if the veteran's family income for the 12-month period preceding the veteran's application for care was equal to or less than 3.34 times the maximum annual rate of improved pension payable to totally disabled veterans under chapter 15 of title 38 (as increased annually pursuant to section 3112 of title 38). Thus, this income threshold amount at the time the House bill was passed was $19,068 for veterans with no dependents and $24,977 for veterans with one dependent, plus $3,233 for each additional dependent. In determining a veteran's annual family income, the Administrator would consider the same items and sources of income and would allow the same exclusions as are considered and allowed under the improved pension program.

Senate bill

The Senate bill would amend section 622 to provide generally that (in addition to veterans in receipt of any VA pension benefits or eligible for Medicaid) a veteran shall be determined to be "unable to defray" the cost of care if, during the calendar year preceding the date of the veteran's application for care, the veteran's family income is not greater than $25,000 and would provide for that amount to be increased by the same percentage and at the same time as each cost-of-living adjustment is made in chapter 15 VA improved pension benefits pursuant to section 3112 of title 38. In determining a veteran's annual family income, the Administrator would be required to consider the same items and sources of income and to allow the same exclusions as are considered and allowed under the improved pension program.

The Senate bill would also provide the Administrator with discretionary authority, in order to avoid hardship, to increase the above-mentioned income level for a specified geographic area.

Conference agreement

The conference agreement (section 19011(c)) would amend present section 622 to provide generally that a veteran shall be determined to be unable to defray the necessary expenses of hospital

care if the veteran receives VA improved pension or is eligible for Medicaid, or if, during the calendar year immediately preceding the veteran's application for care, the veteran's family income is not greater than $15,000 for a veteran with no dependents or $18,000 for a veteran with one dependent, plus $1,000 for each additional dependent.

A veteran would be considered not unable to defray the necessary expenses of care and thus liable for making certain payments for care (discussed above under the heading, "AMOUNT OF PAYMENTS") if the veteran's family income exceeds the Category B threshold—is greater than $20,000 for a veteran with no dependents or greater than $25,000 for a veteran with one dependent, plus $1,000 for each additional dependent. Each of the above amounts would be increased on January 1 of each year (beginning January 1, 1987) by the precentage that chapter 15 VA improved pension benefits are increased, pursuant to section 3112(a) of title 38, effective the preceding December 1.

In determining a veteran's annual income, the Administrator would be required to consider the same items and sources of income and to allow the same exclusions as are considered and allowed under the chapter 15 VA improved pension program.

Consideration of Assets in Determining Eligibility

House bill

The House bill would provide that the Administrator may refuse to determine that the veteran is unable to defray necessary medical expenses if the veteran or the veteran's immediate family has sufficient assets so that, under all the circumstances, it is reasonable that some part of those assets be consumed for the veteran's maintenance.

Senate bill

The Senate bill would provide that the Administrator shall not determine that a veteran is "unable to defray" the cost of care if the veteran or the veteran's immediate family has sufficient assets so that, under all the circumstances, the Administrator finds it unreasonable to make that determination. In determing the amount of assets, the Administrator would be required to consider the same items as the Administrator considers in determining the amount of assets for purposes of the chapter 15 improved pension program.

Conference agreement

The conference agreement (section 19011(c)) follows the House bill. In determining a veteran's assets for this purpose, the Administrator would be required to consider the same items as the Administrator considers in determining the amount of assets for purposes of the chapter 15 VA improved pension program.

Certain Adjustments of Income Eligibility Determinations

The conference agreement (revised section 622(b) of title 38) would enable the Administrator to adjust a veteran's income threshold status where necessary in order to avoid hardship to the

veteran in certain cases in which the veteran's income has dropped off substantially from the preceding calendar year amount.

Reports

Both the Senate bill (section 1108) and the House bill (section 1975) would require the Administrator of Veterans' Affairs to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives reports relating to the furnishing of health care to veterans after the enactment of this Act.

The conference agreement (section 19011(e)) would blend the Senate and House reporting requirements, with three annual reports due by February 1 of 1987, 1988, and 1989, and require the Administrator to include in the reports information regarding the numbers and characteristics of, and health care furnished to, veterans (and amounts of payments by them where appropriate) who are eligible for VA care by reason of any of the proposed new income threshold criteria, and the numbers of and health care furnished to veterans in each of the other categories of eligibility, with breakdowns, in the case of such veterans with service-connected disabilities, for each percentile disability rating.

