101ST CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
101-964

OMNIBUS BUDGET RECONCILIATION ACT OF 1990

CONFERENCE REPORT

TO ACCOMPANY

H.R. 5835

OCTOBER 27 (legislative day, OCTOBER 26), 1990.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 5835]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, have met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1990".

SEC. 2. TABLE OF TITLES.

TITLE I—AGRICULTURE AND RELATED PROGRAMS

SEC. 1001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1990".

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

Subtitle A—Commodity Programs

SEC. 1101. TRIPLE BASE FOR DEFICIENCY PAYMENTS.

(a) WHEAT.—Section 107B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(b) FEED GRAINS.—Section 105B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(c) UPLAND COTTON.—Section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

(d) RICE.—Section 101B(c)(1)(C)(ii) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by striking "100 percent" and inserting "85 percent".

SEC. 1102. CALCULATION OF DEFICIENCY PAYMENTS BASED ON 12-MONTH AVERAGE.

(a) WHEAT.—Clause (ii) of section 107B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of

wheat shall be the amount by which the established price for the crop of wheat exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 10 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the crop of wheat.".

(b) FEED GRAINS.—Clause (ii) of section 105B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of corn, grain sorghums, oats, and barley shall be the amount by which the established price for the respective crop of feed grains exceeds the higher of—

"(I) the lesser of—

"(aa) the national weighted average market price received by producers during the marketing year for the crop, as determined by the Secretary; or

"(bb) the national weighted average market price received by producers during the first 5 months of the marketing year for the crop, as determined by the Secretary, plus 7 cents per bushel; or

"(II) the loan level determined for the crop, prior to any adjustment made under subsection (a)(3) for the marketing year for the respective crop of feed grains.".

(c) RICE.—Clause (ii) of section 101B(c)(1)(B) of the Agricultural Act of 1949 (as added by section 601 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(ii) PAYMENT RATE OF 1994 AND 1995 CROPS.—The payment rate for each of the 1994 and 1995 crops of rice shall be the amount by which the established price for the crop of rice exceeds the higher of—

"(I) the lesser of—

"(aa) the national average market price received by producers during the calendar year that contains the first 5 months of the marketing year for the crop, as determined by the Secretary; or

"(bb) the national average market price received by producers during the first 5 months of the marketing year for the crop, as deter-

mined by the Secretary, plus an appropriate amount that is fair and equitable in relation to wheat and feed grains (as determined by the Secretary); or

"(II) the loan level determined for the crop.".

(d) CONFORMING AMENDMENT.—Section 114(c) of the Agricultural Act of 1949 (as amended by section 1121(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 and redesignated by section 1161(a)(1) of such Act) by striking "wheat, feed grains, and rice which payments are calculated on the basis of the national weighted average market price (or, in the case of rice, the national average market price) for the marketing year for the crop" and inserting "wheat and feed grains which payments are calculated as provided in sections 107B(c)(1)(B)(ii), 107B(p), or 105B(c)(1)(B)(ii)".

SEC. 1103. ACREAGE REDUCTION PROGRAM FOR 1991 CROP.

(a) WHEAT.—In the case of the 1991 crop of wheat, the Secretary of Agriculture shall provide for an acreage limitation program as described in section 107B(e)(1)(F) of the Agricultural Act of 1949 (as added by section 301 of the Food, Agriculture, Conservation, and Trade Act of 1990).

(b) FEED GRAINS.—Subparagraph (F) of section 105B(e)(1) of the Agricultural Act of 1949 (as added by section 401 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended to read as follows:

"(F) ACREAGE LIMITATION PROGRAM FOR 1991 CROP.—In the case of the 1991 crop of corn, the Secretary shall provide for an acreage limitation program (as described in paragraph (2)) under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7.5 percent.".

SEC. 1104. ACREAGE REDUCTION PROGRAMS FOR 1992 THROUGH 1995 CROPS.

(a) IN GENERAL.—Notwithstanding any other provision of law, except as provided in subsections (b) and (c), the Secretary of Agriculture shall announce an acreage limitation program for each of the 1992 through 1995 crops of—

(1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by—

(A) in the case of the 1992 crop of wheat, not less than 6 percent;

(B) in the case of the 1993 crop of wheat, not less than 5 percent;

(C) in the case of the 1994 crop of wheat, not less than 7 percent; and

(D) in the case of the 1995 crop of wheat, not less than 5 percent; and

(2) corn, grain sorghum, and barley under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7½ percent.

(b) STOCKS-TO-USE RATIO.—Subsection (a) shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than—

(1) in the case of wheat, 34 percent; and

(2) in the case of corn, grain sorghum, and barley, 20 percent.

(c) TERMINATION.—If the Secretary determines that the quantity of soybeans on hand in the United States on the first day of the marketing year for the 1991 crop of soybeans (not including any quantity of soybeans of the 1991 crop) will be less than 325,000,000 bushels, subsection (a) shall not apply to any of the 1992 through 1995 crops of wheat and feed grains.

SEC. 1105. LOAN ORIGINATION FEES AND OTHER SAVINGS.

(a) OILSEEDS.—Section 205 of the Agricultural Act of 1949 (as added by section 701(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (m) as subsection (n); and

(2) by inserting after subsection (1) the following new subsection:

"(m) LOAN ORIGINATION FEE.—

"(1) LOANS.—The Secretary shall charge a producer a loan origination fee for a crop of oilseeds, in connection with making a loan, equal to the product obtained by multiplying—

"(A) the loan level determined for the crop under subsection (c); by

"(B) 2 percent; by

"(C) the quantity of oilseeds for which the producer obtains the loan.

"(2) LOAN DEFICIENCY PAYMENTS.—The Secretary shall deduct, from the amount of any loan deficiency payment made under subsection (e), an amount equal to the amount of the loan origination fee that would otherwise be paid under paragraph (1) if the producer obtained a loan rather a loan deficiency payment.".

(b) PEANUTS.—

(1) IN GENERAL.—Section 108B of the Agricultural Act of 1949 (as added by section 806 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(A) by redesignating subsection (g) as subsection (h); and

(B) by inserting after subsection (f) the following new subsection:

"(g) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—The Secretary shall provide, by regulation, for a nonrefundable marketing assessment applicable to each of the 1991 through 1995 crops of peanuts. The assessment shall be made in accordance with this subsection and shall be on a per pound basis in an amount equal to 1 percent of the national average quota or additional peanut support rate per pound, as applicable, for the applicable crop. No peanuts shall be assessed more than 1 percent of the applicable support rate under this subsection.

"(2) FIRST PURCHASERS.—

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

"(i) collect from the producer a marketing assessment equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired;

"(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to ½ percent of the applicable national average support rate times the quantity of peanuts acquired; and

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

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

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

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

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

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

"(B) the national average quota peanut price support level for the applicable crop year.

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

(2) CONFORMING AMENDMENT.—Section 108B(a)(2) of the Agricultural Act of 1949 (as added by section 806(3) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by inserting after "cost of land" the following: "and the cost of any assessments required under subsection (g)".

(c) SUGAR.—Section 206 of the Agricultural Act of 1949 (as added by section 901(2) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) SUGARCANE.—Effective only for each of the 1991 through 1995 crops of sugarcane, the first processor of sugarcane shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .18 cents per pound of raw cane sugar processed by the processor from domestically produced sugarcane.

"(2) SUGAR BEETS.—Effective only for each of the 1991 through 1995 crops of sugar beets, the first processor of sugar beets shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .193 cents per pound of beet sugar processed by the processor from domestically produced sugar beets.

"(3) COLLECTION.—Marketing assessments required under this subsection shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary and shall be nonrefundable.

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

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

"(B) the support level for the applicable crop of sugarcane or sugar beets.

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

(d) HONEY.—Section 207 of the Agricultural Act of 1949 (as added by section 1001 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) by redesignating subsection (i) as subsection (j); and

(2) by inserting after subsection (h) the following new subsection:

"(i) MARKETING ASSESSMENT.—

"(1) IN GENERAL.—Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey (as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602)) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment on a per pound basis in an amount equal to 1 percent of the national price support level for each such crop as otherwise provided in this section.

"(2) COLLECTION.—The assessment shall be collected and remitted by the first handler of honey in the manner prescribed by the Secretary which, to the extent practicable, shall be as provided for in the Honey Research, Promotion, and Consumer Information Act.

"(3) EXEMPTIONS.—All persons who are exempt from the payment of the assessment authorized by such Act, and all imported honey, shall be exempt from the payment of the assessment required by this subsection.

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

"(A) the quantity of honey involved in the violation; by

"(B) the support level for the applicable crop of honey.

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

(e) WOOL AND MOHAIR.—Section 704 of the National Wool Act of 1954 (7 U.S.C. 1783) (as amended by section 201(b) of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended by adding at the following new subsection:

"(c) MARKETING ASSESSMENTS.—Effective only for each of the 1991 through 1995 marketing years for wool and mohair, the Secretary shall deduct an amount from the payment to be made available to producers of wool and mohair under subsection (a) equal to 1 percent of the payment.".

(f) TOBACCO.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended by adding at the end the following new subsection:

"(g)(1) Effective only for each of the 1991 through 1995 crops of tobacco for which price support is made available under this Act, producers and purchasers of such tobacco shall each remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop as otherwise provided for in this section.

"(2) Such producer assessments and purchaser assessments shall be—

"(A) collected in the same manner as provided for in section 106A(d)(2) or 106B(d)(3), as applicable; and

"(B) enforced in the same manner as provided in section 106A(h) or 106B(j), as applicable.

"(3) The Secretary may enforce this subsection in the courts of the United States.".

(g) OTHER SAVINGS.—Section 204 of the Agricultural Act of 1949 (as added by section 101 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in subsection (g)—

(A) in paragraph (1), by striking "1991 through 1994" and inserting "1992 through 1995";

(B) in the matter preceding subparagraph (A) of paragraph (2)—

(i) by inserting after "purchases" the following: "in the following calendar year"; and

(ii) by inserting after "producers" the following: "in such following calendar year"; and

(C) in paragraph (2)(B), by striking "that calendar year" and inserting "such following calendar year";

(2) by redesignating subsections (h) and (i) as subsections (j) and (k), respectively; and

(3) by inserting after subsection (g) the following new subsections:

"(h) REDUCTION IN PRICE RECEIVED.—

"(1) IN GENERAL.—Beginning January 1, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under subsection (g).

"(2) AMOUNT.—The amount of the reduction under paragraph (1) in the price received by producers shall be—

"(A) during calendar year 1991, 5 cents per hundredweight of milk marketed; and

"(B) during each of the calendar years 1992 through 1995, 11.25 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of each of the calendar years 1992 through 1995 by an amount per hundredweight that is necessary to compensate for refunds made under paragraph (3) on the basis of marketings in the previous calendar year.

"(3) REFUND.—The Secretary shall provide a refund of the entire reduction under paragraph (2) in the price of milk received by a producer during a calendar year, if the producer provides evidence that the producer did not increase marketings in the calendar year that such reduction was in effect when compared to the immediately preceding calendar year.

"(i) ENFORCEMENT.—

"(1) COLLECTION.—Reductions in price required under subsection (g) or (h) shall be collected and remitted to the Commodity Credit Corporation in the manner prescribed by the Secretary.

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

"(A) the quantity of milk involved in the violation; by

"(B) the support rate for the applicable calendar year for milk.

"(3) ENFORCEMENT.—The Secretary may enforce subsection (g) or (h) in the courts of the United States.".

Subtitle B—Other Agricultural Programs

SEC. 1201. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by adding at the end the following new section:

"SEC. 314. AUTHORIZATION LEVELS FOR RURAL ELECTRIC AND TELEPHONE LOANS.

"(a) IN GENERAL.—Subject to the other provisions of this section and notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, insured loans may be made in accordance with this title from the Rural Electrification and Telephone Revolving Fund established under section 301 in amounts equal to the following levels:

"(1) For fiscal year 1991, $896,000,000.
"(2) For fiscal year 1992, $932,000,000.
"(3) For fiscal year 1993, $969,000,000.
"(4) For fiscal year 1994, $1,008,000,000.
"(5) For fiscal year 1995, $1,048,000,000.

"(b) REDUCTION.—Notwithstanding any other provision of law, for each of fiscal years 1991 through 1995, the Administrator shall—

"(1) reduce the amounts otherwise made available for insured loans made from the Rural Electrification and Telephone Revolving Fund by—

"(A) $224,000,000 for fiscal year 1991;
"(B) $234,000,000 for fiscal year 1992;
"(C) $244,000,000 for fiscal year 1993;
"(D) $256,000,000 for fiscal year 1994; and
"(E) $267,000,000 for fiscal year 1995; and

"(2) use the funds made available from such reductions in each fiscal year to guarantee loans under subsection (d).

"(c) MANDATORY LEVELS.—Notwithstanding any other provision of law, the Administrator shall make insured loans at the levels authorized by this section for each of fiscal years 1991 through 1995 taking into account any reductions under subsection (b).

"(d) GUARANTEED LOANS—

"(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (e) and notwithstanding any other provision of law, in carrying out this Act, the Administrator shall guarantee loans made by legally organized lending agencies to the extent of the reduction in insured loans as provided in subsection (b).

"(2) AMOUNT OF GUARANTEE.—The guarantees authorized under paragraph (1) shall be 90 percent of the principal of and interest on the loan and shall be made only upon the request of the borrower.

"(3) NO FEDERAL INSTRUMENTALITY.—The Administrator may not provide any such guarantee for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States other than banks for cooperatives.

"(4) AUTHORITY.—The Administrator is authorized to approve such guarantees subject to full use being made during each fiscal year of insured loan amounts made available during the fiscal year.

"(5) CONSTRUCTION.—Nothing in this subsection shall be construed as modifying the authority provided in section 306.

"(e) IMPLEMENTATION.—

"(1) IN GENERAL.—The Administrator shall implement the reduction in insured loans provided by subsection (b) in a manner that will lessen its adverse effect.

"(2) ALLOCATION BETWEEN ELECTRIC AND TELEPHONE PROGRAMS.—The reductions required by subsection (b) shall be allocated between the electric and telephone programs for each fiscal year in proportion to the amount of insured funds made available for each such program during the fiscal year in annual appropriations Acts.

"(3) ELECTRIC BORROWER'S OPTION.—If the amount of an insured electric loan is reduced as a result of the requirements of subsection (b), the electric borrower may, at the option of such borrower, obtain capital to replace the amount of the reduction—

"(A) with the assistance of a loan guarantee (as provided by subsection (d));

"(B) from internally generated funds of the electric borrower;

"(C) from private credit sources with a lien accommodation provided by the Administrator; or

"(D) from other private sources.".

SEC. 1202. AUTHORIZATION LEVELS FOR FmHA LOANS.

(a) IN GENERAL.—Subsection (b) of section 346 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1994(b)) is amended to read as follows:

"(b)(1) For each of the fiscal years 1991 through 1995, real estate and operating loans may be insured, made to be sold and insured, or guaranteed in accordance with subtitles A and B, respectively, from the Agricultural Credit Insurance Fund established under section 309 in amounts equal to the following levels:

"(A) For fiscal year 1991, $4,175,000,000, of which not less than $827,000,000 shall be for farm ownership loans under subtitle A.

"(B) For fiscal year 1992, $4,343,000,000, of which not less than $861,000,000 shall be for farm ownership loans under subtitle A.

"(C) For fiscal year 1993, $4,516,000,000, of which not less than $895,000,000 shall be for farm ownership loans under subtitle A.

"(D) For fiscal year 1994, $4,697,000,000, of which not less than $931,000,000 shall be for farm ownership loans under subtitle A.

"(E) For fiscal year 1995, $4,885,000,000, of which not less than $968,000,000 shall be for farm ownership loans under subtitle A.

"(2) Subject to paragraph (3), such amounts set forth in paragraph (1) shall be apportioned as follows:

"(A) For fiscal year 1991—

"(i) $1,019,000,000 for insured loans, of which not less than $83,000,000 shall be for farm ownership loans; and

"(ii) $3,156,000,000 for guaranteed loans, of which not less than $744,000,000 shall be for guarantees of farm ownership loans.

"(B) For fiscal year 1992—

"(i) $1,060,000,000 for insured loans, of which not less than $87,000,000 shall be for farm ownership loans; and

"(ii) $3,283,000,000 for guaranteed loans, of which not less than $774,000,000 shall be for guarantees of farm ownership loans.

"(C) For fiscal year 1993—

"(i) $1,102,000,000 for insured loans, of which not less than $90,000,000 shall be for farm ownership loans; and

"(ii) $3,414,000,000 for guaranteed loans, of which not less than $805,000,000 shall be for guarantees of farm ownership loans.

"(D) For fiscal year 1994—

"(i) $1,147,000,000 for insured loans, of which not less than $94,000,000 shall be for farm ownership loans; and

"(ii) $3,550,000,000 for guaranteed loans, of which not less than $837,000,000 shall be for guarantees of farm ownership loans.

"(E) For fiscal year 1995—

"(i) $1,192,000,000 for insured loans, of which not less than $97,000,000 shall be for farm ownership loans; and

"(ii) $3,693,000,000 for guaranteed loans, of which not less than $871,000,000 shall be for guarantees of farm ownership loans.

"(3) Notwithstanding any other provision of law:

"(A) The Secretary shall—

"(i) reduce the amounts otherwise made available for insured loans by—

"(I) $482,000,000, for fiscal year 1991;

"(II) $614,000,000, for fiscal year 1992;

"(III) $760,000,000, for fiscal year 1993;

"(IV) $859,000,000, for fiscal year 1994; and

"(V) $907,000,000, for fiscal year 1995; and

"(ii) use the funds made available from such reductions in each fiscal year to guarantee loans under section 351.

"(B) The total amount of insured loans shall bear the same ratio to the amount of insured farm ownership loans as the dollar amount specified in paragraph (2)(A)(i) for insured loans bears to the dollar amount specified therein for insured farm ownership loans.

"(C) If more than 70 percent of the number of loans guaranteed under section 351 in a fiscal year have been guaranteed to persons to whom the Secretary had not previously made an insured loan under this Act, in lieu of the dollar amounts specified in subparagraph (A) for the immediately succeeding fiscal year, the dollar amounts which shall apply shall each be the product obtained by multiplying—

"(i) such dollar amount; by

"(ii) the quotient of—

"(I) the number of persons provided with guaranteed loans under section 351 in the fiscal year to whom the Secretary had not previously made an insured or a guaranteed loan under this Act; divided by

"(II) the total number of persons provided with guaranteed loans under section 351 in the fiscal year.

"(4) Notwithstanding subsection (a), the Secretary shall, as soon as practicable after the date of enactment of this subsection, make, insure, or guarantee loans at the levels authorized by this subsection for each of the fiscal years 1991 through 1995.".

(b) INTEREST RATE REDUCTION PROGRAM.—

(1) IN GENERAL.—Section 351 of such Act (7 U.S.C. 1999) is amended—

(A) in subsection (c)—

(i) by striking "50 percent" and inserting "100 percent"; and

(ii) by striking "2 percent" and inserting "4 percent"; and

(B) in subsection (d), by striking ", or 3 years, whichever is less".

(2) EXTENSION OF PROGRAM FOR 2 YEARS.—Section 1320 of the Food Security Act of 1985 (7 U.S.C. 1999 note) is amended by striking "1993" and inserting "1995".

(c) DEMONSTRATION PROJECT FOR PURCHASE OF SYSTEM LAND.—Section 351(h)(1) of such Act (7 U.S.C. 1999(h)(1)) is amended by striking "3-year" and inserting "4-year".

SEC. 1203. APHIS INSPECTION USER FEE ON INTERNATIONAL PASSENGERS.

Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended—

(1) in paragraph (1), by striking "a commercial vessel, commercial aircraft, commercial truck, or railroad car," and inserting "an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car."; and

(2) in paragraph (3)(B)—

(A) by adding at the end of clause (ii) the following: "Any such reimbursement shall be subject to appropriations under clause (v).."; and

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

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated each fiscal year amounts in the Fund for use for quarantine or inspection services.".

SEC. 1204. ADDITIONAL SAVINGS AND OTHER PROVISIONS.

(a) INTEGRATED FARM MANAGEMENT PROGRAM.—Section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended—

(1) in subsection (d), by striking "enroll not more than" and inserting "enroll not less than"; and

(2) in subsection (h)(7)(A), by striking "shall not be eligible" and inserting "shall be eligible".

