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HEARINGS

Before the

COMMITTEE ON FINANCE

# UNITED STATES SENATE

EXECUTIVE SESSION

Washington, D.C.

Wednesday, September 21, 1983

ALDERSON REPORTING

(202) 628-9300
440 FIRST STREET, N.W.
WASHINGTON, D.C. 20001

EXECUTIVE SESSION

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WEDNESDAY, SEPTEMBER 21, 1983

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U.S. Senate

Committee on Finance

Washington, D.C.

The Committee met, pursuant to notice, at 10:20 a.m. in Room SD-215, Dirksen Senate Office Building, Hon. Robert Dole [Chairman of the Committee] presiding.

Present: Senators Dole, Danforth, Chafee, Heinz, Durenberger, Symms, Grassley, Long, Bentsen, Moynihan, Baucus, Bradley and Pryor.

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The Chairman: I think our first order of business this morning is the nomination of Katherine Ortega, and the hearing was held last week, last Friday. As far as I know, there were no additional reasons to recall Ms. Ortega. And I think one thing we are waiting on was a report from the Government Ethics. What is the name of that office?

Mr. DeArment: The Office of Government Ethics.

The Chairman: Have they made their report? I understand it is directed to Senator Thurmond, who is the President Pro Tem of the Senate.

Mr. DeArment: That is correct, Mr. Chairman. They

incorrectly addressed the letter, but the letter in substance indicates that the Office of Government Ethics has reviewed the financial disclosure statement and found no potential conflict of interest, and they conclude by saying: "We believe that Ms. Ortega is in compliance with the applicable laws and regulations governing conflicts of interest.

The Chairman: Right. I think the record should -- maybe we should get another letter from them addressed to the Finance Committee.

Mr. DeArment: We have so requested this morning.

The Chairman: I hope they are more accurate in their other areas than -- what do we need to report her out?

Mr. DeArment: Eleven.

The Chairman: I think if there is no objection what we might do is just poll the Committee, if there should be eleven after a while.

Mr. DeArment: We could call the roll now and poll the absent members.

The Chairman: Okay.

Senator Bradley: What is this?

The Chairman: This is the Ortega nomination.

The Clerk: Mr. Danforth.

Senator Danforth: Aye.

The Clerk: Mr. Heinz.

Senator Heinz: Aye.

The Clerk: Mr. Symms.

Senator Symms: Aye.

The Clerk: Mr. Long.

Senator Long: Aye.

The Clerk: Mr. Bradley.

Senator Bradley: Aye.

The Clerk: Mr. Chairman.

The Chairman: Aye.

The Clerk: That is six. We will poll the absent members.

The Chairman: The next matter on the agenda is possible Finance Committee amendments to S. 979, the Export Administration Act Amendments of 1983. And as I understand, there is an area of Finance Committee jurisdiction with reference to the import controls, and I think just for the record staff might refer to the rules so there will be no question about at least possible jurisdiction by this Committee.

Mr. DeArment: Yes, Mr. Chairman. The Finance Committee has jurisdiction over matters governing imports and the Banking Committee has jurisdiction over exports. And I am looking in Rule 25 governing the jurisdiction of the standing committees, and the Banking Committee's jurisdiction is described as export controls and the Finance Committee's jurisdiction is responsible for reciprocal trade agreements,

tariffs, and import quotas and matters related thereto.

This jurisdictional question was addressed in the letter that, Mr. Chairman, you and Senator Long sent to the Banking Committee laying forth our interest in the import control portion of that bill.

The Chairman: Right, and what we wanted to do, we wanted to accommodate the Banking Committee and others in moving S. 979. As I understand it, Senator Heinz, we must act on that legislation by the end of this month, is that correct?

Senator Heinz: That is correct, Senator Dole.

The Chairman: And what we hope we might agree on this morning is, there are two areas that we are primarily concerned about in the legislation that are in S. 979. We have had hearings on these provisions, as Senator Danforth's Subcommittee conducted hearings.

And so perhaps I can call on Senator Danforth and Senator Heinz, who has an interest not only as a member of that Subcommittee but as a member of the Banking Committee, to see if there is any resolution of these differences of opinion between the two Committees. Senator Danforth.

Senator Danforth: Mr. Chairman, thank you very much.

Mr. Chairman, I am troubled by each of the two issues that are before the Finance Committee, and the first issue concerns whether import controls are going to be available as well as export controls for foreign policy purposes. At

first blush, that seems to be a reasonable idea. If for foreign policy purposes the U.S. is going to shut off exports to another country, why should we not shut off imoorts from that country.

But from the hearing and from considering this concept, it is my view that the possibility of import as well as export controls is a trap, and that it would build a constituency of import-sensitive industries which would campaign for export controls. In other words, I think that what we would see would be that industries affected, for example, by imports from say the People's Republic of China, the textile industry, would be engaging in foreign policy crusades against the People's Republic of China, urging a combination of import and export controls. That might help the textile industry; it would hurt agriculture.

So I see in this proposal in the bill a move toward protectionism, a move toward more divisiveness on American trade policy, and an acceleration of the use of trade as a foreign policy weapon. And I am not convinced that trade as a general rule is an effective foreign policy weapon.

And therefore, if it is in order, I would -- I do not know if it would be offering an amendment or suggesting it in the Committee and then to offer it on the floor, to delete import authority related to foreign policy export controls.

The Chairman: That is, as I understand, Section 6(1) of

S. 979, the Export Administration Act Amendments of 1983. And what it does essentially is give the President authority to impose controls on imports from a country against whom foreign policy export controls are imposed.

I have a letter which will be made a part of the record, which says in effect, we strongly oppose Section 6(1) and recommend its deletion from the Senate bill, and that is from Lionel H. Olmer, the Under Secretary for International Trade.

[The material referred to follows:]

[COMMITTEE INSERT]

The Chairman: There are two provisions that I think directly affect the jurisdiction of this Committee. One is Section 6(1), the other is Section 9(7). And Senator Danforth has just addressed Section 6(1).

Senator Heinz feels just as strongly the other way, so I think we should hear from Senator Heinz.

Senator Heinz: Thank you, Mr. Chairman.

I do not think there is any question, first, that the Finance Committee has jurisdiction over these matters. I do not contest that at all, and hearings were held, and the testimony at those hearings I think would, if taken particularly in the context of the overall bill, I think lend considerable credence to the necessity of retaining both the foreign policy and national security import controls here in this legislation.

Let me discuss the foreign policy control issue, and first put into the record, if I may, a letter signed by myself, Senator Garn, Senator Nunn, and Senator Proxmire on both of these issues. It was sent to members of this Committee on the 19th.

[The material referred to follows:]

[COMMITTEE INSERT]

Senator Heinz: I think for the members of the Committee to understand what is at issue here, you have to understand all of the foreign policy control section of the Export Administration Act. Now, I happen to agree wholeheartedly with Senator Danforth that export controls have been overused. The Committee felt that export controls had been overused, and the purpose of Section 6, the foreign policy export control section, overall is to restrict, in our judgment, and improve, when they are used, foreign policy controls.

What the Administration wants to do is get rid of one component of a larger issue. Let me read, if I may, or give you the background, if I may, on foreign policy controls. Current law which this Act would amend simply says that the President or the Secretary must consider a list of factors and then advise the Congress.

The way that worked was that a few days after the Amal Pipeline sanctions were imposed we got a paper advising us of their imposition, which is ridiculous. What this section does, therefore, in the first instance is to say to the President, you must stipulate what you are going to do, why you are going to do it, what you hope to achieve, and get it before you do anything; and secondly, we want you to not have to put the entire burden, if you have got a really valid case to make, do not put the burden just on our exports. And in

cases where you cannot get allied cooperation, sometimes the only effective sanction that you can impose if the other people are not willing to go along with you, is a sanction on imports.

Now, we cannot seem to get much cooperation from the European allies on export credits being extended to the Soviet Union, which just shot down the Korean airliner, I do not have to, I suppose, mention. So what do we do? Shall we just tell our banks to let the German banks and the French banks do all of the export financing to the Soviet Union?

No one is proposing that. The President does not propose that. But if the President wants to, if he first said, there is a serious foreign policy problem here, the President right now has the authority to embargo vodka and caviar. Now, that would not be popular with the vodka and caviar import association, but I would tell me friends that that at this point, if a President was so inclined, would be about all one could do effectively.

And striking this foreign policy section that Senator Danforth proposes to do would very much undercut our ability tc react. Now, I think Senator Danforth has put his finger on something that is of concern to some of our allies, and I would concede that there is a technical problem with the amendment.

It is a problem I have discussed with Ken Damm, our

Deputy Secretary of State, and that is that there is some appearance that these foreign policy import controls, notwithstanding the careful way they are circumscribed by the necessity of the President necessarily invoking in the first instance the entire section, reporting to us carefully on what the objectives are, how they are compatible with our foreign policy objectives, what the reaction of other countries is going to be, whether or not they will have an extraterritorial effect, what the cost of controls will be to the United States, and that we will have the ability to enforce them, notwithstanding that careful circumscription, I think that many of our GATT competitors who sell in this country are concerned that somehow their use might violate the GATT.

I would be prepared -- and I do not know if Senator Danforth would be happy with this -- to accept an amendment that would clarify that we do not intend to use these against the GATT members. I must tell you, I think that that is a very substantial concession.

Import controls are frequently used by other GATT members, namely the European Community that use them consistently, because they have recognized that it shoots themselves in the foot when they want to make a foreign policy point and all they do to shoot themselves in the foot is impose unilateral export controls. They learned that you

do not hit your mark by hitting the other guy where it hurts, but shoot yourself in the foot.

When Argentina was the subject of foreign policy controls, so-called, by us -- we would call them foreign policy controls -- one of the things that was used across the board by the Europeans was import controls, and not a single GATT member except Argentina, for some reason, complained.

And I might add, Mr. Chairman, that it is not at all clear under the GATT -- which does, by the way, make it very clear that national security controls are entirely appropriate -- that their definition of what a national security control is does not cover at least a large part of what we have in mind here on foreign policy controls.

For example, terrorism controls, foreign policy controls, that we might impose on Iraq or Syria, to name two countries where foreign policy controls have been invoked because of terrorist support by those countries, is considered by the GATT definition a national security control, whereas we would consider it and we have invoked them under the foreign policy control section.

So were the Committee to adopt Senator Danforth's amendment, we could not, even though it would be consistent with the GATT and their definition of national security controls, we could not for foreign policy purposes impose export and import controls on a country supporting

terrorists. And therefore, for example, we would have to go on importing, absent a very specific action of the Congress, Libyan oil.

Now, Mr. Chairman, I do not want to cause any trouble with our GATT members, but to say that we want to make it next to impossible for the President to stop importing Libyan oil when they are going around trying to assassinate our Ambassador to Rome, as they were, when they are invading nations next door, as they have done in Chad, just makes no sense.

Let us address the GATT consistency problem, but let us not hamstring ourselves and shoot ourselves in the foot, not once, but several times over.

Senator Symms: Would the Senator yield?

Senator Heinz: I would be happy to yield.

Senator Symms: I appreciate what you are saying, and generally I have been supportive of free trade initiatives, I think as you have. But it seems like that if we get down to the bottom line, ultimately are we not talking also about a second pipeline from East to West? And if we stop this now instead of waiting, so that we do not have to cut across contracts, like when the President tried to do it and found out it was impossible to do, how else can the Soviet Union get hard currency other than to either sell gold or sell oil and gas? Is there any other way?

Senator Heinz: I do not pretend to be an expert on the Soviet economy, but I think the Senator makes a point. Those are their two main exports.

Senator Symms: So if we would give the President this authority, it may be that we could head this off down the road and not allow the second pipeline. But if we give them free rein to get all the hard currency they want, they are going to keep on building war machines. If we sell them grain, then they have to sell gold to buy the grain if we make them pay cash for it.

Senator Heinz: The Senator makes exactly the right point.

Senator Moynihan: Would the Senator yield for a moment?

Senator Heinz: May I clarify something, Senator Moynihan, that Senator Symms has said? Insofar as I am concerned, I am the floor manager with Senator Garn of this legislation, if we ever get it out of the Finance Committee back to the Banking Committee.

My view on the Amal Pipeline sanctions as implemented was that they were well-meaning, but ultimately destructive only to the United States. They made a political point, perhaps, with our allies, but they made U.S. exporters be viewed by others as unreliable people to do business with.

It is my view that if the amendment we seek to the Export Administration Act had been the law at the time, the

Administration would have had to come up a lot sooner with a plan to deal with the pipeline, not after the fact when, frankly, it was too late and all it could do was cause trouble.

So as it was, I opposed, because of the way and when they were implemented, the pipeline sanctions. But that does not mean that they would not be a good thing to impose in the right way, at the right time, on some future pipeline. But I leave that decision to our President.

And what you are saying is that this section indeed will help if a future President wants to have a meaningful attack.

Senator Symms: What I am trying to get at is, I would like to see the U.S. Government get in a position where we do not try to cut across contracts that are made in good faith by people like Caterpillar, even though five years ago was the time that we should have done something. Now you are saying, if we pass these amendments the way they are today, you and Senator Garn and Senators Nunn and Proxmire, you are saying that this might be avoided in the future.

Senator Heinz: This will force us to confront the foreign policy choices at a time when they should be confronted and not too late.

Senator Symms: So we do not try to shut the door --

Senator Heinz: Thereby, we will avoid the needless

breaking of contracts that I am afraid has characterized the Amal Pipeline situation.

Senator Symms: Thank you.

The Chairman: I wonder if we might hear from Mr. Hurwitz of the State Department.

Senator Moynihan: Mr. Chairman, could I?

Senator Heinz: Is this debate between me and the members or between me and the State Department?

The Chairman: Well, I just want to get it resolved. I think it is very important, but we have a big long list of things to do. And as I understand, the Administration does not seek the authority, they do not want the authority. There are a lot of good reasons, at least in their view, that they do not want the authority. They do not seek it, and I thought we ought to hear from somebody in the Administration.

But I first will recognize Senator Moynihan.

Senator Moynihan: I just wanted to make a very brief comment and maybe a query. My friend from Idaho Senator Symms made the observation, I believe, that the Soviet Union pays gold, pays in gold for the grain they buy from the West.

Senator Symms: Well, they sell gold to get hard currency.

Senator Moynihan: Is he aware of the proposition that

has been put forth by Chase Econometrics that the Soviets have an approximately three to one comparative advantage in the production of oil and gas as against the production of grain? And I will tell you in a moment, these numbers have been disputed, but they are very important numbers, and I think that the Senator from Louisiana would be interested in this.

The proposition is that the Soviets have to have grain. They have to feed themselves. And as they buy grain from the United States -- so they have two choices, either to grow it themselves or import it. When they import it, they free up resources in their economy that produce oil and gas that is sold abroad for hard currency; and that the comparative advantage is such that for every dollar spent on grain, something more than a dollar is earned in oil and gas.

I understand that the Chase study is relatively new and disputed, and it need not be a three to one comparative advantage. But there is one. Otherwise they would not do it, obviously. And it would be very interesting if somebody in our Government or somewhere in our Congress, maybe the Joint Committee, the Joint Economic Committee, could study that for us, or the Joint Committee on Taxation.

I think it is something we ought to have an informed judgment about. But I do believe it is the case that they gain currency in this manner, and that the public perception

is wrong. I am not saying that the sales are wrong. I am just saying that the public perception of what is the consequence might just be just the opposite of what the real one is.

The Chairman: I wonder if we might ask Mr. Hurwitz, since I guess what Senator Danforth has proposed to do is to offer, if we have a Committee approval, and then either along the lines suggested, by deletion, or maybe some compromise that can be worked out. But I think we, as we normally do, we should hear from the Administration if they support deletion or if there is some compromise that would be acceptable.

Mr. Hurwitz: Thank you, Mr. Chairman.

I am an assistant to Under Secretary Wallace, the Under Secretary for Economic Affairs, and as Senator Heinz stated, we would welcome an amendment to this provision on, as we call it, GATT-ability, consistency with our GATT obligations.

But as we see it in the State Department, even if that provision were enacted there would still be a number of difficulties with the bill. First of all, we have international obligations beyond that agreement, such as the treaties of friendship, commerce and navigation, that impose on us certain obligations for nondiscriminatory treatment of imports, which we might be in violation of with non-GATT

signatories if this were enacted.

Secondly, for non-GATT signatories or non-signatories of these other obligations, our main fear is that the enactment of this measure would provide an avenue for protectionist pressure. We believe, based upon our past experience, that if this were enacted that manufacturers whose markets were threatened by foreign imports would seek to use this authority as an avenue to persuade the Executive Branch to impose protectionism to benefit them.

We have seen this over and over again. Where there is an authority, where there is an avenue that they can use, they have come in and said that, we are a special exception, we deserve protection. And of course the whole thrust of our policy, our foreign policy and trade policy in general, is to avoid protectionism, is to plead with others to reduce protectionist barriers and to increase trade overall, in the belief that that would benefit everybody.

Senator Symms: Could I ask you a question on that?

Senator Heinz: Steve, could I make an inquiry? Well, go ahead.

Senator Symms: My inquiry is that, my understanding of what Senator Heinz just said was that we want to have the situation so that -- and it does not really conflict with what the Senator from New York was talking about -- that if you want to have access to the big open market in the United

States, which is the world's greatest market for any country to import into, then there is going to have to be some international cooperation in terms of murder and terrorism and civility between nations, and we are not going to cooperate.

Then our friends have to decide whose side they are on, if they want to be friends with the Russians or they want to be friends of ours and enter into our market. Is that what you are trying to get at?

Senator Heinz: No.

Senator Symms: Let me finish my point here, while I have got the floor.

Senator Heinz: I want to be very clear on what the bill is trying to do and what you are trying to do, just so there is no misunderstanding. The bill simply says that if we cannot get cooperation just from our allies against Libya and therefore the purpose of our foreign policy controls on exports is going to be rendered nil because it will be ineffective, but we still want to do something that will get to Libya, we would have the ability to embargo, to impose import controls on Libyan oil.

Now, it is not within the meaning, it is not within the intent either, of this amendment to say that we could impose import controls on the French for importing Libyan oil. That is not what this is about. This does not give us a cause of

action against the non-cooperative allies. That is a different issue that we deal with in a different section in a different way.

Mr. Hurwitz: Senator, if I may just add a point here, it is not generally appreciated, but the United States has foreign policy export controls against a very large number of countries in the world at any one time. For example, the crime control equipment controls are very widespread. I believe they include almost all the countries of the world except for our NATO allies.

And so technically speaking, legally speaking, we would have the authority if this were enacted to enact import sanctions, not just against the Libyas and other countries that you are citing, but against otherwise friendly countries for which we might not want to do that.

Senator Heinz: Mr. Hurwitz, you have made a lot of good points. Let me ask you this. Let us assume for the purpose of this -- and this is a concession that I would gladly make -- that we solve the crime control equipment problem as not -- in a way that does not trigger import controls. Just say, except where the embargo of crime control equipment is concerned, those will not trigger import controls. Because you are absolutely right, we do not sell crime control ecuipment to a lot of countries for human rights reasons, and I think it would be unwise to trigger.

Notwithstanding some of the other things in the Act that I will get to in a minute, I think we need to carve that out in a particular way. Now, leaving that aside, what do you understand that the President has to do here before he may impose export controls under the amendments to this Act? What does he have to do before he can do it?

Mr. Hurwitz: Well, you are talking about the determinations that he has to reach before he can impose export controls?

Senator Heinz: Yes.

Mr. Hurwitz: Senator, I would have to review that section of the Act before I could read them to you faithfully.