Technical Revision of Authority to Contract for Hospital Care and Medical Services

The Senate but not the House bill (1) would delete section 601(4)(C) of title 38, which includes within the definition of "Veterans' Administration facilities"—and thus, in conjunction with provisions in sections 610 and 612, authorizes the VA to contract for hospital care or medical services with—private facilities in certain cases when VA facilities are not capable of furnishing economical care because of geographical inaccessibility or of furnishing the care of services required, and (2) replace that provision with a new section 603, which would recodify current law under section 601(4)(C), for purposes of clarity, without making any substantive change.

The conference agreement (section 19012) follows the Senate provision.

Recovery by the United States of the Cost of Certain Health Care and Services

Both the Senate bill (section 1111) and the House bill (section 1973) would amend present section 629 of title 38, United States Code—relating to the United States' authority to recover under workers' compensation laws or plans, from automobile accident reparation (auto no-fault) insurers, and from crime-victim compensation programs the reasonable costs of VA-furnished non-service-connected health care to the extent that the insurer or program would be liable to a non-Federal provider—so as (1) to add authority for the United States to recover from a third party under a health-plan contract (a defined term that includes, for example, health-insurance policies) the reasonable costs of VA care furnished to a veteran who does not have a service-connected disability and is entitled to care or reimbursement for care from the in-

surer; (2) to require the Administrator to prescribe regulations to govern determinations of the reasonable cost of care or services; (3) expressly to authorize the Administrator to compromise, settle, or waive claims of the United States under section 629; (4) to specify that money collected under section 629 shall be deposited in the Treasury; and (5) to provide for the changes in existing law made by amendments to section 629 to apply prospectively, that is, only with respect to care furnished after the date of enactment and only with respect to heatlh-plan contracts that are entered into, renewed, or modified after the date of enactment.

The conference agreement (section 19013) contains these provisions.

The conferees note that, in revising the wording of existing provisions of section 629 pertaining to recovery under workers' compensation laws or plans, from automobile accident reparation insurers, and from crime-victim compensation programs, the conferees do not intend to make any substantive revisions in current law or in its application or to overrule any judicial interpretations of these provisions.

The Senate bill, but not the House bill, would delete from section 629(b) provisions specifying that the amount that the United States may recover under that section may not exceed the lesser of (1) the reasonable cost of the care involved as determined by the Administrator, or (2) the maximum amount specified by applicable State or local law or by any relevant contractual provision.

The conference agreement (revised section 629(a)(1) of title 38) follows the Senate provision.

The conferees agree that, in light of the provisions in section 629(a) providing for recovery by the United States of the reasonable cost of the VA-furnished care "to the extent" that the veteran (or the provider of the care) would be eligible for payment for the care had it been furnished by a non-Federal provider, the provisions being deleted are surplusage.

The Senate bill, but not the House bill, would specify, in the case of a health-plan contract containing the requirement for payment of a deductible or copayment by the veteran, (1) that the veteran's not having paid the deductible or copayment with respect to VA-furnished care does not preclude recovery under section 629, (2) that the amount that the United States may recover under section 629 shall be reduced by the appropriate deductible or copayment amount, or both, and (3) that a veteran eligible for VA care shall not be required by reason of section 620 to make any copayment or deductible payments in order to receive such care.

The conference agreement (revised section 629(a)(3) contains these provisions.

The Senate bill, but not the House bill, would (1) require the Administrator, before prescribing the regulations for determining the reasonable cost of care or services (discussed above), to consult with the Comptroller General of the United States; (2) require the Comptroller General, within 45 days after the regulations (or any amendment to them) are prescribed, to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives the Comptroller General's comments on and recommendations regarding such regulations (or amendments); and (3) require

that the regulations provide that in no event may such reasonable cost exceed an amount equal to what the third party would pay for the care or services under the prevailing rates applicable under its contracts with non-Federal facilities in the geographic area in which the VA facility that provided the care or services is located.

The conference agreement (revised section 629(c)(2)) follows the Senate amendment.

The House bill, but not the Senate bill, would provide the Administrator with express authority to enter into agreements with health-plan contractors for the purpose of determining reasonable costs.

The conference agreement does not contain this provision.

The conferees note that the Administrator is already authorized by section 213 of title 38, relating to the Administrator's authority to enter into contracts for necessary services, to enter into such agreements.

Both the Senate and the House bills would require that the medical records of a health-plan beneficiary for the cost of whose care recovery is sought be made available for the purpose of enabling the third party to verify that the care for which recovery is sought was furnished. The Senate bill, but not the House bill, would also provide that the records shall be made available under such conditions to protect their confidentiality as the Administrator shall prescribe in regulations and that the records may also be made available to permit the third party to verify that the provision of the care involved meets criteria generally applicable under the health-plan contract.