(b) FOOD AID ASSISTANCE.—The Agricultural Trade, Development, and Assistance Act of 1954 (as amended by section 1512 of the Food, Agriculture, Conservation, and Trade Act of 1990) is amended—

(1) in section 202(e)(1), by striking "private" and all that follows through "Administrator" and inserting "the Administrator, not less than $10,000,000, and not more than $13,500,000, shall be made available in each fiscal year to private voluntary organizations and cooperatives";

(2) in section 406, by adding at the end the following new subsection:

"(d) AVAILABILITY OF FUNDS.—Funds shall be available under this Act only to the extent provided in advance in appropriation Acts."; and

(3) in section 407(c)(4), by striking "providing ocean" and inserting "providing ocean transportation or".

(c) TOBACCO PROGRAM ADJUSTMENT.—Section 213 of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is amended—

(1) in subsection (d), by inserting before the period the following: ", subsection (e), and subsection (f)"; and

(2) in subsection (f), by adding at the end the following new paragraph:

"(4) Subsection (d) shall apply with respect to fees and charges imposed to cover the costs of such end user identification, certification, and reporting activities.".

(d) EMERGENCY LOANS.—Section 2269 of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by—

(1) striking "(7 U.S.C. 1981(b))" and inserting "(7 U.S.C. 1961(b))"; and

(2) striking "1988" and inserting "1990".

(e) FIFRA USER FEES.—Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990, nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

Subtitle C—Effective Date

SEC. 1301. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 1 day after the date of enactment of the Food, Agriculture, Conservation, and Trade Act of 1990, or December 1, 1990, whichever is earlier.

SEC. 1302. READJUSTMENT OF SUPPORT LEVELS.

(a) FAILURE TO ENTER INTO AGREEMENT.—If by June 30, 1992, the United States does not enter into (within the context of section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902)) an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), agricultural acreage limitation and price support and production adjustment programs and export promotion levels shall be reconsidered and adjusted by the Secretary of Agriculture (hereafter in this section referred to as the "Secretary") in accordance with subsection (b), as appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(b) REQUIRED MEASURES.—Pursuant to subsection (a), in order to protect the interests of American agricultural producers and ensure the competitive position of United States agriculture, the Secretary—

(1) is authorized to waive any minimum level for any acreage limitation program required or authorized for any of the 1993 through 1995 crops of wheat, feed grains, upland cotton, or rice established under section 107B(e), 105B(e), 103B(e), or 101B(e) of the Agricultural Act of 1949 (as amended by sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade Act of 1990), respectively;

(2) shall increase by $1,000,000,000 for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs authorized under the Agricultural Trade Act of 1978 (as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990), in addition to any amounts otherwise required or made available under such programs; and

(3) shall permit producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(c) FAILURE OF AGREEMENT TO ENTER INTO FORCE.—If by June 30, 1993, an agricultural trade agreement under the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade has not entered into force for the United States, agricultural price support and other programs and export promotion levels shall be reconsidered and adjusted by the Secretary in accordance with subsection (d), if the Secretary determines such action is appropriate to protect the interests of American agricultural producers and ensure the international competitiveness of United States agriculture.

(d) SPECIFIC MEASURES.—

(1) MEASURES TO BE CONSIDERED.—Pursuant to subsection (c), the Secretary shall consider—

(A) waiving all or part of the requirements of this title, and the amendments made by this title, requiring reductions in agricultural spending;

(B) increasing the level of funds made available for the programs authorized under the Agricultural Trade Act of 1978; and

(C) permitting producers to repay price support loans for any of the 1993 through 1995 crops of wheat and feed grains at the levels provided under sections 107B(a)(4) and 105B(a)(4) of the Agricultural Act of 1949, respectively.

(2) AUTHORITY.—The Secretary is authorized to implement the measures specified in subparagraphs (A), (B), and (C) of paragraph (1). This authority shall be in addition to, and not in place of, any other authority under any other provision of law.

(3) IMPLEMENTATION.—If the Secretary determines the action is appropriate pursuant to subsection (c), the Secretary shall implement measures specified in subparagraph (A) of paragraph (1) and either or both of the measures specified in subparagraph (B) or (C) of paragraph (1).

(e) LIMITATION.—This section shall not be construed to authorize the Secretary to reduce the level of income support provided to agricultural producers in the United States.

(f) TERMINATION.—The provisions of subsections (a) and (b) shall cease to be effective if the President certifies to Congress that the failure referred to in subsection (a) to enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the GATT is a result in whole or in part of the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191), or essentially similar provisions, not applying or in effect not applying

during the period ending May 31, 1991 (or during the period June 1, 1991, through May 31, 1993, if the condition of section 1103(b)(1)(B)(i) is satisfied) to implementing bills submitted with respect to such an agreement entered into during the applicable period under section 1102(b) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902(b)).

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

Subtitle B—FHA Mortgage Insurance

Subtitle C—Auction of Federally Insured Mortgages

Subtitle D—Crime and Flood Insurance Programs

Subtitle E—Effective Date

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Subtitle A—Federal Deposit Insurance Assessments

SEC. 2001. SHORT TITLE.

This Act may be cited as the "FDIC Assessment Rate Act of 1990".

SEC. 2002. FDIC AUTHORIZED TO INCREASE ASSESSMENT RATES AS NECESSARY TO PROTECT INSURANCE FUNDS.

(a) BANK INSURANCE FUND.—Section 7(b)(1)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(C)) is amended to read as follows:

"(C) ASSESSMENT RATE FOR BANK INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Bank Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

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

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Bank Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.".

(b) SAVINGS ASSOCIATION INSURANCE FUND.—Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)) is amended to read as follows:

"(D) ASSESSMENT RATE FOR SAVINGS ASSOCIATION INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—The assessment rate for Savings Association Insurance Fund members shall be the greater of 0.15 percent or such rate as the Board of Directors, in its sole discretion, determines to be appropriate—

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

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio within a reasonable period of time.

"(ii) FACTORS TO BE CONSIDERED.—In making any determination under clause (i), the Board of Directors shall consider the Savings Association Insurance Fund's expected operating expenses, case resolution expenditures, and income, the effect of the assessment rate on members' earnings and capital, and such other factors as the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—Notwithstanding clause (i), the assessment shall not be less than $1,000 for each member in each year.

"(iv) TRANSITION RULE.—Until December 31, 1997, the assessment rate for Savings Association Insurance Fund members shall not be less than the following:

"(I) From January 1, 1990, through December 31, 1990, 0.208 percent.

"(II) From January 1, 1991, through December 31, 1993, 0.23 percent.

"(III) From January 1, 1994, through December 31, 1997, 0.18 percent.".

(c) CLERICAL AMENDMENTS REFLECTING $1,000 MINIMUM ASSESSMENT PROVISIONS OF CURRENT LAW.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)) is amended—

(1) by inserting "or subparagraph (C)(iii) or (D)(iii) of subsection (b)(1)" after "subsection (c)(2)"; and

(2) in clauses (i) and (ii), by inserting "the greater of $500 or an amount" before "equal to the product of".

SEC. 2003. FDIC AUTHORIZED TO MAKE MID-YEAR ADJUSTMENTS IN ASSESSMENT RATES.

(a) ASSESSMENT RATES.—Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended to read as follows:

"(A) ASSESSMENT RATES PRESCRIBED.—

"(i) AUTHORITY TO SET RATES.—Subject to clause (iii), the Corporation shall set assessment rates for insured depository institutions at such times as the Corporation, in its sole discretion, determines to be appropriate.

"(ii) RATE FOR EACH FUND TO BE SET INDEPENDENTLY.—The Corporation shall fix the assessment rate of Bank Insurance Fund members independently from the assessment rate for Savings Association Insurance Fund members.

"(iii) DEADLINE FOR ANNOUNCING RATE CHANGES.—The Corporation shall announce any change in assessment rates.—

"(I) for the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(II) for the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

(b) ASSESSMENT PROCEDURES.—Section 7(b)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)), as amended by section 2(c) of this Act, is amended—

(1) by striking "annual" each time it appears;

(2) in clause (i)(I), by inserting "during that semiannual period" after "member"; and

(3) in clause (ii)(I), by inserting "during that semiannual period" after "member".

(c) CONFORMING AMENDMENT ON TIMING OF ASSESSMENT CREDITS.—Section 7(d)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(d)(1)(A)) is amended to read as follows:

"(A) The Corporation shall prescribe and publish the aggregate amount to be credited to insured depository institutions—

"(i) in the semiannual period beginning on January 1 and ending on June 30, not later than the preceding November 1; and

"(ii) in the semiannual period beginning on July 1 and ending on December 31, not later than the preceding May 1.".

SEC. 2004. FDIC AUTHORIZED TO SET DESIGNATED RESERVE RATIO AS NECESSARY IN FACE OF SIGNIFICANT RISK OF SUBSTANTIAL LOSSES TO INSURANCE FUND.

Section 7(b)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(B)) is amended—

(1) by striking ", not exceeding 1.50 percent," each time it appears;

(2) in clause (iii)—

(A) by inserting "and" at the end of subclause (I);

(B) by striking subclauses (II) and (III); and
(C) by redesignating subclause (IV) as subclause (II); and
(3) in clause (iv)—
(A) by inserting "and" at the end of subclause (I);
(B) by striking subclauses (II) and (III); and
(C) by redesignating subclause (IV) as subclause (II).

SEC. 2005. FDIC AUTHORIZED TO BORROW FROM FEDERAL FINANCING BANK.

Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) in the heading, by striking "SEC. 14." and inserting:

"SEC. 14. BORROWING AUTHORITY.

"(a) BORROWING FROM TREASURY.—";

(2) in subsection (a), as designated by paragraph (1)—
(A) by striking "this section" each time it appears and inserting "this subsection", and
(B) by striking "The Corporation may employ such funds" and inserting "The Corporation may employ any funds obtained under this section"; and

(3) by adding after subsection (a), as amended by paragraph (2), the following new subsection:

"(b) BORROWING FROM FEDERAL FINANCING BANK.—The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Bank Insurance Fund or Savings Association Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.".

Subtitle B—FHA Mortgage Insurance

SEC. 2101. INCREASE IN MORTGAGE LIMIT.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by striking "150 percent (185 percent until October 31, 1990) of the dollar amount specified" and inserting the following: "185 percent of the dollar amount specified".

SEC. 2102. MORTGAGOR EQUITY.

Section 203(b)(2) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended by adding at the end the following new undesignated paragraph:

"Notwithstanding any other provision of this paragraph, a mortgage may not involve a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured. For purposes of the preceding sentence, the term 'appraised value' means

the amount set forth in the written statement required under section 226, or a similar amount determined by the Secretary if section 226 does not apply.".

SEC. 2103. MORTGAGE INSURANCE PREMIUMS.

(a) PREMIUMS.—Section 203(c) of the National Housing Act (12 U.S.C. 1709(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking the last sentence; and

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

"(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling and executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, shall be subject to the following requirements:

"(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

"(B) In addition to the premium under subparagraph (A), the Secretary shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) for the following periods:

"(i) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

"(ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).".

(b) TRANSITION PROVISIONS.—Notwithstanding section 203(c) of the National Housing Act (as amended by subsection (a)), mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 and that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) 1991 AND 1992.—For mortgages executed during fiscal years 1991 and 1992 (but after the date of the effectiveness of regulations issued under subsection (c)), the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) 1993 AND 1994.—For mortgages executed during fiscal years 1993 and 1994, the Secretary shall establish and collect the following premiums:

(A) UP-FRONT.—At the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(B) ANNUAL.—In addition to the premium under subparagraph (A), annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is—

(i) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(ii) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(iii) greater than 95 percent of such value, for the first 30 years of the mortgage term.

(3) REFUNDS.—With respect to any mortgage subject to premiums under this subsection, the Secretary shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraph (1)(A) or (2)(A) upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(c) REGULATIONS.—The Secretary shall issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90-day period beginning on the date of the enactment of this Act.

SEC. 2104. MUTUAL MORTGAGE INSURANCE FUND DISTRIBUTIONS.

Section 205 of the National Housing Act (12 U.S.C. 1711) is amended by adding at the end the following new subsection:

"(e) In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.".

SEC. 2105. ACTUARIAL SOUNDNESS OF MUTUAL MORTGAGE INSURANCE FUND.

Section 205 of the National Housing Act (12 U.S.C. 1711), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

"(f)(1) The Secretary shall ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter, subject to paragraph (2).

"(2) The Secretary shall endeavor to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0 percent within 10 years after the date of the enactment of this subsection, and shall ensure that the Fund maintains at least such capital ratio at all times thereafter.

"(3) Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary shall submit to the Congress a report describing the actions the Secretary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required under paragraph (2).

"(4) For purposes of this subsection:

"(A) The term 'capital' means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit required under section 538.

"(B) The term 'capital ratio' means the ratio of capital to unamortized insurance-in-force.

"(C) The term 'economic net worth' means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

"(D) The term 'unamortized insurance-in-force' means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

"(g) The Secretary shall provide for an independent actuarial study of the Mutual Mortgage Insurance Fund to be conducted annually and shall report annually to the Congress regarding the financial status of the Fund.

"(h)(1) If, pursuant to the independent annual actuarial study of the Mutual Mortgage Insurance Fund required under subsection (g), the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals under paragraph (2), the Secretary may not issue distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums under

section 203(c) or section 2103(b) of the Omnibus Budget Reconciliation Act of 1990. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary shall immediately notify Congress of the proposed change and the reasons for the change. Any such premium change shall not take effect before the expiration of the 90-day period beginning upon such notification.

"(2) The operational goals referred to in paragraph (1) shall be—

"(A) maintaining an adequate capital ratio;

"(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit;

"(C) minimizing the risk to the Fund and to homeowners from homeowner default; and

"(D) avoiding adverse selection.".

SEC. 2106. HOME EQUITY CONVERSION MORTGAGE INSURANCE DEMONSTRATION.

(a) TERMINATION DATE.—The first sentence of section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) NUMBER OF MORTGAGES INSURED.—Section 255(g) of the National Housing Act (12 U.S.C. 1715z-20(g)) is amended by striking the second sentence and inserting the following: "The total number of mortgages insured under this section may not exceed 25,000.".

Subtitle C—Auction of Federally Insured Mortgages

SEC. 2201. AUCTION OF MULTIFAMILY MORTGAGES.

Section 221(g)(4) of the National Housing Act (12 U.S.C. 1715l(g)(4)) is amended by adding after subparagraph (B) the following new subparagraph:

"(C)(i) In lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument under subparagraph (A) in exchange for receipt of debentures, the Secretary shall arrange for the sale of the beneficial interests in the mortgage loan through an auction and sale of the (I) mortgage loans, or (II) participation certificates, or other mortgage-backed obligations in a form acceptable to the Secretary (in this subparagraph referred to as 'participation certificates'). The Secretary shall arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. The sale price shall also include the right to a subsidy payment described in clause (iii).

"(ii)(I) The Secretary shall conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and mortgage securing the credit instrument.

"(II) A mortgagee who elects to assign a mortgage shall provide the Secretary and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instru-

ment, which shall include the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable Federal subsidies, and any other information determined by the Secretary to be appropriate. The Secretary shall also provide information regarding the status of the property with respect to the provisions of the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act with respect to eligibility to prepay the mortgage, a statement of whether the owner has filed a notice of intent to prepay or a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, and the details with respect to incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act in lieu of exercising prepayment rights.

"(III) The Secretary shall, upon receipt of the information in subclause (II), promptly advertise for an auction and publish such mortgage descriptions in advance of the auction. The Secretary may conduct the auction at any time during the 6-month period beginning upon receipt of the information in subclause (II) but under no circumstances may the Secretary conduct an auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to the Secretary.

"(IV) In any auction under this subparagraph, the Secretary shall accept the lowest interest rate bid for purchase that the Secretary determines to be acceptable. The Secretary shall cause the accepted bid to be published in the Federal Register. Settlement for the sale of the credit instrument and the mortgage securing the credit instrument shall occur not later than 30 business days after the date winning bidders are selected in the auction, unless the Secretary determines that extraordinary circumstances require an extension (not to exceed 60 days) of the period.

"(V) If no bids are received, the bids that are received are not acceptable to the Secretary, or settlement does not occur within the period under subclause (IV), the mortgagee shall retain all rights (including the right to interest, at a rate to be determined by the Secretary, for the period covering any actions taken under this subparagraph) under this section to assign the mortgage loan to the Secretary.

"(iii) As part of the auction process, the Secretary shall agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser under the auction of the original credit instrument or the mortgage securing the credit instrument (and any subsequent holders or assigns who are approved mortgagees). The subsidy payment shall be paid on the first day of each month in an amount equal to the difference between the stated interest due on the mortgage loan and the lowest interest rate necessary to accomplish a sale of the mortgage loan or participation certificates (less the servicing fee, if appropriate) for the then unpaid principal balance plus accrued interest at

a rate determined by the Secretary. Each interest subsidy payment shall be treated by the holder of the mortgage as interest paid on the mortgage. The interest subsidy payment shall be provided until the earlier of—

"(I) the maturity date of the loan;

"(II) prepayment of the mortgage loan in accordance with the Emergency Low Income Housing Preservation Act of 1987 or any subsequent Act, where applicable; or

"(III) default and full payment of insurance benefits on the mortgage loan by the Federal Housing Administration.

"(iv) The Secretary shall require that the mortgage loans or participation certificates presented for assignment are auctioned as whole loans with servicing rights released and also are auctioned with servicing rights retained by the current servicer.

"(v) To the extent practicable, the Secretary shall encourage State housing finance agencies, nonprofit organizations, and organizations representing the tenants of the property securing the mortgage, or a qualified mortgagee participating in a plan of action under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act to participate in the auction.

"(vi) The Secretary shall implement the requirements imposed by this subparagraph within 30 days from the date of enactment of this subparagraph and not be subject to the requirement of prior issuance of regulations in the Federal Register. The Secretary shall issue regulations implementing this section within 6 months of the enactment of this subparagraph.

"(vii) Nothing in this subparagraph shall diminish or impair the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, if any, or other agreements for the provision of Federal assistance to the housing or its tenants.

"(viii) This subparagraph shall not apply after September 30, 1995. Not later than January 31 of each year (beginning in 1992), the Secretary shall submit to the Congress a report including statements of the number of mortgages auctioned and sold and their value, the amount of subsidies committed to the program under this subparagraph, the ability of the Secretary to coordinate the program with the incentives provided under the Emergency Low Income Housing Preservation Act of 1987 or subsequent Act, and the costs and benefits derived from the program for the Federal Government.".

Subtitle D—Crime and Flood Insurance Programs

SEC. 2301. CRIME INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by striking "September 30, 1991" in the matter preceding paragraph (1) and inserting "September 30, 1995".

(b) CONTINUATION OF EXISTING CONTRACTS.—Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended by striking "September 30, 1992" and inserting "September 30, 1996".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb–10c note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

SEC. 2302. FLOOD INSURANCE PROGRAM.

(a) EXTENSION OF GENERAL AUTHORITY.—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(b) EXTENSION OF EMERGENCY PROGRAM.—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(c) EXTENSION OF LIMITATION ON PREMIUMS.—Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(d) EXTENSION OF EROSION PROVISIONS.—Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(e) INCLUSION OF COSTS IN PREMIUMS.—

(1) ESTIMATES OF PREMIUM RATES.—Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended—

(A) in paragraph (1)(B)(i), by striking "and" at the end;

(B) in paragraph (1)(B)(ii), by inserting "and" after the comma at the end;

(C) in paragraph (1)(B), by inserting at the end the following new clause:

"(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes,"; and

(D) in paragraph (2), by inserting after "title" the following: ", and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premi-

um taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360)".

(2) ESTABLISHMENT OF CHARGEABLE PREMIUM RATES.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended—

(A) in subsection (b)—

(i) by striking "and" at the end of paragraph (2);

(ii) by redesignating paragraph (3) as paragraph (4); and

(iii) by inserting after paragraph (2), the following new paragraph:

"(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), and"; and

(B) by striking subsection (d) and inserting the following new subsection:

"(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Director. The Director shall deposit the sum in the National Flood Insurance Fund established under section 1310.".

(3) NATIONAL FLOOD INSURANCE FUND.—Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended to read as follows:

"(4) to the extent approved in appropriations Acts, to pay any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360); and".