Senator Heinz: Let me ask that the record at this point reflect what the criteria are. Let me remind the Committee, I guess, that the President may impose, expand or extend export controls under this Act only if he determines:

One, that such controls are likely to achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of goods or technologies proposed for such controls;

Two, such controls are compatible with the foreign policy objectives of the United States, including the effort to counteract international terrorism, and with overall United States policy toward the country which is the proposed target

of the controls;

Three, the reaction of other countries to the imposition or expansion of such controls by the U.S. is not likely to render the controls ineffective in achieving the intended foreign policy purpose or counterproductive to the United States' foreign policy interests;

Four, such controls will not have an extraterritorial effect on countries friendly to the U.S. adverse to overall U.S. foreign policy interests;

Five, the cost of such controls to the export performance of the United States, to the competitive position of the United States in the international economy, to the international reputation of the United States as a supplier of goods and technology, and to individual countries and communities, taking into account the effects of the controls in the existing context, does not exceed the benefit to the United States' foreign policy objectives, and the United States has the ability to enforce the proposed controls effectively.

Those are the determinations that must be made by the President, sent to the Congress in advance, not two or three days after the lapse of controls, of their imposition. It means that if, as a few people frankly in the agriculture community fear, that the textile manufacturers --

The Chairman: More than a few.

Senator Heinz: -- that the textile manufacturers are going to come to the President of the United States and say, Mr. Chairman, those textiles from China are killing us, invoke Section 6(1) or Section 6 of the Export Administration Act. And you know, you have got a great backdoor way to shut out those textiles.

The farmers understandably, if there was any credibility to any President ever doing that, should be worried, because China undoubtedly would retaliate and mess up our grain exports, our soybean exports particularly, I understand, to the People's Republic of China.

But what I hope the members of the Committee understand and the reason I took the time to read these criteria is, a President would basically have to declare that China was persona non grata with the United States. He would have to say why he wanted to isolate China, the People's Republic of China. And I doubt that any President, no matter what the failures of our electoral system, would be so stupid as to do that.

Now, let me ask, Mr. Hurwitz, do you really believe that any sane President would invoke the foreign policy controls of this Act as a backdoor way of imposing import controls on Chinese textiles?

Mr. Hurwitz: Sir, our concern was not that the President would intend that this eventuality would occur, but only

that, given the breadth of our current foreign policy export controls, that some inadvertent occurrence would happen where we would have a set of controls in place against a country -- for example, I note that the People's Republic and Taiwan are not signatories of GATT -- and that this inadvertent situation would occur where the manufacturers could come in, as you said, and ask for protection in their case only.

Senator Heinz: Do you know of any instance where foreign policy controls have been inadvertently invoked?

Mr. Hurwitz: No. Where the foreign policy controls were in place for a different reason and that the inadvertent opportunity to cut imports occurred, that is what I meant, sir.

Senator Heinz: May I point out respectfully, Mr. Hurwitz, that the Act would not permit the expansion of the use -- as it is written in the law before us, would not as I understand it -- the use of import controls unless the President made this new set of determinations. There is not a single set of determinations made by the President in existence on anything at all right now.

So it would be a very strong effort at inadvertence that the President would have to make. You cannot use those import controls without going through this process as of today, assuming the law was enacted one minute ago.

Now, if the facts are as I state them, do you still have

concern about inadvertence?

Mr. Hurwitz: Senator, I would have to work with you on the specifics of narrowing down the set of foreign policy controls that we have in place now. As I said, it does include most of the nations of the world, and we would have to work on the specifics of narrowing that down.

Senator Heinz: I think going back to your first two of three points, the GATT-ability and the treaties of friendship and so forth, it would be -- it is consistent with every objective of this Act to make it clear that the imposition of any, the use of any of these import sanctions, must be consistent not just with the GATT but with all of our multilateral obligations, which is a term I choose because I think it would sweep in with it the treaties of friendship and so forth to which you referred.

Mr. Hurwitz: We would welcome that, Senator.

Senator Heinz: If we took care of the crime control/human rights issue and if we took care of the GATT-ability/multilateral obligations issue, would you feel, and if you were satisfied as to the fact that this is not going to trigger any new inadvertent use of import controls because of, in light of our previous discussion, then would you feel that we have met most of your concerns?

Mr. Hurwitz: Well, clearly, sir, those would be improvements from our point of view. I cannot speak right

now as to whether we would then be completely satisfied, but I can get an answer for you very soon.

Senator Heinz: Mr. Chairman, I do not know how you want to proceed. What I propose to do is to make a substitute for Senator Danforth's amendment that did what we just discussed. I think what the State Department has stated is very reasonable. It seems to be the heart of their concern. I want to meet it.

Senator Symms: Mr. Chairman.

The Chairman: I just wanted to ask one question. We have export controls righ now on China, do we not?

Mr. Hurwitz: Yes, Senator.

The Chairman: You would not have to make any more findings if you had this section?

Mr. Hurwitz: Well, as the Senator stated, if new criteria were in place I suppose that we would have to put into process meeting those criteria under the new legislation. But under the present legislation we do not have to make any more determination.

Senator Heinz: Mr. Chairman, may I say that the Act is very specific on this. He can only expand controls or can only impose them, expand them or extend them under this section if the President makes these determinations. We have drafted it that way because we did not want to upset the soybean exporters. They are apparently very upset.

The Chairman: You say -- if no sane President would make these findings, what is the value of the amendment?

Senator Heinz: Well, what is the nature of our foreign policy controls on the People's Republic?

Mr. Hurwitz: I am sorry, I could not answer in great detail. It would include human rights and crime control and nuclear materials.

Senator Heinz: But let me suggest that the nuclear materials is not invoked under the Export Administration Act. That would be invoked under a different Act. The crime control may be invoked under this Act. We are going to take care of that.

Under what Act are the other export controls invoked? Because Senator Danforth put into the record of the Committee at the hearing a list of all kinds of export controls that have been invoked. There is only one problem with this list: The largest part of those export controls are not invoked under this Act and are not invoked under this section of the Act.

A lot of them are national security, which we are not even talking about now. A lot of them are emergency economic powers and other Acts. And I think we have to be a little careful about what we are saying.

Senator Danforth: Mr. Chairman.

The Chairman: Senator Danforth.

Senator Danforth: Mr. Chairman, I must say that Senator Heinz' suggestion of how to remedy this situation with respect to GATT-ability, as I understand the suggestion, does not do the job, and it does not do the job for two reasons. First of all, with respect to GATT member countries what is a violation of GATT and what is not a violation of GATT is something which is determined by GATT. It is not something which is predetermined.

When I was asked at the time that I suggested quotas on Japanese imports, was that a violation of GATT, my answer was of course not. That is a matter which is argued by both sides until it is determined. So I do not think that it is sufficient to write into law a guess or a judgment call as to what is a GATT violation and what is not.

Secondly, if GATT-ability is to be the criterion that would allow free rein for import restrictions against non-GATT members -- and I would simply point out some of the imports that we now have from non-GATT members: from the PRC, textiles; Taiwan, which is not a GATT member, textiles, shoes, steel, TV's; from Hungary, machinery, chemicals; from Romania --

Senator Heinz: Those are the ones where they stole the patents.

Senator Danforth: From Romania, textiles; from U.S.S.R., casein.

So I think that the original objection still stands. There is a debate within our country right now as to who is supposed to be making foreign policy. Some people think that there are too many people in the Act of making foreign policy. But what you are going to do if you have import restrictions along with export restrictions is, for the first time to my knowledge, build in major constituencies of import-affected industries which are going to be right in the middle of foreign policy considerations.

I wish I could be confident that a President of the United States were hermetically sealed in some decisionmaking room, isolated from the storms of public opinion and able to make strict legal judgments on matters such as this. But I fear that what we are building is enormous political pressure on the politicians, where Washington, even more than it is now, is going to be the focal point of pressure for various interests wanting protection from exports. And they are going to have a whole new means of attack, and that is going to be foreign policy controls.

So I think that this is a very bad idea and I think that it is going to escalate something which has been escalating anyhow, and that is the use of trade as a foreign policy tool.

Senator Heinz: Mr. Chairman, I have great respect for my friend from Missouri. I am troubled by his argument because

what he is in essence arguing in saying that the President should not have a power which I think we have very responsibly circumscribed is in effect to say, not only is it a bad idea to give -- to put any ammunition in the President's gun, but if we are going to have ammunition and there is some ammunition there, rather than do anything else let us make sure the gun is always pointed at our foot; and that by pointing the gun only at our foot we will somehow improve our aim.

And I do not think that that is really the way to solve the problem. It is all very good to play on the public's distrust of politicians and say there is nobody in Washington who can be trusted to make rational decisions, and if you give the President some additional power, or some other President, they are going to go around the bend.

But I hope my friend from Missouri has actually read not just that portion of the Act that seems to offend him, but that he has read the overall criteria and process through which a President must go.

I would only add, and I will be brief, that the irony in this is that there are a lot of people who are exporters, who are exporters, who support this in the Act, because they believe it will make foreign policy controls essentially more difficult to impose and, when imposed, imposed more thoughtfully.

And that is, I assume, why the Electronic Industry Association is for it. They do not anticipate clamping down on the imports of semiconductors from Japan. That is not their objective. We are not enemies with Japan. We are going to exempt them with the GATT-ability provisions. They are members of the GATT. There is nothing in this for them in that regard.

So I just hope that the Committee would accept my substitute, Mr. Chairman.

The Chairman: Senator Symms.

Senator Symms: Well, Mr. Chairman, I just want to say again that in normal circumstances I would say I would come down on the side with the Senator from Missouri, that we should always push for free trade policies and not have Government interferences with the free flow of trade. But when it comes to East-West trade, I think that we need to give the President the authority to try to get some cooperation, so that there can be some things that could happen, that could be not necessarily punitive in nature, but would in fact slow down and restrict the ability of the Soviets to build a massive war machine.

Now, I am trying to support my good friend from Pennsylvania here, but I want to read back what the letter says. Now, I know you are talking about two amendments here, but your letter says:

"After extensive investigation, we concluded that the best way to do that is the import control authority we have included. Keep in mind that such authority could be used only in cases where a company had violated COCOM standards and the standards the government had agreed to and agreed to enforce. In reality, we expect the actual sanction would be imposed less frequently than the authority would be used quietly to persuade another government to fulfil its own enforcement."

Well, I support that.

Senator Heinz: That is going to be the second amendment. We are still on the foreign policy amendment.

Senator Symms: I would just like to have you try to clarify for me if you -- what are you weakening with your amendment?

Senator Heinz: Well, first of all, we are not at this point. We are not weakening. Neither Senator Danforth has proposed, nor have I proposed, an amendment, although he does intend to propose one, I am told, to weaken the national security import control section.

There are two sections of this bill under which import -- excuse me -- under which export controls may be imposed. The one that you have just referred to is when the President claims that the national security of the United States is invoked. It is typically invoked to prevent high technology

and other vital resources from falling into the hands of countries whose interests are inimicable to ours.

But the other part of the Act, the one we are really focused on now, is that part which deals with actions taken by the President under the foreign policy section, which is Section 6, where in a sense what the United States is doing is to express displeasure of one kind or another.

And Mr. Hurwitz, would you care to add to my distinction between Section 5 and Section 6?

Mr. Hurwitz: I think it is a very accurate description. Where we want to distance ourselves from the actions of a particular government, would be how we normally describe foreign policy controls, put ourselves at a distance and not provide any economic support in any way for a government that engages in activities that we find obnoxious.

The Chairman: If I might make a suggestion, because we have a lot of territory to cover. If we might go on and discuss the second amendment briefly, and so we would have them both on the table.

And then I might say, for the comfort and convenience of those who are standing or seated here, that about all we are going to do this morning is try to address these two amendments and look at some spending reductions, and then we will meet again tomorrow morning at 10:00 o'clock, if that will help anybody.

Senator Heinz: That is going to give a lot of people in this room a new lease on life.

[Laughter.]

The Chairman: But if you are not here -- unless you are just very interested in this debate -- it emptied the Committee pretty fast as far as members.

[Laughter.]

The Chairman: And I think it will empty the room, right after you know that nothing else is coming up except we are going to discuss budget reductions. There will be no votes this morning, so all those lobbyists who want to get an early lunch can leave.

[Laughter.]

The Chairman: Let us take number two and discuss that one.

Senator Danforth: Mr. Chairman.

The Chairman: Let me ask the staff, let us go to the second amendment. Leonard, do you want to explain it briefly.

Mr. Santos: Amendment number two would deal with Section 9 of S. 979. That section in part authorizes the President to deny U.S. entry to imports from, the term is used, "whoever violates a regulation issued pursuant to a multilateral agreement to control exports for national security reasons to which the United States is a party."

The purpose of this amendment --

The Chairman: Could we close the rear door there? I think most of those who are not interested in this particular subject have departed.

Mr. Santos: The purpose of this amendment is to delete the power granted in the bill to punish, in effect, those who violate the COCOM controls -- those are controls maintained in cooperation with our allies on exports to the Communist bloc of high technology items -- to punish those who violate regulations issued by COCOM by denying them the ability to import goods into the United States.

It does not address, does not delete, does not deal at all, with the authority in Section 9 which is also granted in the bill to deny import privileges to firms that violate United States national security export controls. That would remain in the bill and that authority would be available to the President.

The Chairman: I will turn this over to Senator Danforth and Senator Heinz. But it is my understanding there are some areas of concern where this particular provision could be helpful. And I think there has been some effort, again -- and I am not certain whether it has achieved anything -- to work out some compromise that would address the real concerns that some may have and still satisfy some of the fears that others may have.

Mr. Santos: Yes, Mr. Chairman. The concern essentially is that COCOM, which is after all a voluntary organization of countries that have joined together in an alliance, is not always enforced as effectively as the United States would like. And we have had problems from time to time with exports from the COCOM members to the Communist bloc of items which the United States feels should not have been exported.

For our own exporters, that means they lose a sale which is nonetheless obtained by an exporter from one of the allied countries. So our own exporters, some of them feel that it is important that we give the President this import control authority as a way of obtaining greater discipline in COCOM, and there is disagreement as to whether or not it would achieve greater discipline. But that is its purpose.

From the Committee's standpoint, it would be helpful if the authority could be qualified in ways which apply to the application of export controls in the foreign policy area, and there are two possible ways that we could suggest, and there may be others, of modifying this authority in a way that is consistent with this Committee's interest and at the same time gives the President this tool.

One means of accomplishing that would be to require that when the President wishes to use this tool he make findings comparable to the ones he must make when he uses foreign policy export controls about their utility and their

compatibility with the trading interests and national security of the United States.

Those findings could be transmitted to the Finance Committee and the Ways and Means Committee in the Congress. They could be required to be made prior to the use of import controls. That way there would be a record of the rationale and the reasons and the motivating factors, and the relevant Committees could at least be informed.

Senator Heinz: Are we talking foreign policy, Section 2?

Mr. Santos: No, we are talking Section 9 now. But we are talking about requiring that the use of import controls under Section 9 as a tool of, in effect, punishing firms be accompanied with a reporting requirement similar to the ones that apply in Section 6 on foreign policy export controls.

The Chairman: That is one recommendation.

Mr. Santos: That is one possible course. The second possible course is to require that when the President wishes to use this authority, the authority to impose import controls, against firms that violate national security export controls either of the United States or of COCOM, that he transmit a bill, in effect, to Congress requesting this authority, that that bill be treated in a so-called fast track procedure, that Congress be given a period of time, perhaps 60 days, in which to act on this measure, and if

Congress does not act on such a measure then the President does not have that authority.

It would be similar to the procedures provided for fast track legislation in the Trade Act of '74.

The Chairman: Senator Danforth.

Senator Danforth: Mr. Chairman, I think that the first thing to come to grips with is what COCOM is. Now, please correct me if I am wrong. COCOM is a voluntary arrangement by the United States and NATO allies and Japan, entered into for the purpose of restricting the export of scientifically sensitive technological items to Eastern bloc countries.

Mr. Santos: That is correct.

Senator Danforth: The list is a list of products which we and our allies together agree should not be shipped into Eastern bloc countries. Now, the voluntary nature of that list is a very important thing to focus on. There is nothing that compels France or Germany or Great Britain or Japan to agree that something should be on the list in the first place. It is strictly voluntary on their part.

Now, the proposal here is that if something is on the list and if a foreign country, in spite of the list, sells a product to an Eastern bloc country, the United States can impose import controls against that foreign country.

I think it is fair to say that this issue of the COCOM controls has been one of the greatest bones of contention

over the last year or so that we have had with our NATO allies. Virtually every discussion that I have had with anyone from Europe who has anything to do with either trade or economics, virtually every discussion, early on in the discussion has resulted in a complaint being lodged on what our European allies have viewed as an attempt by the United States of extraterritorial enforcement of American law.

One of the concerns about this section in the bill is that, if COCOM in the first place depends upon a voluntary arrangement between us and our allies, this threat of American import sanctions against companies abroad would make it less likely, rather than more likely, that items would be put on the list in the first place. That is to say that, with respect to the working of COCOM itself, this proposal would not make it a tighter agreement, a tighter arrangement, but in fact would tend to remove the cooperation which is necessary for the arrangement in the first place.

Senator Heinz: Will the Senator yield at that point?

Senator Danforth: I will finish in just a minute. The idea of extraterritoriality, even the idea of the United States attempting to enforce an agreement extraterritorially against a company located in another country has been a bone of contention with those other countries and with their private sector. The EEC has taken the position, as I understand it, that it would consider such import restrictions against their companies a GATT violation, and furthermore, would retaliate.

And finally, the same arguments that were made with respect to foreign policy sanctions are equally applicable here. However, they are applicable not against the People's Republic of China or Taiwan or non-GATT members. These are applicable really against our allies. These are trade sanctions which are proposed to use against our NATO allies, and it would be an enormous source of continuing friction.

Senator Heinz: Mr. Chairman?

The Chairman: Senator Heinz?

Senator Heinz: Mr. Chairman, I am glad Senator Danforth clarified one thing, because I think from Mr. Santos' explanation there, it was unclear that the sanctions are only company specific. They are not country specific.

Mr. Santos: Well, if I may, Senator Heinz, the bill says whoever --

Senator Heinz: It is the intention of the Committee, and we are perfectly willing to clarify it, that they be company specific. They were always intended to be that way. I think if you read the report it is fairly clear, and if you read the debate and so forth in the Committee, it only took us five years to write this, that we are talking about company problems.

Senator Danforth also made clear that what we are talking about here under these national security controls generally, not just COCOM, but generally, is to prevent the illegal export of controlled goods, high tech, if you will, and that we have had considerable problems in controlling the export of high technology not only from this country, because of enforcement problems, but because of a very leaky COCOM arrangement.

Now, one of the things Senator Danforth said strikes me as a very good argument for this section of the bill. As I understand what he said, it is that COCOM is a voluntary arrangement, that if the items that are put on the list are really going to be enforced in terms of their export to the Soviet Union, it is less likely that countries will put those items on the list, presumably because they want to sell them and will sell them, and they therefore do not want us enforcing our law against companies that break the COCOM arrangement, and my attitude towards that is, that would be a

hell of a good improvement, because we who observed the COCOM standards rigorously and do not export five access machine tools would not find ourselves in Chicago looking at a five access machine tool that is on the COCOM list along with four access and three access computer controlled machine tools made in Hungary or Romania, I forget which one, made in an eastern bloc country, under license to Fujitsu of Japan.

Now, we have not been selling those five access or four access or three access machine tools. They are on the COCOM list, and how do we find out about the violation, but that one of the eastern bloc countries has at a trade show in Chicago a machine tool identical to the one Fujitsu makes that is not supposed to be sold as a machine, let alone to license the technology to make these machines, and here we are. The Soviet Union's allies are selling to us something we are not allowed to sell to them.