The conference agreement (revised section 629(h)) follows the Senate bill.

The Senate bill, but not the House bill, would require the Administrator to submit to the Committees on Veterans' Affairs a 6-month report and annual reports on the process for and results of the implementation of the amendments to section 629.

The conference agreement would require two such reports, one due not later than 6 months after the date of enactment and the other, to provide information through at least the end of fiscal year 1987, due not later than February 1, 1988.

Medicare Providers' Acceptance of Veterans' Administration Beneficiaries at Medicare Rates

The House bill (section 1974), but not the Senate bill, would amend chapter 17 of title 38, United States Code, relating to VA health care, to insert a new section 625 to require non-Federal providers of hospital services under the Medicare program to accept VA beneficiaries on a basis similar to that on which they accept Medicare beneficiaries; to require those providers to accept VA payments made in accordance with VA regulations as payment in full; to authorize the Administrator to report violations of these requirements to the Secretary of Health and Human Services; and to authorize the Secretary to terminate a provider's participation in the Medicare program on the basis of such violations.

The conference agreement does not contain this provision.

SUBTITLE B—COMPENSATION RATE INCREASES DISABILITY COMPENSATION

House bill

The House bill (sections 1962 through 1964) would amend chapter 11 of title 38, United States Code, relating to compensation for service-connected disability, to increase by 3.7 percent, effective December 1, 1985, the basic rates of service-connected disability compensation for veterans, the rates payable for certain severe disabilities, the dependents' allowances payable to veterans rated 30-percent or more disabled, and the annual clothing allowance for certain disabled veterans.

Senate bill

The Senate bill (section 1121) would limit the fiscal year 1986 disability compensation COLA to a maximum of 3.7 percent—the same percentage that the Congressional Budget Office projected for the fiscal year 1986 Social Security/VA pension cost-of-living adjustment at the time the Senate Veterans' Affairs Committee reported its reconciliation recommendations to the Senate Budget Committee. Thereafter, on December 2, 1985, the Senate passed S. 1887 providing (in sections 101 through 103) for a 3.1-percent increase, the same percentage as the actual percentage increase for the Social Security/VA pension cost-of-living adjustments, effective December 1, 1985.

Conference agreement

The conference agreement (sections 19021 through 19023) would increase these rates and allowances, effective December 1, 1985, by 3.1 percent.

DEPENDENCY AND INDEMNITY COMPENSATION

House bill

The House bill (sections 1965 through 1967) would amend chapter 13 of title 38, relating to dependency and indemnity compensation (DIC) for service-connected deaths, to increase by 3.7 percent, effective December 1, 1985, rates of DIC payable to the surviving spouses and children of veterans whose deaths were service connected.

Senate bill

The Senate bill (section 1121) would limit the fiscal year 1986 DIC increases to a maximum of 3.7 percent—the same percentage that the Congressional Budget Office projected for the fiscal year 1986 Social Security/VA pension cost-of-living adjustment at the time the Senate Veterans' Affairs Committee reported its recommendations to the Senate Budget Committee. S. 1887 as passed by the Senate provided for a 3.1-percent COLA.

Conference agreement

The conference agreement (sections 19024 through 19026) would amend chapter 13 to increase these rates, effective December 1, 1985, by 3.1 percent.

SUBTITLE C—MISCELLANEOUS PROVISIONS

Epidemiological Study of Female Vietnam Veterans

The House bill (section 1982), but not the Senate bill, would require the Administrator to provide for the conduct of an epidemiological study of any long-term adverse gender-specific health effects in female Vietnam veterans that may result from their exposure to Agent Orange or to other phenoxy herbicides and would authorize the Administrator to expand the scope of the study to evaluate any long-term adverse gender-specific health effects in females resulting from other aspects of service in Vietnam. However, the Senate, or December 2, 1985, passed a similar provision in S. 1887, the "Veterans' Compensation and Benefits Improvements Act of 1985", (section 507), that would unless determined not to be scientifically feasible, require the Administrator to provide for the conduct of a female Vietnam veterans health-experience study and permit investigation of any long-term adverse health effects which may have resulted from traumatic experiences, exposure to phenoxy herbicides (including Agent Orange), or other experience or exposure.

The conference agreement (section 19031) follows the Senate provision.

Advisory Committee on Native-American Veterans

The House bill (section 1981), but not the Senate bill, would provide for the establishment of a VA Advisory Committee on American-Indian Veterans to examine and evaluate VA programs and activities with respect to the needs of American-Indian veterans and to transmit reports on its examinations and evaluation to the Administrator of Veterans' Affairs for subsequent transmittal to the Congress. However, on December 2, 1985, the Senate passed a comparable provision in S. 1887, the "Veterans' Compensation and Benefits Improvements Act of 1985" (section 505), which would provide for the establishment of a VA Advisory Committee on Native American Veterans (including Alaska Natives).