(4) ADMINISTRATIVE EXPENSES.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended by striking "program" and all that follows and inserting the following: "and floodplain management programs authorized under this title may be paid with amounts from the National Flood Insurance Fund (as provided under section 1310(a)(4)), subject to approval in appropriations Acts.".

(5) EXCEPTION TO LIMITATION ON PREMIUM INCREASES.—Notwithstanding section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015 note) (as amended by this section), the premium rates charged for flood insurance under any program established pursuant to the National Flood Insurance Act of 1968 may be increased by more than 10 percent during fiscal year 1991, except that any increase in such rates not resulting from the inclusion in chargeable premium rates of administrative expenses of the flood insurance and floodplain management programs (pursuant to the amendments made by this subsection) may not exceed 10 percent.

Subtitle E—Effective Date

SEC. 2401. EFFECTIVE DATE.

If the Cranston-Gonzalez National Affordable Housing Act is enacted before the enactment of this Act, the provisions of subtitles B and C (of this title) and the amendments made by such subtitles shall not take effect. This section shall apply notwithstanding any provision relating to effective date or applicability contained in subtitle B or C.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

Subtitle A—Student Loan Program Savings

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "Student Loan Default Prevention Initiative Act of 1990".

SEC. 3002. SUPPLEMENTAL PRECLAIMS ASSISTANCE PAYMENTS.

(a) ELIMINATION OF SUPPLEMENTAL PRECLAIMS ASSISTANCE REIMBURSEMENTS.—Section 428(c) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)) is amended—

(1) in the first sentence of paragraph (1)(A), by striking ", including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C)";

(2) in paragraph (6)(C)(i), by striking "this paragraph" and inserting "subsection (l)";

(3) in paragraph (6)(C)(i)(I), by striking "required or permitted under paragraph (2)(A) of this subsection and subsection (f)" and inserting "generally comparable in intensiveness to the level of preclaims assistance performed, prior to the 120th day of delinquency, by the guaranty agency as of October 16, 1990";

(4) in paragraph (6)(C)(ii)—

(A) by striking "reimbursement" and inserting "payment under subsection (l)"; and

(B) by striking "which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f)" and inserting "described in division (i)(I) of this subparagraph"; and

(5) by striking the first sentence of paragraph (6)(C)(iv).

(b) FIXED PAYMENTS FOR PRECLAIMS ASSISTANCE.—Section 428 of such Act is further amended by adding at the end thereof the following new subsection:

"(l) PRECLAIMS ASSISTANCE AND SUPPLEMENTAL PRECLAIMS ASSISTANCE.—

"(1) ASSISTANCE REQUIRED.—Upon receipt of a proper request from the lender, a guaranty agency having an agreement with the Secretary under subsection (c) of this section shall engage in preclaims assistance activities (as described in subsection (c)(6)(C)(i)(I)) and supplemental preclaims assistance activities

(as described in subsection (c)(6)(C)) with respect to each loan covered by such agreement.

"(2) PAYMENTS FOR SUPPLEMENTAL PRECLAIMS ASSISTANCE.—The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency that engages in supplemental preclaims assistance (as defined in subsection (c)(6)(C)) on a loan guaranteed under this part. Such payments shall be equal to $50.00 for each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent.".

SEC. 3003. INITIAL DISBURSEMENT AND ENDORSEMENT REQUIREMENTS.

(a) AMENDMENT.—Section 428G(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078-7(b)(1)) is amended to read as follows:

"(1) FIRST YEAR STUDENTS.—The first installment of the proceeds of any loan made, insured, or guaranteed under this part that is made to a student borrower who is entering the first year of a program of undergraduate education, and who has not previously obtained a loan under this part, shall not (regardless of the amount of such loan or the duration of the period of enrollment) be presented by the institution to the student for endorsement until 30 days after the borrower begins a course of study, but may be delivered to the eligible institution prior to the end of that 30-day period.".

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective for loans made on or after the date of enactment of this Act to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3004. INELIGIBILITY BASED ON HIGH DEFAULT RATES.

(a) IN GENERAL.—Section 435(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)) is amended by adding at the end thereof the following new paragraph:

"(3) INELIGIBILITY BASED ON HIGH DEFAULT RATES.—(A) An institution whose cohort default rate is equal to or greater than the threshold percentage specified in subparagraph (B) for each of the three most recent fiscal years for which data are available shall not be eligible to participate in a program under this part for the fiscal year for which the determination is made and for the two succeeding fiscal years, unless, within 30 days of receiving notification from the Secretary of the loss of eligibility under this paragraph, the institution appeals the loss of its eligibility to the Secretary. The Secretary shall issue a decision on any such appeal within 45 days after its submission. Such decision may permit the institution to continue to participate in a program under this part if—

"(i) the institution demonstrates to the satisfaction of the Secretary that the Secretary's calculation of its cohort default rate is not accurate, and that recalculation would reduce its cohort default rate for any of the three fiscal years below the threshold percentage specified in subparagraph (B); or

"(ii) there are, in the judgment of the Secretary, exceptional mitigating circumstances that would make the application of this paragraph inequitable.

During such appeal, the Secretary may permit the institution to continue to participate in a program under this part.

"(B) For purposes of determinations under subparagraph (A), the threshold percentage is—

"(i) 35 percent for fiscal years 1991 and 1992; and

"(ii) 30 percent for any succeeding fiscal year.

"(C) Until July 1, 1994, this paragraph shall not apply to any institution that is—

"(i) a part B institution within the meaning of section 322(2) of this Act;

"(ii) a tribally controlled community college within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978; or

"(iii) a Navajo Community College under the Navajo Community College Act.".

(b) REFUSAL TO PROVIDE STATEMENT TO LENDER.—Section 428(a)(2)(F) of such Act (20 U.S.C. 1078(a)(2)(F)) is amended by inserting before the period at the end thereof the following: ", except that, in individual cases where the institution determines that the portion of the student's expenses to be covered by the loan can be met more appropriately, either by the institution or directly by the student, from other sources, the institution may refuse to provide such statement or may reduce the determination of need contained in such statement".

(c) EXTENSION OF DEFAULT RATE LIMITATIONS ON SLS LOANS.—Section 2003(a)(3) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(1) by inserting "paragraph (1) of" after "amendments made by"; and

(2) by striking out "October 1, 1991" and inserting "October 1, 1996".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective July 1, 1991, except that the amendment made by subsection (b) shall be effective upon enactment.

SEC. 3005. ABILITY TO BENEFIT.

(a) IN GENERAL.—Section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)) is amended to read as follows:

"(d) ABILITY TO BENEFIT.—In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under this title, the student shall, prior to enrollment, pass an independently administered examination approved by the Secretary.".

(b) CONFORMING AMENDMENT.—Section 481(b) of the Higher Education Act of 1965 (20 U.S.C. 1088(b)) is amended in the fourth sentence by inserting ", except in accordance with section 484(d) of this Act," after "shall not".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any grant, loan, or work assistance to cover the cost of instruction for periods of enrollment beginning on or after January 1, 1991.

SEC. 3006. MAXIMUM SLS LOAN AMOUNTS.

(a) EFFECTIVE DATE EXTENSION.—Section 2003(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "1991" and inserting "1996".

(b) PERIOD FOR DETERMINATION OF MAXIMUM LOAN AMOUNTS.—Section 428A(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1078–1(b)) is amended by striking "9 consecutive" and inserting "7 consecutive".

SEC. 3007. AMENDMENTS TO BANKRUPTCY LAWS.

(a) AUTOMATIC STAY AND PROPERTY OF THE ESTATE.—(1) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (12), by striking "or" at the end thereof;

(B) in paragraph (13), by striking the period at the end thereof and inserting a semicolon; and

(C) by inserting immediately following paragraph (13) the following new paragraphs:

"(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

"(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution; or

"(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.".

(2) Section 541(b) of title 11, United States Code, is amended—

(A) in paragraph (1), by striking "or" at the end thereof;

(B) in paragraph (2), by striking the period at the end thereof and inserting a semicolon and "or"; and

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

"(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution.".

(3) The amendments made by this subsection shall be effective upon date of enactment of this Act.

(b) TREATMENT OF CERTAIN EDUCATION LOANS IN BANKRUPTCY PROCEEDINGS.—(1) Section 1328(a)(2) of title 11, United States Code, is amended by striking "section 523(a)(5)" and inserting "paragraph (5) or (8) of section 523(a)".

(2) The amendment made by paragraph (1) shall not apply to any case under the provisions of title 11, United States Code, commenced before the date of the enactment of this Act.

SEC. 3008. SUNSET PROVISION.

The amendments made by this subtitle shall cease be effective on October 1, 1996.

Subtitle B—Labor Related Penalties

SEC. 3101. OCCUPATIONAL SAFETY AND HEALTH.

Section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) is amended—

(1) in subsection (a), by striking "$10,000 for each violation" and inserting "$70,000 for each violation, but not less than $5,000 for each willful violation; and

(2) in subsections (b), (c), (d), and (i), by striking "$1,000" and inserting "$7,000".

SEC. 3102. MINE SAFETY AND HEALTH.

Section 110 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 820) is amended—

(1) in subsection (a), by striking "$10,000" and inserting "$50,000"; and

(2) in subsection (b), by striking "1,000" and inserting "$5,000", and

SEC. 3103. FAIR LABOR STANDARDS.

Section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

(1) in the first sentence—

(A) by striking "or any person who repeatedly or willfully violates section 6 or 7"; and

(B) by striking "not to exceed $1,000 for each such violation" and inserting "not to exceed $10,000 for each employee who was the subject of such a violation";

(2) by inserting after the first sentence the following: "Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.",

(3) by striking "such penalty" each place the term appears except after "appropriateness of" and inserting "any penalty under this subsection", and

(4) in the last sentence, by striking "Sums" and inserting "Except for civil penalties collected for violations of section 12, sums"; and

(5) by inserting at the end the following new sentence: "Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.".

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

Subtitle A—Medicare

SEC. 4000. REFERENCES IN SUBTITLE; TABLE OF CONTENTS.

(a) AMENDMENTS TO THE SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

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

PART 1—PROVISIONS RELATING TO PART A

SEC. 4001. PAYMENTS FOR CAPITAL-RELATED COSTS OF INPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR FISCAL YEAR 1991.—Section 1886(g)(3)(A)(v) (42 U.S.C. 1395ww(g)(3)(A)(v)) is amended by striking "September 30, 1990" and inserting "September 30, 1991".

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT FOR CAPITAL-RELATED COSTS.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)) is amended by adding at the end the following: "Aggregate payments made under subsection (d) and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1861(v)).".

(c) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1886(g)(3)(B) is amended by striking "subsection (d)(5)(D)(iii))." and inserting "subsection (d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

SEC. 4002. PROSPECTIVE PAYMENT HOSPITALS.

(a) CHANGES IN UPDATE FACTORS.—

(1) IN GENERAL.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(A) by striking "and" at the end of subclause (V);

(B) in subclause (VI)—

(i) by striking "1991" and inserting "1994", and

(ii) by redesignating such subclause as subclause (IX); and

(C) by inserting after subclause (V) the following new subclauses:

"(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

"(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in all areas,

"(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in all areas, and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to payments for discharges occurring on or after January 1, 1991.

(b) CHANGES IN DISPROPORTIONATE SHARE PAYMENTS.—

(1) INCREASE FOR URBAN HOSPITALS WITH MORE THAN 100 BEDS.—Section 1886(d)(5)(F)(vii) (42 U.S.C. 1395ww(d)(5)(F)(vii)) is amended—

(A) in subclause (I), by striking "greater than 20.2," and all that follows and inserting the following: "greater than 20.2—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P–20.2)(.65) + 5.62,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P–20.2)(.7) + 5.62,

"(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, (P–20.2)(.8) + 5.88, and

"(d) for discharges occurring on or after October 1, 1994, (P–20.2)(.825) + 5.88; or"; and

(B) in subclause (II), by striking "hospital, (P–15)(.6) + 2.5," and inserting the following: "hospital—

"(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, (P–15)(.6) + 2.5,

"(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, (P–15)(.6) + 2.5,

"(c) for discharges occurring on or after October 1, 1993, (P–15)(.65) + 2.5,".

(2) INCREASE FOR HOSPITALS WITH DISPROPORTIONATE INDIGENT CARE REVENUES.—Section 1886(d)(5)(F)(iii) (42 U.S.C. 1395ww(d)(5)(F)(iii)) is amended by striking "30 percent" and inserting "35 percent".

(3) REPEAL OF SUNSET.—

(A) IN GENERAL.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by striking "and before October 1, 1995," each place it appears in paragraph (2)(C)(iv) and paragraph (5)(F)(i).

(B) CONFORMING AMENDMENTS.—(A) Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)) is amended to read as follows:

"(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after May 1, 1986, is equal to 1.89 × (((1 + r) to the nth power) − 1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405.".

(B) Section 1886(d)(3)(C)(ii) (42 U.S.C. 1395ww(d)(3)(C)(ii)) is amended by striking "occurring—" and all that follows and inserting the following: "occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Rec-

onciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.".

(4) NO RESTANDARDIZING FOR RECENT ADJUSTMENTS.—

(A) ADJUSTMENTS UNDER OBRA 1989.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)) is amended by striking the period at the end and inserting the following: ", except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.".

(B) ADJUSTMENTS UNDER OBRA 1990.—Section 1886(d)(2)(C)(iv), as amended by subparagraph (A), is further amended by striking "1989." and inserting "1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.".

(5) EFFECTIVE DATE.—The amendments made by paragraphs (1), (3), and (4)(B) shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(c) PAYMENTS TO RURAL HOSPITALS.—

(1) PHASE-OUT OF SEPARATE AVERAGE STANDARDIZED AMOUNTS.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)), as amended by subsection (a)(1), is further amended—

(A) in subclause (VI), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area,";

(B) in subclause (VII), by striking "in all areas," and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,";

(C) in subclause (VIII), by striking "in all areas, and" and inserting "in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,";

(D) in subclause (IX)—

(i) by striking "1994" and inserting "1996", and

(ii) by redesignating such subclause as subclause (XI); and

(E) by inserting after subclause (VIII) the following new subclauses:

"(IX) for fiscal year 1994, the market basket percentage increase for hospitals located in a large urban or other urban area, and the market basket percentage increase plus 1.5 percentage points for hospitals located in a rural area,

"(X) for fiscal year 1995, the market basket percentage increase for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area), and".

(2) CONFORMING AMENDMENTS.—(A) Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)) is amended—

(i) in clause (ii), by striking "(A) and (E)," and inserting "(A), (C), (D), and (E),";

(ii) in subparagraphs (C)(ii) and (D)(ii), by striking "(B)(i)" each place it appears and inserting "(B)(ii)".

(B) Section 1886(d) (42 U.S.C. 1395ww(d)) is amended—

(i) in paragraph (1)(A)(iii), by striking "rural, large urban, or other urban area" and inserting "large urban or other area";

(ii) in paragraph (3)(A)—

(I) in clause (ii), by striking "the Secretary" and inserting "and ending on or before September 30, 1994, the Secretary",

(II) by redesignating clause (iii) as clause (v), and

(III) by inserting after clause (ii) the following new clauses:

"(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an other urban area.

"(iv) For discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) with respect to hospitals located in the respective areas for the fiscal year involved.";

(iii) in paragraph (3)(B), by striking "for hospitals located in an urban area" and all that follows and inserting the following: "by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).";

(iv) in paragraph (3)(D)(i)—

(I) in the matter preceding subclause (I), by striking "an urban area (or," and all that follows through "area)," and inserting "a large urban area", and

(II) in subclause (I), by striking "an urban area" and inserting "a large urban area";

(v) in paragraph (3)(D)(ii), by striking "a rural area" each place it appears and inserting "other areas"; and

(vi) in paragraph (8)(D)—

(I) in the first sentence, by striking "for hospitals located in an urban area", and

(II) by striking the second sentence.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) and paragraph (2)(A) shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) shall take effect October 1, 1994.

(d) AREA WAGE INDEX.—

(1) DETERMINATION OF AREA WAGE INDEX.—(A) For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

(2) STUDY OF AREA WAGE INDEX ADJUSTMENTS BASED ON PROFESSIONAL OCCUPATIONAL COMPONENT.—

(A) STUDY.—The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3)(E) of the Social Security Act.

(B) REPORT TO CONGRESS.—In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

(e) EXTENSION OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS.—

(1) IN GENERAL.—Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended by striking "beginning on or after" and all that follows through "1990" and inserting "beginning on or after April 1, 1988, and ending on September 30, 1993,".

(2) STUDY.—(A) The Secretary of Health and Human Services shall collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under section 1886(d)(3) of the Social Security Act to identify the extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices.

(B) Not later than June 1, 1993, the Secretary shall submit a report to Congress analyzing such data, and shall include in such report recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

(C) The provisions of chapter 35 of title 44, United States Code, shall not apply to data collected by the Secretary under subparagraph (A).

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1990.

(f) ELIMINATION OF HOSPITAL OFF-SET FOR SERVICES OF PHYSICIAN ASSISTANTS.—

(1) IN GENERAL.—Section 9338 of the Omnibus Budget Reconciliation Act of 1986 is amended by striking subsection (d).

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986.

(g) RESPONSIBILITIES AND REPORTING REQUIREMENTS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

(1) EXPANSION OF RESPONSIBILITIES.—Section 1886(e)(2) (42 U.S.C. 1395ww(e)(2)) is amended—

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

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

"(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this title, including recommendations relating to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospital discharges under subsection (d), adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this title.

"(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to—

"(i) trends in health care costs;

"(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this title on such condition;

"(iii) trends in the use of health care services; and

"(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.".

(2) REPORTING REQUIREMENTS FOR COMMISSION AND SECRETARY; ELIMINATION OF OTA REPORTING REQUIREMENTS.—Section 1886 (42 U.S.C. 1395ww) is amended—

(A) by striking subparagraph (D) of subsection (d)(4);

(B) in the second sentence of subsection (e)(2)(A), as amended by paragraph (1)(A), by striking "In addition"

and all that follows through "the Commission" and inserting "The Commission";

(C) in subsection (e)(3)(A)—

(i) by striking "the Secretary" and inserting "Congress", and

(ii) by striking the period at the end and inserting the following: ", together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.";

(D) in subsection (e)(4)—

(i) by striking "(4)" and inserting "(4)(A)", and

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

"(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates.";

(E) in subsection (e)(5)—

(i) by striking "recommendation" each place it appears and inserting "recommendations", and

(ii) by adding at the end the following new sentence: "To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations."; and

(F) in subsection (e)(6)(G)—

(i) by striking clause (i), and

(ii) by redesignating clauses (ii) and (iii) as clauses (i) and (ii).

(3) CONFORMING AMENDMENT.—Section 1845(c)(1)(D) (42 U.S.C. 1395w-1(c)(1)(D)) is amended by striking "reports and".

(4) PROPAC STUDY OF MEDICAID PAYMENTS TO HOSPITALS.—

(A) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large numbers of individuals eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) REPORT.—By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for

payments to hospitals under title XIX of such Act as the Commission deems appropriate.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(h) PROVISIONS RELATING TO GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

(1) PAYMENTS TO RECLASSIFIED HOSPITALS.—

(A) IN GENERAL.—Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended—

(i) in clause (i), in the matter preceding subclause (I), by striking "area—" and inserting "area, or by treating hospitals located in one urban area as being located in another urban area—";

(ii) by amending clause (i)(II) to read as follows:

"(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).";

(iii) by striking clause (ii); and

(iv) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii).

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to discharges occurring on or after January 1, 1991.

(2) GEOGRAPHIC CLASSIFICATION REVIEW BOARD.—

(A) DEADLINE FOR SUBMISSION OF APPLICATIONS.—For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.

(B) TECHNICAL CORRECTIONS.—Section 1886(d)(10) (42 U.S.C. 1395ww(d)(10)) is amended—

(i) in subparagraph (A), by striking "Geographical" and inserting "Geographic";

(ii) in subparagraph (B)(i)—

(I) by striking "representatives" and inserting "representative", and

(II) by striking "1 member shall be a member of the Prospective Payment Assessment Commission, and at least";

(iii) in subparagraph (B)(ii), by striking "all" and inserting "initial"; and

(iv) in subparagraph (10)(C)(iii)(II)—

(I) by striking the first 2 sentences and inserting the following: "Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5, United States Code.", and

(II) by striking "after" and inserting "after the date on which".

SEC. 4003. EXPANSION OF DRG PAYMENT WINDOW.