That is why I think Senator Danforth's argument is a very good argument for what is in our bill.

Let me give my colleagues on the Committee a couple of examples, because you have to understand the problem we are dealing with, and it is not a question of whether somebody says, gee, that is GATT inconsistent. We all agree with Senator Danforth that GATT is what people call it. Consistency or inconsistency with the GATT is what people say it is. So if our European allies say something is

inconsistent with the GATT, it does not mean it is.

In one particular case, a representative of one of these companies that we want to have the authority to crack down on and deny if necessary their ability to import into the United States, set up a front company by the Polish government, succeeded in obtaining several classified reports of prime importance to our national security, including the F-15 made in St. Louis, look down, shoot down radar system, the quiet radar system for the B-1 and Stealth bombers, and an all weather radar system for tanks, an experimental radar system for the U.S. Navy, the Phoenix air to air missile, a shipborne surveillance radar, the Patriot surface to air missile, a tow to raise submarine system, the air to air missile, the improved Hawk surface to air missile, and a NATO air defense system.

For his efforts, this particular gentleman who set up this front company was made president of the Polish company. He was subsequently apprehended and convicted of espionage. The company that he worked under continued its operations, including the sale of Polish machinery in the U.S.

Let me share two other cases, also violations of our national security, re-export controls, which is what I think the main argument is about here, a large diversified multinational. I should say that these cases are accurate, but we are not revealing the country of origin nor the

company involved here, although we would reveal that to members in a classified briefing.

A large, diversified multinational company in a western European neutral nation knowingly sold air control equipment to the Soviet Union in direct countervention of U.S. re-export regulations. That equipment was clearly dual use and very significantly upgraded the air defense capabilities of the Soviet Union. Such equipment allows the Soviet air defense command to keep track of many more targets than had previously been the case. Additionally, it allows their air defense command to direct interceptors to the site of these multiple targets.

The country involved did not at the time have significant sanctions for such illegal transshipments, nor was there anything that the United States government could do other than to strongly protest and to deny such company, such foreign company future exports from the United States. Obviously, an import sanction against this large multinational company, which happens to sell billions of dollars worth of goods to the United States, would have been highly effective both for leverage with the company itself and with the host government.

One other example, which is really two cases, involves, and this is during the last three years, 1981, 1982, and 1983, a major diversified multinational corporation with its

home base in a major western ally which is a member of COCOM sold stored program switching equipment and technology of a level of sophistication greater than that which is now in place at NATC command headquarters.

The host country repeatedly ignored U.S. inquiries and warnings of the strategic significance of such equipment, and further ignored direct requests that the license application be brought before COCOM for review. This equipment, which is of a highly critical nature to military command and contol, was then re-exported, if you will, sold a second time. In the first instance, it was sold directly to the Soviet Union, and in the other case it was sold to Bulgaria, a close ally of the Soviet Union.

The company involved seems to be in a cash flow crisis, and apparently felt that such sales were critical to its economic survival. It is thus that avarice and short-term economic gain lead to Soviet acquisition of a critical military technology in this instance, and left the U.S. with no option at all to prevent such technology transfer other than through diplomatic overtures.

The point is, had the import control sanction been in place, that company, which has multi-million dollar sales in the United States and is highly dependent upon the U.S. market, could have been directly faced with the option of losing that market, despite the host country's unwillingness

to enforce its own export laws.

Now, I want to address the way these controls would work most effectively. They would work most effectively, Mr. Chairman, if they never had to be used. The purpose of having these controls is to be able to go to the two multinational companies I just mentioned and say to them, you do not want to re-export this critical technology in violation of COCOM. Normally you would not have to listen to us, but today you do, because you run the risk of the President taking action against you if you do. That is called quiet diplomacy. It was called in the old days, I guess, walking softly but carrying a big stick. And it is the very opposite of forcing a crisis with our allies.

There will be a lot less in the way of crises with our allies if when an agreement is made in COCOM that it is policed and made effective. It does nobody any good, it does our relations with our allies no good for us to get mad at them because the bureaucracy in one country or another is looking the other way when a piece of high technology equipment or the plans themselves, which is what the first instance dealt with, are sold in effect to the Soviet Union, and that is the issue.

So, I would hope, Mr. Chairman, that Senator Danforth's amendment to strike this section and, for that matter, Mr. Santos' suggestion would be rejected totally by the

Committee. I must also say that this is one of the most necessary things we can do if we care about not arming the Soviet Union, and I do not like the kind of demagogic statements that are easy to come by when the Soviets have just shot down a Korean Airline plane, and the emotions are running high, because I do not like to fan the fires in that way. But I have got to tell you that substantively if you really want to do something to help the Soviet Union, we ought to accept the Danforth amendment.

The Chairman: Senator Danforth, do you agree with that?

[General laughter.]

Senator Danforth: Mr. Chairman, I do want to be recognized just to ask two questions of the staff. I am not trying to aid the Soviet Union, I want to assure you.

Senator Heinz: I did not say that was Senator Danforth's intention. I know he does not want to.

Senator Danforth: Let me just ask two questions of Len, if you know, or whoever.

The Chairman: And we also have Mr. Zacharia here from Commerce.

Senator Danforth: First, with respect to the company specific nature of this import restriction, supposing that a company has been nationalized by, say, France, and it violates COCOM, and we were to impose import restrictions. We would in effect be imposing import restrictions against

another country, would we not?

Mr. Santos: Well, Senator, the distinction between the corporate entity and its ownership is drawn in various countries, and arguably in that case one could just limit the import control to the specific entity, although clearly the interest of the country that owned that entity would be affected.

Senator Danforth: Now, secondly, with respect to the re-export examples of Senator Heinz, if the United States manufactures a product, ships that product to a NATO ally, that ally in turn reships it, or a company within that country reships it to an eastern bloc country, regardless of what we do in this bill that is before us, would that be a violation of U.S. law?

Mr. Santos: Yes, Senator. We in our export control statute, the Export Administration Act, do assert jurisdiction over the re-export of U.S. goods and technology, regardless of whether the re-exporter is a U.S. person or not. So, in that case, if, let us say, a French company were to sell an American good or technology in violation of the rules that are established under U.S. law, we would claim jurisdiction and the right to punish that firm, and if import control authority were added to the arsenal of punitive measures, we could, regardless of whether this amendment passes, we could nonetheless impose import controls against

that company.

Senator Danforth: Regardless of what is done?

Mr. Santos: Regardless of what action is taken.

Senator Heinz: Under what authority?

Mr. Santos: The Export Administration Act does regulate exports from the United States and the re-export of those items. So to the extent that someone re-exported an item in violation of the Export Administration Act, or the rules established thereunder, it would constitute a violation of U.S. law, and this amendment does not deny the President to impose import controls for violations of U.S. law. It only addresses the extra permutation, which is violations of COCOM regulations.

Senator Heinz: How about the following example, where the technology is on the COCOM list? It may have been technology that has been licensed by a U.S. firm to a French firm. Now, that is not re-exportation.

Mr. Santos: Senator, there are situations where the Commerce Department imposes licensing requirements on the export of the technology -- I am sorry, licensing on the licensing of the technology. In that event, if the terms of the export license of that licensing technology were violated, it would constitute a violation of U.S. law.

Senator Heinz: And where is the President authorized to impose import controls under current law?

Mr. Santos: There is no authority under current law, but there is authority in the bill that has been reported out of the Banking Committee, and none of the amendments before this Committee today would touch that authority.

Senator Heinz: As I understand, I do not have a copy of -- there are two things Senator Danforth is proposing to strike or he is proposing to circumscribe. I do not have a copy of his proposal.

The Chairman: I think he proposed to strike, and I just had the Committee staff indicate a couple of areas.

Senator Heinz: Well, I would like to see a copy of it. You drafted it. You know what you have got. I do not have it, and so I do not know what you have got.

The Chairman: Senator Bradley wanted to raise another area, since Senator Heinz is here, in the Export Administration Act. As I have explained, we do not have the bill before us, but if it is something that the Committee could agree on.

Senator Bradley: Mr. Chairman, I would like to raise a small issue. I think it is important, though, and it is related to this Export Administration Act. In the bill we shift enforcement for export controls from the Commerce Committee to the Customs, and what that means is that we will have less available Customs officers to do the job of commercial work or the other kind of enforcement activities

such as drugs, and what I would like the Committee to do is just to recognize that if we are going to take up that added enforcement, it is going to cost about another $5 million, and we do not want it taken away from either commercial inspectors or from the Drug Enforcement, and therefore that if we do not deal with it in this Committee amendment, that we agree that on the bill, S. 1295, that we have already reported out, where we say we basically want to do both things, and we recognize we will need another $5 million in that bill, and do a Committee amendment that would achieve that end to that bill.

Senator Heinz: Mr. Chairman, just to be brief, I think Senator Bradley is absolutely right. That is something that ought to be done, and I support him fully.

The Chairman: All right. Let us check that with the proper Administration people. I do not think there is any problem with it.

Senator Bradley: Sure. I just thought this was the time to raise this issue, and it is consistent with what the Committee did in S. 1295, where we said we wanted Customs inspectors to be on the docks checking the goods as they come in and not receiving some computer printout two months later that tells them what might have come in.

The Chairman: I wonder if either one of the Administration witnesses, either Mr. Zacharia from Commerce

or Mr. Hurwitz have any comments, brief comments on the second proposed deletion.

Mr. Zacharia: If I could, Mr. Chairman, the Administration clearly shares the concern of Senator Heinz and everyone here about technology transfer to the Soviet Union, and we also support many of the provisions in the bill dealing with strengthening COCOM, because we believe that is a very important organization.

The Administration also supports the portion of the import control provision up to the point where the Committee is proposing an amendment today. The problem that the Administration has with, and is in alignment with Senator Danforth's amendment here, is that we believe that it would damage COCOM rather than strengthen COCOM to have the type of authority, extended authority that the current Senate bill would give the President.

In the -- Let me just make the point, if I could, about the three examples that Senator Heinz gave. I concur with what Mr. Santos said. If you have U.S. technology or U.S. products involved in the violation, it would violate U.S. national security controls, and the portion of the import control provision that everyone is in agreement is a good idea would take effect, and we could go after that company with an import control penalty. The area --

Senator Heinz: Under Senator Danforth's amendment he

strikes it.

Mr. Zacharia: That is correct, but he does not strike, Senator, the portion that would allow the President to impose import controls as a penalty for violating U.S. national security controls, and under the examples that you gave, those foreign companies would be violating U.S. national security controls.

Senator Heinz: How about on technology?

Mr. Zacharia: The same with technology, sir.

Senator Heinz: Do you mean if they had a license to produce a machine?

Mr. Zacharia: Yes, sir.

Senator Heinz: Could you explain how in the Fujitsu case, which has to be one of the most serious problems we have encountered, that Senator Danforth's amendment would have prevented the granting of the five access machine tool technology and license to produce that technology to Hungary or Romania? I guess both of them got it through Fujitsu in Japan.

Mr. Zacharia: Senator, when U.S. technology or products are involved, and they involve shipment abroad, they require an export.

Senator Heinz: This is COCOM proscribed not to send to the Soviets technology. Now, how would Senator Danforth's amendment have, if it was the law, how would it have helped

us with getting the Japanese company, Fujitsu, to back off? How would it have helped us in the case of the multinational company that I described in my second example, say, of selling to the Soviet Union and Bulgaria?

Mr. Zacharia: The situation that Senator Danforth's amendment would not reach, Senator, is when you have a foreign company that is not U.S. affiliated involved, and they are transmitting a technology or product that has no U.S. components or any U.S. technology involved, and they violate their country's COCOM standard. If all three of those criteria are met, that is the one situation in which if this amendment is adopted the United States could not react, but the Administration's position is, if you do not have the U.S. company involved, if you do not have a U.S. product or technology involved, and you do not have a violation of U.S. law involved, that it is an ill-advised extension of U.S. jurisdiction to try and impose a penalty by the United States for that violation.

Senator Heinz: When you say that is the Administration's point of view, is that a State Department point of view, a Defense Department point of view? Whose point of view is that?

Mr. Zacharia: Senator, that is the President's personal point of view. This was an issue that went to him for decision.

Senator Heinz: Well, I hate to say it, but I think the President is just dead wrong on that one.

The Chairman: Mr. Hurwitz, do you have anything to add?

Mr. Hurwitz: Yes. Thank you, Mr. Chairman. I just want to make a brief statement on the national security control. Our COCOM partners have told us in no uncertain terms that they believe that we in the United States have no legal standing to determine when their own national export controls have been violated.

They say how can an American determine that a French law on a transaction that has no U.S. contract whatsoever has been violated, and our fear in the executive branch is that adding this increment of COCOM cognizance to the import sanctions which we proposed and favor in general except for this increment would be counterproductive in the sense of reducing the propensity of our COCOM partners to cooperate with us rather than enhancing the strength of our controls.

As Mr. Zacharia said, we share your concerns on reducing the flow of technology to the Soviet bloc, and we want to do everything we can, but the way that our foreign partners see this, this would be a flagrant, in their view, a flagrant extension of extraterritoriality on which they already have an outstanding agreement with us, and in our view we are concerned that it might reduce their propensity to cooperate.

Senator Heinz: Mr. Hurwitz, let me say this. And I

really do not think that this issue could have been considered carefully enough by the President. I cannot for the life of me see how the President could defend a policy that really makes it impossible for us if your point of view as expressed prevails to get through quiet diplomacy the enforcement that is necessary to prevent critical technology which is leaking daily to the Soviet Union at a time of great tension between the United States and the Soviet Union.

Now, I understand your concern, and I would like to see COCOM work. We would like to give you some tools to get our allies to give COCOM a higher priority, a higher status. It is backlogged. It has inadequate resources. It operates on the lowest common denominator basis. If one of the countries involved kind of says, well, let us go slowly on this, they go even slower.

It is a good idea that is not working too well, and the proof that it is not working too well is that even in the last two years, since it has been focused on rather dramatically, countries, COCOM member countries have been unable to take meaningful actions in case after case to stop the transfer of really truly critical technology to the Soviet Union. Sometimes we find out about that transfer in the most amazing ways. The Soviets send it back to France for servicing, because they did not think we were going to catch them when it was serviced and sent back to the Soviet

Union.

You have all seen the article on the front page of the New York Times or the Washington Post, and they are all absolutely true. For once the press was right. And I just think that it would be very prudent for the President to take a second look at this issue, because I just do not think it is good for anybody, including the President, to take -- to at least be portrayed as not understanding the criticality of this situation.

The Chairman: Senator Danforth, did you want to be heard?

Senator Danforth: Mr. Chairman, the United States now enjoys a very significant trade surplus with Europe. We are, I am afraid, heading for a significant trade confrontation with Europe on another matter, that is, the proposal by France to the European Community for a tax on vegetable oil, and a tariff on corn gluten feed, and possibly a tariff on soybeans.

I have no doubt that if that course is followed by the European community, the United States would act in response to that, and the result would be a very strained relationship in international trade that would be unavoidable, I think, on our part. This is something which is avoidable. I do not think that this provision in the bill with respect to COCOM helps COCOM. I think instead it is asking for a very, very

combative situation with Europe in international trade, and this is something we can avoid, so I would very much hope that the Committee would approve this.

The Chairman: Mr. Zacharia, did you have a comment?

Mr. Zacharia: Senator, I just wanted to reiterate the President's commitment to stemming the flow of technology to the Soviet Union which is clear in the resource allocation that he has made both to the Defense Department and Commerce Department and Customs Service to beef up both licensing capabilities as well as enforcement capabilities, and also the President's strong commitment to negotiations with the COCOM allies to try and urge them to stiffen up their enforcement, and also his efforts to strengthen the COCOM organization itself by upgrading it and providing more dollars for it.

So, the Administration and your opinions are in line right down the line, with the exception of the President made the determination that extending the import control provisions to the narrow cases which the amendment would reach in practical effect would not be worth the damage to the COCOM organization which would be caused by that amendment's presence.

The Chairman: Senator Chafee?

Senator Chafee: Mr. Chairman, the Environment Committee was meeting, so I was, unfortunately, unable to be here

during the first part of this session.

The Chairman: That might be fortunately.

[General laughter.]

Senator Chafee: But nonetheless I wanted to just note for the record how the legislation from the Banking Committee does deeply disturb me, and I associate myself with Senator Danforth's amendments. I think they are good amendments, and I hope they will be favorably considered by this Committee, and I particularly would call people's attention to the last remarks made by Mr. Zacharia as regards to COCOM. That is not the world's most solid organization, and if we venture into these areas, I think we are liable to undermine the strength that COCOM presently has, and that the members are liable to go off in separate directions unless we are able to if we venture in the area that has been suggested by the Banking Committee legislation.

The Chairman: Well, let me suggest that since a lot of the members seem to have disappeared, and there is not a quorum here to act on the amendments, that perhaps in the next three or four hours maybe the staff and the representatives from Commerce and State and any other agency that has an interest might be working to see if there is some way to resolve the differences, and if not, we will just have to vote on these.

It seems to me that there might be some resolution of the

second one.

Senator Heinz: Mr. Chairman, hope springs eternal, but I doubt it is going to be worked out at the staff level.

The Chairman: Well, they can at least try, and we will take it at the Senate level later on, and we will vote on it tomorrow. We do not want to hold up S. 979. Senator Garn and you both need to get it up before this Friday, so at least we ought to take action one way or the other, which we will do the first thing tomorrow morning.

Now, these are important amendments, and certainly Senator Heinz and Senator Danforth have spent a lot of time. We have -- What I would like to do, rather than get into some new topic, we are finished with this discussion. I wonder, Sheila, if you might come up for a second. Do you have available, Sheila, the areas that we would be discussing in spending reductions and in which this Committee has jurisdiction? Are those available?

Ms. Burke: Yes, Senator. The materials were distributed to the Committee, the descriptions of the Administration's spending proposals and additional spending proposals. The Committee has received them.

The Chairman: Well, I am not certain that it would do anybody any great good to have you go over them with me and maybe one other Senator, but I assume that all Senators have probably read the material carefully, so that maybe tomorrow

morning, without going into a detailed explanation, we can just sort of do a fast overview of the material that has already been -- the material is made available?

Ms. Burke: Yes, sir, it has.

The Chairman: So we would like to get into the spending reductions, but also tomorrow we have the extension of FSC, and it is my hope we might dispose of that first, Export Administration amendments, and then FSC, and then to get into the Medicare, and then into leasing, and then into who knows what else between now and some time next week.

Ms. Burke: Senator, the other items on the agenda for tomorrow include other time sensitive provisions, specifically disability and child support, and you may also wish to discuss that. The material has also been distributed to the Committee.

The Chairman: Right. I understand we might be able to resolve those matters without much difficulty if there is bipartisan agreement. I know that we are going to be working with Senator Long, at least going over the disability amendment. The only one we think is necessary at this time is an extension. And also the FSC area we discussed.

Ms. Burke: And the foster care.

The Chairman: Foster care. I am not certain -- there is no dispute about that that I know of.

Ms. Burke: I do not believe so.

The Chairman: So we could take care of those very quickly, and it seems like a good time to quit, with the bell ringing. Thank you. We will meet at 10:30 tomorrow morning, rather than 10:00.

[Whereupon, at 12:00 noon, the Committee was adjourned, to reconvene at 10:30 a.m. of the following day, Thursday, September 22, 1983.]

COMMITTEE ON FINANCE

Executive Session

Wednesday, September 21, 1983

Room SD-215

10:00 a.m.