The conference agreement (section 19032) contains such a provision, blending together aspects of the two provisions, naming the Advisory Committee the "Advisory Committee on Native-American Veterans" and specifying that representatives of American Indians and of other Native Americans each would serve on the Committee.

Waiver of Waiting Period for Administrative Reorganization of Certain Veterans' Administration Automated Data Processing Activities

The conference agreement (section 19033) also contains a provision that would waive the waiting period prescribed by section 210(b)(2) of title 38—which provides, in part, that the VA may not in any fiscal year implement certain administrative reorganizations unless the Administrator, not later than the date on which the President submits the budget for that year, submits a report containing a detailed plan and justification for the reorganization—with respect to a reorganization, described in letters dated

November 1, 1985, that were submitted to the chairmen and ranking minority members of the Committees, involving the transfer of certain functions from the VA's Office of Data Management and Telecommunications to the VA's Department of Veterans' Benefits and requesting a waiver of that waiting period.

The conferees have determined that the information contained in the November 1 letters, together with other information subsequently provided to the Committees, constitutes a sufficiently detailed plan and justification (as that term is proposed to be defined by section 501 of S. 1887, as passed by the Senate on December 2, 1985) for this proposed reorganization and that the reorganization will serve to improve the operations of the VA's service and benefits delivery system. Since, under the provisions of section 210(b)(2), the reorganization would not be permitted to be implemented prior to the beginning of fiscal year 1987, the conference agreement would waive the required waiting period in order to permit the Administrator to implement this reorganization prior to October 1, 1986.

In agreeing that this statutory waiver be granted, the conferees intend that the Administrator, as part of implementing the reorganization, develop and implement plans for better coordination and integration between the Department of Medicine and Surgery and the Department of Veterans' Benefits in automated data processing modernization, and are not necessarily expressing agreement with the recommendations of the October 25, 1985, report of McManis Associates. The conferees believe that the Administrator should proceed cautiously in adopting recommendations from that report (particularly those relating to procurement). In that regard, the confereees recommend that the Administrator take full cognizance of the review being conducted by the General Accounting Office, pursuant to a request from the Chairman of the House Veterans' Affairs Committee and the Ranking Minority Member of the Senate Veterans' Affairs Committee, pertaining to certain aspects of the report.

RATIFICATION OF CERTAIN TEMPORARILY EXPIRED AUTHORITIES

Veterans' Administration Regional Office in the Philippines

The compromise agreement (section 19034(a)) contains a provision ratifying any action taken by the Administrator during the period beginning on November 1, 1985, and ending on December 3, 1985, in connection with the exercise of the Administrator's authority under section 230(b) of title 38, relating to the establishment of a regional office in the Republic of the Philippines. This authority to operate such an office expired on October 31, 1985, but was extended for three additional years by section 402 of Public Law 99-166.

Contract Care Authority in Puerto Rico and the Virgin Islands

The compromise agreement (section 19034(b)) also contains a provision ratifying any action taken by the Administrator of Veterans' Affairs in connection with entering into any contract to provide, during the period beginning on November 1, 1985, and ending on

December 3, 1985, care described in subclause (v) of section 601(4)(C) of title 38, United States Code, relating to the Administrator's authority to provide hospital care and medical services in certain noncontiguous "States" (defined in present section 101(20) to include United States Territories and possessions and the Commonwealth of Puerto Rico), including any waiver made by the Administrator of the applicability to the Commonwealth of Puerto Rico or the Virgin Islands of the restrictions described in that subclause for that period. This authority to provide such care and services also expired on October 31, 1985, but was made permanent in the case of the Virgin Islands, and was extended (with certain limitations) for an additional three years in the case of Puerto Rico, by section 102 of Public Law 99-166, enacted on December 3, 1985.

ALCOHOL AND DRUG TREATMENT AND REHABILITATION CONTRACT PROGRAM

The compromise agreement (section 19034(c)) also contains a provision ratifying any action taken by the Administrator of Veterans' Affairs in connection with entering into any contract to provide, during the period beginning November 1, 1985, and ending December 3, 1985, care described in section 620A of title 38, relating to contracts for certain care and treatment and rehabilitative services for eligible veterans suffering from alcohol or drug dependence or abuse disabilities. This authority to provide such care and services also expired on October 31, 1985, but was extended for an additional three years by section 101 of Public Law 99-166.