(a) IN GENERAL.—The first sentence of section 1886(a)(4) (42 U.S.C. 1395ww(a)(4)) is amended by striking the period and inserting the following: ", and includes the costs of all services for which payment may be made under this title that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act and before October 1, 1991;

(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

(3) in the case of any other services, to services furnished on or after October 1, 1991.

(c) ISSUANCE OF INTERIM FINAL REGULATION.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section.

SEC. 4004. PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4005. PPS-EXEMPT HOSPITALS.

(a) ADJUSTMENT TO PAYMENT AMOUNTS.—

(1) IN GENERAL.—Section 1886(b)(1)(B) (42 U.S.C. 1395ww(b)(1)(B)) is amended by striking "(ii) in the case of" and

all that follows through the semicolon and inserting the following: "(ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1991.

(b) DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) APPEALS OF TARGET AMOUNTS.—

(1) DEADLINES FOR REVIEW AND DECISION.—(A) Section 1816(f) (42 U.S.C. 1395h(f)) is amended—

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

(ii) by striking "(f)" and inserting "(f)(1)"; and

(iii) by striking "Such standards and criteria" and all that follows and inserting the following:

"(2) The standards and criteria established under paragraph (1) shall include—

"(A) with respect to claims for services furnished under this part by any provider of services other than a hospital—

"(i) whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days, and

"(ii) the extent to which such agency or organization's determinations are reversed on appeal; and

"(B) with respect to applications for an exemption from or exception or adjustment to the target amount applicable under section 1886(b) to a hospital that is not a subsection (d) hospital (as defined in section 1886(d)(1)(B))—

(i) if such agency or organization receives a completed application, whether such agency or organization is able to process such application not later than 75 days after the application is filed, and

"(ii) if such agency or organization receives an incomplete application, whether such agency or organization is able to return the application with instructions on how to complete the application not later than 60 days after the application is filed.".

(B) Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended by adding at the end the following new sentence: "The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.".

(2) STANDARDS FOR ASSIGNMENT OF NEW BASE PERIOD.—Section 1886(b)(4) (42 U.S.C. 1395ww(b)(4)) is amended—

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

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

"(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

"(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

"(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.".

(3) GUIDANCE TO INTERMEDIARIES AND HOSPITALS.—The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.

(4) EFFECTIVE DATES.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act, and the amendments made by paragraph (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4006. HOSPICE BENEFIT EXTENSION.

(a) IN GENERAL.—Section 1812 (42 U.S.C. 1395d) is amended—

(1) in subsection (a)(4), by striking "90 days each" and all that follows through "with respect to" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to"; and

(2) in subsection (d)—

(A) in paragraph (1), by striking "90 days each" and all that follows through "lifetime" and inserting the following: "90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime", and

(B) in paragraph (2)(B), by striking "a 90- or 30-day period," and inserting "a 90- or 30-day period or a subsequent extension period,".

(b) CONFORMING AMENDMENT.—Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the semicolon at the end and inserting ", and"; and

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

"(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to care and services furnished on or after January 1, 1990.

SEC. 4007. FREEZE IN PAYMENTS UNDER PART A THROUGH DECEMBER 31.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act (including payments under section 1886 of such Act attributable to or allocated under such part) during the period described in subsection (b):

(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act shall be deemed to be 0.

(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.

SEC. 4008. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART A.

(a) WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES AND HOSPICES.—

(1) SKILLED NURSING FACILITIES.—The second sentence of section 9126(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "October 31, 1990" and inserting "December 31, 1995".

(2) HOSPICES.—Section 9305(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect on the date of the enactment of this Act.

(b) HOSPITAL OBLIGATIONS WITH RESPECT TO TREATMENT OF EMERGENCY MEDICAL CONDITIONS.—

(1) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by striking "knowingly" and inserting "negligently".

(2) APPLICATION OF PENALTIES TO SMALL HOSPITALS.—Section 1867(d)(2)(A) (42 U.S.C. 1395dd(d)(2)(A)) is amended by inserting "(or not more than $25,000 in the case of a hospital with less than 100 beds)" after "$50,000".

(3) TERMINATION OF HOSPITAL PROVIDER AGREEMENTS.—

(A) Section 1867 (42 U.S.C. 1395dd) is further amended—

(i) by striking paragraph (1) of subsection (d),

(ii) by redesignating paragraphs (2) and (3) of subsection (d) as paragraph (1) and (2), respectively, and

(iii) in subsection (c)(2)(C), by striking "(d)(2)(C)" and inserting "(d)(1)(C)".

(B) Section 1866(a)(1)(I)(i) (42 U.S.C. 1395cc(a)(1)(I)(i)) is amended by inserting "and to meet the requirements of such section" before the comma at the end.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(c) INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS.—

(1) STUDY.—The Secretary of Health and Human Services (acting through the Inspector General of the Department of Health and Human Services) shall conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and shall include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act relating to the examination and treatment of individuals with an emergency medical condition and women in labor.

(2) REPORT.—By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

(d) DESIGNATION OF RURAL PRIMARY CARE HOSPITALS.—

(1) PRIORITY DESIGNATIONS OF BORDER STATE HOSPITALS.—Section 1820(i)(2)(C) (42 U.S.C. 1395i-4(i)(2)(C)) is amended by adding at the end the following new sentence: "In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) with a rural health network located in a State receiving a grant under subsection (a)(1).".

(2) ELIGIBILITY OF CERTAIN CLOSED HOSPITALS.—Section 1820(f)(1)(B) (42 U.S.C. 1395i-4(f)(1)(B)) is amended by striking "is a hospital," and inserting the following: "is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),".

(3) ELIGIBILITY OF URBAN HOSPITALS.—Section 1820(f)(1)(A) (42 U.S.C. 1395i-4(f)(1)(A)) is amended by striking the semicolon and inserting the following: ", or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas;".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) shall take effect on the date of the enactment of this Act.

(e) SKILLED NURSING FACILITY ROUTINE COST LIMITS.—

(1) IN GENERAL.—Section 6024 of the Omnibus Budget Reconciliation Act of 1989 is amended by adding at the end the following new sentence: "The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled

nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.".

(2) 2-YEAR UPDATES REQUIRED.—Section 1888(a) (42 U.S.C. 1395yy(a)) is amended in the matter following paragraph (4) by striking the period and inserting the following: ", and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(f) CLARIFICATION OF EXTENSION OF WAIVER FOR FINGER LAKES AREA HOSPITAL CORPORATION.—

(1) IN GENERAL.—The second sentence of section 1886(c)(4) (42 U.S.C. 1395ww(c)(4)) is amended by striking "rate of increase from" and inserting "payments under the State system as compared to aggregate payments which would have been made under the national system since".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(g) ENROLLMENT IN PART A FOR HMO MEMBERS.—

(1) IN GENERAL.—Section 1818(c) (42 U.S.C. 1395i-2(c)) is amended—

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

(B) by striking the period at the end of paragraph (6) and inserting a semicolon, and

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

"(7) an individual who meets the conditions of subsection (a) may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1876 with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

"(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

"(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1876 with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

"(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

"(9) in applying the provisions of section 1839(b), there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1876 with an eligible organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on February 1, 1991.

(h) NURSING HOME REFORM.—

(1) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(A) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(B) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1819(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A skilled nursing facility" and inserting "(i) Except as provided in clause (ii), a skilled nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(C) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1819(b)(5)(C) (42 U.S.C. 1395i-3(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(D) RETRAINING OF NURSE AIDES.—Section 1819(b)(5)(D) (42 U.S.C. 1395i-3(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(E) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1819(f)(2)(A)(iv) (42 U.S.C. 1395i-3(f)(2)(A)(iv)) is amended—

(i) in subclause (I), by striking "and" at the end;

(ii) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(iii) in subclause (II), by striking the period at the end and inserting ", and"; and

(iv) by adding at the end the following new subclause:

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has re-

ceived an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis during the period in which the nurse aide is so employed.".

(F) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(i) IN GENERAL.—Section 1819(f)(2)(B)(iii)(I) (42 U.S.C. 1395i–3(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a skilled nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II);

"(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) or section 1919(g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) or section 1919(h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in clauses (i) or (iii) of subsection (h)(2)(B), subsection (h)(4), section 1919(h)(1)(B)(i), or in clauses (i), (iii), or (iv) of section 1919(h)(2)(A), or".

(ii) EFFECTIVE DATE.—The amendments made by clause (i) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(I) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(II) was subject to a denial of payment under either such title;

(III) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(IV) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(V) pursuant to State action, was closed or had its residents transferred.

(G) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1819(f)(2)(B) (42 U.S.C. 1395i–3(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

(H) EFFECTIVE DATE.—Except as provided in subparagraph (F), the amendments made by this subsection shall

take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(2) OTHER AMENDMENTS.—

(A) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—(i) Section 1861(v)(1)(E) (42 U.S.C. 1395x(v)(1)(E)) is amended in the second sentence by striking "the costs of such facilities" and inserting "the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) of such facilities".

(ii) Section 1888(d)(1) (42 U.S.C. 1395xx(d)(1)) is amended in the first sentence by striking "(and capital-related costs)" and inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title) and capital-related costs".

(B) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1819(b)(1)(B) (42 U.S.C. 1395i-3(b)(1)(B)) is amended by adding at the end the following new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(C) PERIOD FOR RESIDENT ASSESSMENT.—Section 1819(b)(3)(C)(i)(I) (42 U.S.C. 1395i-3(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not later than 14 days".

(D) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1819(b)(4)(A) (42 U.S.C. 1395i-3(b)(4)(A)) is amended—

(i) by striking "and" at the end of clause (v),

(ii) by striking the period at the end of clause (vi) and inserting "; and", and

(iii) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(E) NOTIFICATION OF SECRETARIAL WAIVER.—Section 1819(b)(4)(C)(ii) (42 U.S.C. 1395i-3(b)(4)(C)(ii)) is amended—

(i) by striking "and" at the end of subclause (II);

(ii) by striking the period at the end of subclause (III) and inserting a comma; and

(iii) by adding at the end the following new subclauses:

"(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the facility that is granted such a waiver notifies residents of the facility (or, where appro-

priate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(F) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1819(b)(5)(F)(i) (42 U.S.C. 1395i–3(b)(5)(F)(i)) is amended by striking "(G)," and inserting "(G)) or a registered dietician,".

(G) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS FOR NON-MEDICAL REASONS.—Section 1819(c)(1)(A) (42 U.S.C. 1395i–3(c)(1)(A)) is amended—

(i) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this title) to a portion of the facility that is not such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this title or to medical assistance under title XIX of this Act.".

(H) RESIDENT ACCESS TO CLINICAL RECORDS.—Section 1819(c)(1)(A)(iv) (42 U.S.C. 1395i–3(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(I) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1819(c)(1)(B)(ii) (42 U.S.C. 1395i–3(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under section 1919(e)(6)" after "in such rights)".

(J) SPECIFICATION OF REQUIRED PROGRAMS.—Section 1819(e)(1)(A) (42 U.S.C. 1395i–3(e)(1)(A)) is amended by striking "clause (i) or (ii) of subsection (f)(2)(A)" and inserting "subsection (f)(2)".

(K) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1819(e)(2) (42 U.S.C. 1395i–3(e)(2)) is amended—

(i) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

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

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(L) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1819(g)(1)(C) (42 U.S.C. 1395i–3(g)(1)(C)) is amended by

adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(M) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1819(g)(5)(A)(i) (42 U.S.C. 1395i–3(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(N) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1819(g)(5)(B) (42 U.S.C. 1395i–3(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h), with respect".

(O) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(P) EFFECTIVE DATES.—The amendments made by this paragraph shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(i) CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY.—

(1) RURAL HOSPITAL DEMONSTRATION.—The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) NURSING HOME DEMONSTRATIONS.—Section 6901(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by striking "Wisconsin" and inserting "Wisconsin and nursing home case-mix demonstration projects in other States"; and

(B) by striking the second sentence.

(3) STATE WAIVER AUTHORITY.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended—

(A) in paragraph (3)(B), by striking "October 1, 1983" and inserting "January 1, 1981";

(B) in the second sentence, by striking "seventh month" and inserting "37th month"; and

(C) by adding at the end the following: "If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B)

of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.".

(4) EFFECTIVE DATE.—The amendment made by paragraphs (1) and (2) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(j) DETERMINATION OF REASONABLE COSTS RELATING TO SWING BEDS.—

(1) IN GENERAL.—Section 1883(a)(2)(B) (ii)(II) (42 U.S.C. 1395tt(a)(2)(B)(ii)(II)) is amended by striking "the previous calendar year" and all that follows through the period and inserting "the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1888 for subsequent cost reporting periods and up to and including such calendar year) under this title to freestanding skilled nursing facilities in the region (as defined in section 1886(d)(2)(D)) in which the facility is located.".

(2) HOLD HARMLESS.—If, as a result of the amendment made by paragraph (1), the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.

(3) SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987.—Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Serv-

ices and a hospital located in an urban area shall remain in effect.

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to services furnished on or after October 1, 1990.

(k) PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(l) REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

(m) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) APPLICATION OF PREENTITLEMENT PSYCHIATRIC HOSPITAL SERVICES TO LIMIT ON INPATIENT HOSPITAL SERVICES.—Effective as if included in the enactment of the Medicare Catastrophic Coverage Repeal Act of 1989, section 101(b)(1)(B) is amended by inserting "(other than the limitation under section 1812(c) of such Act)" after "limitation".

(2) PROVISIONS RELATING TO HOSPITALS.—

(A) Section 1886(d)(5)(D)(iii) (42 U.S.C. 1395ww(d)(5)(D)(iii)), as amended by section 6003(e)(1)(A)(iv) of Omnibus Budget Reconciliation Act of 1989 (in this subsection referred to as "OBRA-1989"), is amended by striking "The term" and inserting "For purposes of this title, the term".

(B) Section 1820 of such Act (42 U.S.C. 1395i–4), as added by section 6003(g)(1)(A) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subsection (d)(1), by striking "demonstration";

(ii) in subsection (g)(1)(A)(ii), by striking "rural referral center" and inserting "regional referral center"; and

(iii) in subsection (j), by inserting "and part C" after "this part".

(C) Section 6003(g)(3)(C)(vii)(I) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "each place it appears".

(D) Section 1835(c) of the Social Security Act (42 U.S.C. 1395n(c)) is amended—

(i) in the first sentence, by striking "a hospital" and inserting "a hospital or a rural primary care hospital";

(ii) in the second sentence, by striking "1833(a)(2)" and inserting "1833(a)(2) (or, in the case of a rural primary care hospital, in accordance with section 1833(a)(6))"; and

(iii) by striking the third sentence.

(3) TECHNICAL CORRECTIONS RELATING TO OTHER PROVIDERS OF SERVICES.—

(A) Section 1814(i)(1)(C)(i) (42 U.S.C. 1395f(i)(1)(C)(i)), as amended by section 6005(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking "during fiscal year 1990" and inserting "on or after January 1, 1990, and on or before September 30, 1990,".

(B) Section 6005(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "subsection (a)" and inserting "subsections (a) and (b)".

(C) Section 1818A(d)(1) (42 U.S.C. 1395i-2a(d)(1)), as inserted by section 6012(a)(2) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(i) in subparagraph (A), by inserting "for enrollment under this section" after "Premiums", and

(ii) by striking subparagraph (C).

(D) Section 1818(g)(2)(B) (42 U.S.C. 1395i-2(g)(2)(B)), as added by section 6013(a) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (c)" and inserting "subsection (c)(6)".

(F) Section 1819(f)(2)(A)(ii) (42 U.S.C. 1395i-3(f)(2)(A)(ii)) is amended by striking "and" at the end.

(G) Section 1866(a)(1)(F) (42 U.S.C. 1395cc(a)(1)(F) is amended—

(i) in clause (i), by striking the comma at the end and inserting "),", and

(ii) in clause (ii), by striking "(4)(A)" and inserting "(3)(A)" and by striking the semicolon at the end and inserting a comma.

PART 2—PROVISIONS RELATING TO PART B

Subpart A—Payment for Physicians' Services

SEC. 4101. CERTAIN OVERVALUED PROCEDURES.

(a) PREVIOUSLY IDENTIFIED PROCEDURES.—Section 1842(b)(14) (42 U.S.C. 1395u(b)(14)) is amended—

(1) by inserting "(i)" after "(14)(A)"; and

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

"(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.".

(b) UNSURVEYED SURGICAL AND TECHNICAL PROCEDURES.—(1) Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:

"(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall

be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

"(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

"(ii) Primary care services specified in subsection (i)(4), hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

"(iii) Partial, simple and subcutaneous mastectomy; tendon sheath injections; small joint arthrocentesis; femoral fracture treatments; trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; lobectomy; aneurysm repair; enterectomy; colectomy; cholecystectomy; cystourethroscopy; transurethral fulguration; transurerethral resection; sacral laminectomy; tympanoplasty with mastoidectomy; and ophthalmoscopy.".

(2) In applying section 1842(b)(16) of the Social Security Act:

(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

(B) The codes for the procedures specified in clause (iii) are as follows: Partial, simple and subcutaneous mastectomy (HCPCS codes 19160 and 19162); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250, and 92260).".

SEC. 4102. RADIOLOGY SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended—

(1) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) 1991 FEE SCHEDULES.—For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall be determined as follows:

"(i) NATIONAL WEIGHTED AVERAGE CONVERSION FACTOR.—The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

"(ii) REDUCED NATIONAL WEIGHTED AVERAGE.—The national weighted average estimated under clause (i) shall be reduced by 13 percent.

"(iii) COMPUTATION OF 1990 LOCALITY INDEX RELATIVE TO NATIONAL AVERAGE.—The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

"(iv) LOCAL ADJUSTMENT.—Subject to clause (vii), the conversion factor to be applied to the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clauses (vi).

"(v) LOCALLY-ADJUSTED AMOUNT.—For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

"(vi) GPCI-ADJUSTED AMOUNT.—For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238-36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

"(vii) LIMITS ON CONVERSION FACTOR.—The conversion factor to be applied to a locality under this subparagraph to the professional or technical component of a service shall not be more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall

the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).".

(b) SPECIAL RULE FOR TRANSITION FOR RADIOLOGY SERVICES.—Section 1848(a)(2)(C) (42 U.S.C. 1395w-4(a)(2)(C)) is amended—

(1) by inserting "AND RADIOLOGY" after "SPECIAL RULE FOR ANESTHESIA", and

(2) by adding at the end the following: "With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).

(c) REDUCTION IN PREVAILING CHARGE LEVEL FOR OTHER RADIOLOGY SERVICES.—

(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act, the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act with respect to such services.

(2) EXCEPTION.—Paragraph (1) shall not apply to radiology services which are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(d) REDUCTION IN PAYMENTS FOR TECHNICAL COMPONENTS OF CERTAIN SCANNING SERVICES.—Section 1834(b)(4) (42 U.S.C. 1395m(b)(4)) is amended by inserting after subparagraph (D) the following new paragraph:

"(E) In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.".

(e) LIMITATION ON ADJUSTMENTS.—For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act—

(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act, in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

(3) section 1842(b)(9) of such Act shall not apply.

(f) USE OF LOCALITIES.—Section 1834(b)(1)(B) (42 U.S.C. 1395m(b)(1)(B)) is amended by inserting "locality," after "statewide,".

(g) TREATMENT OF NUCLEAR MEDICINE PHYSICIANS.—

(1) CONTINUATION OF SPECIAL RULE.—Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking all that follows "Social Security Act" the second place it appears and inserting the following: "beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to

this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.".

(2) ADJUSTED HISTORICAL PAYMENT BASIS.—Section 1848(a)(2)(D) (42 U.S.C. 1395w-4(a)(2)(D)) is amended—

(A) in clause (ii) by inserting ", but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989" after "section 1834(b)(6))", and

(B) by adding at the end the following:

"(iii) NUCLEAR MEDICINE SERVICES.—In applying clause (i) in the case of physicians' services which are nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under such section.".

(h) EXTENSION OF SPLIT BILLING RULE FOR INTERVENTIONAL RADIOLOGISTS.—Section 6105(c) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "or 1991" after "1990" each place it appears.

(i) EFFECTIVE DATES.—

(1) Except as otherwise provided, the amendments made by this section shall apply to services furnished on or after January 1, 1991.

(2) The amendment made by subsection (f) shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4103. ANESTHESIA SERVICES.