AGENDA

1. Nomination of Katherine Ortega to be Treasurer of the United States
(Attachment A)

2. Possible Finance Committee Amendments to S. 979, the Export Administration Act Amendments of 1983
(Attachment B)

3. Finance Committee Response to Reconciliation Instructions of First Concurrent Budget Resolution

   A. Spending Reductions

      1. Background data and materials on Fiscal Year 1984 Spending Reduction proposals (Bluebook previously distributed)

      2. Additional Reconciliation Options
      (Attachment C)

   B. Revenue Increases

      1. Public Property leasing, S. 1564
      (Attachment D)

Attachment A

# RESUME OF KATHERINE D. ORTEGA

1140 23rd Street, N.W. #506
Washington, D.C. 20037
Home: 202/466-5233
Office: 202/653-5175

EDUCATION

Eastern New Mexico University, Portales, New Mexico
B.A. Degree in Business and Economics, 1957
Graduated with honors. Completed work towards degree within two and a half years.
Licensed as California Certified Public Accountant, 1971

BUSINESS EXPERIENCE

1982 to present

Commissioner, Copyright Royalty Tribunal, Washington, D.C. The Tribunal is an independent agency in the Legislative Branch of Government. It is composed of five members appointed by the President with the advice and consent of the Senate. The Tribunal's statutory responsibilities are to make determinations concerning certain copyright royalty rates and to distribute cable television and jukebox royalties deposited with the Register of Copyrights.

1982

Presidential Advisory Committee on Small and Minority Business Ownership. Appointed by President Reagan to this ten-member committee which held meetings throughout the country as part of a study to determine optimal participation of the private sector in the training, development and upgrading of small businesses, particularly minority businesses.

1977 to 1982

Consultant, Otero Savings and Loan Association, Alamogordo, New Mexico. Provided managerial direction to family-controlled savings and loan association with approximately $14 million in assets. Principal executive officer and decisionmaker for family-owned real estate development.

1975 to 1977

President and Director of Santa Ana State Bank, Santa Ana, California. Was elected to the above position in December, 1975, and became the first woman to serve as president of a bank in the State of California. Assets were $8 to $10 million. Bank was merged into Pan American Bank in 1981.

1972 to 1975

Vice President and Cashier, Pan American National Bank, Los Angeles, California. Assets were $28 to $30 million with approximately 52 employees. Facilitated financing for the Hispanic business community in East Los Angeles, as well as consumer financing.

BUSINESS EXPERIENCE (cont.)

| | |
|---|---|
| 1969 to 1972 | Tax Supervisor, Peat, Marwick, Mitchell & Co., Certified Public Accountants, Los Angeles, California. Was one of a limited number of women employed by one of the "big eight" public accounting firms. Managed accounts for a number of small businesses and prominent individuals. Supervised work of four or five staff accountants. |
| 1968 | Accountant, Valencia Water Company, Valencia, California. Improved and implemented accounting system for new utility company, a subsidiary of Newhall Land and Farming Company. |
| 1962 to 1966 | Accountant, John H. Trigg Company, independent oil operator, Roswell, New Mexico. Was responsible for preparation of payroll for approximately 100 to 150 employees, preparation of audit workpapers, intangible drilling costs and lease expenses. |
| 1957 to 1962<br>1966 to 1968 | Accountant, Olson and Ortega, public accounting firm, Alamogordo, New Mexico. Member of family-owned accounting practice. Was responsible for accounts of various small businesses. |

MEMBERSHIPS

Executive Women in Government
American Institute of Certified Public Accountants
American Society of Women Accountants, Los Angeles, California, 1969-1978
California Society of Certified Public Accountants, 1971-1978
American Bankers Association, 1972-1977
National Association of Bank Women, 1972-1977
Soroptimist International, Santa Ana, California, 1976-1978
Zonta International, Los Angeles, California, 1973-1975

AWARDS

Outstanding Alumni Award, Eastern New Mexico University, 1977
Business and Professional Woman of the Year Award, Fullerton, California, 1977
California Businesswomen's Achievement Award
Damas de Commercio Outstanding Woman of the Year Award, Los Angeles, California

OTHER

University of California Medical School, Irvine, Member of Admissions Committee, 1976-1977
Bi-lingual, Spanish and English
Have visited China, Russia, Scandinavia, Western and Eastern Europe, Japan, Israel, Mexico, Central and South America

Attachment B

# POSSIBLE FINANCE COMMITTEE AMENDMENTS TO S. 979, THE EXPORT ADMINISTRATION ACT AMENDMENTS OF 1983

## Background

On August 4, 1983, the Subcommittee on International Trade held a hearing on certain provisions of S. 979, a bill to amend and reauthorize the Export Administration Act (EAA) of 1979. Unless extended the Act will expire on September 30, 1983. The Banking Committee bill has not been referred to this Committee, but Senators Dole and Long objected to Senate consideration of the bill until the Finance Committee had an opportunity to review three provisions in the bill falling within its jurisdiction.

The Export Administration Act of 1979 confers authority on the President (acting principally through his Secretary of Commerce) to regulate exports from the United States. The Act permits the regulation of exports based on three separate rationales: to protect U.S. national security, to further U.S. foreign policy, and to protect the United States economy from excessive drain of scarce materials. The sections of the Act which are the principal focus of S. 979, and the sections which are the most controversial, are the sections authorizing the President to regulate exports for national security reasons and for foreign policy reasons.

In general, S. 979 places significant new constraints on the President's use of his authority to impose foreign policy export controls. Two of the most significant constraints are the contract sanctity and prior Congressional notification requirements. S. 979 precludes the President from interfering with exports made pursuant to contracts entered into prior to the imposition of foreign policy export controls. Similarly, the President is required under S. 979 to report to Congress on the rationale for foreign policy export controls prior to their imposition, rather than permitting the President to report to Congress after issuing his authority, as is true under present law.

Another change in the Preisdent's authority to use foreign policy export controls provided for in S. 979 is the addition of power to control imports from a country which is the subject of foreign policy export controls. The addition of this new authority is based, at least in part, on the desire to place at the President's disposal the power to inflict on exporters of the target country some of the economic costs which, under present law, must be borne entirely by U.S. exporters. This additional authority would permit the President to avoid the anomalous situation of denying U.S. exports a market because of foreign

policy considerations while the country which is the target of controls can enjoy undiminished access to the U.S. market.

Amendment 1

The first proposed amendment would delete that portion of section 6 of S. 979 which authorizes the President to impose import controls against a country with respect to which he has exercised his power to impose foreign policy export controls.

This amendment would eliminate import controls as an instrument of foreign policy export controls on the grounds that the linkage under the EAA represents a significant additional threat to U.S. exports. Foreign policy export controls have mushroomed in recent years as the term foreign policy has been given new content and scope. The expanded definition includes promoting human rights, nuclear non-proliferation and regional stability, discouraging support for international terrorism, sending signs of displeasure with particular countries and denying crime control instruments to repressive regimes. S. 979 would, for the first time, authorize the President to use import controls against a country subject to one of these foreign policy export controls. The amendment before this Committee would delete this new import authority.

Although foreign policy export controls are associated with attempts to punish the Soviet Union for its trangressions in Poland and Afghanistan, a very large number of countries have been the target of foreign policy export controls. The following is a listing of the more recent foreign policy export controls, and the countries which were the target in each case.

| Foreign policy export control | Target Country |
|---|---|
| 1. Prohibition on export without a validated license of crime control and detection equipment, and related technical data. | The entire world except NATO countries Japan, Australia and New Zealand |
| 2. Embargo on exports of arms, ammunition, related maintenance materials, aircraft and helicopters. | South Africa and Namibia |

| | | |
|---|---|---|
| 3. | Embargo on exports of all commodities or technical data to or for military or police entities. | South Africa and Namibia |
| 4. | Prohibition on export without a validated license of numerous nuclear devices and related technical data useful in developing nuclear explosive capabilities. | The entire world |
| 5. | A ban on export without a validated license of off highway wheel tractors above a certain tonnage capacity. | Libya |
| 6. | A prohibition on export without a validated license of aircraft and helicopters above a certain value, and of vehicles designed for military purposes. | Libya, Iraq Syria, and Southern Yemen |
| 7. | Total embargoes | North Korea, Vietnam, Cambodia and Cuba |
| 8. | A ban on export without a validated license of oil and gas exploration and production equipment and related technical data, a ban on grain exports (no longer effective) a ban on phosphate exports; on any export transaction associated with the 1980 Olympics, and a ban on exports without a validated license of oil and gas transmission and refining equipment and related technical data (no longer effective). | Soviet Union |

Accordingly, the use of import control authority as a corollary of foreign policy export controls could, theoretically affect imports from much of the world. Although S. 979 provides

that the President's use of foreign policy export controls must be preceded by certain findings regarding their effectiveness, cost and impact, and cannot interefere with existing export contracts, no similar constraints apply to the President's use of import controls, once he has invoked his power to impose foreign policy export controls. It is ironic that totally unfettered import authority is to be added to a statute in which Congress has repeatedly emphasized procedural constraints on Presidential export authority.

The proposed amendment would delete this import control authority based on the following propositions:

1. Congress has never before seen fit to delegate totally unfettered import control authority to the President, and has not done so in the area of export controls.

2. The availability of this import control authority is likely to attract entire new constituencies interested in the use of export controls as a means of obtaining sweeping import control authority, thus increasing the likelihood that foreign policy export controls will be imposed.

3. Use of import controls as a corollary to foreign policy export controls is not justifiable under the GATT, and in any event, is likely to invite retaliation against other U.S. exports by the target country. Thus this new import authority could prove doubly damaging to U.S exports.

Amendment 2

A second proposed amendment would delete that portion of section 9 of S. 979 which authorizes the President to deny U.S. entry to imports from "whoever" violates a regulation issued pursuant to a multilateral agreement to control exports for national security purposes, to which the United States is a party.

In addition to and as a corollary to its own national security import controls, the United States participates in COCOM, the Coordinating Countires of NATO allies (plus Japan, minus Iceland) in an effort to obtain a unified allied approach to the exportation of militarily useful goods and technology to communist countries. The record of COCOM enforcement of these controls is uneven. Because S. 979 makes it easier to export items controlled for national security reasons to other COCOM countries, S. 979 also seeks to obtain stricter enforcement of COCOM controls by U.S. allies to avoid undermining the effectiveness of U.S. national security export controls. Both the power to ban imports from those violating U.S. national

security export controls and the power to ban imports from those violating COCOM controls are seen as a means of obtaining greater COCOM discipline. The proposed amendment is directed at that portion of S. 979 which would permit the President to impose import controls against whoever violates national security controls imposed by COCOM (as opposed to U.S. national security controls under U.S. law). It might be noted that the language of S. 979 may permit the denial of import privileges to countries as well as companies, since the term "whoever" could include both. Thus, under S. 979, import privileges could be denied a non-U.S. firm (or a country) based on the exportation from a NATO ally of goods which contain non U.S.-origin goods or technology. Even though such an export was not within the reach of U.S. law and thus would not constitute a violation of U.S. law, the firm or country could be denied U.S. import privileges based on the U.S. interpretation of the applicable COCOM regulations.

Although the proposed amendment would delete the President's authority to deny import privileges to firms or countries that violate multilateral national security regulations, the amendment would leave unchanged the President's authority in S. 979 to deny import privileges to those violating U.S. national security export controls.

The proposed amendment is based on the following propositions:

1. Using import control authority against a firm or a country which did not violate U.S. law invites retaliation against U.S. exports.

2. The import control authority is poorly suited as a provision intended to bolster COCOM enforcement by the U.S. allies, since its coercive nature is counterproductive to the voluntary nature of COCOM.

3. Punishing foreign entities for actions which are outside the reach of U.S. law is likely to exacerbate existing European complaints about the extraterritorial reach of U.S. law and possibly result in resistance to cooperative enforcement of COCOM.

| ITEM | PRESENT LAW | SENATE BILL (S. 979) | PROPOSED AMENDMENT |
|---|---|---|---|
| Foreign Policy export controls; Presidential authority to control imports from a country with respect to which he has imposed foreign policy controls. | Section 6 of the EAA authorizes the President to curtail or prohibit the exportation of goods or technology from the U.S. or agency person subject to U.S jurisdiction to further significantly the foreign policy of the U.S. or fulfill its international obligations; there is no authority to control imports pursuant to the use of export controls; controls expire on this anniversary unless extended by the President; President required to consider effectiveness of controls; consult with Congress where possible before imposing controls and immediately submit report to Congress. | President is given authority to impose import controls against a country which is the target of export controls for foreign policy reasons. President is prohibited from interfering with exports under contracts entered into before the date the controls are imposed; controls expire after 6 months unless extended by the President; President required to make certain findings before controls are imposed and to transmit a report to Congress on such findings before imposing controls. | Would delete President's import control authority. |

| ITEM | PRESENT LAW | SENATE BILL (S. 979) | PROPOSED AMENDMENT |
|---|---|---|---|
| Enforcement authority; authority to bar imports from whoever violates a regulation issued pursuant to a multilateral agreement to control exports for national security purposes. | Pursuant to section 11 of the EAA, knowing violations of the Act carry a potential fine of five times the value of the export or $50,000, whichever is greater, and a maximum five years in prison; willful violations carry fines of five times the value of the export up to $1,000,000, or, in the case of individual, up to $250,000 or 10 years in prison; civil penalties include the revocation of export privileges and a $10,000 penalty per violation; there is no authority to use import controls against violators. | President is given authority to impose import controls against whoever violates either a national security export control imposed by the U.S. or any regulation issued pursuant to a multilateral agreement to control exports for national security purposes; goods or technology which the subject of a national security export control violation are subject to forfeiture. | Would delete President's authority to control imports based on violations of COCOM regulations; would leave unchanged President's authority to control imports based on violation of U.S. law or regulations. |

# ADDITIONAL RECONCILATION OPTIONS

## 1. Modify Part B Premium

### Current Law

By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or Part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits are increased under the cost-of-living (COLA) provisions of the social security programs.

Premium income, which originally financed half of the costs of Part B, has declined - as the result of this formula - to less than 25 percent of total program income. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) temporarily suspended the limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The "Social Security Amendments of 1983" (Public Law 98-21) postponed the scheduled July 1, 1983 increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Future increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA are to apply for the two-year period beginning January 1, 1984.

### Proposal

The proposal provides that beginning in 1985 the limitation on premium increases would be repealed. As a result, the proportion of program costs to be met by premiums would permanently be set at 25 percent.

### Effective Date

January 1, 1985.

Cost Savings

| 1984 | 1985 | 1986 | 3-Yr. Total |
|---|---|---|---|
| - | - | -359 | -359 |

## 2. Freeze "Reasonable Charges" For Physician Services

Current Law

Under present law, medicare pays for physician services on the basis of medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by medicare as customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in prevailing charge levels are limited by an economic index which reflects changes in the operating expenses of physicians and in general earnings levels.

Proposals

OPTION 1) For all physician services, revert to the prevailing charge limits that were in effect prior to the annual updating that occurred on July 1, 1983. For nine months until July 1, 1984, charge limits for all physician services would remain at the levels applicable during the 1982-1983 fee screen year.

OPTION 2) For inpatient physician services only, revert to the customary and prevailing charge limits that were in effect prior to the annual updating.

OPTION 3) For inpatient physician services only, revert to the prevailing charge limits that were in effect prior to the annual updating.

Effective Date

For services rendered on or after October 1, 1983.

Cost Savings

| | 1984 | 1985 | 1986 | 3-Yr. Total |
|---|---|---|---|---|
| OPTION 1 | -325 | -475 | -575 | -1,375 |
| OPTION 2 | -350 | -500 | -600 | -1,450 |
| OPTION 3 | -175 | -275 | -350 | - 800 |

## 3. Hepatitis B Vaccine

Current Law

Current law precludes medicare coverage of immunization against viral hepatitis, an infectious disease that produces acute and chronic inflammation of the liver which may then lead to serious illness or death. However, end stage renal disease patients are currently monitored by monthly testing for the virus, and these tests are covered and paid for under the medicare program.

Proposal

Permit medicare coverage of Hepatitis B vaccine for ESRD hemodialysis patients.

Cost Savings

| 1984 | 1985 | 1986 | 3-Yr. Total |
|---|---|---|---|
| +2.2 | -1.4 | -2.2 | -1.4 |

Effective Date

October 1, 1983.

## 4. Increase Medicaid Ceilings for Puerto Rico and the Territories

Current Law

Under present law, the Federal Medicaid matching rates for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marianas are set at 50 percent and Federal matching is subject to annual dollar ceilings. The dollar ceilings are: $45 million for Puerto Rico; $1.5 million for the Virgin Islands; $1.4 million for Guam; $350,000 for the Northern Marianas; and, $750,000 for American Samoa.

Proposal

Increase funding to Puerto Rico and the Territories by the following amounts: Puerto Rico, $18.4 million ; Virgin Islands, $600,000; Guam, $600,000; Northern Marianas, $200,000; American Somoa, $400,000. Total approximate increase: $20 million.

Effective Date

October 1, 1983.

Cost

| 1984 | 1985 | 1986 | 3-Yr. Total |
|---|---|---|---|
| + $20 | + 20 | + 20 | + 60 |

5. Increase Authorization for Maternal and Child Health Block Grant Program

Current Law

The present authorization level for the Maternal and Child Health (MCH) Services block grant program is $373 million. Congress originally appropriated this amount, but has since added (under P.L. 98-8) $105 million in additional appropriations to increase the availability of essential health services for disadvantaged children and mothers.

Proposal

The proposal permanently increases the authorization level for the MCH block grant program to $455 million by 1986.

Effective Date

Enactment.

Cost

| 1984 | 1985 | 1986 | 3-Yr. Total |
|---|---|---|---|
| + $79 | + 80 | + 82 | + 241 |

The expenditures resulting from this proposal are assumed in the Senate Budget Resolution.

Attachment D

## 1. GOVERNMENT AND TAX EXEMPT LEASE FINANCING

(S.1564)

### Present law and background

Property leased to tax-exempt entities generally qualifies for rapid cost recovery deductions but not for the investment credit. The accelerated cost recovery deductions enable the taxable lessor to obtain a substantial tax subsidy from the tax deferral. Thus, leasing causes a Federal revenue loss that does not occur when a tax-exempt entity owns its property. This subsidy encourages tax-exempt entities (including foreign entities) to lease property that they would otherwise own or to engage in sale-leasebacks of property that they already own.

In addition, tax benefits for this property are not uniform, because foreign entites that are not subject to U.S. tax are not currently treated as tax-exempt entities. Thus, in certain cases, the investment tax credit is available on such property. Another cause of nonuniformity is that the investment credit has been allowed for property used under service contracts which in substance may not differ significantly from leases on which no investment credit would be allowed. Finally, additional nonuniformity arises because rehabilitation tax credits are available for property used by domestic tax-exempt entities.

### Description of S. 1564

In general, the bill would limit depreciation deductions to economic depreciation and tighten the present law denial of investment credits for property used by tax-exempt entities, so that more uniform and subsidy-free tax benefits would be available for this property.

Depreciation provisions --Depreciation deductions for personal property would generally be computed by using the straight-line method over the ADR midpoint life of the property or 125 percent of the lease term, whichever is longer. Current ACRS deductions would be allowed in the case of short-term leases or property (such as computers) with an ADR midpoint of 6 years or less (if the lease term does not exceed 75 percent of the ADR midpoint).

Depreciation deductions for real property would generally be computed by using the straight-line method over the greater of 40 years or 125 percent of the lease term. This rule would apply only to the extent that a tax-exempt entity uses the property and the entity participates in tax-exempt financing for it, the lease term exceeds 10 years, the lease contains a fixed price option, or use occurs after a sale leaseback or lease leaseback. An exception would permit current ACRS deductions if the disqualified use does not exceed use of 50 percent of the building or if the lease term is short.

Investment credit provisions--The bill would extend the present denial of the credit to property used under a service contract that is more properly treated as a lease. Also, no rehabilitation credit would be allowed for the portion of a building for which reduced depreciation is required as tax-exempt use property.