From the Committee on the Budget, for consideration of the entire Senate amendment and the entire House amendment to the Senate amendment, except for sections 778H, 778I, 780, 781, 783 through 789B, 789D through 789G, subpart A of part 3 of subtitle I of title VII, section 793, subsections (a), (b), (c), (f), and (g)(1) of section 794, and sections 795 and 796 of the Senate amendment, and except for sections 2502(a) and 2503 of division B of the House amendment to the Senate amendment:

WILLIAM H. GRAY III,
BUTLER DERRICK,
MICHAEL D. BARNES,
CHARLES E. SCHUMER,
BARBARA BOXER,
BUDDY MACKAY,
JIM SLATTERY,
CHESTER G. ATKINS,

From the Committee on Ways and Means, solely for the consideration of sections 144(b)(3), 204, 205, 746(e)(2)-(4), and 759, subtitles A, C-F, H, and I of title VII, part G of title IX, and part I of title IX of the Senate amendment, and of subtitles B and C of title III and section 1974 of division A, and all of division B except parts E and G of title I, of the House amendment to the Senate amendment:

SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
JIM JONES,

HAROLD FORD,
ED JENKINS,
JOHN J. DUNCAN,
BILL GRADISON,
CARROLL CAMPBELL,
WM. THOMAS,

From the Committee on Agriculture, solely for the consideration of title I and section 536 of the Senate amendment:

E DE LA GARZA,
ED JONES,
LEON E. PANETTA,
TONY COELHO,
BERKLEY BEDELL,
ED MADIGAN,
ED EMERSON,
JAMES M. JEFFORDS,
E. THOMAS COLEMAN,

From the Committee on Agriculture, solely for the consideration of subpart B of part 3 of subtitle I of title VII of the Senate amendment:

E DE LA GARZA,
CHARLIE ROSE,
WALTER B. JONES,
CHARLES HATCHER,
CHARLIE WHITLEY,
ROBIN TALLON,
ROBERT L. THOMAS,
LARRY J. HOPKINS,
PAT ROBERTS,
WEBB FRANKLIN,
LARRY COMBEST,

From the Committee on Agriculture, solely for the consideration of subpart B of part 3 of subtitle I of title VII of the Senate amendment:

E. DE LA GARZA,
CHARLIE ROSE,
CHARLIE WHITLEY,
LARRY J. HOPKINS,
PAT ROBERTS,

From the Committee on Armed Services, solely for the consideration of title II and section 165 of the Senate amendment, and of title I of division A of the House amendment to the Senate amendment:

LES ASPIN,
G.V. MONTGOMERY,
PAT SCHROEDER,
WM. L. DICKINSON,
BUD HILLIS,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the Senate amendment and of title II of division A of the House amendment to the Senate amendment:

FERNAND J. ST GERMAIN,
PARREN J. MITCHELL,

STAN LUNDINE,
MARY ROSE OAKAR,
BRUCE VENTO,
BARNEY FRANK,
CHALMERS P. WYLIE,
STEWART MCKINNEY,
MARGE ROUKEMA,
STEVE BARTLETT,

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of subtitle A of title IV of division A of the House amendment to the Senate amendment:

FERNAND J. ST GERMAIN,
STAN LUNDINE,

From the Committee on Education and Labor, solely for the consideration of parts A through E of title IX of the Senate amendment, and of subtitle A of title III of division A of the House amendment to the Senate amendment:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
MARIO BIAGGI,
PAT WILLIAMS,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TERRY L. BRUCE,
JIM JEFFORDS,
E. THOMAS COLEMAN,
STEVE GUNDERSON,
PAUL B. HENRY,

From the Committee on Education and Labor, solely for the consideration of section 746(d), subtitle H of title VII, section 782, and parts G and I of title IX of the Senate amendment, and of subtitles B and C of title III of division A, and of sections 2181 and 2505 and title VI of division B, of the House amendment to the Senate amendment:

GUS HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
WILLIAM CLAY,
MARIO BIAGGI,
DALE E. KILDEE,
MAJOR R. OWENS,
CHARLES A. HAYES,
MERVYN M. DYMALLY,
CHESTER G. ATKINS,
JAMES M. JEFFORDS,
THOMAS E. PETRI,
MARGE ROUKEMA,
STEVE BARTLETT,
ROD CHANDLER,
RICHARD ARMEY,
HARRIS W. FAWELL,

From the Committee on Education and Labor, solely for the consideration of part F of title IX of the Senate amendment:

AUGUSTUS F. HAWKINS,
AUSTIN J. MURPHY,
BILL CLAY,
PAT WILLIAMS,
JIM JEFFORDS,
TOM PETRI,
STEVE BARTLETT,

From the Committee on Energy and Commerce, solely for the consideration of sections 706 and 713–716, parts 2–5 of subtitle A of title VII (except for section 734), subtitle B of title VII (except for subsections (d) and (e)(2)–(4) of section 746), sections 769B, 770, 772, 774, and 782, and parts G and H of title IX of the Senate amendment, and of section 1974 of division A, and of section 2107, parts B–G of title I, and section 2302 of division B of the House amendment to the Senate amendment:

JOHN D. DINGELL,
HENRY A. WAXMAN,
JAMES H. SCHEUER,
THOMAS LUKEN,
DOUG WALGREN,
BARBARA A. MIKULSKI,
MICKEY LELAND,
CARDISS COLLINS,
RON WYDEN,
ED MADIGAN
(for Medicaid and maternal and child health only),
BOB WHITTAKER
(for Medicare, Medicaid, and maternal and child health only),

From the Committee on Energy and Commerce, solely for the consideration of those portions of section 789C of the Senate amendment inserting subsections 9505 (c), (d), and (e) in the Internal Revenue Code:

JOHN D. DINGELL,
DENNIS E. ECKART,
RALPH M. HALL,
BILLY TAUZIN,
WAYNE DOWDY,
TOM LUKEN,
AL SWIFT,
MIKE SYNAR,
NORMAN F. LENT,
DON RITTER,
JACK FIELDS,
DAN SCHAEFER,

From the Committee on Energy and Commerce, solely for the consideration of sections 501, 502, 521–524, and 536 of the Senate amendment, of subtitles A–E of title IV and subtitles B and C of title VIII of division A of the House amendment to the Senate amendment:

JOHN D. DINGELL,
PHIL SHARP,

•

ED MARKEY,
DOUG WALGREN,
AL SWIFT,
MICKEY LELAND
(except for strategic petroleum reserve, shared energy, biomass loan guarantee, and synfuels programs),
RICHARD C. SHELBY,
MIKE SYNAR,
BILLY TAUZIN,
JAMES T. BROYHILL,
BILL DANNEMEYER,
CARLOS MOORHEAD,
BOB WHITTAKER,
MICHAEL G. OXLEY,
FRED J. ECKERT,

From the Committee on Energy and Commerce, solely for the consideration of sections 403 and 404 of the Senate amendment, and subtitle F of title IV of division A of the House amendment to the Senate amendment:

JOHN D. DINGELL,
TIMOTHY E. WIRTH,
JAMES H. SCHEUER,
TOM LUKEN,
AL SWIFT,
MICKEY LELAND,
CARDISS COLLINS,
MIKE SYNAR,
BILLY TAUZIN,

From the Committee on Energy and Commerce, solely for the consideration of sections 401, 402, 408, 769G, 777(h)(1), and subsections (d), (e), (g)(2) and (g)(3) of section 794 of the Senate amendment, and of subtitles G and H of title IV of division A, and of sections 2252(b) and 2402 of division B of the House amendment to the Senate amendment:

JOHN D. DINGELL,
JAMES J. FLORIO,
PHIL SHARP,
BILLY TAUZIN,
RALPH M. HALL,
WAYNE DOWDY,
BILL RICHARDSON,
JIM SLATTERY,
JIM BROYHILL,
NORMAN F. LENT,
DON RITTER,
DAN COATS,
JACK FIELDS,

From the Committee on Government Operations, solely for the consideration of subtitle G of title VII of the Senate amendment:

JACK BROOKS,
DON FUQUA,

TED WEISS,
FRANK HORTON,
ROBERT S. WALKER,

From the Committee on Government Operations, solely for the consideration of section 523 and parts C and D of title VIII of the Senate amendment, and of subtitle E of title IV of division A of the House amendment to the Senate amendment:

JACK BROOKS,
DON FUQUA,
CARDISS COLLINS,
FRANK HORTON,
AL MCCANDLESS,

From the Committee on Interior and Insular Affairs, solely for the consideration of sections 521, 522, and 531–535 of the Senate amendment, and of subtitle C of title IV, section 1542, title V, subtitles D and H of title VI, and subtitle C of title VIII, of division A of the House amendment to the Senate amendment:

MO UDALL
(except for Outer Continental Shelf programs),
JOHN F. SEIBERLING
(except for Outer Continental Shelf programs),
JIM WEAVER
(except for Nuclear Regulatory Commission fees),
GEORGE MILLER,
PHIL SHARP
(except for Outer Continental Shelf programs),
NICK RAHALL,
BRUCE F. VENTO
(except for Outer Continental Shelf programs),
JERRY HUCKABY,
SAM GEJDENSON
(except for Outer Continental Shelf programs),
DON YOUNG
(except for Nuclear Regulatory Commission fees),
MANUEL LUJAN, Jr.
(except for Nuclear Regulatory Commission fees),
ROBERT J. LAGOMARSINO
(except for Outer Continental Shelf programs, and Nuclear Regulatory fees),
RON MARLENEE
(except for Outer Continental Shelf programs, and Nuclear Regulatory Commission fees),
CHARLES PASHAYAN, Jr.