(a) REDUCTION IN FEE SCHEDULE.—Section 1842(q)(1) (42 U.S.C. 1395u(q)(1)) is amended—

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

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

"(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall be determined as follows:

"(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

"(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

"(iii) Subject to clause (iv), the prevailing charge conversion factor to be applied in a locality is the sum of—

"(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

"(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conver-

sion factor computed under clause (ii) and (b) the geographic practice cost index value specified in section 1842(b)(14)(C)(iv) for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

"(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).".

(b) EXTENSION OF REDUCTION FOR SUPERVISION OF CONCURRENT SERVICES.—Section 1842(b)(13) (42 U.S.C. 1395u(b)(13)) is amended by striking "1991" each place it appears and inserting "1996".

SEC. 4104. PHYSICIAN PATHOLOGY SERVICES.

(a) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES.—Subsection (f) of section 1834 (42 U.S.C. 1395m) is amended to read as follows:

"(f) REDUCTION IN PAYMENTS FOR PHYSICIAN PATHOLOGY SERVICES DURING FISCAL YEAR 1991.—

"(1) IN GENERAL.—For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

"(2) LIMITATION.—The prevailing charge for the technical and professional components of an physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(1)(J) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "or physician pathology services" and by striking "or section 1834(f), respectively".

(2) Section 1848(a)(1) of such Act (42 U.S.C. 1395w-4(a)(1)) is amended by striking "or 1834(f)".

(3) Section 4050 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(c) ANCILLARY POLICY.—The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act, shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4105. UPDATE FOR PHYSICIANS' SERVICES.

(a) PERCENTAGE INCREASE IN MEI FOR 1991.—

(1) IN GENERAL.—Section 1842(b)(4)(E) (42 U.S.C. 1395u(b)(4)(E)) is amended by adding at the end the following new clause:

"(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

"(I) 0 percent for services (other than primary care services), and

"(II) 2 percent for primary care services (as defined in subsection (i)(4)).".

(2) CUSTOMARY CHARGES FOR 1991.—Section 1842(b)(4)(B) (42 U.S.C. 1395u(b)(4)(B)) is amended by adding at the end the following new clause:

"(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4)) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F) applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.".

(3) CHANGE IN PAYMENT FOR YEARS AFTER 1991.—Section 1848 of such Act (42 U.S.C. 1395w-4) is amended in subsection (d)(3)(A)—

(A) in clause (i), by inserting "except as provided in clause (iii)," after "subparagraph (B),", and

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

"(iii) ADJUSTMENT IN PERCENTAGE INCREASE.—In applying clause (i) for services furnished in 1992 for which the appropriate update index is the index described in clause (ii)(I), the percentage increase in the appropriate update index shall be reduced by 0.4 percentage points.".

(b) INCREASE IN PREVAILING CHARGE FLOOR FOR PRIMARY CARE SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A)(vi) of such Act (42 U.S.C. 1395u(b)(4)(A)(vi)) is amended by striking "50 percent" and inserting "60 percent".

(2) BUDGET NEUTRAL IMPLEMENTATION.—In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act for physicians' services in 1991 assuming that the amendments made by this subsection did not apply.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to services furnished on or after January 1, 1991.

(c) VOLUME PERFORMANCE STANDARD FOR FISCAL YEAR 1991.—Section 1848(f) (42 U.S.C. 1395w-4(f)) is amended—

(1) in paragraph (1)(C), by striking "1990" the first place it appears and inserting "1991", and

(2) by adding at the end of paragraph (2) the following:

"(C) Notwithstanding subparagraph (A), the performance standard rate of increase for a category of physicians' services for fiscal year 1991 shall be the sum of—

"(i) the Secretary's estimate of the percentage by which actual expenditures for the category of physicians' services under this part for fiscal year 1991 exceed actual expenditures for such category of services in fiscal year 1990 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990), and

"(ii) the Secretary's estimate of the percentage increase or decrease in expenditures for the category of services in fiscal year 1991 (compared with fiscal year 1990) that will result from changes in law and regulations (including the Omnibus Budget Reconciliation Act of 1990), reduced by 2 percentage points.".

(d) Not later than 45 days after the date of the enactment of this Act, the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act for fiscal year 1991.

SEC. 4106. NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

(a) EXTENSION OF CUSTOMARY CHARGE LIMIT AND INCLUSION OF HEALTH CARE PRACTITIONERS.—

(1) IN GENERAL.—Subparagraph (F) of section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

"(F)(i) In the case of physicians' services and professional services of a health care practitioner (other than primary care services and other than services furnished in a rural area (as defined in section 1886(d)(2)(D)) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area) furnished during the physician's or practitioner's first through fourth years of practice (if payment for those services is made separately under this part and on other than a cost-related basis), the prevailing charge or fee schedule amount to be applied under this part shall be 80 percent for the first year of practice, 85 percent for the second year of practice, 90 percent for the third year of practice, and 95 percent for the fourth year of practice, of the prevailing charge or fee schedule amount for that service under the other provisions of this part.

"(ii) For purposes of clause (i):

"(I) The term 'health care practitioner' means a physician assistant, certified nurse-midwife, qualified psychologist, nurse practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner as may be specified by the Secretary.

"(II) The term 'first year of practice' means, with respect to a physician or practitioner, the first calendar year during the first 6 months of which the physician or practitioner furnishes professional services for which payment is made under this part, and includes any period before such year.

"(III) The terms 'second year of practice', 'third year of practice', and 'fourth year of practice' mean the second, third, and fourth calendar years, respectively, following the first year of practice.".

(2) CONFORMING AMENDMENTS.—Section 6108(a)(2)(A) of the Omnibus Budget Reconciliation Act of 1989 is amended—

(A) by inserting "or 1991" after "1990", and

(B) by inserting "or 1990" after "1989".

(b) APPLICATION UNDER FEE SCHEDULE.—

(1) IN GENERAL.—Section 1848(a) (42 U.S.C. 1395w-4(a)) is amended by adding at the end the following new paragraph:

"(4) TREATMENT OF NEW PHYSICIANS.—In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1886(d)(2)) that is designated under section 322(a)(1)(A) of the Public Health Service Act as a health manpower shortage area.".

(2) CONFORMING AMENDMENTS.—Section 1842(b)(4)(F), as amended by subsection (a), is amended—

(A) in clause (i), by striking "physicians' services and",

(B) in clause (i), by striking "physician's or", and

(C) in clause (ii)(II), by striking "physician or" each place it appears.

(c) CONFORMING ADJUSTMENT IN CONVERSION FACTOR COMPUTATION.—In computing the conversion factor under section 1848(d)(1)(B) for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) apply to services furnished after 1990, except that—

(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

(2) The amendments made by subsection (b) shall apply to services furnished after 1991.

SEC. 4107. ASSISTANTS AT SURGERY.

(a) PHYSICIANS AS ASSISTANTS-AT-SURGERY.—

(1) IN GENERAL.—Section 1848(i) (42 U.S.C. 1395w-4(i)) is amended by adding at the end the following:

"(2) ASSISTANTS-AT-SURGERY.—

"(A) IN GENERAL.—Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

"(B) DENIAL OF PAYMENT IN CERTAIN CASES.—If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.".

(2) APPLICATION IN 1991.—Section 1848(i)(2) of the Social Security Act, as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount.

(b) CONFORMING AMENDMENT.—Section 1862(a)(15) of such Act (42 U.S.C. 1395y(a)(15)) is amended—

(1) by inserting "(A)" after "(15)",

(2) by striking "; or" at the end and inserting ", or", and

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

"(B) which are for services of an assistant at surgery to which section 1848(i)(2)(B) applies; or".

(c) EFFECTIVE DATE.—The amendment made by subsection shall apply with respect to services furnished on or after January 1, 1992.

SEC. 4108. TECHNICAL COMPONENTS OF CERTAIN DIAGNOSTIC TESTS.

(a) IN GENERAL.—Section 1842(b) of the Social Security Act (42 U.S.C. 1395u(b)), as amended by section 4101, is further amended by adding at the end the following new paragraph:

"(18) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to tests and services furnished on or after January 1, 1991.

SEC. 4109. INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by adding at the end the following new paragraph:

"(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS.—If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1842(j)(2).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.

SEC. 4110. RECIPROCAL BILLING ARRANGEMENTS.

(a) IN GENERAL.—The first sentence of section 1842(b)(6) of the Social Security Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking "and" before "(C)", and

(2) by inserting before the period at the end the following: ", and (D) payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r)) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

SEC. 4111. STUDY OF PREPAYMENT MEDICAL REVIEW SCREENS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

(b) LIMITATIONS.—The study shall be based upon the release of the screen parameters at a minimum of six carriers.

(c) REPORT.—The Secretary shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of

the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.

SEC. 4112. PRACTICING PHYSICIANS ADVISORY COUNCIL.

Title XVIII of the Social Security Act is amended by inserting after section 1867 the following new section:

"PRACTICING PHYSICIANS ADVISORY COUNCIL

"SEC. 1868. (a) The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the 'Council') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this title in the previous year. At least 11 of the members of the Council shall be physicians described in section 1861(r)(1) and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

"(b) The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

"(c) Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this title.".

SEC. 4113. STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

SEC. 4114. UTILIZATION SCREENS FOR PHYSICIAN VISITS IN REHABILITATION HOSPITALS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit patients after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 has been exceeded.

SEC. 4115. STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

SEC. 4116. LIMITATION ON BENEFICIARY LIABILITY.

Section 1848(g)(2)(A) (42 U.S.C. 1395w-4(g)(2)(A)) is amended by adding at the end thereof the following:
"In the case of evaluation and management services (as specified in section 1842(b)(16)(B)(ii)), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.".

SEC. 4117. STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES.

(a) IN GENERAL.—Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w-4(j)(2)), in the case of the States of Nebraska and Oklahoma, if the respective State meets the requirements specified in subsection (b) on or before April 1, 1991, the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D))), and

(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w-4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3))) furnished on or after January 1, 1992.

(b) REQUIREMENTS.—The requirements specified in this subsection are that (on or before April 1, 1991) there are written expressions of support for treatment of the State as a single fee schedule area (on a budget-neutral basis) from—

(1) each member of the congressional delegation from the State, and

(2) organizations representing urban and rural physicians in the State.

(c) BUDGET NEUTRALITY.—Notwithstanding section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)), the Secretary shall provide for treatment of a State as a single fee schedule area (as described in

subsection (a)) in a manner that ensures that total payments for physicians' services (as so defined) furnished by physicians in the State during 1992 are not greater or less than total payments for such services would have been but for such treatment.

(d) CONSTRUCTION.—Nothing in this section shall be construed as limiting the availability (to the Secretary, the appropriate agency or organization with a contract under section 1842, or physicians in a State) of otherwise applicable administrative procedures for modifying the fee schedule area or areas in the State after implementation of subsection (a) with respect to the State.

SEC. 4118. TECHNICAL CORRECTIONS.

(a) OVERVALUED PROCEDURES.—

(1) Section 1842(b)(14) of the Social Security Act (42 U.S.C. 1395u(b)(14)) is amended—

(A) in subparagraph (B)(iii)(I), by striking "practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))" and inserting "practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101-M, 101st Congress, 1st Session) for the service";

(B) in subparagraph (B)(iii)(II), by striking "practice expense ratio" and inserting "practice expense component (percent), divided by 100";

(C) in subparagraph (C)(i), by striking "physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress," and inserting "procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission";

(D) in subparagraph (C)(iii), by striking "The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement" and inserting "The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list"; and

(E) in subparagraph (C)(iv), by striking "such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)" and inserting "the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)".

(2) Section 1842(b)(4)(E)(iv)(I) of such Act (42 U.S.C. 1395u(b)(4)(E)(iv)(I)) is amended by striking "Table #2" and all that follows through "101st Congress" and inserting "the list referred to in paragraph (14)(C)(i)".

(3) The amendments made by paragraphs (1) and (2) apply to services furnished after March 1990.

(b) MVPS AS MULTIPLICATIVE, NOT ADDITIVE.—Section 1848(f)(2)(A) (42 U.S.C. 1395w-4(f)(2)(A)) is amended—

(1) in the matter preceding clause (i) by striking "sum" and inserting "product";

(2) in clauses (i) through (iv), by inserting "1 plus" before "the Secretary's" each place it appears,

(3) in clause (i), by inserting "(divided by 100)" after "percentage increase",

(4) in clauses (ii) and (iv), by inserting "(divided by 100)" after "decrease",

(5) in clause (iii), by inserting "(divided by 100)" after "percentage growth", and

(6) in the matter following clause (iv), by striking "reduced" and inserting "minus 1, multiplied by 100, and reduced".

(c) PERIODIC REVIEW OF GEOGRAPHIC ADJUSTMENT FACTORS.—Section 1848(e)(1) of such Act is amended—

(1) in subparagraph (A), by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)", and

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

"(C) PERIODIC REVIEW AND ADJUSTMENTS IN GEOGRAPHIC ADJUSTMENT FACTORS.—The Secretary, not less often than every 3 years, shall review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped since the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be ½ of the adjustment that otherwise would be made.".

(d) ELIMINATION OF RESTRICTION ON INCORPORATION OF TIME IN VISIT CODES.—Section 1848(c)(4) (42 U.S.C. 1395w-4(c)(4)) is amended by striking "only for services furnished on or after January 1, 1993".

(e) TREATMENT OF PRICE INCREASE IN DETERMINING PERFORMANCE STANDARD RATES OF INCREASE.—Section 1848(f)(2)(A)(iv) (42 U.S.C. 1395w-4(f)(2)(A)(iv)) is amended by inserting "including changes in law and regulations affecting the percentage increase described in clause (i)" after "law or regulations".

(f) MISCELLANEOUS FEE SCHEDULE CORRECTIONS.—

(1) CHANGES IN SECTION 1848.—Section 1848 of the Social Security Act (42 U.S.C. 1395w-4) is amended—

(A) in subsection (c)(1)(B), by striking the last sentence;

(B) in subsections (c)(3)(C)(ii)(II) and (c)(3)(C)(iii)(II), by striking "by" the first place it appears in each respective subsection,

(C) in subsection (c), by redesignating the second paragraph (3), and paragraphs (4) and (5), as paragraphs (4) through (6), respectively;

(D) in subsection (c)(4), as redesignated by subparagraph (C), is amended by striking "subsection" and inserting "section";

(E) in subsection (d)(1)(A), by striking "subparagraph (C)" and inserting "paragraph (3)";

(F) in subsection (d)(1)—

(i) in subparagraph (A)—

(I) by inserting "(or factors)" after "conversion factor" each place it appears,

(II) by inserting "or updates" after "update", and

(III) by striking "subparagraph (C)" and inserting "paragraph (3)"; and

(ii) in subparagraph (C)—

(I) in clause (i), by striking "(or factors)", and

(II) in clause (ii), by inserting "the conversion factor (or factors) which will apply to physicians' services for the following year and" before "the update (or updates)", and by striking "the following" and inserting "such";

(G) in subsection (d)(2)(A), in the matter preceding clause (i), by striking "services" the first place it appears and inserting "services (as defined in subsection (f)(5)(A))";

(H) in subsection (d)(2)(A)(ii)—

(i) by striking "(as defined in subsection (f)(5)(A))" and inserting "and for the services involved", and

(ii) by striking "all such physicians'" and inserting "such"; and

(I) in the last sentence of subsection (d)(2)(A), by striking "proportion of HMO enrollees" and inserting "proportion of individuals who are enrolled under this part who are HMO enrollees";

(J) in subsection (d)(2)(E)(i), by inserting "the" after "as set forth in";

(K) in subsection (d)(2)(E)(ii)(I), by inserting "payments for" after "under this part for";

(L) in subsection (d)(3)(B)—

(i) in clause (i)—

(I) by striking "update for" and inserting "update for a category of physicians' services for"; and

(II) by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "services in such category";

(ii) in clause (ii)—

(I) by inserting "more than" after "decrease of"; and

(II) in subclause (I), by striking "more than";

(M) in paragraphs (1)(D)(i) and (2)(A)(i) of subsection (f), by striking "calendar years" and inserting "portions of calendar years";

(N) in subsection (f)(2)(A)—

(i) by striking "each performance standard rate of increase" and inserting "the performance standard rate of increase, for all physicians' services and for each category of physicians' services,",

(ii) in clause (i), by striking "physicians' services (as defined in subsection (f)(5)(A)" and inserting "all physicians' services or for the category of physicians' services, respectively,",

(iii) in clause (iii), by striking "physicians' services" and inserting "all physicians' services or of the category of physicians' services, respectively,", and

(iv) in clause (iv), by striking "physicians' services (as defined in subsection (f)(5)(A))" and inserting "all physicians' services or of the category of physicians' services, respectively,";

(O) in subsection (f)(4)(A), by striking "paragraph (B)" and inserting "subparagraph (B)";

(P) in subsection (f)(4)(B), by striking "Congress specifically approves the plan" and inserting "specifically approved by law";

(Q) in subparagraphs (A) and (B) of subsection (g)(2), by inserting "other than radiologist services subject to section 1834(b)," after "during 1991," and after "during 1992,", respectively;

(R) in subsection (i)(1)(A), by striking "historical payment basis (as defined in subsection (a)(2)(C)(i))" and inserting "adjusted historical payment basis (as defined in subsection (a)(2)(D)(i))"; and

(S) in subsection (j)(1), by striking ", and such other" and all that follows through the period and inserting "(as defined by the Secretary) and all other physicians' services.".

(2) MISCELLANEOUS.—

(A) Effective as if included in the Omnibus Budget Reconciliation Act of 1989, section 6102(e)(4) of such Act is amended by inserting "determined" after "prevailing charge rate".

(B) Effective January 1, 1991, section 1842(b)(3)(G) of the Social Security Act, as amended by section 6102(e)(2) of Omnibus Budget Reconciliation Act of 1989, is amended by striking "subsection (j)(1)(C)" and inserting "section 1848(g)(2)".

(C) Section 1842(b)(12)(A)(ii)(II) of the Social Security Act, as amended by section 6102(e)(4) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

(D) Section 1833(a)(1)(H) of the Social Security Act, as amended by section 6102(e)(5) of the Omnibus Budget Reconciliation Act of 1989, is amended by striking ", as the case may be".

(E) Section 6102(e)(11) of the Omnibus Budget Reconciliation Act of 1989 is amended by inserting "of Health and Human Services" after "Secretary".

(F) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, section 922(d)(1) of the Public Health Service Act (42 U.S.C. 299c-1(d)(1)) is amended—

(i) by inserting "(other than of dissemination activities)" after "evaluations", and

(ii) by inserting "research, demonstration projects, or evaluations of" after "applications with respect to".

(g) REPEAL OF REPORTS NO LONGER REQUIRED.—

(1) Subsection (b) of section 4043 of the Omnibus Budget Reconciliation Act of 1987 is repealed.

(2) Subsection (c) of section 4048 of such Act is repealed.

(3) Section 4049(b)(1) of such Act is amended by striking ", and shall report" and all that follows up to the period at the end.

(4) Section 4056(a)(1) of such Act, as redesignated by section 411(f)(14) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking the last sentence.

(5) Section 4056(b)(2) of such Act is amended by striking the second sentence.

(h) ADJUSTMENT OF EFFECTIVE DATES.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987—

(1) section 4048(b) of such Act is amended by striking "January 1, 1989" and inserting "March 1, 1989", and

(2) section 4049(b)(2) of such Act is amended by striking "January 1, 1989" and inserting "April 1, 1989".

(i) TRANSFER OF PROVISION INTO TITLE XVIII.—

(1) Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

"(r) The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this title.".

(2) Section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking subsection (g).

(j) PPRC.—(1) Section 1845 of such Act (42 U.S.C. 1395w-1) is amended—

(A) in subsection (a)(3), by striking "include physicians" and inserting "include (but need not be limited to) physicians";

(B) by striking subsection (b)(3);

(C) in subsection (b)(2)—

(i) by striking "and" at the end of subparagraph (H),

(ii) by striking the period at the end of subparagraph (I) and inserting a semicolon,

(iii) by striking subparagraphs (A), (B), (C), and (F),

(iv) by redesignating subparagraphs (D), (E), (G), (H), and (I) as subparagraphs (A), (B), (C), (D), and (E), and

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

"(F) make recommendations regarding major issues in the implementation of the resource-based relative value scale established under section 1848(c);

"(G) make recommendations regarding further development of the volume performance standards established under section 1848(f), including the development of State-based programs;

"(H) consider policies to provide payment incentives to increase patient access to primary care and other physician services in large urban and rural areas, including policies regarding payments to physicians pursuant to title XIX;

"(I) review and consider the number and practice specialties of physicians in training and payments under this title for graduate medical education costs;

"(J) make recommendations regarding issues relating to utilization review and quality of care, including the effectiveness of peer review procedures and other quality assurance programs applicable to physicians and providers under this title and physician certification and licensing standards and procedures;

"(K) make recommendations regarding options to help constrain the costs of health insurance to employers, including incentives under this title;

"(L) comment on the recommendations affecting physician payment under the medicare program that are included in the budget submitted by the President pursuant to section 1105 of title 31, United States Code; and

"(M) make recommendations regarding medical malpractice liability reform and physician certification and licensing standards and procedures."; and

(D) by striking subsection (e) and redesignating subsection (f) as subsection (e).