Effective dates --The bill would generally apply to property placed in service by the taxpayer after May 23, 1983. Property would be exempt if used pursuant to binding contracts which on May 23, 1983, and thereafter, required the taxpayer (or its predecessor in interest) to acquire, construct, reconstruct or rehabilitate the property and required the tax-exempt entity to use it. This exception would apply to property used by the United States only if placed in service before January 1, 1984. Mass commuting vehicles leased under the special rules of the Tax Equity and Fiscal Responsibility Act of 1982 would not be affected by the new rules.

AL:c

## Budget Provisions Previously Agreed to by the Senate Finance Committee and included in S. 951

### 1. Repeal of Limitations on Part B Premium Increases

Present law.--By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or Part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium rate is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits are increased under the cost-of-living adjustment (COLA) provisions of the Social Security program. Premium income, which originally financed half of the costs of Part B, had declined--as the result of this formula--to less than 25 percent of program costs for the aged. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) temporarily suspended the COLA limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The "Social Security Amendments of 1983" (Public Law 98-21) postponed the scheduled July 1, 1983 premium increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Future increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA is to apply for the two-year period ending December 31, 1985.

Committee amendment.--The amendment makes permanent the existing temporary provision which fixes the proportion of the Part B Medicare costs financed by enrollees at 25 percent of program costs for the aged.

Effective date.--January 1, 1984

Estimated savings.--

| Fiscal years: | Millions |
|---|---|
| 1984 | 0 |
| 1985 | 0 |
| 1986 | - $359 |
| 3-year total | -$359 |

## 2. Limitation on Physician Fee Prevailing Charge Level

Present Law.--Under current law, medicare pays for physician services on the basis of Medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by Medicare as customary and prevailing charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in prevailing charge levels are, however, limited by an economic index which reflects changes in the operating expenses of physicians and in general earnings levels. The economic index limit promulgated for the period July 1, 1983 through June 30, 1984 represents an increase of 5.85 percent over the index utilized for the previous 12-month period.

Committee amendment.--The amendment provides that the prevailing charge level which was in effect prior to the annual updating which occurred in July 1983 would be utilized for the October 1, 1983-June 30, 1984 period. Thus, for this nine month perioduntil July 1, 1984, prevailing limits for all physician services would revert to the levels applicable during the July 1, 1982-June 30,1983 fee screen year. Physicians' current customary charge screens would not be affected by the rollback.

Effective date.--October 1, 1983.

Estimated savings.--

| Fiscal years: | Millions |
|---|---|
| 1984 | - $309 |
| 1985 | -453 |
| 1986 | -521 |
| 3-year total | - $1,283 |

## 3. Medicaid Coverage for Pregnant Women

Present law.--Prior to the enactment of the "Omnibus Budget Reconciliation Act of 1981" (Public Law 97-35) States were permitted to make AFDC payments to pregnant women on the basis of their unborn children. Pregnant women who are entitled to AFDC cash payments on this basis were also entitled to Medicaid coverage. Public Law 97-35 prohibited States from making AFDC cash payments to a pregnant woman on the basis of her unborn child until the sixth month of pregnancy. However, States are permitted to extend Medicaid eligibility to these women from the

time the pregnancy has been medically verified. An estimated 80 percent of the States and jurisdictions have elected to provide coverage to a pregnant woman on the basis of her unborn child for either all or a portion of her pregnancy.

Committee amendment.--The amendment would mandate States, for a two-year period beginning August 1, 1983, to provide Medicaid coverage beginning with the medical determination of pregnancy to every woman who would be eligible for AFDC if the child were born.

Effective date.--August 1, 1983. A later implementation date is permitted where State legislation is required.

Estimated costs.--

| Fiscal years: | Millions |
|---|---|
| 1984 | + $25 |
| 1985 | + 25 |
| 1986 | 0 |
| 3-year total | + $50 |

4. Technical Amendments

In addition to the above provisions, the Committee also agreed to a number of administrative and technical amendments to medicare and medicaid.

98TH CONGRESS
*1st Session*

COMMITTEE PRINT

S. PRT.
98-57

# Background Data and Materials on Fiscal Year 1984 Spending Reduction Proposals

PENDING BEFORE THE

## Senate Finance Committee

Prepared by the Staff for the Use of the

## COMMITTEE ON FINANCE
## UNITED STATES SENATE

ROBERT J. DOLE, *Chairman*

JUNE 1983

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1983

21-141

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TABLES

## BUDGET OVERVIEW

The revised current services baseline projects outlays of $854.8 billion and revenues of $661.2 billion for fiscal year 1984, leaving a baseline deficit of $193.6 billion. Table 1 shows that the deficit will rise to $215.3 billion in fiscal year 1986 if no policy changes are made.

TABLE 1.—REVISED BASELINE BUDGET ESTIMATES

| | Fiscal year— | | |
|---|---|---|---|
| | 1984 | 1985 | 1986 |
| Revenues | 661.2 | 729.4 | 784.9 |
| Outlays | 854.8 | 928.4 | 1,000.2 |
| Deficit | 193.6 | 199.0 | 215.3 |

Table 2 displays the revenue and spending changes proposed by the Senate budget resolution. Outlay savings of $56.9 billion, and additional revenues of $74.6 billion are assumed. Of the total deficit reduction of $131.5 billion, revenue increases represent 57 percent. By fiscal year 1986, the deficit is estimated to decline to $130.1 billion.

TABLE 2.—FIRST CONTINUING BUDGET RESOLUTION, SENATE VERSION

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Baseline deficit | 193.6 | 199.0 | 215.3 | 607.9 |
| Outlays | −5.1 | −17.6 | −34.2 | −56.9 |
| Revenues | +9.9 | +13.7 | +51.0 | +74.6 |
| Deficit reduction | 15.0 | 31.3 | 85.2 | 131.5 |
| Remaining deficits | 178.6 | 167.7 | 130.1 | 476.4 |

### INSTRUCTIONS FOR THE FINANCE COMMITTEE

The Senate resolution instructs the Committee on Finance to reduce expenditures below the baseline by $5.4 billion and raise revenues by $73.0 billion over fiscal years 1984-1986, as shown by Table 3. In all, the Committee on Finance is responsible for $78.4 billion in deficit reduction over the next three years—59.6 percent of the total deficit reduction.





TABLE 3.—3-YEAR TOTALS FOR THE FINANCE COMMITTEE

[Dollars in billions]

| | Senate |
|---|---|
| Outlay reductions | $5.4 |
| Revenue increases | $73.0 |
| Total deficit reduction, Finance | $78.4 |
| Percent of total budget deficit reduction | 59.6 |

Table 4 lists the program changes that were assumed by the Budget Committee in arriving at our totals. As with specific revenue measures, however, the Finance Committee is not bound to any of these marks. Only total spending reductions and revenue increases are contained in the reconciliation instructions. The committee retains full flexibility over where savings are to be achieved and revenues increased.

TABLE 4.—ASSUMPTIONS UNDERLYING SENATE BUDGET RESOLUTION INSTRUCTIONS FOR THE COMMITTEE ON FINANCE

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Expenditure cuts: | | | | |
| Medicare | −809 | −995 | −1,572 | −3,376 |
| Medicaid | −7 | −543 | −407 | −957 |
| Child support program | | | | |
| Unemployment compensation | −40 | −116<br>−370 | −139<br>−366 | −295<br>−736 |
| Subtotal, spending | −856 | −2,024 | −2,484 | −5,364 |
| Revenues | +9,000 | +13,000 | +51,000 | +73,000 |
| Total deficit reduction | 9,856 | 15,024 | −53,484 | 78,364 |

# Health Programs





## ADMINISTRATION PROPOSALS FOR HEALTH PROGRAMS UNDER JURISDICTION OF THE FINANCE COMMITTEE

[CBO estimates; outlays in millions]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Medicare: | | | | |
| 1. Cost-sharing and catastrophic coverage | −$900 | −$1,450 | −$1,750 | −$4,100 |
| 2. Voluntary voucher | 0 | +50 | +50 | +100 |
| 3. Freeze physician reimbursement | −900 | −1,050 | −1,200 | −3,150 |
| 4. Reduce target rate of hospital cost increase | −80 | −170 | −200 | −450 |
| 5. Part B premium | 0 | −432 | −1,527 | −1,959 |
| 6. Index part B deductible | −50 | −115 | −180 | −345 |
| 7. Initial eligibility | −200 | −265 | −305 | −770 |
| 8. Eliminate mandatory utilization review, eliminate PRO's | 0 | 0 | 0 | 0 |
| 9. Lower reimbursement to home health agencies | −15 | −20 | −20 | −55 |
| 10. Authorize competitive bidding | −9 | −14 | −20 | −43 |
| 11. Eliminate waiver of provider liability | 0 | 0 | 0 | 0 |
| 12. Authorize processing part A bills on flow basis | −3 | −3 | −4 | −10 |
| 13. Modify medicare contracting | 0 | −3 | −9 | −11 |
| 14. Eliminate renal networks | −5 | −5 | −5 | −14 |
| 15. Eliminate railroad retirement carrier contract | −2 | −2 | −2 | −5 |
| Total, medicare | −2,163 | −3,478 | −5,172 | −10,812 |
| Medicaid: | | | | |
| 1. Cost-sharing by recipients | −140 | −155 | −175 | −470 |
| 2. Assignment of rights | −6 | −7 | −7 | −20 |
| 3. Cross over claims | −1 | −1 | −2 | −4 |
| 4. Extension of Federal reductions | 0 | −535 | −397 | −932 |

ADMINISTRATION PROPOSALS FOR HEALTH PROGRAMS UNDER JURISDICTION OF THE FINANCE COMMITTEE—Continued

[CBO estimates; outlays in millions]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| 5. Impact of other proposals on medicaid: | | | | |
| Medicare | +56 | +129 | +209 | +394 |
| AFDC impact | −93 | −184 | −202 | −479 |
| SSI impact | 0 | 0 | 0 | 0 |
| Total, medicaid | −184 | −753 | −574 | −1,511 |

# I. MEDICARE

## Legislative Initiatives

### 1. Restructure Beneficiary Cost-Sharing and Provide Coverage for Unlimited Hospital Days (Catastrophic Coverage)

*Current law.*—Under present law, Medicare beneficiaries share in the costs of inpatient hospital and skilled nursing facility services. During each benefit period, the beneficiary must pay an inpatient hospital deductible (currently $304). If the beneficiary is hospitalized beyond 60 days during such period, he or she must pay an additional daily coinsurance amount equal to 25 percent of the inpatient hospital deductible (currently $76) for the 61st through 90th day of care. For the 60 lifetime reserve days, beneficiaries are required to pay a daily coinsurance amount equal to 50 percent of the inpatient hospital deductible (currently $152). In addition, beneficiaries are required to pay a daily coinsurance amount equal to 12.5 percent of the inpatient hospital deductible (currently $38) for care provided from the 21st through the 100th day in a skilled nursing facility.

*Proposal.*—The administration proposal would restructure the current inpatient hospital and skilled nursing facility cost-sharing requirements. Specifically, the administration proposes to:

(1) Eliminate patient cost sharing for any hospital days of care after 60 days during any calendar year.

(2) Impose new cost-sharing requirements on the first 60 days of inpatient care: a daily copayment equal to 8 percent of the inpatient deductible (estimated to be $28/day during calendar year 1984) from day 2 through day 15, and a daily copayment amount equal to 5 percent of the inpatient hospital deductible (estimated to be $17.50/day during calendar year 1984) for each day of care from the 16th through the 60th day of hospitalization in any benefit period.

(3) Limit the number of times a beneficiary must pay an inpatient hospital deductible to two in each year.

(4) Reduce the present copayment amount applicable to care in skilled nursing facilities from its present level (12.5 percent of the inpatient hospital deductible amount) to 5 percent of the deductible (estimated to be $17.50/day during calendar year 1984).

The estimated annual increase in costs to medicare beneficiaries using hospital services, as a result of such a change in cost sharing is approximately $250.

*Effective date.*—January 1, 1984.





[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −900 | −1,450 | −1,750 | −4,100 |

### 2. Voluntary Medicare Voucher Program

*Current law.*—Under present law, medicare payments are made on behalf of beneficiaries to hospitals and other institutions who participate in the Government-sponsored program and through payment arrangements to beneficiaries or to providers on behalf of beneficiaries in the case of physician and other medical services.

In addition, under a provision contained in Public Law 97-248, the medicare program is permitted to pay certain health maintenance organizations at a prepaid rate, equal to 95 percent of the average per person costs of medicare coverage provided in the fee-for-service sector. The provision has not yet been implemented by the Department of Health and Human Services.

*Proposal.*—The administration proposal would establish a voluntary medicare voucher program under which beneficiaries could elect to receive services through a private health benefits plan, including certain health maintenance organizations, rather than through participation in the present Government-sponsored medicare program. Where beneficiaries opted for such alternative coverage, the Government would contribute an amount equal to 95 percent of the average per-person costs of medicare coverage toward the purchase of such private protection.

*Effective date.*—January 1, 1985.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay increases | 0 | +50 | +50 | +100 |

### 3. Freeze "Reasonable Charges" for Physician Services

*Current law.*—Under present law, medicare pays for physician services on the basis of medicare-determined "reasonable charges." "Reasonable charges" are the lesser of: a physician's actual charges, the customary charges made by an individual physician for specific services, or the prevailing level of charges made by other physicians for specific services in a geographic area. The amounts recognized by medicare as customary and prevailing

charges are updated annually (on July 1) to reflect changes in physician charging practices. Increases in prevailing charge levels are limited by an economic index which reflects changes in the operating expenses of physicians and in general earnings levels.

*Proposal.*—The administration proposal would postpone the annual updating of both the customary and prevailing charge limits that would otherwise occur on July 1, 1983 for one year, until July 1, 1984. During this period, charge limits would remain at the levels now applicable during the current fee screen year.

*Effective date.*—July 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −900 | −1,050 | −1,200 | −3,150 |

4. Reduce Hospital Cost Target Rate by One Percentage Point

*Current law.*—Currently medicare pays hospitals on the basis of reasonable costs, subject to certain limits. The "Tax Equity and Fiscal Responsibility Act of 1982" (Public Law 97-248, commonly referred to as TEFRA) expanded previously existing limits on medicare costs effective October 1, 1982. Among other things, it established a 3-year target rate reimbursement system which in effect limited allowable rates of increase in medicare payments over the fiscal year 1983-1985 period. The target rate is equal to the previous years allowable operating costs per case (or after the first year, the previous year's target amount) increased by the percentage increase in the hospital wage and price index plus one percentage point. Penalties and bonuses are established for hospitals, with costs above and below the target.

The "Social Security Admendments of 1983" (Public Law 98-21) provides for the establishment of a prospective reimbursement system for hospitals to be phased-in over a three year period. During the transitional period a portion of a hospital's payments will be based on prospective rates and a portion on the hospitals' cost base. The cost-based portion of the payment will be calculated on the basis of reasonable costs, subject to the existing rate of increase limits, without the penalties and bonuses established under TEFRA.

*Proposal.*—The administration proposal would no longer include the additional percentage point in the calculation of the target rate.

*Effective date.*—October 1, 1983.



[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −80 | −170 | −200 | −450 |

5. Modify Timing and Rate of Increase in Part B Premium

*Current law.*—By law, the Secretary of Health and Human Services has been required to calculate each December the increase in premiums of those who elect to enroll in the Supplementary Medical Insurance (or Part B) portion of the Medicare program. The new premium rates have been effective on July 1 of the year following the year in which the calculation was made. Ordinarily, the new premium rate is the lower of: (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits are increased under the cost-of-living (COLA) provisions of the social security programs. Premium income, which originally financed half of the costs of Part B, has declined—as the result of this formula—to less than 25 percent of total program income. The "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) temporarily suspended the limitation for two one-year periods, beginning on July 1, 1983. During these periods, enrollee premiums would be allowed to increase to amounts necessary to produce premium income equal to 25 percent of program costs for elderly enrollees. The limitation would again apply with respect to periods beginning July 1, 1985 and thereafter.

The "Social Security Amendments of 1983" (Public Law 98-21) postponed the scheduled July 1, 1983 increase to January 1, 1984 to coincide with the delay in the cost-of-living increase in social security cash benefit payments. Future increases will occur in January of each year based on calculations made the previous September. Public Law 98-21 further provided that the suspension of limitations as authorized by TEFRA are to apply for the two-year period beginning January 1, 1984.

*Proposal.*—The proposal had recommended the six-month deferral which was incorporated in Public Law 98-21. The proposal would also provide that beginning in 1985 the premium would be allowed to increase so that the proportion of costs borne by premiums would rise by no more than 2½ percentage points per year. By calendar year 1988, the premium would be set at a rate equal to 35 percent of the costs of the program for the aged.

*Effective date.*—January 1, 1985 for phase-in of premium percentage increase.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | −432 | −1,527 | −1,959 |

## 6. Index Part B Deductible

*Current law.*—Under present law, enrollees in the Supplementary Medical Insurance (or Part B) portion of Medicare must pay the first $75 of covered expenses (known as the deductible) each year before any benefits are paid. The amount of this deductible is fixed by law.

*Proposal.*—The administration proposal would index the amount of the part B deductible, beginning in calendar year 1984, by the percentage by which the medicare economic index increases each year. The Medicare economic index is the index used to limit increases in the prevailing level of physician fees reimbursable under the Part B program. Under the proposal, the administration estimates that the part B deductible would increase to $80 in calendar year 1984, $85 in calendar year 1985, and $90 in calendar year 1986.

*Effective date.*—January 1, 1984.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −50 | −115 | −180 | −345 |

## 7. Delay in Initial Eligibility Date for Medicare Entitlement

*Current law.*—Under present law, eligibility for Medicare begins on the first day of the month in which an individual reaches age 65.

*Proposal.*—The administration proposal would delay eligibility for both Parts A and B of medicare to the first day of the month following the individual's 65th birthday.

*Effective date.*—October 1, 1983.



[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −200 | −265 | −305 | −770 |

## 8. a. Eliminate Mandatory Utilization Review

*Current law.*—Under present law, hospitals and skilled nursing facilities are required to conduct utilization review of services provided except where such function is performed by another review organization.

*Proposal.*—The administration proposal would eliminate the requirement for utilization review in hospitals and skilled nursing facilities.

*Effective date.*—Enactment.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | 0 | 0 | 0 |

## 8. b. Elimination of the Peer Review Program

*Current law.*—TEFRA required the Secretary to enter into contracts for utilization and quality control peer review with Professional Review Organizations (PRO's) throughout the country. These entities will replace existing Professional Standards Review Organizations (PSRO's).

The "Social Security Amendments of 1983" (Public Law 98-21) provides that until September 30, 1984, hospitals are required to contract with a PRO if there is one serving the geographic area; after that date they are required to contract with such an organization as a condition of receiving program payments.

*Proposal.*—The administration proposal would repeal the PRO provision.

*Effective date.*—Enactment.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | 0 | 0 | 0 |

9. Reduce Reimbursement to Home Health Agencies for Durable Medical Equipment

*Current law.*—Under present law, when covered durable medical equipment is furnished by a supplier of services, rather than by an institutional provider, payment is made under the Part B program on the basis of 80 percent of the reasonable charges (after the deductible is satisfied). If the equipment is furnished by a provider, such as a home health agency, payment is made on the basis of 100 percent of the reasonable cost of the rental or purchase of such equipment.

*Proposal.*—The administration proposal would reimburse home health agencies for durable medical equipment at 80 percent of reasonable cost and permit the agencies to bill beneficiaries for the remaining 20 percent.