(except for Nuclear Regulatory Commission fees),

From the Committee on the Judiciary, solely for the consideration of section 982 and that portion of section 999 amending paragraph (2) of section 4074(c) of the Employee Retirement Income Security Act, of the Senate amendment, and of that portion of section 1458 inserting section 4041(c)(2)(B)(ii) in the Employee Retirement Income Security Act, of division A, and section 2124(b) of division B, of the House amendment to the Senate amendment:

PETER W. RODINO, Jr.,
DANIEL GLICKMAN,
DON EDWARDS,
HAMILTON FISH, Jr.,
THOMAS N. KINDNESS,

From the Committee on Merchant Marine and Fisheries, solely for consideration of sections 405, 406, 407, and 531–535 of the Senate amendment, and of titles V and VI of division A of the House amendment to the Senate amendment:

WALTER B. JONES,
MARIO BIAGGI,
GLENN M. ANDERSON,
JOHN BREAUX,
GERRY E. STUDDS,
BARBARA A. MIKULSKI,
MIKE LOWRY,
DOUGLAS H. BOSCO,

(In lieu of Mr. Hughes solely for consideration of sections 531–535 of the Senate amendment and title V and subtitles D and H of title VI of division A of the House amendment to the Senate amendment):

BILLY TAUZIN,
NORMAN F. LENT,
GENE SNYDER,
DON YOUNG
(except as listed below),
BOB DAVIS,

(In lieu of Mr. Young solely for consideration of sections 531–535 of the Senate amendment and title V and subtitles D and H of title VI of division A of the House amendment to the Senate amendment):

WILLIAM CARNEY,
JACK FIELDS
(for purposes of OCS programs only),

From the Committee on Post Office and Civil Service, solely for the consideration of section 769G and parts A and B of title VIII of the Senate amendment, and of title VII of division A of the House amendment to the Senate amendment:

WILLIAM D. FORD,
MICKEY LELAND,
MARY ROSE OAKAR,
GENE TAYLOR,
BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation, solely for the consideration of title VI, sections 777(h)(2) and 1202, and those portions of section 789C inserting sections 9505 (c), (d), and (e) in the Internal Revenue Code, of the Senate amendment, and of sections 1533, 1541, and title VIII of division A, and section 2252(c) of division B of the House amendment to the Senate amendment:

JAMES J. HOWARD
(except for Superfund authorization and pipeline programs),
GLENN M. ANDERSON
(except for Superfund authorization and pipeline programs),
ROBERT A. ROE
(except for Superfund authorization and pipeline programs),
NORMAN Y. MINETA
(except for Superfund authorization and pipeline programs),
JAMES L. OBERSTAR
(except Superfund authorization),
HENRY J. NOWAK
(except Superfund authorization and pipeline programs),
BOB EDGAR
(except Superfund authorization and pipeline programs),
ROBERT A. YOUNG
(except Superfund authorization and pipeline programs),
NICK RAHALL
(except Superfund authorization and pipeline programs),
GENE SNYDER
(except Superfund authorization and pipeline programs),
JOHN PAUL HAMMERSCHMIDT
(except Superfund authorization),
BUD SHUSTER
(except Superfund authorization and pipeline programs),
ARLAN STANGELAND

(except Superfund authorization),
NEWT GINGRICH
(except Superfund authorization and pipeline programs),
BILL CLINGER
(except Superfund authorization and pipeline programs),

(In lieu of Mr. Rahall solely for the consideration of section 1541 and subtitle B of title VIII of division A of the House amendment to the Senate amendment):

JOHN BREAUX,

From the Committee on Science and Technology, solely for the consideration of sections 406(a)–(c), (e)–(g), and (i) of the Senate amendment:

DON FUQUA,
JAMES H. SCHEUER,
TIM WIRTH,
MANUEL LUJAN, Jr.,
CLAUDINE SCHNEIDER,

From the Committee on Small Business, solely for the consideration of title X of the Senate amendment and of title IX of division A of the House amendment to the Senate amendment:

PARREN J. MITCHELL,
JOSEPH P. ADDABBO,
JOSEPH M. MCDADE,
SILVIO O. CONTE,

From the Committee on Veterans' Affairs, solely for the consideration of section 205 and title XI of the Senate amendment, and of title X of division A of the House amendment to the Senate amendment:

G.V. MONTGOMERY,
BOB EDGAR
(solely for requirement of Medicare providers to accept VA beneficiaries),
DOUGLAS APPLEGATE
(solely for requirement of Medicare providers to accept VA beneficiaries),
JOHN PAUL HAMMERSCHMIDT,
CHALMERS P. WYLIE,

Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,
BOB DOLE,
RICHARD G. LUGAR,
THAD COCHRAN,
ED ZORINSKY,
PATRICK LEAHY,
JOHN MELCHER,

From the Committee on Finance—general conferees:
BOB PACKWOOD,
W.V. ROTH, Jr.,
J.C. DANFORTH,
JOHN H. CHAFEE,
RUSSELL B. LONG,
LLOYD BENTSEN,
SPARK M. MATSUNAGA,

From the Committee on Armed Services:
SAM NUNN,

From the Committee on Veterans' Affairs:
FRANK H. MURKOWSKI,
ALAN K. SIMPSON,
ALAN CRANSTON,

From the Committee on Finance—for CHAMPUS Medicare Subconference only:
DAVE DURENBERGER,
MAX BAUCUS,

From the Committee on Banking, Housing, and Urban Affairs:
JAKE GARN,
JOHN HEINZ,
CHIC HECHT,

From the Committee on Commerce, Science, and Transportation:
J.C. DANFORTH,
BOB PACKWOOD,
BARRY GOLDWATER,
LARRY PRESSLER,
SLADE GORTON,
TED STEVENS,
FRITZ HOLLINGS,
RUSSELL LONG,
DANIEL K. INOUYE,
WENDELL FORD,
DON RIEGLE,

From the Committee on Energy and Natural Resources—general conferees:
JAMES A. MCCLURE,
PETE V. DOMENICI,
MALCOLM WALLOP,
J. BENNETT JOHNSTON,
WENDELL H. FORD,

From the Committee on Energy and Natural Resources—conferees on title VI, section 6701 only:
JAMES A. MCCLURE,
MARK O. HATFIELD,
PETE V. DOMENICI,
J. BENNETT JOHNSTON,
WENDELL H. FORD,

From the Committee on Commerce, Science, and Transportation—conferees on title VI, section 6701 only:
BOB PACKWOOD,
ERNEST F. HOLLINGS,
RUSSELL B. LONG,

From the Committee on Environment and Public Works:

ROBERT T. STAFFORD,
JOHN H. CHAFEE,
AL SIMPSON,
STEVE SYMMS,
LLOYD BENTSEN,
QUENTIN N. BURDICK,
FRANK R. LAUTENBERG,

From the Committee on Labor and Human Resources—general conferees:

ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
EDWARD M. KENNEDY,
CLAIBORNE PELL,

From the Committee on Labor and Human Resources—for PBGC and ERISA Subconference only:

(For the purposes of subconference No. 18 only):

ORRIN HATCH,
DON NICKLES,
STROM THURMOND,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Finance—for PBGC and ERISA Subconference only:

BOB PACKWOOD,
JOHN CHAFEE,
JOHN HEINZ,
GEORGE MITCHELL,
DANIEL PATRICK MOYNIHAN,

From the Committee on Finance—for Private Health Insurance Coverage Subconference only:

JOHN HEINZ,
DAVE DURENBERGER,
MAX BAUCUS,

From the Committee on Labor and Human Resources—for PBGC and ERISA Subconference only:

ORRIN HATCH,
DON NICKLES,
STROM THURMOND,
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Environment and Public Works:

(For Superfund authorization only):

JOHN H. CHAFEE,
LLOYD BENTSEN,

From the Committee on Governmental Affairs:

W.V. ROTH, Jr.,
TED STEVENS,
WILLIAM S. COHEN,
TOM EAGLETON,
CARL LEVIN,
ALBERT GORE, Jr.,

From the Committee on the Budget—general conferees:

PETE V. DOMENICI,

W.L. ARMSTRONG,
NANCY LANDON KASSEBAUM,
RUDY BOSCHWITZ,
FRITZ HOLLINGS,
J. BENNETT JOHNSTON,
HOWARD M. METZENBAUM,

From the Committee on Small Business:

LOWELL P. WEICKER, Jr.,
SLADE GORTON,
DALE BUMPERS,

Managers on the Part of the Senate.

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