(2) In Section 1842(b)(2)(A) is amended by striking "section 1845(f)(2)" and inserting "section 1845(e)(2)".

(k) PROHIBITION OF CERTAIN ADJUSTMENTS.—Section 1848(i) is amended by adding at the end the following new paragraph:

"(3) NO COMPARABILITY ADJUSTMENT.—For physicians' services for which payment under this part is determined under this section—

"(A) a carrier may not make any adjustment in the payment amount under section 1842(b)(3)(B) on the basis that the payment amount is higher than the charge applicable, for a comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

"(B) no payment adjustment may be made under section 1842(b)(8), and

"(C) section 1842(b)(9) shall not apply .".

Subpart B—Provisions Relating to Other Items and Services

SEC. 4151. PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by inserting before the period at

the end the following: ", by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995".

(2) EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS.—Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking "1886(d)(5)(D)(iii))." and inserting "1886(d)(5)(D)(iii) or a rural primary care hospital (as defined in section 1861(mm)(1))."

(b) REDUCTION IN REASONABLE COSTS OF HOSPITAL OUTPATIENT SERVICES.—

(1) IN GENERAL.—Section 1861(v)(1)(S)(ii) (42 U.S.C. 1395x(v)(1)(S)(ii)) is amended—

(A) in subclause (II)—

(i) by striking "Subclause (I)" and inserting "Subclauses (I) and (II)", and

(ii) by striking "capital-related costs of any hospital" and inserting "costs of hospital outpatient services provided by any hospital";

(B) in subclause (III)—

(i) by striking "subclause (I)" and inserting "subclauses (I) and (II)", and

(ii) by striking "capital-related" and inserting "the";

(C) by redesignating subclauses (II) and (III) as subclauses (III) and (IV); and

(D) by inserting after subclause (I) the following new subclause:

"(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1833(a)(2)(B)(i)(I) by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991, 1992, 1993, 1994, or 1995.".

(2) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES.—

(A) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider—

(i) the need to provide for appropriate limits on increases in expenditures under the medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a

cost-related basis under the medicare program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) REPORTS.—(i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

(c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES AND RADIOLOGY SERVICES.—

(1) MODIFICATION OF COST AND ASC PROPORTIONS OF ASC BLEND AMOUNTS.—

(A) IN GENERAL.—Section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended—

(i) in subclause (I), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991."; and

(ii) in subclause (II), by striking "and 50 percent for other cost reporting periods." and inserting "50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.".

(B) EXTENSION OF ASC BLEND AMOUNTS FOR EYE AND EYE AND EAR SPECIALTY HOSPITALS.—The last sentence of section 1833(i)(3)(B)(ii) (42 U.S.C. 1395l(i)(3)(B)(ii)) is amended by striking "in fiscal year 1989 or fiscal year 1990" and inserting "on or after October 1, 1988, and before January 1, 1995".

(2) MODIFICATION OF COST AND CHARGE PROPORTIONS FOR RADIOLOGY SERVICES.—Section 1833(n)(1)(B)(ii)(I) (42 U.S.C. 1395l(n)(1)(B)(ii)(I)) is amended by striking the period at the end and inserting ", and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.".

(3) 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES.—Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for the insertion of an intraocular lens during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act and on or before December 31, 1992, shall be equal to $200.

SEC. 4152. DURABLE MEDICAL EQUIPMENT.

(a) PAYMENTS FOR SEAT-LIFT AND TENS.—

(1) 15 PERCENT REDUCTION IN PAYMENTS FOR TRANSCUTANEOUS ELECTRICAL NERVE STIMULATORS.—Section 1834(a)(1)(D) of the Social Security Act (42 U.S.C. 1395m(a)(1)(D)) is amended by inserting before the period at the end the following: ", and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent".

(2) SEAT-LIFTS.—Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by adding at the end the following: "With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.".

(3) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1991.

(b) DEVELOPMENT AND APPLICATION OF NATIONAL LIMITS ON FEES.—

(1) INEXPENSIVE AND ROUTINELY PURCHASED DURABLE MEDICAL EQUIPMENT AND ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Paragraphs (2) and (3) of section 1834(a) of such Act (42 U.S.C. 1395m(a)) are each amended—

(A) in subparagraph (B)(i), by striking "or" at the end;

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

"(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

"(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

"(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year."; and

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

"(C) COMPUTATION OF LOCAL PAYMENT AMOUNT AND NATIONAL LIMITED PAYMENT AMOUNT.—For purposes of subparagraph (B)—

"(i) the local payment amount for an item or device for a year is equal to—

"(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

"(II) for 1992, the amount determined under this clause for the preceding year increased by the covered item update for 1992; and

"(ii) the national limited payment amount for an item or device for a year is equal to—

"(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item, and

"(II) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.".

(2) MISCELLANEOUS ITEMS AND OTHER COVERED ITEMS.—Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended—

(A) in subparagraph (A)(ii)—

(i) by striking "or" at the end of subclause (I);

(ii) in subclause (II)—

(I) by striking "1991 or", and

(II) by striking "the percentage increase" and all that follows through the period and inserting "the covered item update for the year.";

(iii) by redesignating subclause (II) as subclause (III); and

(iv) by inserting after subclause (I) the following new subclause:

"(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; or";

(B) by amending subparagraph (B) to read as follows:

"(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE.—With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

"(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year; and

"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";

(C) in subparagraph (C)—

(i) by striking "regional purchase price" each place it appears and inserting "national limited purchase price",

(ii) by striking "and subject to subparagraph (D)",

(iii) in clause (ii)—

(I) by striking "75" and inserting "67"; and

(II) by striking "25" and inserting "33", and

(iv) in clause (iii)—

(I) in subclause (I), by striking "50" and inserting "33" and by striking "(A)(ii)(II)" and inserting "(A)(ii)(III)"; and

(II) in subclause (II), by striking "50" and inserting "67"; and

(D) by striking subparagraph (D).

(3) OXYGEN AND OXYGEN EQUIPMENT.—Section 1834(a)(9) of such Act (42 U.S.C. 1395m(a)(9)) is amended—

(A) in subparagraph (A)(ii)(II), by striking "the percentage increase" and all that follows through the period and inserting "the covered item increase for the year.";

(B) by amending subparagraph (B) to read as follows:

"(B) COMPUTATION OF NATIONAL LIMITED MONTHLY PAYMENT RATE.—With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

"(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year; and

"(ii) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.";

(C) in subparagraph (C)—

(i) by striking "regional monthly payment rate" each place it appears and inserting "national limited monthly payment rate",

(ii) in clause (ii)—

(I) by striking "75" and inserting "67"; and

(II) by striking "25" and inserting "33", and

(iii) in clause (iii)—

(I) in subclause (I), by striking "50" and inserting "33"; and

(II) in subclause (II), by striking "50" and inserting "67" and by striking "(B)(i)" and inserting "(B)(ii)"; and

(D) by striking subparagraph (D).

(4) DEFINITION.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(14) COVERED ITEM UPDATE.—In this subsection, the term 'covered item update' means, with respect to a year—

"(A) for 1991 and 1992, a reduction of 1 percentage point; and

"(B) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.".

(5) CONFORMING AMENDMENT.—Section 1834(a)(12) (42 U.S.C. 1395m(a)(12)) is amended by striking "defined for purposes of paragraphs (8)(B) and (9)(B)".

(c) TREATMENT OF "RENTAL CAP" ITEMS.—

(1) LIMITATION ON MONTHLY RECOGNIZED RENTAL AMOUNTS FOR MISCELLANEOUS ITEMS.—Section 1834(a)(7)(A)(i) (42 U.S.C. 1395m(a)(7)(A)(i)) is amended—

(A) by striking "for each such month" and inserting "for each of the first 3 months of such period"; and

(B) by striking the semicolon at the end and inserting the following: ", and for each of the remaining months of such period is 7.5 percent of such purchase price;".

(2) OFFER OF OPTION TO PURCHASE FOR MISCELLANEOUS ITEMS; ESTABLISHMENT OF REASONABLE LIFETIME.—Section 1834(a)(7) of such Act (42 U.S.C. 1395m(a)(7)(A)) is amended—

(A) in subparagraph (A)(i), by striking "15 months" and inserting "15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months";

(B) in subparagraph (A)(ii)—

(i) by striking "(ii) during the succeeding 6-month period of medical need," and inserting "(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),", and

(ii) by striking "and" at the end;

(C) in subparagraph (A)(iii)—

(i) by striking "(iii)" and inserting "(v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),", and

(ii) by striking the period at the end and inserting "; and";

(D) by inserting after clause (i) of subparagraph (A) the following new clauses:

"(ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

"(iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option—

"(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

"(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (v);";

(E) by inserting after clause (v) of subparagraph (A) (as amended by subparagraph (C)) the following new clause:

"(vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing."; and

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

"(C) REPLACEMENT OF ITEMS.—

"(i) ESTABLISHMENT OF REASONABLE USEFUL LIFETIME.—In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph or paragraph (3).

"(ii) PAYMENT FOR REPLACEMENT ITEMS.—If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have

payment for an item serving as a replacement for such item made—

"(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

"(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

"(iii) LENGTH OF REASONABLE USEFUL LIFETIME.—The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, except that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this title, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.".

(3) APPLICATION OF REASONABLE USEFUL LIFETIME FOR ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—Section 1834(a)(3) (42 U.S.C. 1395m(a)(3)), as amended by subsection (b)(1), is further amended by adding at the end the following new subparagraph:

"(D) REPLACEMENT OF ITEMS.—If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).".

(4) TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS MISCELLANEOUS ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(A) IN GENERAL.—Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)(2)(A)) is amended—

(i) in clause (i), by inserting "or" at the end;

(ii) in clause (ii), by striking "or" at the end; and

(iii) by striking clause (iii).

(B) CRITERIA FOR TREATMENT OF WHEELCHAIR AS CUSTOMIZED ITEM.—(i) Section 1834(a)(4) (42 U.S.C. 1395m(a)(4)) is amended by adding at the end the following: "In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.".

(ii) The amendment made by clause (i) shall apply to items furnished on or after January 1, 1992, unless the Sec-

retary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act (in which case the amendment made by such clause shall not become effective).

(d) FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991.—In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.

(e) REQUIRING PRIOR APPROVAL FOR POTENTIALLY OVERUSED ITEMS.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(15) CARRIER DETERMINATIONS OF POTENTIALLY OVERUSED ITEMS IN ADVANCE.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

"(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1862(a)(1).".

(f) PROHIBITION AGAINST DISTRIBUTION OF MEDICAL NECESSITY FORMS BY SUPPLIERS.—

(1) IN GENERAL.—Section 1834(a) (42 U.S.C. 1395m(a)), as amended by subsections (e) and (f), is further amended by adding at the end the following new paragraph:

"(16) PROHIBITION AGAINST DISTRIBUTION BY SUPPLIERS OF FORMS DOCUMENTING MEDICAL NECESSITY.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

"(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in

the same manner as they apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to forms and documents distributed on or after January 1, 1991.

(g) RECERTIFICATION FOR CERTAIN PATIENTS RECEIVING HOME OXYGEN THERAPY SERVICES.—

(1) IN GENERAL.—Section 1834(a)(5) (42 U.S.C. 1395m(a)(5)) is amended—

(A) in subparagraph (A), by striking "(B) and (C)" and inserting "(B), (C), and (E)"; and

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

"(E) RECERTIFICATION FOR PATIENTS RECEIVING HOME OXYGEN THERAPY.—In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.

(h) TECHNICAL CORRECTIONS.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section 4062(e) of such Act is amended—

(1) by inserting "(other than oxygen and oxygen equipment)" after "covered items", and

(2) by inserting before the period at the end the following: "and to oxygen and oxygen equipment furnished on or after June 1, 1989".

(i) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to items furnished on or after January 1, 1991.

SEC. 4153. PROVISIONS RELATING TO ORTHOTICS AND PROSTHETICS.

(a) PAYMENTS FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

(1) MAINTAINING CURRENT PAYMENT METHODOLOGY.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(h) PAYMENT FOR PROSTHETIC DEVICES AND ORTHOTICS AND PROSTHETICS.—

"(1) GENERAL RULE FOR PAYMENT.—

"(A) IN GENERAL.—Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be

made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

"(B) PAYMENT BASIS.—Except as provided in subparagraph (C), the payment basis described in this subparagraph is the lesser of—

"(i) the actual charge for the item; or

"(ii) the amount recognized under paragraph (2) as the purchase price for the item.

"(C) EXCEPTION FOR CERTAIN PUBLIC HOME HEALTH AGENCIES.—Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

"(D) EXCLUSIVE PAYMENT RULE.—This subsection shall constitute the exclusive provision of this title for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A to a home health agency.

"(2) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

"(A) COMPUTATION OF LOCAL PURCHASE PRICE.—Each carrier under section 1842 shall compute a base local purchase price for the item as follows:

"(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

"(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

"(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

"(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

"(B) COMPUTATION OF REGIONAL PURCHASE PRICE.—With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

"(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

"(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for

the previous year increased by the applicable percentage increase for the year.

"(C) PURCHASE PRICE RECOGNIZED.—For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

"(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

"(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

"(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

"(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

"(D) RANGE ON AMOUNT RECOGNIZED.—The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

"(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

"(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

"(3) APPLICABILITY OF CERTAIN PROVISIONS RELATING TO DURABLE MEDICAL EQUIPMENT.—Paragraph (12) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'applicable percentage increase' means—

"(i) for 1991, 0 percent, and

"(ii) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

"(B) the term 'prosthetic devices' has the meaning given such term in section 1861(s)(8), except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment; and

"(C) the term 'orthotics and prosthetics' has the meaning given such term in section 1861(s)(9), but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to

ostomy care) furnished by a home health agency under section 1861(m)(5).".

(2) CONFORMING AMENDMENTS.—(A) Section 1832(a)(2) (42 U.S.C. 1395k(a)(2)) is amended—

(i) in subparagraphs (A) and (B), by striking "subparagraph (G)" each place it appears and inserting "subparagraph (G) or subparagraph (I)";

(ii) by striking "and" at the end of subparagraph (G);

(iii) by striking the period at the end of subparagraph (H) and inserting "; and"; and

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

"(I) prosthetic devices and orthotics and prosthetics (described in section 1834(h)(4)) furnished by a provider of services or by others under arrangements with them made by a provider of services.".

(B) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1) is amended—

(i) by striking ", and (L)" and inserting ", (L)"; and

(ii) by striking "subparagraph and (N)" and inserting the following: "subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1834(h)(4)), the amounts paid shall be the amounts described in section 1834(h)(1), and (N)".

(C) Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(i) in paragraph (2), in the matter before subparagraph (A), by striking "and (H)" and inserting "(H), and (I)";

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

(iii) by striking the period at the end of paragraph (6) and inserting "; and"; and

(iv) by adding at the end the following new paragraph: "(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1834(h)(4)), the amounts described in section 1834(h).".

(D) Section 1834(a) (42 U.S.C. 1395m(a)), is amended—

(i) in the heading, by striking ", PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS";

(ii) in paragraph (2)(A), by striking "(13)(A)" and inserting "(13)"; and

(iii) in paragraph (13), by striking "means—" and all that follows and inserting the following: "means durable medical equipment (as defined in section 1861(n)), including such equipment described in section 1861(m)(5)).

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items furnished on or after January 1, 1991.

(b) PROVISIONS RELATING TO EYEGLASSES.—

(1) PROHIBITION ON REGULATIONS.—(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the "Secretary") may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act) following cataract surgery with insertion of an intraocular lens.

(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).

(2) CLARIFYING COVERAGE OF POST-CATARACT EYEGLASSES.—(A) Section 1861(s)(8) (42 U.S.C. 1395x(s)(8)) is amended by inserting after "such devices" the following ", and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens".

(B) Section 1862(a)(7) (42 U.S.C. 1395y(a)(7)) is amended by inserting after "eyeglasses" the first place it appears the following: "(other than eyewear described in section 1861(s)(8))".

(C) The amendments made by subparagraphs (A) and (B) shall apply to items furnished on or after January 1, 1991.

(c) GAO STUDY OF MEDICARE PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

(1) STUDY.—The Comptroller General shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(a) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the study conducted under subparagraph (A) to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program that the Comptroller General considers appropriate.

(d) CLARIFICATION OF COVERAGE OF OSTOMY SUPPLIES.—

(1) IN GENERAL.—Section 1866(a)(1)(P) (42 U.S.C. 1395cc(a)(1)(P)) is amended by striking "ostomy supplies" and inserting "catheters, catheter supplies, ostomy bags, and supplies related to ostomy care".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4154. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) LIMIT ON ANNUAL FEE SCHEDULE INCREASES.—Section 1833(h)(2)(A)(ii) (42 U.S.C. 13951(h)(2)(A)(ii)) is amended—

(1) by striking "any other provision of this subsection" and inserting "clause (i)";

(2) by striking "and" at the end of subclause (I);

(3) by striking the period at the end of subclause (II) and inserting ", and"; and

(4) by adding at the end the following new subclause:

"(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent.".

(b) REDUCTION IN NATIONAL CAP ON FEE SCHEDULES.—

(1) IN GENERAL.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii)—

(i) by inserting "and before January 1, 1991," after "1989,", and

(ii) by striking the period at the end and inserting ", and"; and

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

"(iv) after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to tests furnished on or after January 1, 1991.

(c) CLARIFICATION OF MANDATORY ASSIGNMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS PERFORMED BY PHYSICIANS.—

(1) IN GENERAL.—(A) Section 1833(h)(5)(C) of such Act (42 U.S.C. 1395l(h)(5)(C)) is amended by striking "test performed by a laboratory other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic".

(B) Section 1833(h)(5)(D) of such Act (42 U.S.C. 1395l(i)(5)(D)) is amended by striking "test performed by a laboratory, other than a rural health clinic" and inserting "test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, and the amendment made by paragraph (1)(B) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(d) AGREEMENTS WITH STATES TO DETERMINE COMPLIANCE OF CLINICAL LABORATORIES WITH PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—Section 1864(a) (42 U.S.C. 1395aa(a)) is amended in the first sentence by striking "1861(s)," and inserting "1861(s) or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 353 of the Public Health Service Act,".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988.

(e) TECHNICAL CORRECTIONS.—

(1) Section 1833(h)(5)(A)(ii) of such Act (42 U.S.C. 1395l(h)(5)(A)(ii)) is amended—

(A) in subclause (II), by striking "a wholly-owned subsidiary of" and inserting "wholly owned by";

(B) in subclause (III), by striking "laboratory" and inserting "laboratory (but not including a laboratory described in subclause (II)),"; and

(C) in subclause (III), by striking "submits bills or requests for payment in any year" and inserting "receives re-

quests for testing during the year in which the test is performed".

(2) The heading of section 1846 of such Act is amended by striking "OF" and inserting "OR SUPPLIERS OF".

(3) Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986, section 9339(b) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking paragraph (3).

(4) Section 6111(b)(2) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "January 1, 1990" and inserting "May 1, 1990".

(5) The amendments made by paragraphs (1)(A) (1)(B), (2), and (4) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, and the amendment made by paragraph (1)(C) shall take effect January 1, 1991.

SEC. 4155. COVERAGE OF NURSE PRACTITIONERS IN RURAL AREAS.

(a) IN GENERAL.—Section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended—

(1) in clause (ii), by striking "and" at the end;

(2) by redesignating clause (iii) as clause (iv); and

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

"(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(3)) working in collaboration (as defined in subsection (aa)(4)) with a physician (as defined in subsection (r)(1)) in a rural area (as defined in section 1886(d)(2)(D)) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and".