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −15 | −20 | −20 | −55 |

10. Competitive Procurement of Laboratory Services, Durable Medical Equipment and Other Medical Supplies

*Current law.*—Under present law, physicians and beneficiaries are free to select the sources of laboratory services, durable medical equipment and certain other medical supplies.

*Proposal.*—The administration proposal would permit the Secretary to enter into exclusive agreements and negotiate rates for laboratory services, durable medical equipment and certain other items furnished under Part B. The Secretary could take such action only if he determined that the agreement would not deny access to beneficiaries for the specified items. The amounts payable under the agreement could not exceed, in the aggregate, the amounts which would otherwise be payable under the program. The Secretary could waive the deductible and coinsurance provisions if the resulting payments would not exceed amounts otherwise payable. The supplier could not charge the beneficiary any more than the applicable deductible and coinsurance amounts.

*Effective date.*—Enactment.



[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −9 | −14 | −20 | −43 |

11. Eliminate Waiver of Provider Liability for Uncovered Services

*Current law.*—Under present law, Medicare pays hospitals and skilled nursing homes for certain uncovered or medically unnecessary care furnished beneficiaries, if the hospitals or skilled nursing facilities could not have known that payment would be disallowed. The institutions are not held liable for the costs of these services, if their total denial rate on Medicare claims remains below certain prescribed levels.

*Proposal.*—The administration proposal would eliminate this waiver of liability provision for providers. The proposal would not affect current statutory provisions which protect beneficiaries from financial liability for expenses for uncovered services.

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | 0 | 0 | 0 |

12. Assignment of Inpatient Hospital Benefit Period, Deductible, and Coinsurance in the Order of Filing of Payment Requests (Authorize Processing Part A Bills on a Flow Basis)

*Current law.*—Under current law, the responsibility for collecting deductible and coinsurance amounts from beneficiaries in connection with stays in two or more hospitals is currently assigned in the chronological order in which services are furnished.

*Proposal.*—The administration proposal would assign the responsibility in the order in which hospitals submitted requests for medicare payments. A hospital that provided services after another hospital but submitted its payment request first would be responsible

for collecting the deductible and be credited with the first 60 days of coverage (for which no coinsurance is required).

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −3 | −3.3 | −3.6 | −9.9 |

### 13. Modify Medicare Contracting

*Current law.*—Under current law, medicare contracts with intermediaries and carriers to perform the day-to-day operational work of the program including reviewing claims and making program payments.

*Proposal.*—The administration proposal would increase the Secretary's discretion in entering into agreements for medicare claims processing by (1) eliminating the right of providers of services to nominate intermediaries, (2) permitting the Secretary to enter into various kinds of agreements, not solely those based on cost, and (3) broadening the Secretary's authority to experiment with different kinds of contracts by including contracts other than fixed price or performance incentive contracts and by permitting waiver of competitive bidding requirements. The section would also require new intermediaries, as well as carriers, to be health insurance organizations. The Secretary's authority to deal directly with any provider of services or to assign any provider of services to an intermediary would be clarified.

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | −2.8 | −8.5 | −11.3 |

### 14. Eliminate Funding for End-Stage Renal Disease (ESRD) Networks

*Current law.*—Under current law, a system of end-stage renal disease networks has been designated to perform a variety of functions in connection with the end-stage renal disease program under



medicare (e.g., developing criteria and standards for quality patient care).

*Proposal.*—The administration proposal would eliminate funding for end-stage renal disease networks and make the national ESRD medical information system discretionary with the Secretary.

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −4.5 | −4.5 | −4.5 | −13.5 |

### 15. Elimination of Requirements for a Railroad Retirement Board Carrier Contract

*Current Law.*—Current law requires the Railroad Retirement Board to contract with a carrier or carriers to handle medicare part B payments with respect to railroad retirement beneficiaries. The Board has contracted with Travelers Insurance Company to serve as a carrier nationwide.

*Proposal.*—The administration's proposal would eliminate the requirement for a separate Railroad Retirement Board carrier contract. Part B claims of railroad retirees would be processed by the same organizations that process other Part B claims.

*Effective date.*—One year after enactment or at such earlier time as agreed upon by the Secretary and the Railroad Retirement Board.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −1.5 | −1.5 | −1.5 | −4.5 |

## II. MEDICAID

### Legislative Initiatives

1. Require Nominal Cost-Sharing by Medicaid Recipients

*Current law.*—Prior to the enactment of Public Law 97-248 (TEFRA), States were prohibited from imposing cost-sharing charges on mandatory services for the categorically needy. They were permitted, but not required to impose such charges on optional services for the categorically needy and all services for the medically needy.

Public Law 97-248 revised prior law by permitting, but not requiring States to impose nominal cost-sharing on all persons for all services with certain major exceptions. States may not impose such charges on children under age 18; persons institutionalized in long-term care facilities; pregnancy-related services; family planning services and supplies; emergency services; and services furnished to the categorically needy in health maintenance organizations (HMO's). In addition, States may elect to exempt reasonable categories of children age 19-21, all services to pregnant women, and/or services furnished to medically needy in HMO's. States, under an approved waiver, may charge up to twice the "nominal" amount for non-emergency services furnished in an emergency room if other less costly forms of care are available and accessible.

*Proposal.*—The administration proposal would mandate States to impose the following cost-sharing charges:

—For the categorically needy, $1 per visit for physician, clinic, and hospital outpatient services;

—For the medically needy, $1.50 per visit for physician, clinic, and hospital outpatient department services;

—For the categorically needy, $1 per day for inpatient hospital services;

—For the medically needy, $2 per day for inpatient hospital services.

States would be prohibited from imposing copayments on services furnished to long term care inpatients or services furnished by HMO's to the categorically needy. States would be permitted certain exemptions with respect to medically needy HMO enrollees, pregnant women, and emergency services.

*Effective Date.*—October 1, 1983 except delay permitted where State legislation required.





[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −140 | −155 | −175 | −470 |

2. Improve Third Party Collections

*Current law.*—Present law permits the State agency and Federal Government to retain from third-party recoveries only the amount equal to medical assistance payments on behalf of the individual concerned.

A State medicaid plan may provide that, as a condition of eligibility, each legally able applicant and recipient must assign his or her rights to medical support or other third party payments to the State agency and cooperate with the agency in obtaining support or payments.

*Proposal.*—The administration proposal would provide for retention of administrative costs associated with third party recoveries. The proposal would also require as a condition of medicaid eligibility that an applicant assign his or her health insurance rights to the State medicaid agency.

*Effective date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −6 | −7 | −7 | −20 |

3. One Hundred Percent Federal Payment for Processing of Combined Medicaid and Medicare Claims

*Current law.*—Under current law, claims for dual medicaid/medicare eligibles are processed both by the medicaid fiscal agent and the medicare carrier.

*Proposal.*—The proposal would provide 100 percent Federal reimbursement for the combined processing of medicare/medicaid claims by medicare contractors.

*Effective date.*—Enactment.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | −1 | −1 | −2 | −4 |

4. Extend Reduction in Federal Payments

*Current law.*—Public Law 97-35 provided that whatever Federal matching payments a State is otherwise entitled to is to be reduced by 3 percent in fiscal year 1982, 4 percent in fiscal year 1983, and 4.5 percent in fiscal year 1984. A State may qualify for a percentage point offset to these reductions if it has a qualified hospital cost review program, an unemployment rate which exceeds 150 percent of the national average, or fraud and abuse recoveries greater than one percent of Federal expenditures. In addition States may earn back part or all of the reductions if expenditures remain below specific target amounts.

*Proposal.*—The Administration proposal would extend the existing reduction and offset provisions indefinitely. The reduction rate would be 3 percent for fiscal year 1985 and beyond.

*Effective date.*—October 1, 1985.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay savings | 0 | −535 | −397 | −932 |

5. Impact of Changes in Other Programs

The Administration is proposing changes in the SSI, AFDC and medicare programs which will affect medicaid outlays.

[In millions of dollars]

| | Fiscal year | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effects | | | | |
| Medicare changes | +56 | +129 | +209 | +394 |
| AFDC changes | −93 | −184 | −202 | −479 |
| SSI changes | 0 | 0 | 0 | 0 |



**Regulatory Initiative**

1. Third Party Liability Collections

*Current law.*—The Child Support Enforcement (CSE) program is a Federal-State partnership under which States are required to have a program which locates absent parents, establishes family responsibility and sets forth and enforces support orders.

*Proposal.*—The administration budget reflects a regulatory initiative which would require State CSE agencies to petition the court to include medical support as part of the child support order whenever health care coverage is available to the absent parent at a reasonable cost. In addition, the regulation would provide for improved information exchange between the CSE and medicaid agencies on the availability of health insurance coverage.

*Effective Date.*—October 1, 1983.

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Medicaid outlay savings | −89.5 | −99.9 | −111.7 | −301.1 |

## III. MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

### Legislative Initiatives

*Current law.*—Under current law, the Maternal and Child Health (MCH) Services Block Grant provides health services to mothers and children, particularly those with low income or limited access to health services. Block grant services may be provided free of charge to mothers and children whose incomes fall below the poverty level (currently $9,300 for a family of four).

In fiscal year 1983, 85 percent of the block grant appropriation is allotted among States, which determine the services to be provided under the block. Each State's individual allotment is based on the proportion of funds allotted to all States in fiscal year 1981 for certain programs now included in the block. These programs are MCH and crippled children's (CC) services, supplemental security income services for disabled children, lead-based paint poisoning prevention, sudden infant death syndrome, and adolescent pregnancy.

For every $4 in Federal funds States receive, they must spend $3 of their own funds. Federal law requires that, at the State level, the State health agency administer the block grant except that the CC program may be administered by another State agency if that agency has administered the program since July 1, 1967.

A portion of the block's appropriation is reserved under a Federal set-aside. In fiscal year 1983, 15 percent of this appropriation is reserved for MCH special projects of regional and national significance, research and training, and genetic disease and hemophilia programs. These programs are federally administered.

Under the block grant, States are required to prepare annual reports describing the intended use of payments including data the State intends to collect on program activities. States must also transmit a statement to the Secretary of Health and Human Services which, among other things provides assurances that the State will spend a substantial proportion of its allotment on health services to mothers and children and will give consideration to the continuation of special projects previously funded under the old title V program; and the State agency administering the block grant will participate in the coordination of activities between the block grant and other MCH-related programs. States must also prepare annual reports on block grant activities, and conduct biennial audits on program expenditures.

*Proposal.*—The Administration proposal would:

—Eliminate the Federal set-aside of 10 to 15 percent;
—eliminate the requirement for State matching funds;
—repeal prohibition against States using Federal funds for research or training by a for-profit entity;





—permit States to transfer up to 10 percent of Federal funds to other block grants administered by the Secretary of Health and Human Services (and permit use of funds transferred from other block grants);
—delete requirement for State description of data they intend to collect; require States to describe the criteria and method to be used to distribute funds;
—remove requirements for: State assurances pertaining to application of guidelines with respect to health care assessments and services; use of a portion of block grant funds for specific activities; imposition of charges on others tied to ability to pay, and appropriate coordination with other related programs;
—remove prohibition on imposition of charges for services furnished to low income beneficiaries;
—require States, rather than the Secretary, to determine the form and content of their annual activities reports; but would require States to explain how their previously stated goals and objectives had been met; and
—eliminate requirement that a specific State agency in each State be required to be responsible for the administration of the block grant funds.

*Effective date.*—October 1, 1983.

## Income Security Programs





ADMINISTRATION PROPOSALS FOR INCOME SECURITY PROGRAMS UNDER JURISDICTION OF THE FINANCE COMMITTEE

[CBO estimates; outlays in millions of dollars]

| | Fiscal year | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Aid to families with dependent children (AFDC): | | | | |
| 1. End benefits of parent when youngest child reaches age 16 | −20 | −25 | −25 | −70 |
| 2. Include all adults and children in AFDC assistance unit | −125 | −135 | −140 | −400 |
| 3. Adjust shelter and utilities grant | −75 | −145 | −150 | −370 |
| 4. Treatment of lump-sum payments | (*) | (*) | (*) | (*) |
| 5. Work requirements: | | | | |
| a. job search and CWEP | +15 | −40 | −55 | −80 |
| b. repeal WIN | −257 | −298 | −312 | −867 |
| 6. Households headed by minor parent | −20 | −20 | −20 | −60 |
| 7. Repayment from periodic benefits | (1) | (1) | (1) | (1) |
| 8. Treatment of public benefits withheld | (*) | (*) | (*) | (*) |
| 9. Absence by reason of employment | −5 | −5 | −5 | −15 |
| 10. Essential persons | (*) | (*) | (*) | (*) |
| 11. Effect of strike participation | (*) | (*) | (*) | (*) |
| 12. Access to AFDC information | 0 | 0 | 0 | 0 |
| 13. Eligibility of alien | (*) | (*) | (*) | (*) |
| 14. CWEP work for Federal agencies | 0 | 0 | 0 | 0 |
| 15. Refusal to repay overpayments | (*) | (*) | (*) | (*) |
| 16. Gross amount of earned income | (1) | (1) | (1) | (1) |
| Total, AFDC | −487 | −668 | −707 | −1,862 |
| Child support enforcement (CSE): | | | | |
| 1. Phase in restructuring of CSE financing | −10 | −51 | −69 | −130 |
| 2. AFDC effect of CSE proposal to mandate changes in State law | −30 | −65 | −70 | −165 |
| 3. Effect of AFDC changes on CSE collections | +15 | +20 | +25 | +60 |
| Total, CSE | −25 | −96 | −114 | −235 |
| Social services (Title XX): | | | | |
| Reduction in 1984 authorization level | −60 | 0 | 0 | −60 |

ADMINISTRATION PROPOSALS FOR INCOME SECURITY PROGRAMS UNDER JURISDICTION OF THE FINANCE COMMITTEE—Continued

[CBO estimates; outlays in millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Supplemental security income (SSI): | | | | |
| 1. Eligibility of aliens | (*) | (*) | (*) | (*) |
| 2. Windfall benefits | −15 | −16 | −17 | −48 |
| Total, SSI | −15 | −16 | −17 | −48 |
| Foster care and adoption assistance | 0 | −40 | −86 | −126 |

* Savings under $1 million.

[1] Savings estimate not available.

## IV. INCOME SECURITY AND SOCIAL SERVICES PROGRAMS

### A. Aid to Families With Dependent Children

### (Title IV-A) (AFDC)

### Legislative Initiatives

1. Exclusion of Needs and Income of Caretaker Relative When Youngest Child Reaches Age 16

*Current Law.*—Present law continues the eligibility of a parent/caretaker as long as the youngest child is eligible for benefits, i.e., until the child reaches 18, or, at the option of the State, age 19 if the child is in school and is expected to complete his course of study before his 19th birthday.

*Proposal.*—Under the administration's proposal, when the youngest child reaches age 16, an employable parent/caretaker relative would no longer be eligible for AFDC benefits. An individual would be determined to be employable if he is required to register for the State's AFDC work-related programs. Benefits to the child would continue. However, the income of a parent or stepparent who is living with the child would be considered in determining the amount of the child's benefit. The amount of income to be considered in determining the child's benefit would be the amount calculated as available after application of the "disregard" provisions which are currently applied to stepparents. This proposal was agreed to by the committee last year, but was deleted in conference with the House.

*Effective date.*—October 1, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −20 | −25 | −25 | −70 |





2. Inclusion of Parents and Siblings in the AFDC Unit; Treatment of Income of Parents of a Minor Who is Claiming Aid as the Parent of a Needy Child

*Current law.*—There is no requirement in present law that parents and all siblings be included in the AFDC filing unit. Families applying for assistance may exclude from the filing unit certain family members who have income which might reduce the family benefit. For example, a family might choose to exclude a child who is receiving social security or child support payments, if the payments would reduce the family's benefits by an amount greater than the amount payable on behalf of the child. In addition, a mother who is a minor is excluded if she is supported by her parents. However, if she has no income of her own which may be attributed to her child, the child may qualify for assistance as a one-person unit, and receive proportionately more in assistance than it would receive as part of a two-person unit. The income of the grandparents is not considered in determining the eligibility of the child.

*Proposal.*—(a) The administration's proposal would require States to include in the assistance unit the parents and all minor siblings (except SSI recipients and any stepbrothers and stepsisters) living with a child who applies for or receives AFDC. A similar proposal was agreed to by the committee last year, but was dropped in conference with the House.

(b) In addition, if a minor who is living in the same home as his parents applies for aid as the parent of a needy child, the income of his parents (the grandparents) would be counted as available to the assistance unit. The rules that would be used in determining the amount of available income would be the same as are currently used in counting the income of stepparents. A similar provision was approved by the committee last year, but was dropped in conference with the House.

*Effective date.*—October 1, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −125 | −135 | −140 | −400 |

3. Mandatory Adjustment of Shelter and Utilities Allowance

*Current law.*—An amendment in the Tax Equity and Fiscal Responsibility Act of 1982 gave States the option of prorating or otherwise adjusting the portion of the AFDC benefit which is paid for shelter and utilities to take into account economies of scale which may result when the AFDC family shares a household with other

individuals. States were given flexibility in determining the method of adjustment they wished to use.

*Proposal.*—The administration proposes to *require* States to adjust the portion of the grant paid for shelter and utilities when the family shares a household. The State would either have to prorate (using the ratio of AFDC recipients to total household members) the shelter and utilities components of both the standard of need and the payment standard, or, at its option, develop an alternative method. The alternative method adopted by the State must result in average reductions comparable to those that would be achieved by using the proration method described above, and must have the prior approval of the Secretary. No adjustment would be made with respect to SSI recipients who are living with the AFDC family and whose SSI benefits are reduced by one-third because of the special rule for counting in-kind support and maintenance.

*Effective date.*—October 1, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −75 | −145 | −150 | −370 |

4. Treatment of Lump-Sum Payments to Individuals Outside the AFDC Family

*Current law.*—The Omnibus Budget Reconciliation Act of 1981 (P. L. 97-35) included an amendment requiring that any nonrecurring income received in a month by an individual claiming assistance must be considered available as income to the family in the month it is received and also in future months. Thus, if such income exceeds the standard of need in the month of receipt, the family is ineligible for that month. In addition, the income that exceeds the initial month's needs standard is divided by the monthly needs standard. The family is then ineligible for assistance for the number of months resulting from that calculation.

*Proposal.*—The present rule for treatment of nonrecurring lump-sum income applies only to income of individuals who are claiming assistance on their own behalf. The administration proposes applying the same rule to income received by any person whose income the State considers in determining the family's AFDC benefit, but who is not himself a recipient, e.g., stepparents and sponsors of aliens. In cases involving these nonrecipients, the standard of need which would be applied to the family would be the standard that would be applicable if the nonrecipient and his dependents were included in the AFDC grant.

*Effective date.*—October 1, 1983.

*Estimated savings.—Negligible.*



5. Work Requirements for Applicants and Recipients of AFDC

*Current law.—(a) General description of programs.*—The work incentive (WIN) program was enacted by Congress in 1967 with the purpose of reducing welfare dependency through the provision of manpower training and job placement services. In 1971 the Congress adopted amendments aimed at strengthening the administrative framework of the program and at placing greater emphasis on immediate employment instead of institutional training, thus specifically directing the program to assist individuals in the transition from welfare to work. In the same year, Congress also provided for a tax credit to employers who hire WIN participants.

The Omnibus Budget Reconciliation Act of 1981 included a provision authorizing States to operate 3-year demonstration programs as alternatives to the current WIN program. The demonstration is aimed at testing single-agency administration and must be operated under the direction of the welfare agency. The legislation includes broad waiver authority.

The 1981 Reconciliation Act also authorized States to operate community work experience (CWEP) programs which serve a useful public purpose, and to require AFDC recipients to participate in these programs as a condition of eligibility. Participants may not be required to work in excess of the number of hours which, when multiplied by the greater of the Federal or the applicable State minimum wage, equals the sum of the amount of aid payable to the family.

In addition, the 1981 Reconciliation Act included a provision under which States are permitted to use any savings from reduced AFDC grant levels to make jobs available on a voluntary basis. Under this approach (work supplementation), recipients may be given a choice between taking a job or depending upon a lower AFDC grant. States may use the savings from the reduced AFDC grant levels to provide or underwrite job opportunities for AFDC eligibles.

Another work-related provision was enacted in the Tax Equity and Fiscal Responsibility Act of 1982, which authorized States to require applicants and recipients to participate in job search programs operated by the welfare agency.

*(b) Eligibility.*—As a condition of AFDC eligibility, all applicants and recipients must register for WIN unless they are: children under age 16 or in school full time; ill, incapacitated, or elderly; too far from a project to participate; needed at home to care for a person who is ill; a caretaker relative providing care on a substantially full-time basis for a child under age 6; employed at least 30 hours a week; or the parent of a child if the other parent is required to register (unless that parent has refused). Persons who are not required to register may volunteer to do so.

Under the community work experience program, States may require caretaker relatives who are caring for a child under 3 (rather than 6) to participate, provided child care is available. They may also require persons who are not required to register for WIN because they live too far from a WIN project to participate in CWEP. Individuals who are employed 80 hours a month and earning at least the applicable minimum wage may not be required to partici-

pate in a CWEP project. Otherwise, all registrants of WIN may be required to participate in a CWEP project.

The work supplementation legislation gives States complete flexibility in determining who may be included in the program, provided they meet the State's May 1981 AFDC eligiblity requirements.

With respect to the employment search program, any applicant or recipient who is required to register for WIN (or who would be required to register except for remoteness from a WIN site) may be required by the State to participate. However, the State has the option of limiting participation to certain groups or classes of individuals who are required to register for WIN.

*(c) Jobs and other services.*—WIN participants may receive employment or training services. They may also be given supportive services, including child care, which are needed to enable them to take a job or participate in training.

Community work experience programs must be designed to improve the employability of participants through actual work experience and training, and to enable individuals to move into regular employment.

The work supplementation legislation defines a supplemented job as one which is provided by: the State or local agency administering the program; a public or nonprofit entity for which all or part of the wages are paid by the administering agency; or a proprietary child care provider for which all or part of the wages are paid by the administering agency.

States have authority to design their own employment search programs, which may include job search clubs or individual job search activities.

*(d) Financing.*—The Federal Government provides 90 percent matching funds for WIN. States must contribute 10 percent matching in cash or kind. Half the funds are allocated to the States on the basis of the State's percentage of WIN registrants during the preceding January; half are distributed under a formula developed by the Secretary to take into consideration each State's performance. Special funding provisions apply to States with WIN demonstration programs.

Regular AFDC matching provisions prevail in the case of individuals who are receiving AFDC benefits and are participating in CWEP. State expenditures for administration of CWEP are eligible for Federal matching of 50 percent. However, such expenditures may not include the cost of making or acquiring materials or equipment or the cost of supervision of work, and may include only such other costs as are permitted by the Secretary.

Federal matching (as determined by the regular AFDC matching provisions) is available to a State for the costs of a work supplementation program to the extent that those expenditures do not exceed the amount of Federal savings resulting from the reductions in assistance payments made to eligible participants. To the extent that program costs are less than the savings generated through the reduction in assistance payments, both State and Federal governments derive a saving. No Federal matching is available to a State for expenditures which exceed the savings in Federal matching. Program costs which a State may claim within this matching limi-



tation include wage subsidies, necessary employment related services, and administrative overhead.

Federal matching of 50 percent is available to the States for the cost of administering the employment search program. This may include transportation and other necessary services.

*(e) Administration.*—WIN is administered jointly at the Federal level by the Department of Health and Human Services and the Department of Labor. At the State level it is administered jointly by the welfare (or social services) agency and the State employment service. The new WIN demonstration authority requires single-agency administration of the program under the direction of the welfare agency.

The community work experience, the work supplementation, and the employment search programs are administered at the Federal level by the Department of Health and Human Services. Regulations require that these programs be administered through the welfare agency.

*Proposal.*—The administration is proposing amendments which would substantially restructure the work-related activities and requirements for AFDC applicants and recipients. All activities would be operated by or under the direction of the State welfare agency. The work incentive program would be repealed. The work supplementation program, authorized by the Omnibus Budget Reconciliation Act of 1981, would also be repealed and replaced with a new optional subsidized employment program. The State welfare agency would thus have three employment programs to which to refer AFDC applicants and recipients: the community work experience program, employment search, and, at its option, subsidized employment.

*(a) Requirements for participation.*—The present law requirements for participation in work-related activities would be somewhat modified. Under present law, if the principal earner in a family which is eligible on the basis of unemployment of the parent is participating in work-related activities, the second parent is exempt. Under the proposed change, both parents would be required to participate, (unless the second parent is otherwise exempt—for example, on the basis of illness, or needed to care for a young child).

Under current law, the parent or other caretaker relative of a child is required to register for work if the youngest child is age 6 or older. In addition, States have the option of requiring AFDC mothers whose youngest child is between 3 and 6 to participate in the community work experience program if day care is available. The administration is proposing to permit States to require the parent or caretaker relative to participate in other work activities in addition to CWEP, if the youngest child is between 3 and 6 and if day care is available.

Current regulations provide sanctions for AFDC recipients if they voluntarily quit work, reduce earnings, refuse employment, or refuse a CWEP assignment. However, this penalty does not apply to those who are not required to register because they are employed 30 hours or more a week, or live in an area so remote from a WIN program that their participation is precluded. The administration proposes to extend the sanctions to these nonregistrants.

The administration is also proposing to modify the present law exemption for an individual of "advanced age" to refer instead to an individual who is age 60 or above.

*(b) Modification in number of required hours.*—Under the administration's proposed amendments, there would also be modifications in the number of hours that individuals could be required to participate in work programs. Present law permits only the consideration of the amount of the AFDC benefit in establishing the work participation requirement for CWEP. Under the proposed change, the number of hours that members of one family could be required to participate in CWEP in a month would equal the amount of its AFDC benefit plus its food stamp allotment for the month, divided by the higher of the State or Federal minimum wage. The Secretary would prescribe regulations for determining the amount of the family's allotment which must be counted for this purpose when the food stamp household includes the AFDC family and other individuals. The maximum monthly number of hours that the family could be required to participate in CWEP would be 120, reduced by hours spent in any other employment. The maximum number of hours that a family could be required to participate in employment search would be 160, reduced by hours spent in all other employment-related activities.

*(c) Rules for referrals to particular programs.*—The proposed new law would establish rules for referring all non-exempt applicants and recipients to particular programs. Parents in a family receiving benefits on the basis of the unemployment of the principal earner must be referred to the employment search program and the community work experience program. All other recipients must be referred to CWEP and to employment search, or, to the extent the State finds appropriate, to subsidized employment. Applicants must be referred to employment search.

*(d) Sanctions for failure to participate.*—Current law sanction provisions for AFDC recipients would be retained. Under present law, sanctions may be imposed if the recipient refuses to participate without good cause. In the case of the principal earner in an unemployed parent family, the sanction is denial of benefits for the entire family. In other cases, the individual who refuses is removed from the grant and the family's benefit is reduced. The sanction period is 3 months in the case of a first refusal and 6 months in the case of any subsequent refusals. Applicants may also be sanctioned for refusing to participate in employment search. Under current rules, the period for which the sanction applies is only for as long as the applicant fails without good cause to satisfy the State's requirements for participation in employment search. The administration is proposing to extend to applicants the same sanctions as are applied to recipients.

*(e) Employment search program.*—The administration's amendments would also make changes in the optional employment search program, as established by the Tax Equity and Fiscal Responsibility Act of 1982. Under the administration's proposal, that program would become mandatory with the State welfare agencies. In addition, the present law provision which limits States to requiring an initial 8-week search period, and additional 8-week periods each year, would be repealed.



The proposed amendment provides for requiring non-exempt AFDC applicants to participate until the application is acted upon. Recipients who are participating in CWEP could be required to participate in job search at intervals and for periods set by the State, but at least on a monthly basis. Other recipients could be required to participate in job search on such basis as the State finds appropriate. The present law requirement that employment search participants may not be referred to employment opportunities which do not meet the WIN criteria for appropriate work and training to which an individual may be assigned, would be repealed.

*(f) Community work experience program.*—Currently, States have the option of implementing the community work experience program. The administration is proposing to require all States to implement CWEP.

*(g) New subsidized employment program.*—The administration is proposing to repeal the work supplementation program and to replace it with a new subsidized employment program. States would no longer have the authority to reduce AFDC grants and to use savings to make jobs available to AFDC recipients on a voluntary basis.

States would be authorized to establish a subsidized employment program in such parts of the State as they wish. The stated purpose of the program would be to make jobs available to AFDC recipients, under agreements between the State agency and the employer, in such a manner as will aid in moving people from welfare to unsubsidized employment, and assist them in becoming financially self-sufficient. Agreements could be made with both public and private (including profit-making) employers.

Acceptance of a subsidized job would be voluntary. (However, participation in subsidized employment would meet the requirement for participation in work-related activities only to the extent the individual is actually engaged in subsidized employment.)

Only recipients who are not principal earners in an unemployed parent family would be eligible to participate. Employers would be required to treat participants the same as other employees in similar positions, and State laws and regulations applicable to employment would be equally applicable to program participants. Earnings of participants would not be eligible for the $30 plus one-third disregard of earnings provisions. However, this disregard would be applicable in months immediately after the recipient moves from subsidized employment to regular employment. Wages paid to an individual could not be fully subsidized by the welfare agency. At least past of the wages would have to be provided by the employer. Wages would be considered as earned income under other provisions of law.

The amount which the State could pay to an employer with respect to an individual who is being paid a subsidized wage would be limited for any month to the amount the individual's family would be eligible to receive as AFDC if it had no income, reduced by the amount of any AFDC benefit actually received in the first month of subsidized employment. The payments could be made for no more than 6 months.

*(h) Error rate provision made applicable to employment activities.*—Under the quality control program, States with error rates in excess of a specified percentage may be sanctioned by being required to repay the Federal Government the Federal cost of improperly paid benefits. The administration is proposing to add a new kind of payments to the definition of erroneous excess payments. Payments would be erroneous when made to families with a member subject to the work requirements if the member is not actually participating in employment-related activities, to the extent that such families exceed 25 percent of all families with a member subject to the work requirements. The percentage of participation would be measured over a period selected by the Secretary to correspond to the relevant quality control reviews.

*Effective date.*—October 1, 1983.

(1) Job search and CWEP components.—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | +15 | −40 | −55 | −80 |

(2) Repeal work incentive (WIN) program.—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −257 | −298 | −312 | −867 |

## 6. Households Headed by Minor Parents

*Current law.*—A minor parent who has a child, and who leaves home, may establish her own household and claim AFDC as a separate family unit. The income of the grandparents is not automatically counted as available to the minor parent, because they are not sharing the household.

*Proposal*—The administration is proposing that in the case of a minor parent who is not and has never been married, AFDC may be provided only if the minor parent resides with her parent or legal guardian, unless the State agency determines that (1) the minor parent has no parent or legal guardian who is living and whose whereabouts are known, (2) the health and safety of the minor parent or the dependent child would be seriously jeopardized



if she lived in the same residence with the parent or legal guardian, or (3) the minor parent has lived apart from the parent or legal guardian for a period of at least one year prior to the birth of the child, or before claiming aid, whichever is later. The State agency would be given authority to make payments to a protective payee with respect to a minor parent affected by the provision, until the individual is no longer considered a minor by the State.

The committee approved a similar provision last year, but it was dropped in conference with the House.

*Effective date.*—October 1, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −20 | −20 | −20 | −60 |

## 7. Repayment of AFDC From Retroactive Payment of Periodic Benefits

*Current law.*—Under current law, if an AFDC recipient receives a retroactive benefit under another program, the amount of that benefit will be considered a nonrecurring (lump-sum) payment, and the recipient's future AFDC benefits may be reduced or temporarily terminated under the special rules for counting nonrecurring income. In many cases, however, when a person receives a retroactive payment, for example, a retroactive social security payment, he will also be eligible for future payments which will cause him to lose eligibility for AFDC so long as his social security eligibility continues. In such cases, there can be no recovery from future AFDC payments because none are payable. There is no other provision in the AFDC statute which establishes rules by which the States may recover AFDC amounts which would not have been paid if the social security benefit had been paid when due.

*Proposal.*—The administration is proposing that, whenever an individual or family who received AFDC (within such prior period as prescribed by regulation) receives a payment of retroactive periodic benefits under any other public program (excluding SSI), which, if the benefits had been paid when they were regularly due rather than retroactively, would have resulted in a reduction in the AFDC payment, the State agency must treat the amount of the reduction as if it were an overpayment. The amount would then be subject to the same rules for recovery of overpayments as are applied under current law. Amounts that are considered as overpayments for purposes of this provision would not be counted as income in the month received or in future months for purposes of the provision relating to the treatment of nonrecurring (lump-sum) income, the provision limiting eligibility when income exceeds 150 percent of

the standard of need, and special provisions relating to stepparent disregards and treatment of the income of sponsors or aliens.

*Effective date.*—With respect to AFDC and other public benefits paid for months after September 1983.

*Estimated savings.*—Not available; savings are anticipated.

### 8. Treatment of Amounts Withheld From Other Public Benefits as a Penalty

*Current law.*—Generally, only income which is actually available to a family may be counted as income for purposes of determining AFDC benefits.

*Proposal.*—The administration is proposing to require States to count as income amounts being withheld from public benefit payments because of the imposition of a penalty or other such sanction if such amounts would otherwise have been counted as income.

*Effective date.*—October 1, 1983.

*Estimated savings.*—Negligible.

### 9. Absence From Home Solely by Reason of Employment

*Current law.*—Under present law, if a parent leaves the home in order to maintain employment elsewhere, the remaining members of that parent's family may be eligible for AFDC assistance on the basis that the parent is "absent from the home."

*Proposal.*—The change proposed by the administration would prohibit AFDC payments in any case in which the sole reason for a parent's absence is an employment-related activity. This provision is similar to a change made in the Tax Equity and Fiscal Responsibility Act of 1982 which prohibits assistance to families when the sole reason for such assistance is the absence of a parent due to performance of duty in one of the uniformed services.

*Effective date.*—October 1, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −5 | −5 | −5 | −15 |

### 10. Limitation on Individuals Who May Be Considered Essential Persons

*Current law.*—Regulations allow States to treat an individual as an "essential person" for purposes of determining a family's AFDC grant. The States are free to define the term as they wish. If an individual is considered an essential person, his needs are considered together with the family's in determining the benefit amount. His income and resources are also added to those of the family.



*Proposal.*—The administration is proposing to amend the statute to limit the inclusion of an individual as an "essential person" to an individual who is living in the same home as the child and furnishing personal services required (1) because of the relative's physical or mental inability to provide necessary care for himself or for the dependent child, or (2) in order to permit the relative to engage in full-time employment.

*Effective date.*—October 1, 1983.

*Estimated savings.*—Negligible.

### 11. Effect of Participation in Strike on Eligibility for AFDC

*Current law.*—An amendment in the Omnibus Budget Reconciliation Act of 1981 prohibited payment of AFDC to a family if a caretaker relative (mother, father, or other relative who is designated as the caretaker) is, on the last day of the month, participating in a strike. If an individual in the family other than a caretaker relative is on strike, that individual's needs may not be included in determining the amount of the AFDC payment.

*Proposal.*—The administration is proposing to limit the prohibition on payment of AFDC to cases in which the parent who is employable (rather than any caretaker relative) is on strike. It is also proposing to change the date for which the finding is made from the last day of the month to the last day of the preceding month (or, at State option, the second preceding month), in order to take account of the procedures used by the State for retrospective accounting and monthly reporting. A provision would also be added to deny assistance to the family if the employable parent is participating in a strike on the day the application is filed, and to exclude from the family's grant determination the needs of any other individual who is on strike on the day of application.

*Effective date.*—October 1, 1983.

*Estimated savings.*—Negligible.

### 12. Access to AFDC Information

*Current law.*—The AFDC statute restricts the disclosure of information concerning applicants and recipients to purposes directly related to the administration of Federal or federally-assisted programs which provide assistance to individuals based on need.

*Proposal.*—The administration is proposing to allow disclosure to law enforcement officials of AFDC information for use in connection with any criminal proceeding.

*Effective date.*—Upon enactment.

*Estimated savings.*—No budget effect.

### 13. Eligibility of Alien for AFDC When Sponsor Is an Agency or Other Organization

*Current law.*—The AFDC program provides that for purposes of eligibility for benefits, legally admitted aliens who apply for benefits after September 30, 1981 are deemed to have the income and resources of their immigration sponsors available for their support for a period of 3 years after their entry into the United States. The provision does not apply with respect to sponsors of aliens who

are agencies or organizations; it applies only to individuals. (A similar amendment was made to the SSI statute in 1980.)

*Proposal.*—The administration is proposing to amend the present statute to make ineligible for benefits an alien with respect to whom an agency or organization has executed an affidavit of support as a sponsor of the alien's entry into the United States, unless the State agency determines that the sponsoring agency or organization is no longer in existence, or that it does not have the financial ability to meet the alien's needs. The determinations would be made by the State agency based upon such criteria as it may specify and upon such documentary evidence as it may require. A similar change is being proposed with respect to agency sponsors of SSI recipients.

*Effective date.*—Effective with respect to applications for benefits filed after September 30, 1983.

*Estimated savings.*—Negligible.

### 14. CWEP Work for Federal Agencies Permitted

*Current law.*—The Omnibus Budget Reconciliation Act of 1981 authorized States to conduct community work experience programs "which serve a useful public purpose." Employable recipients may be required to participate in these programs as a condition of eligibility for AFDC.

*Proposal.*—The administration is proposing to amend the statute to make clear that participation in a CWEP program may include work performed for a Federal office or agency. Such work would not be considered to constitute Federal employment, and the State agency would be required to provide appropriate workers' compensation and tort claims protection to each participant.

*Effective date.*—Date of enactment.

*Estimated savings.*—No budget effect.

### 15. Sanction for Refusal To Repay Overpayments of AFDC

*Current law.*—A provision in the Omnibus Budget Reconciliation Act of 1981 required State welfare agencies to adopt procedures to collect overpayments and underpayments of AFDC. With respect to overpayments, the State may make recovery by repayment by the individual, or by reduction of future payments of AFDC. The AFDC payment may be reduced only to the extent that the family's income and liquid resources (including AFDC income) exceed 90 percent of the payment that a family would receive if it had no other income.

*Proposal.*—The administration is proposing to amend the overpayment provision to impose a sanction in cases in which the caretaker relative in a family that continues to receive AFDC refuses to repay an earlier overpayment. The sanction would be the exclusion of the needs of the relative in determining the family's grant. The sanction would apply only in months in which the family's income and liquid resources are in excess of 90 percent of the payment that a family would receive if it had no other income. It would continue until the individual has agreed to make repayment of the full amount of the overpayment and has paid the agency, for one month or such greater number of months as the State may



specify, the monthly amount agreed to by the individual and the State agency.

*Effective date.*—October 1, 1983.

*Estimated savings.*—Negligible.

### 16. Gross Amount of Earned Income

*Current law.*—The AFDC statute requires the States to disregard the following amounts of a family's earned income—

Eligibility Determination: (1) the first $75 of monthly earnings for full time employment, and (2) the cost of care for a child or incapacitated adult, up to $160 per child per month.