(b) PAYMENT.—

(1) DIRECT PAYMENT.—Section 1832(a)(2)(B) (42 U.S.C. 1395k(a)(2)(B)) is amended—

(A) in clause (ii), by striking "and" at the end;

(B) in clause (iii), by striking the semicolon and inserting a comma; and

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

"(iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1886(d)(2)(D)); and".

(2) AMOUNT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking "and" at the end of subparagraph (K); and

(B) by inserting after subparagraph (L) the following new subparagraph: "(M) with respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized

(or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2)), and".

(3) CAP ON PREVAILING CHARGE; BILLING ONLY ON ASSIGNMENT-RELATED BASIS.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r)(1) With respect to services described in section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, skilled nursing facility or nursing facility (as defined in section 1919(a)), physician, group practice, ambulatory surgical center, with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, ambulatory surgical center.

"(2)(A) For purposes of subsection (a)(1)(M), the prevailing charge for services described in section 1861(s)(2)(K)(iii) may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1848) determined for such services performed by physicians who are not specialists.

"(B) In subparagraph (A), the term 'applicable percentage' means—

"(i) 75 percent in the case of services performed in a hospital, and

"(ii) 85 percent in the case of other services.

"(3)(A) Payment under this part for services described in section 1861(s)(2)(K)(iii) may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

"(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1861(s)(2)(K)(iii) in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(4) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1861(s)(2)(K)(iii) may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this title.".

(c) CONFORMING AMENDMENT.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by striking "section 1861(s)(2)(K)" each place it appears in paragraphs (6) and (12) and inserting "clauses (i), (ii), or (iv) of section 1861(s)(2)(K)".

(d) DEFINITION.—Section 1861(aa)(3) (42 U.S.C. 1395x(aa)(3)) is amended by striking "The term" and all that follows through "who performs" and inserting the following: "The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this Act, a physician assistant, nurse practitioner, or clinical nurse specialist who performs".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1991.

SEC. 4156. COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking "and" at the end of subparagraph (M),

(B) by inserting "and" at the end of subparagraph (N), and

(C) by inserting after subparagraph (N) the following new subparagraph:

"(O) a covered osteoporosis drug and its administration (as defined in subsection (jj)) furnished on or after January 1, 1991, and on or before December 31, 1995; and"; and

(2) by inserting after subsection (ii) the following new subsection:

"Covered Osteoporosis Drug

"(jj) The term 'covered osteoporosis drug' means an injectable drug approved for the treatment of a bone fracture related to postmenopausal osteoporosis provided to an individual if, in accordance with regulations promulgated by the Secretary—

"(1) the individual's attending physician certifies that the patient is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

"(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7)).".

(b) STUDY OF EFFECTS OF COVERAGE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on the health of individuals enrolled under such part and the utilization of inpatient hospital and extended care services by such individuals.

(2) REPORT.—By not later than October 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

SEC. 4157. SEPARATE PAYMENT UNDER PART B FOR SERVICES OF CERTAIN HEALTH PRACTITIONERS.

(a) SERVICES OF CERTAIN HEALTH PRACTITIONERS NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b) (42 U.S.C. 1395x(b)) is amended—

(1) in paragraph (3), by striking "(including clinical psychologist (as defined by the Secretary))", and

(2) in paragraph (4), by striking everything after "intern" and inserting ", services described by subsection (s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and".

(b) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) (42 U.S.C. 1395k(a)(2)(B)(iii)) is amended to read as follows:

> *"(iii) services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist;".*

(c) CONFORMING AMENDMENTS.—

(1) Section 1862(a)(14) (42 U.S.C. 1395y) is amended—

(A) by striking "or are services of a certified registered nurse anesthetist", and

(B) by inserting after "this paragraph)" a comma and the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,".

(2) The matter in section 1866(a)(1)(H) (42 U.S.C. 1395x(a)(1)(H)) preceding clause (i) is amended by inserting after "and other than" the following: "services described by section 1861(s)(2)(K)(i), certified nurse-midwife services, qualified psychologist services, and".

(d) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to services furnished on or after January 1, 1991.

SEC. 4158. REDUCTION IN PAYMENTS UNDER PART B DURING FINAL 2 MONTHS OF 1990.

(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act),

the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act or under similar contracts under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972.

SEC. 4159. PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4160. CERTIFIED REGISTERED NURSE ANESTHETISTS.

Section 1833(l) (42 U.S.C. 1395l) is amended—

(1) in paragraph (1)—

(A) by inserting "(A)" after "(1)"; and

(B) by adding at the end the following:

"(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

"(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.";

(2) by striking the second sentence of paragraph (2); and

(3) by striking paragraph (4) and inserting the following:

"(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

"(i) the conversion factor shall be—

"(I) for services furnished in 1991, $15.50,

"(II) for services furnished in 1992, $15.75,
"(III) for services furnished in 1993, $16.00,
"(IV) for services furnished in 1994, $16.25,
"(V) for services furnished in 1995, $16.50,
"(VI) for services furnished in 1996, $16.75, and
"(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year;

"(ii) the payment areas to be used shall be the fee schedule areas used under section 1848 (or, in the case of services furnished during 1991, the localities used under section 1842(b)) for purposes of computing payments for physicians' services that are anesthesia services;

"(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—

"(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1842(q)(1)(B) for physicians' services that are anesthesia services furnished in the area or locality, and

"(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1848,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1848).

"(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

"(ii) The conversion factor used under clause (i) shall be—
"(I) for services furnished in 1991, $10.50,
"(II) for services furnished in 1992, $10.75,
"(III) for services furnished in 1993, $11.00,
"(IV) for services furnished in 1994, $11.25,
"(V) for services furnished in 1995, $11.50,
"(VI) for services furnished in 1996, $11.70, and
"(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1848(d)(3) for physician anesthesia services for that year.

"(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

"(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by

the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

"(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

"(I) the 1990 conversion factor, or

"(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

"(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to determine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.".

SEC. 4161. COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) COMMUNITY HEALTH CENTERS.—

(1) COVERAGE.—Section 1861(s)(2)(E) of the Social Security Act (42 U.S.C. 1395x(s)(2)(E)) is amended by inserting "and Federally qualified health center services" after "rural health clinic services".

(2) SERVICES DEFINED.—Section 1861(aa) of such Act is amended—

(A) in the heading, by adding at the end the following: "and Federally Qualified Health Center Services",

(B) in paragraph (3), by striking "paragraphs (1) and (2)" and inserting "the previous provisions of this subsection" and by redesignating such paragraph and paragraph (4) as paragraph (5) and (6), respectively, and

(C) by inserting after paragraph (2) the following new paragraphs:

"(3) The term 'Federally qualified health center services' means—

"(A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and

"(B) preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service Act,

when furnished to an individual as an outpatient of a Federally qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

"(4) The term 'Federally qualified health center' means an entity which—

"(A)(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;

"(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service,

is determined by the Secretary to meet the requirements for receiving such a grant; or

"(C) was treated by the Secretary, for purposes of part B, as a comprehensive Federally funded health center as of January 1, 1990.".

(3) PAYMENTS.—

(A) IN GENERAL.—Section 1832(a)(2)(D) of such Act (42 U.S.C. 1395k(a)(2)(D)) is amended by inserting "(i)" after "(D)" and by inserting "and (ii) Federally qualified health center services" after "rural health clinic services".

(B) DEDUCTIBLE DOES NOT APPLY.—The first sentence of section 1833(b) of such Act (42 U.S.C. 1395l(b)) is amended—

(i) by striking "and" before "(4)",

(ii) by inserting before the period at the end the following: ", and (5) such deductible shall not apply to Federally qualified health center services".

(C) EXCLUSION FROM PAYMENT REMOVED.—Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(i) in paragraph (2), by inserting ", except in the case of Federally qualified health center services" before the semicolon at the end, and

(ii) in paragraph (3), by inserting ", in the case of Federally qualified health center services, as defined in section 1861(aa)(3)," after "1861(aa)(1),", and

(iii) by adding at the end the following new sentence: "Paragraph (7) shall not apply to Federally qualified health center services described in section 1861(aa)(3)(B).".

(4) WAIVER OF ANTI-KICKBACK REQUIREMENT.—Section 1128B(b)(3) of such Act (42 U.S.C. 1320a-7b(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (C),

(B) by redesignating subparagraph (D) as subparagraph (E), and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) a waiver of any coinsurance under part B of title XVIII by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act; and".

(5) CONFORMING AMENDMENTS.—Section 1861 of such Act (42 U.S.C. 1395x) is further amended—

(A) in subsections (s)(2)(H)(i) and (s)(2)(K), by striking "subsection (aa)(3)" and "subsection (aa)(4)" each place either appears inserting "subsection (aa)(5)" and "subsection (aa)(6)", respectively, and

(B) in subsection (aa)(1)(B), by striking "paragraph (3)" and inserting "paragraph (5)".

(6) PRRB REVIEW OF COST REPORTS FOR FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1878 of the Social Security Act (42 U.S.C. 1395oo) is amended by adding at the end the following new subsection:

"(j) In this section, the term 'provider of services' includes a Federally qualified health center.".

(7) GAO STUDY OF HOSPITAL STAFF PRIVILEGES FOR PHYSICIANS PRACTICING IN COMMUNITY HEALTH CENTERS.—

(A) STUDY.—The Comptroller General shall conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study shall review—

(i) how many physicians practicing in such centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital, and

(i)(I) the criteria hospitals use in deciding whether to grant admitting privileges and (II) whether such criteria act as significant barriers to health center physicians obtaining hospital privileges.

(B) REPORT.—By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and shall include in such report such recommendations as the Comptroller General deems appropriate.

(8) EFFECTIVE DATE.—(A) Subject to subparagraphs (B) and (C), the amendments made by this section shall apply to services furnished on or after October 1, 1991.

(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act, to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

(C) The amendment made by paragraph (6) shall apply to cost reports for periods beginning on or after October 1, 1991.

(b) RURAL HEALTH CLINIC SERVICES.—

(1) EXPEDITED CERTIFICATION.—Section 1861(aa)(2) of the Social Security Act (42 U.S.C. 1395x(aa)(2)) is amended by adding at the end the following: "If a State agency has determined under section 1864(a) that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).".

(2) TEMPORARY WAIVER OF STAFFING REQUIREMENTS.—Section 1861(aa) of such Act, as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

"(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility.

"(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.".

(3) PRODUCTIVITY SCREENS.—In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).

(4) PRRB REVIEW OF COST REPORTS FOR RURAL HEALTH CENTERS.—Section 1878(j) of the Social Security Act (42 U.S.C. 1395oo(j)), as added by subsection (a)(6), is amended by inserting "a rural health clinic and" after "includes".

(5) EFFECTIVE DATE.—This subsection shall take effect on October 1, 1991, except that the amendment made by paragraph (4) shall apply to cost reports for periods beginning on or after October 1, 1991.

SEC. 4162. PARTIAL HOSPITALIZATION IN COMMUNITY MENTAL HEALTH CENTERS.

(a) IN GENERAL.—Section 1861(ff)(3) of the Social Security Act (42 U.S.C. 1395x(ff)(3)) is amended—

(1) by striking "(3)" and inserting "(3)(A)";

(2) by striking "outpatients" and inserting "outpatients or by a community mental health center (as defined in subparagraph (B)),"; and

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

"(B) For purposes of subparagraph (A), the term 'community mental health center' means an entity—

"(i) providing the services described in section 1916(c)(4) of the Public Health Service Act; and

"(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.".

(b) CONFORMING AMENDMENTS.—(1) Section 1832(a)(2) of such Act (42 U.S.C. 1395k(a)(2)) is amended—

(A) by striking "and" at the end of subparagraph (H);

(B) by striking the period at the end of subparagraph (I) and inserting "; and"; and

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

"(J) partial hospitalization services provided by a community mental health center (as described in section 1861(ff)(2)(B)).".

(2) Section 1866(e) of such Act (42 U.S.C. 1395cc(e))) is amended by striking "include a clinic" and all that follows through the period and inserting the following: "include—

"(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or

agency meets the requirements of section 1861(p)(4)(A) (or meets the requirements of such section through the operation of section 1861(g)), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B) (or meets the requirements of such section through the operation of section 1861(g)), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services; and

"(2) a community mental health center (as defined in section 1861(ff)(3)(B)), but only with respect to the furnishing of partial hospitalization services (as described in section 1861(ff)(1)).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to partial hospitalization services provided on or after October 1, 1991.

SEC. 4163. COVERAGE OF SCREENING MAMMOGRAPHY.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)—

(A) in paragraph (11), by striking all that follows "(bb))" and inserting a semicolon,

(B) in paragraph (12)(C), by striking all that follows "area)" and inserting "; and", and

(C) by inserting after paragraph (12) the following new paragraph:

"(13) screening mammography (as defined in subsection (jj));"; and

(2) by inserting after subsection (ii) the following new subsection:

"Screening Mammography

"(jj) The term 'screening mammography' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.".

(b) PAYMENT AND COVERAGE.—Section 1834 of such Act (42 U.S.C. 1395m) is amended—

(1) in subsection (b)(1)(B), by inserting "and subject to subsection (c)(1)(A)" after "conversion factors", and

(2) by inserting after subsection (b) the following new subsection:

"(c) PAYMENTS AND STANDARDS FOR SCREENING MAMMOGRAPHY.—

"(1) IN GENERAL.—Notwithstanding any other provision of this part, with respect to expenses incurred for screening mammography (as defined in section 1861(jj))—

"(A) payment may be made only for screening mammography conducted consistent with the frequency permitted under paragraph (2);

"(B) payment may be made only if the screening mammography meets the quality standards established under paragraph (3); and

"(C) the amount of the payment under this part shall, subject to the deductible established under section 1833(b), be equal to 80 percent of the least of—

"(i) the actual charge for the screening,

"(ii) the fee schedule established under subsection (b) or the fee schedule established under section 1848, whichever is applicable, with respect to both the professional and technical components of the screening mammography, or

"(iii) the limit established under paragraph (4) for the screening mammography.

"(2) FREQUENCY COVERED.—

"(A) IN GENERAL.—Subject to revision by the Secretary under subparagraph (B)—

"(i) No payment may be made under this part for screening mammography performed on a woman under 35 years of age.

"(ii) Payment may be made under this part for only 1 screening mammography performed on a woman over 34 years of age, but under 40 years of age.

"(iii) In the case of a woman over 39 years of age, but under 50 years of age, who—

"(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

"(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.

"(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

"(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.

"(B) REVISION OF FREQUENCY.—

"(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

"(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which

screening mammography may be paid for under this subsection, but no such revision shall apply to screening mammography performed before January 1, 1992.

"(3) QUALITY STANDARDS.—The Secretary shall establish standards to assure the safety and accuracy of screening mammography performed under this part. Such standards shall include the requirements that—

"(A) the equipment used to perform the mammography must be specifically designed for mammography and must meet radiologic standards established by the Secretary for mammography;

"(B) the mammography must be performed by an individual who—

"(i) is licensed by a State to perform radiological procedures, or

"(ii) is certified as qualified to perform radiological procedures by such an appropriate organization as the Secretary specifies in regulations;

"(C) the results of the mammography must be interpreted by a physician—

"(i) who is certified as qualified to interpret radiological procedures by such an appropriate board as the Secretary specifies in regulations, or

"(ii) who is certified as qualified to interpret screening mammography procedures by such a program as the Secretary recognizes in regulation as assuring the qualifications of the individual with respect to such interpretation; and

"(D) with respect to the first screening mammography performed on a woman for which payment is made under this part, there are satisfactory assurances that the results of the mammography will be placed in permanent medical records maintained with respect to the woman.

"(4) LIMIT.—

"(A) $55, INDEXED.—Except as provided by the Secretary under subparagraph (B), the limit established under this paragraph—

"(i) for screening mammography performed in 1991, is $55, and

"(ii) for screening mammography performed in a subsequent year is the limit established under this paragraph for the preceding year increased by the percentage increase in the MEI for that subsequent year.

"(B) REDUCTION OF LIMIT.—The Secretary shall review from time to time the appropriateness of the amount of the limit established under this paragraph. The Secretary may, with respect to screening mammography performed in a year after 1992, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that screening mammography of an appropriate quality is readily and conveniently available during the year.

"(C) APPLICATION OF LIMIT IN HOSPITAL OUTPATIENT SETTING.—The Secretary shall provide for an appropriate allo-

cation of the limit established under this paragraph between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where there is a claim for professional services separate from the claim for the radiologic procedure.

"(5) LIMITING CHARGES OF NONPARTICIPATING PHYSICIANS.—

"(A) IN GENERAL.—In the case of mammography screening performed on or after January 1, 1991, for which payment is made under this subsection, if a nonparticipating physician or supplier provides the screening to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B), or if less, as defined in subsection (b)(5)(B) or as defined in section 1848(g)(2)).

"(B) LIMITING CHARGE DEFINED.—In subparagraph (A), the term 'limiting charge' means, with respect to screening mammography performed—

"(i) in 1991, 125 percent of the limit established under paragraph (4),

"(ii) in 1992, 120 percent of the limit established under paragraph (4), or

"(iii) after 1992, 115 percent of the limit established under paragraph (4).

"(C) ENFORCEMENT.—If a physician or supplier knowing and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1842(j)(2).".

(c) CERTIFICATION OF SCREENING MAMMOGRAPHY QUALITY STANDARDS.—

(1) Section 1863 of such Act (42 U.S.C. 1395z) is amended by inserting "or whether screening mammography meets the standards established under section 1834(c)(3)," after "1832(a)(2)(F)(i),".

(2) The first sentence of section 1864(a) of such Act (42 U.S.C. 1395aa(a)) is amended by inserting before the period the following: ", or whether screening mammography meets the standards established under section 1834(c)(3)".

(3) Section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended by inserting "1834(c)(3)," after "1832(a)(2)(F)(i),".

(d) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(2)(E) of such Act (42 U.S.C. 1395l(a)(2)(E)) is amended by inserting ", but excluding screening mammography" after "imaging services".

(2) Section 1862(a) of such Act (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "subparagraph (B), (C), (D), or (E)" and inserting "a succeeding subparagraph",

(ii) in subparagraph (D), by striking "and" at the end,

(iii) in subparagraph (E), by striking the semicolon at the end and inserting ", and", and

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

"(F) in the case of screening mammography, which is performed more frequently than is covered under section 1834(c)(2) or which does not meet the standards established under section 1834(c)(3), and, in the case of screening pap smear, which is performed more frequently than is provided under section 1861(nn);"; and

(B) in paragraph (7), by inserting "or under paragraph (1)(F)" after "(1)(B)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to screening mammography performed on or after January 1, 1991.

SEC. 4164. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART B.

(a) EXTENSION OF DEMONSTRATIONS.—

(1) PREVENTION DEMONSTRATIONS.—Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9344 of the Omnibus Budget Reconciliation Act of 1986, is amended—

(A) in subsection (a), by striking "4-year" and inserting "5-year";

(B) in subsection (e)(2), by striking "Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report" and inserting "Not later than April 1, 1993, the Secretary shall submit an interim report";

(C) in subsection (e), by adding at the end the following new paragraph:

"(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.";

(D) in subsection (f), by striking "$5,900,000" and inserting "$7,500,000"; and

(E) in subsection (f), by inserting before the period at the end the following: "and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)".

(2) ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.—Section 9342 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(A) in subsection (c)(1), by striking "3 years" and inserting "4 years";

(B) in subsection (d)(1), by striking "third year" and inserting "fourth year";

(C) in subsection (f)—

(i) by striking "$40,000,000" and inserting "$55,000,000", and

(ii) by striking "$2,000,000" and inserting "$3,000,000".

(b) DISCLOSURE OF OWNERSHIP.—

(1) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1124 the following new section:

"DISCLOSURE REQUIREMENTS FOR OTHER PROVIDERS UNDER PART B OF MEDICARE

"SEC. 1124A. (a) DISCLOSURE REQUIRED TO RECEIVE PAYMENT.—No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

"(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest; and

"(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

"(A) on the identity of any other entities providing items or services for which payment may be made under title XVIII of the Social Security Act with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

"(B) as to whether any penalties, assessments, or exclusions have been assessed against such person or managing employee under section 1128, 1128A, or 1128B.

"(b) UPDATES TO INFORMATION SUPPLIED.—A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) not later than 180 days after such changes or updates take effect.