Benefit Calculation: (1) the first $75 of monthly earnings for full time employment; (2) child care costs up to $160 per child per month; and (3) $30 plus one-third of earnings not previously disregarded.

The $30 plus one-third disregard is allowed only during the first 4 consecutive months in which a recipient has earnings in excess of the standard work expense and child care disregards.

Courts in several States have been asked to interpret whether the term "earned income" refers to the gross amount earned by an individual before deductions are taken (for income taxes, insurance, FICA, support payments, or other items, regardless of whether the deduction is voluntary or involuntary), or whether the term refers to net income, after such deductions are taken. Regulations issued by the Department of Health and Human Services require that the term be interpreted as referring to gross income. However, courts in two States have ruled that the term must be interpreted as referring to net income.

*Proposal.*—The administration is proposing to amend the disregard provisions to make clear that the term "earned income" means the gross amount of earnings, prior to the taking of payroll or other deductions.

*Effective date.*—Date of enactment.

*Estimated savings.*—None, since baseline projections assume continuation of current HHS interpretations. Failure to enact this change, however, could involve significant costs if the courts uphold a contrary interpretation.

## B. Child Support Enforcement (CSE) (Title IV-D)

### Legislative Initiatives

NOTE.—The administration has not submitted its legislation for the child support enforcement program. The following descriptions are taken from the President's fiscal year 1984 Budget. Modifications to the budget proposal are reportedly under consideration.

#### 1. Restructure Federal Matching Provisions

*Current law.*—The Federal Government pays 70 percent of State and local administrative costs for child support services to both AFDC and non-AFDC families. (The matching rate was reduced from 75 percent beginning in fiscal year 1983 by the Tax Equity and Fiscal Responsibility Act of 1982.) Where the absent parent's family is receiving AFDC, any child support that is collected is used to offset AFDC benefit costs. An additional 15 percent incentive payment financed solely out of the Federal share of collections is also made to States and localities which make collections on behalf of an AFDC family. (The incentive payment is reduced to 12 percent starting in 1984 by that same Act.)

*Proposal.*—The administration proposes that funding for the program be provided by AFDC child support collections. States would apply their administrative expenses for services to AFDC families against child support collections on behalf of AFDC recipients. The residual net collections, whether positive or negative, would then be divided between the State and Federal governments according to the State AFDC matching rate. Bonus payments would be allotted according to standards determined by the Secretary in the following three areas: (1) child support collections for AFDC families; (2) program cost effectiveness; and (3) cost avoidance program savings. The standards for measuring performance in these three categories would be reviewed at least once every two years.

Funding for automated data processing systems would be authorized through project grants, rather than by the 90 percent Federal matching formula in present law.

The new financing mechanism would be phased in over three years. During the first 2 years, States would have the option of receiving funding under the new proposal, or of receiving a level of funding equivalent to 75 percent of what they could have received under the prior law in fiscal year 1984 or 50 percent of their prior law funding in fiscal year 1985.

This financial restructuring proposal without a phase-in was submitted to Congress in 1983, but was not agreed to by the committee.





*Effective date.*—October 1, 1983.
*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −10 | −51 | −69 | −130 |

#### 2. Require States To Enact Laws Requiring the Use of Certain Child Support Enforcement Practices

*Current law.*—Many States have adopted certain procedures which have been found to be cost-effective in operating the child support enforcement program. These include use of mandatory wage assignments, administrative hearing processes to supplement court processes, and State income tax offsets for overdue support payments. These procedures are not currently included as part of the child support State plan requirements.

*Proposal.*—The administration is recommending that States be mandated to enact laws under which they would be required to use these specified child support procedures. States would also have to have as part of their State plans a requirement that medical support will be sought for AFDC children when it is available at a reasonable cost through employer-subsidized health insurance.

*Effective date.*—October 1, 1983.
*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −30 | −65 | −70 | −165 |

## C. Child Welfare Services (Title IV-B)

### Legislative Initiatives

1. Repeal Separate Authority for Child Welfare Training Grants

*Current law.*—Title IV-B of the Social Security Act authorizes grants to the States for the purpose of providing child welfare services. The amount of the permanent authorization is $266 million annually. Allocations to the States reflect State per capita income and the size of the population under age 21. The Adoption Assistance and Child Welfare Act of 1980 restructured the child welfare services program to encourage States to place greater emphasis on those services which are designed to prevent or remedy the need for long-term foster care. The 1982 and 1983 continuing appropriations resolutions provided a spending level of $156 million for child welfare services.

Funds for child welfare training are currently appropriated under sec. 426 of the Social Security Act, which authorizes the Secretary of Health and Human Services to make grants to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as the Secretary may determine. The amount authorized to be appropriated is not specified in the statute. The 1982 and 1983 continuing appropriations resolutions provided $4 million for training for each of those years.

*Proposal.*—The administration is proposing legislation to repeal the separate authority for child welfare training grants, and to make training an activity for which child welfare services program funds may be used, at the option of the State. (The administration's budget request for fiscal year 1984 includes $156 million for child welfare services and child welfare training combined. As noted above, the 1982 and 1983 continuing appropriations resolutions provided $156 million for child welfare services, and an additional $4 million for child welfare training grants.)





*Effective aate.*—Upon enactment.
*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −4 | −4 | −4 | −12 |

2. Repeal of Reference to Title XX Administering Agency

*Current law.*—The child welfare services statute includes a provision which requires that each State plan provide for administration of the child welfare services program by the same agency that administers the title XX social services program (with exception to take account of certain historical arrangements). The specific statutory reference to title XX is now obsolete because of changes in the law pursuant to the social services block grant legislation, enacted as part of the Omnibus Budget Reconciliation Act of 1981.

*Proposal.*—The administration is proposing that the reference to the title XX statute be repealed, and that the child welfare services requirement be amended to provide for administration of the program by a single State agency established or designated by the State to administer or supervise the administration of the plan.

*Effective date.*—Upon enactment.

*Estimated savings.*—No budget impact.

## D. Foster Care and Adoption Assistance (Title IV-E)

### Legislative Initiatives

1. Make the Foster Care Program a Closed-end Entitlement

*Current law.*—The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) involved a major restructuring of Social Security Act programs for the care of children who must be removed from their own homes. In particular, prior law was modified to lessen the emphasis on foster care placement and to encourage efforts to find permanent homes for children either by making it possible for them to return to their own families or by placing them in adoptive homes. The foster care and adoption assistance program is embodied in title IV-E of the Social Security Act.

Before fiscal year 1981, open-ended Federal matching was provided for foster care payments under the AFDC program for children who met certain specified conditions. Under the new title IV-E program, States may continue to receive Federal funding on an open-ended entitlement basis. However, there are two major provisions in effect through fiscal year 1984 which affect the amount which a State may actually claim under this entitlement authority:

*(a) Mandatory cap.*—In any year in which the title IV-B (child welfare services) appropriation reaches a specified level ($266 million in fiscal years 1983 and 1984), a State may claim for foster care maintenance payments only up to a "capped" amount, determined under one of three formulas in the law. For most States this means an allowable annual increase in their allotment (determined by the percentage increase in the Consumer Price Index) of no more than 10 percent. If this foster care cap is triggered by the child welfare appropriation, a State may transfer any amount of its allotment which it does not use for foster care maintenance payments for use in funding child welfare services, so long as it is certified as meeting certain foster care protection requirements. This authority to transfer funds from maintenance payments to services was designed to encourage States to decrease reliance on foster care placements, and to provide instead for services to prevent the need for placing children in foster care. The mandatory cap has been in effect only one year, 1981, because the designated level of appropriations has not been reached in the following years.

*(b) Optional cap.*—In any year in which the title IV-B (child welfare services) appropriation is below the specified level, a State may opt to have a cap imposed on its funding. This allows the State, so long as it meets the foster care protection requirements, to transfer funds from foster care to child welfare services even though the specified appropriation level is not reached. In this case, however, the State is limited in the amount which it may transfer. The amount may not exceed an amount which, together





with the child welfare services funding it receives, is more than the amount of such funds it would have received if the child welfare services appropriation for the year were high enough to trigger the mandatory cap.

In addition to the foster care program, title IV-E authorizes an adoption assistance program under which a State is responsible for determining which children in foster care are eligible for adoption assistance because of special needs which may have discouraged their adoption. In the case of any child meeting the special requirements set forth in the law, the State may offer adoption assistance to parents who adopt the child. The amount of assistance is agreed upon between the parents and the agency.

As in the case of foster care, States may receive Federal matching on an open-ended entitlement basis, but without any provision for a cap.

Matching for both programs is at the medicaid matching rate. Budget authority for foster care was $300 million in fiscal year 1982, increased to $395 million in fiscal year 1983. Budget authority for adoption assistance was $5 million in each of those fiscal years.

*Proposal.*—Under the administration's proposed legislation, the foster care program would become a closed-end entitlement program, and the current law "cap" provisions would be repealed. Funding for foster care for fiscal year 1984 and future years would be limited to $440,170,000, which the administration states would represent a $45 million increase over the estimated requirements for fiscal year 1983. Each State's share for foster care for fiscal year 1984 and each succeeding fiscal year would equal its proportion of the total Federal share of all States' foster care programs for fiscal year 1982, as determined on the basis of claims allowed before October 1, 1983 (and submitted to the Secretary on or before June 1, 1983). States would be allowed to use any funds which they do not need for foster care for providing services under the child welfare services program, subject to certain current law requirements that they have implemented specified foster care protection provisions.

There would be no change in the funding provisions for adoption assistance.

*Effective date.*—Upon enactment.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | | −40 | −86 | −126 |

### 2. Permanent Authority to Fund Voluntary Foster Care Placements

*Current law.*—The Adoption Assistance and Child Welfare Act of 1980 included a provision authorizing Federal matching on a temporary basis for payments made on behalf of children voluntarily placed in foster care. The statute provides that, in those States that have implemented specified foster care protections and procedures, Federal foster care matching funds are available until September 30, 1983, for children who have been voluntarily removed from their home (without a judicial determination), if such removal is pursuant to a voluntary placement agreement. The voluntary placement agreement must be revokable on the part of the parent unless the child welfare agency objects and obtains a judicial determination that the return of the child to the home would be contrary to the child's best interests. There must be a judicial determination of a voluntary placement within six months to the effect that such placement is in the best interests of the child. The Secretary of HHS must report annually to the Congress on the number of children placed under this provision.

*Proposal.*—The administration is proposing to make permanent the authority in present law to fund payments on behalf of certain children placed voluntarily in foster care.

*Effective date.*—The amendment may not become effective before the effective date of the provision which places a limit on States' entitlement for foster care funds.

*Estimated cost.*—Negligible.

## E. Social Services Block Grant (Title XX)

### Legislative Initiatives

### 1. Expand the Purpose Section

*Current law.*—The Social Services Block Grant authorizes grants to the States, on an entitlement basis, to encourage them to furnish services aimed at five goals: (1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency; (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

The Community Services Block Grant (under the jurisdiction of the Committee on Labor and Human Resources) provides authority for grants to States "to ameliorate the causes of poverty in communities within the State."

*Proposal.*—The administration is proposing the repeal of the Community Services Block Grant. The purposes of the Social Services Block Grant would be expanded to make clear that funds may be used for activities now authorized under the Community Services Block Grant. This would be accomplished by adding as a sixth purpose "alleviating poverty."

*Effective date.*—October 1, 1983.

*Estimated savings.*—No budget effect for the Social Services Block Grant. The Community Services Block Grant was funded at $343 million in fiscal year 1983.

### 2. Reduction in 1984 Authorized Spending Level

*Current law.*—The statute entitles States to receive their share of $2,450,000,000 in FY 1983, $2,500,000,000 in FY 1984, $2,600,000,000 in FY 1985, and $2,700,000,000 in FY 1986 and any succeeding fiscal year. In addition, Public Law 98-8, the Emergency Supplemental Appropriations for Jobs bill, included an additional $225 million for social services which may be used for expenditures in fiscal year 1983 or fiscal year 1984.

*Proposal.*—The administration is proposing to reduce the authorized spending level for fiscal year 1984 from $2,500,000,000 to $2,440,000,000, to offset in part the increased appropriations made available by Public Law 98-8.

*Effective date.*—October 1, 1983.

*Estimated savings.*—$60 million for FY 1984.

3. Additional Information to be Included in Pre-Expenditure Reports

*Current law.*—Prior to expenditure by a State of any social services funds, the State must report on the intended use of the payments, including information on the types of activities to be supported and the categories or characteristics of individuals to be served.

*Proposal.*—The administration proposes to require that the pre-expenditure reports made by the States include, in addition to the above information, information on the geographic areas to be served and the criteria and method to be used for disbursement of funds.

*Effective date.*—October 1, 1983.

*Estimated savings.*—No budget effect.

4. Additional Requirements for Post-Expenditure Reports and Audits

*Current law.*—The Social Services Block Grant statute includes a provision requiring each State to prepare reports on its activities carried out with block grant funds. These reports must be "of such frequency (but not less often than every two years) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 2004." (Reports required by section 2004 are the pre-expenditure reports referred to above.)

Present law also requires that each State audit its expenditures under the Social Services Block Grant at least every two years, "in accordance with generally accepted auditing principles." The audit must be submitted to the legislature of the State and to the Secretary within 30 days of completion.

*Proposal.*—The administration is proposing that the post-expenditure reports of each State be prepared no less often than annually, rather than every two years, as provided under current law.

In addition, the administration is proposing that the current requirement that audits be conducted according to "generally accepted auditing principles" be replaced with a requirement that the audits be in accordance with the Comptroller General's "Standards for Audit of Governmental Organizations Programs, Activities, and Functions." A requirement would also be added that each State's audits be made public within the State on a timely basis, replacing the current requirement that they be submitted to the legislature of the State and to the Secretary within 30 days of completion.

*Effective date.*—October 1, 1983.

*Estimated savings.*—No budget effect.

5. Require Direct Grants to Indian Tribes

*Current law.*—Social Services Block Grant funds are allotted to each State, which has the authority to distribute funds within the State according to such procedures as it may establish. There is no provision for direct allotment to Indian tribes.



*Proposal.*—The administration is proposing to amend title XX to require the Secretary of Health and Human Services to make grants directly to any Indian tribe which undertakes to operate a social services program. An Indian tribe which undertakes to operate a program would be paid a share of the State's allotment equal to the proportion that the population in Indian households in the service area bears to the total population of the State. Each State's allotment would be reduced by an amount equal to the amount of any allotment made to an Indian tribe within the State. The term "Indian tribe" is defined to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, consortium of villages, or regional corporation recognized by the Secretary of the Interior as having special rights and responsibilities, and as eligible for the unique services provided by the United States to Indians, because of their status as Indians, or any organized group or consortium of such Indian tribes.

*Effective date.*—October 1, 1983.

*Estimated savings.*—No budget effect.

6. Addition of Requirements Relating to Nondiscrimination

*Current law.*—Title XX does not include any specific language relating to nondiscrimination in activities receiving title XX funding.

*Proposal.*—The administration is proposing the addition of language which is modeled after the nondiscrimination provisions in the health-related block grants (including the Maternal and Child Health Block Grant). The proposed addition would make applicable to title XX activities the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964. The amendment also includes a general prohibition against discrimination on the basis of sex, except that the provision shall not be construed to prohibit any conduct or activities permitted under title IX of the Education Amendments of 1972.

If the Secretary finds that a State has failed to comply with the nondiscrimination provisions, he must notify the chief executive officer of the State and request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer refuses to secure compliance, the Secretary may (1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted, (2) exercise the powers provided by the applicable provisions of the above-mentioned statutes, or (3) take such other action as may be provided by law.

*Effective date.*—October 1, 1983.

*Estimated savings.*—No budget effect.

7. Consolidated Funding for Indian Tribes

*Current law.*—As noted in item (5) above, the administration is proposing that the Social Services Block Grant legislation be amended to require that social services funds be allotted directly to

Indian tribes rather than to the State, as is required under present law. The Low-Income Home Energy Assistance statute already includes language expressly authorizing direct funding to Indian tribes for activities covered by that law.

*Proposal.*—The administration is proposing the enactment of a new "Indian Tribes Consolidated Funding Act" which would require the Secretary of HHS to consolidate the grants made to an Indian tribe under the Social Services and Low-Income Home Energy programs, upon request of the Indian tribe. The Indian tribe would be given full discretion to determine the proportion of the funds granted which are to be allocated to either program. The tribe would be allowed to submit a single application and single pre- and post-expenditure reports with respect to each consolidated grant received for any fiscal year. The Secretary would have the authority to provide procedures for accounting, auditing, evaluating, and reviewing any program or activities receiving funding under any consolidated grant.

*Effective date.*—With respect to fiscal year 1984 and succeeding fiscal years.

*Estimated savings.*—No budget effect.

## F. Supplemental Security Income (SSI)

### Legislative Initiatives

#### 1. Eligibility of Alien for SSI When Sponsor Is an Agency or Organization

*Current law.*—Under the SSI statute as amended in 1980 (P.L. 96-265), in determining eligibility for benefits, legally admitted aliens (applying for benefits after September 30, 1980) are deemed to have the income and resources of their immigration sponsors available for their support for a period of 3 years after their entry into the United States. The provision does not apply with respect to sponsors of aliens who are agencies or organizations; it applies only to individuals.

*Proposal.*—The administration's proposal would make ineligible for benefits an alien sponsored by an agency or organization which has executed an affidavit of support, unless the Secretary determines that the sponsoring agency or organization is no longer in existence, or does not have the financial ability to meet the alien's needs. The determinations would be made by the Secretary based upon such criteria as he may specify and upon such documentary evidence as he may require. As under present law, the provision would not apply to aliens who are (1) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act; (2) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c)(1) of such Act; (3) paroled into the United States as a refugee under section 212(d)(5) of such Act; or (4) granted political asylum by the Attorney General. A similar provision is being proposed to apply to agency sponsors of AFDC recipients.

*Effective date.*—Effective with respect to applications for benefits filed after September 30, 1983.

*Estimated savings.*—Negligible.

#### 2. Adjustment on Account of Retroactive Benefits Under Title II

*Current law.*—Legislation was enacted in 1980 (P.L. 96-265) aimed at ensuring that an individual's entitlement under the OASDI and SSI programs would not result in windfall benefits. Under this legislation, OASDI benefits that are paid retroactively, following the initial determination of eligibility, are reduced by the amount of any excess SSI benefits that are paid because the OASDI benefits have been received in a lump sum rather than in the months when regularly payable.

*Proposal.*—The administration's proposal would amend the present requirement to allow the adjustment of benefits in additional situations. First, in the case where retroactive OASDI bene-

fits are paid before the SSI benefits, but for the same period, the retroactive SSI amount otherwise payable would be reduced by the amount of SSI that would not be paid had OASDI been paid when regularly due. Second, OASDI benefits that are paid retroactively, following a period of suspension of benefits, would be reduced by the amount of SSI benefits that would not have been paid had the OASDI benefits been received in the months when regularly payable.

Finally, present law would be amended to coordinate the benefit adjustment provision with the SSI retrospective accounting system. Under present law, it is possible that the two-month lag in counting OASDI income for purposes of determining the SSI benefit amount can result in adjustment for less than the full retroactive period. The proposed change would make it possible to adjust benefits paid for the entire retroactive period.

*Effective date.*—Applicable to retroactive benefits (either OASDI or SSI) payable after September 30, 1983.

*Estimated savings.*—

[In millions of dollars]

| | Fiscal year— | | | Total |
|---|---|---|---|---|
| | 1984 | 1985 | 1986 | |
| Outlay effect | −15 | −16 | −17 | −48 |

## G. Unemployment Compensation

The administration did not include savings proposals dealing with the Unemployment Insurance System in its fiscal year 1984 budget.