"(c) DEFINITIONS.—For purposes of this section—

"(1) the term 'disclosing part B provider' means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B of title XVIII, except that such term does not include an entity described in section 1124(a)(2);

"(2) the term 'managing employee' means, with respect to a provider, a person described in section 1126(b); and

"(3) the term 'person with an ownership or control interest' means, with respect to a provider—

"(A) a person described in section 1124(a)(3), or

"(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.".

(2) CRIMINAL PENALTY FOR PROVIDING FALSE INFORMATION.—Section 1128B(c) of such Act (42 U.S.C. 1320a-7b(c)) is amended by striking "health care program" and inserting "health care program, or with respect to information required to be provided under section 1124A,".

(3) FAILURE TO PROVIDE INFORMATION AS GROUNDS FOR PERMISSIVE EXCLUSION FROM PROGRAM.—Section 1128(b)(9) of such Act (42 U.S.C. 1320a-7(b)(9)) is amended by striking "1124" and inserting "1124, section 1124A,".

(4) EFFECTIVE DATE.—The amendments made by paragraph (1), (2), and (3) shall apply with respect to items or services furnished on or after—

(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act, has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act; or

(B) January 1, 1992, in the case of items or services furnished by any other provider.

(c) DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Not later than March 31, 1991, the Secretary of Health and Human Services shall publish a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addressess of all listed physicians.

PART 3—PROVISIONS RELATING TO PARTS A AND B

SEC. 4201. PROVISIONS RELATING TO END STAGE RENAL DISEASE.

(a) INCREASE IN COMPOSITE RATES.—Section 9335(a)(1) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6203(a)(1) of the Omnibus Budget Reconciliation Act of 1989, is amended—

(1) by striking "October 1, 1990," and inserting "December 31, 1990,"; and

(2) by inserting after the first sentence the following: "With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989), increased by $1.00.".

(b) PROPAC STUDY ON ESRD COMPOSITE RATES.—

(1) IN GENERAL.—

(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act.

(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations con-

cerning the appropriate methodology the Commission shall consider—

(i) hemodialysis and other modalities of treatment,

(ii) the appropriate services to be included in such payments,

(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus freestanding facilities, urban versus rural, size and mix of services,

(iv) adjustments for labor and nonlabor costs,

(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) ANNUAL REPORT.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

(c) PAYMENT RATES FOR ERYTHROPOIETIN.—

(1) IN GENERAL.—Section 1881(b)(11) of the Social Security Act (42 U.S.C. 1395rr(b)) is amended—

(A) by striking "(11)" and inserting "(11)(A)"; and

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

"(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established under this section, and payment for such item shall be made separately—

"(i) in the case of erythropoietin provided by a physician, in accordance with section 1833; and

"(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

"(I) for erythropoietin provided during 1991, in an amount equal to $11 per thousand units (rounded to the nearest 100 units), and

"(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to erythropoietin furnished on or after January 1, 1991.

(d) SELF-ADMINISTERED ERYTHROPOIETIN.—

(1) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), is amended—

(A) by striking "and" at the end of subparagraph (O);

(B) by adding "and" at the end of subparagraph (P); and

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

"(Q) erythropoietin for home dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug;".

(2) COVERAGE FOR METHOD II PATIENTS.—Section 1881(b) (42 U.S.C. 1395rr(b)) is further amended—

(A) in paragraph (1)—

(B) by striking "and (B)" and inserting "(B), and

(C) by striking "equipment." and inserting "equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1861(s)(2)(Q) if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section)."; and

(3) by adding at the end of paragraph (11), as amended by subsection (c), the following new subparagraph:

"(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply to items and services furnished on or after July 1, 1991.

SEC. 4202. STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis

staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a home hemodialysis staff assistant provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term "services of a home hemodialysis staff assistant" means—

(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

(2) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility (as adjusted to reflect differences in area wage levels), and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home he-

modialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (ii)(II)—

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

(A) the individual is not a resident of a skilled nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(4); and

(F) no family member or other individual is available to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act, is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the

demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(e) REPORTS.—

(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

(1) For fiscal year 1991, $4,000,000.
(2) For fiscal year 1992, $4,000,000.
(3) For fiscal year 1993, $3,000,000.
(4) For fiscal year 1994, $2,000,000.
(5) For fiscal year 1995, $1,000,000.

SEC. 4203. EXTENSION OF SECONDARY PAYOR PROVISIONS.

(a) EXTENSION OF TRANSFER OF DATA.—

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking "September 30, 1991" and inserting "September 30, 1995".

(2) Section 6103(l)(12)(F) of the Internal Revenue Code of 1986 is amended—

(A) in clause (i), by striking "September 30, 1991" and inserting "September 30, 1995";

(B) in clause (ii)(I), by striking "1990" and inserting "1994"; and

(C) in clause (ii)(II), by striking "1991" and inserting "1995".

(b) EXTENSION OF APPLICATION TO DISABLED BENEFICIARIES.—Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking "January 1, 1992" and inserting "October 1, 1995".

(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—

(1) IN GENERAL.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—

(A) in clause (i), by striking "during the 12-month period" and all that follows and inserting "during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A under the provisions of section 226A, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 226A if the individual had filed an application for such benefits; and"

(B) in the matter following clause (ii), by adding at the end the following: "Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.".

(2) GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD.—(A) The Comptroller General shall conduct a study of the impact of the application of clause (iii) of section 1862(b)(1)(C) of the Social Security Act on individuals entitled to benefits under title XVIII of such Act by reason of section 226A of such Act, and shall include in such report information relating to—

(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

(ii) the amount of savings to the medicare program achieved annually by reason of the application of such clause;

(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary;

(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) to all group health plans.

(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.

(d) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act and the amendment made by subsection (a)(2)(B) shall apply to requests made on or after such date.

SEC. 4204. HEALTH MAINTENANCE ORGANIZATIONS.

(a) REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.—

(1) IN GENERAL.—Section 1876(i) (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

"(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

"(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

"(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

"(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

"(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

"(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

"(B) In this paragraph, the term 'physician incentive plan' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.".

(2) PENALTIES.—Section 1876(i)(6)(A)(vi) (42 U.S.C. 1395mm(i)(6)(A)(vi)) is amended by striking "(g)(6)(A);" and inserting "(g)(6)(A) or paragraph (8);".

(3) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended—

(A) by striking ", an eligible organization" and all that follows through "section 1876,",

(B) by adding "and" at the end of subparagraph (A),

(C) by striking subparagraph (B),

(D) by redesignating subparagraph (C) as subparagraph (B), and

(E) by striking "or organization".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) shall take effect on the date of the enactment of this Act.

(b) REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC.—(1) Not later than January 1, 1992, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall submit a proposal to Congress that provides for a modified payment method for organizations with a risk contract under section 1876(g) of the Social Security Act that is more accurate than the current payment methodology in predicting the actual service utilization and annual medical expenditures of the beneficiary population enrolled in a specific organization.

(2) The proposal shall include—

(A)(i) recommendations on modifying the current adjusted average per capita cost formula, by adding predictors of medical utilization such as health status adjustors or prior utilization measures; or

(ii) recommendations for a new payment methodology as an alternative to the adjusted average per capita cost;

(B) data to support any recommended changes in payment methodology for organizations with risk contracts under section 1876(g) of the Social Security Act; and

(C) analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(3) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule providing for the implementation of the payment methodology specified in the proposal submitted pursuant to paragraph (1).

(4) Not later than May 1, 1992, the Comptroller General shall review the proposal and recommendations made pursuant to paragraphs (1) and (2), and shall report to Congress on appropriate modifications in such payment methodology.

(5) Taking into account the recommendations made pursuant to paragraph (4), on or after August 1, 1992, the Secretary shall issue a final rule implementing a payment methodology that meets the requirements of paragraph (1), effective for contract years beginning on or after January 1, 1993.

(c) APPLICATION OF NATIONAL COVERAGE DECISIONS.—

(1) IN GENERAL.—Section 1876(c)(2) (42 U.S.C. 1395mm(c)(2)) is amended—

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

(B) by inserting "(A)" after "(2)"; and

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

"(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) and ending on the date of the next announcement under such subsection that the Secretary projects will result in a significant change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per

capita rate of payment included in the announcement made at the beginning of such period—

"(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

"(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.".

(2) CONFORMING AMENDMENT.—Section 1876(a)(6) of such Act is amended by striking "subsection (c)(7)" and inserting "subsections (c)(2)(B)(ii) and (c)(7)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act.

(d) PAYMENTS FOR SERVICES FURNISHED BY NON-CONTRACT PROVIDERS.—

(1) IN GENERAL.—Section 1876(j) (42 U.S.C. 1395mm(j)) is amended—

(A) in paragraph (1)(A)—

(i) by striking "physician" each place it appears and inserting "physician or provider of services or renal dialysis facility",

(ii) by striking "physicians' services" and inserting "physicians' services or renal dialysis services", and

(iii) by striking "participation agreement under section 1842(h)(1)" and inserting "applicable participation agreement",

(B) in paragraph (2)—

(i) by striking "physicians' services" each place it appears and inserting "physicians' services or renal dialysis services", and

(ii) by striking "which—" and all that follows and inserting "which are furnished to an enrollee of an eligible organization under this section by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1991.

(e) RETROACTIVE ENROLLMENT.—

(1) IN GENERAL.—Section 1876(a)(1)(E) (42 U.S.C. 1395mm(a)(1)(E)) is amended—

(A) by striking "(E)" and inserting "(E)(i)"; and

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

"(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals

enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

"(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) at the time the individual enrolled with the organization.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to individuals enrolling with an eligible organization (which has a risk-sharing contract under section 1876 of the Social Security Act) under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.

(f) STUDY OF CHIROPRACTIC SERVICES.—

(1) The Secretary shall conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act make available to enrollees entitled to benefits under title XVIII of such Act chiropractic services that are covered under such title.

(2) The study shall examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees.

(3) The study shall be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993.

(4) The Secretary shall issue a final report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the study not later than January 1, 1993. The report shall include recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services.

(g) PROHIBITING CERTAIN EMPLOYER MARKETING ACTIVITIES.—

(1) IN GENERAL.—Section 1862(b)(3) (42 U.S.C. 1395y(b)(3)) is amended by adding at the end the following new subparagraph:

"(C) PROHIBITION OF FINANCIAL INCENTIVES NOT TO ENROLL IN A GROUP HEALTH PLAN.—It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this title not to enroll (or to terminate enrollment) under a group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)), unless such incentive is also offered to all individuals who are eligible for coverage under the plan. Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to

a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to incentives offered on or after the date of the enactment of this Act.

SEC. 4205. PEER REVIEW ORGANIZATIONS.

(a) USE OF CORRECTIVE ACTION PLANS.—

(1) IN GENERAL.—Section 1156(b)(1) (42 U.S.C. 1320c-5(b)(1)) is amended—

(A) by inserting "and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan," after "concerned,"; and

(B) by inserting after the second sentence the following: "In determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to initial determinations made by organizations on or after the date of the enactment of this Act.

(b) TREATMENT OF OPTOMETRISTS AND PODIATRISTS.—

(1) IN GENERAL.—Section 1154 (42 U.S.C. 1320c-3) is amended—

(A) in subsection (a)(7)(A)(i), by inserting ", optometry, and podiatry" after "dentistry"; and

(B) in subsection (c), by striking "or dentistry" each place it appears and inserting "dentistry, optometry, or podiatry".

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

(c) COORDINATION OF PROS AND CARRIERS.—

(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

(A) the development of common utilization and medical review criteria;

(B) criteria for the targetting of reviews by peer review organizations and carriers; and

(C) improved methods for exchange of information among peer review organizations and carriers.

(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.

(d) PEER REVIEW NOTICE.—

(1) NOTICE OF PROPOSED SANCTIONS.—

(A) REQUIREMENT.—Section 1154(a)(9) (42 U.S.C. 1320c-3(a)(9)) is amended—

(i) by inserting "(A)" after "(9)"; and

(ii) by adding at the end the following:

"(B) If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.".

(B) DISCLOSURE.—Section 1160(b)(1) (42 U.S.C. 1320c-9(b)(1)) is amended—

(i) by striking "and" at the end of subparagraph (B),

(ii) by adding "and" at the end of subparagraph (C), and

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

"(D) to provide notice to the State medical board in accordance with section 1154(a)(9)(B) when the organization submits a report and recommendations to the Secretary under section 1156(b)(1) with respect to a physician whom the board is responsible for licensing;".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act.

(2) NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN BY SECRETARY.—

(A) IN GENERAL.—Section 1156(b) (42 U.S.C. 1320c-5(b)) is amended by adding at the end the following new paragraph:

"(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.".

(B) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

(e) CONFIDENTIALITY OF PEER REVIEW DELIBERATIONS.—

(1) IN GENERAL.—Section 1160(d) (42 U.S.C. 1320c-9(d)) is amended by adding at the end the following: "No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1154(a)(1)(B) or 1156(a)(2) shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.".

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

(f) CLARIFICATION OF LIMITATION ON LIABILITY.—Section 1157(b) (42 U.S.C. 1320c-6(b)) is amended—

(1) by inserting "organization having a contract with the Secretary under this part and no" after "No",

(2) by striking "by him", and

(3) by striking "he has exercised due care" and inserting "due care was exercised in the performance of such duty, function, or activity".

(g) MISCELLANEOUS AND TECHNICAL AMENDMENTS RELATING TO PEER REVIEW ORGANIZATIONS.—

(1) CLARIFICATION OF PATIENT NOTIFICATION REQUIREMENTS FOR DENIAL OF PAYMENT BY PRO.—

(A) IN GENERAL.—Section 1154(a)(3)(E) (42 U.S.C. 1320c-3(a)(3)(E)) is amended—

(i) by striking "(E)" and inserting "(E)(i)";

(ii) by inserting after "items" the following: "provided by a physician that were";

(iii) by striking "physician and hospital." and inserting "physician."; and

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

"(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term 'physician' in the notice described in clause (i).".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

(2) CLARIFICATION OF APPLICATION OF CRITERIA FOR DENIAL OF PAYMENT.—

(A) IN GENERAL.—Section 1154(a)(2) (42 U.S.C. 1320c-3(a)(2)) is amended by striking the third sentence and inserting the following: "The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4206. MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

(a) IN GENERAL.—Section 1866(a)(1) (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subsection (a)(1)—

(A) by striking "and" at the end of subparagraph (O),

(B) by striking the period at the end of subparagraph (P) and inserting ", and", and

(C) by inserting after subparagraph (P) the following new subparagraph:

"(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) (relating to maintaining written policies and procedures respecting advance directives).", and

(2) by inserting after subsection (e) the following new subsection:

"(f)(1) For purposes of subsection (a)(1)(Q) and sections 1819(c)(2)(E), 1833(r), 1876(c)(8), and 1891(a)(6), the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the written policies of the provider or organization respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of an eligible organization (as defined in section 1876(b)) or an organization provided payments under section 1833(a)(1)(A), at the time of enrollment of the individual with the organization.

"(3) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.".

(b) APPLICATION TO PREPAID ORGANIZATIONS.—

(1) ELIGIBLE ORGANIZATIONS.—Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following new paragraph:

"(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) OTHER PREPAID ORGANIZATIONS.—Section 1833 of such Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(r) The Secretary may not provide for payment under subsection (a)(1)(A) with respect to an organization unless the organization provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(c) EFFECT ON STATE LAW.—Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

(d) CONFORMING AMENDMENTS.—

(1) Section 1819(c)(1) of such Act (42 U.S.C. 1395i-3(c)(1)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A skilled nursing facility must comply with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(2) Section 1891(a) of such Act (42 U.S.C. 1395bbb(a)) is amended by adding at the end the following:

"(6) The agency complies with the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).".

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (d) shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to contracts under section 1876 of the Social Security Act and payments under section 1833(a)(1)(A) of such Act as of first day of the first month beginning more than 1 year after the date of the enactment of this Act.

SEC. 4027. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PARTS A AND B.

(a) HOSPITAL AND PHYSICIAN OBLIGATIONS WITH RESPECT TO EMERGENCY MEDICAL CONDITIONS.—

(1) PEER REVIEW.—(A) Section 1867(d) (42 U.S.C. 1395dd(d)), as amended by section 4008(b)(3), is amended by adding at the end the following new paragraph:

"(3) CONSULTATION WITH PEER REVIEW ORGANIZATIONS.—In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control

peer review organization (with a contract under part B of title XI) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review.

(B) Section 1154(a) (42 U.S.C. 1320c-4(a)) is amended by adding at the end the following new paragraph:

"(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section 1867(d)(3). The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.".

(C) The amendment made by subparagraph (A) shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act. The amendment made by subparagraph (B) shall apply to contracts under part B of title XI of the Social Security Act as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

(2) CIVIL MONETARY PENALTIES.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowingly" and inserting "negligently".

(3) EXCLUSION.—Section 1867(d)(2)(B) (42 U.S.C. 1395dd(d)(2)(B)) is amended by striking "knowing and willful or negligent" and inserting "is gross and flagrant or is repeated".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act.

(b) EXTENSIONS OF EXPIRING PROVISIONS.—

(1) PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974) of more than $50,000,000, except as follows:

(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

(2) PROHIBITION OF PAYMENT CYCLE CHANGES.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(3) WAIVER OF LIABILITY FOR HOME HEALTH AGENCIES.—Section 9305(g)(3) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 426(d) of the Medicare Catastrophic Coverage Act of 1988, is amended by striking "November 1, 1990" and inserting "December 31, 1995".

(4) EXTENSION AND EXPANSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(A) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 is amended—

(i) in paragraph (1), by striking "September 30, 1992" and inserting "December 31, 1995"; and

(ii) in paragraph (4)—

(I) by striking "final" and inserting "second interim", and

(II) by striking the period at the end and inserting the following: ", and shall submit a final report on the demonstration projects conducted under section 2355 of the Deficit Reduction Act of 1984 not later than March 31, 1996.".

(B) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(i) in subsection (a), by adding at the end the following: "Not later than 12 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990, the Secretary shall approve such applications or protocols for not more than 4 additional projects described in subsection (b).";

(ii) by amending paragraph (1) of subsection (b) to read as follows:

"(1) to demonstrate—

"(A) the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1-04 of the University Health Policy Consortium of Brandeis University, or

"(B) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, the effectiveness and feasibilitly of innovative approaches to refining targeting

and financing methodologies and benefit design, including the effectiveness of feasibility of--

"(i) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers;

"(ii) refining targeting or reimbursement methodologies;

"(iii) the establishment and operation of a rural services delivery system; or

"(iv) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery;";

(iii) in subsection (b)—

(I) by inserting "and" at the end of paragraph (3),

(II) by striking the semicolon at the end of paragraph (4) and inserting a period, and

(III) by striking paragraphs (5), (6), and (7).

(iv) in subsection (c)—

(I) by striking "and" at the end of paragraph (1),

(II) by striking the period at the end of paragraph (2) and inserting "; and", and

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

"(3) in the case of a project conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990, any requirements of titles XVIII or XIX of the Social Security Act that, if imposed, would prohibit such project from being conducted."; and

(v) by adding at the end the following new subsection:

"(e) There are authorized to be appropriated $3,500,000 for the costs of technical assistance and evaluation related to projects conducted as a result of the amendments made by section 12907(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1990.".

(c) DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the develop-

ment of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) REPORTS.—(A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) HOME HEALTH WAGE INDEX.—

(1) IN GENERAL.—Section 1861(v)(1)(L)(iii) of (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended to read as follows:

"(iii) Not later than July 1, 1991, and annually thereafter, the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1886(d)(3)(E) as of such date to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B), a decision of the Medicare Geographic Classification Review Board under section 1886(d)(10), or a decision of the Secretary).".

(2) APPLICATION ON BUDGET-NEUTRAL BASIS.—In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act will be no greater or lesser than such payments would have been without regard to such update.

(3) TRANSITION PROVISION.—Notwithstanding section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of such Act with respect to

services furnished by a home health agency, utilize a wage index equal to—

(A) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of—

(i) 67 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 33 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section; and

(B) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of—

(i) 33 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 67 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(4) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.

(e) CLARIFICATION OF DEFINITIONS AND REPORTING REQUIREMENTS RELATING TO PHYSICIAN OWNERSHIP AND REFERRAL.—

(1) CLARIFYING DEFINITIONS.—Section 1877(h) of the Social Security Act (42 U.S.C. 1395nn(h)) is amended—

(A) in paragraph (6)(A), by striking "in the case of" and all that follows through "the service," and inserting "in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service,";

(B) in paragraph (6)(B), by striking "in the case of another clinical laboratory service,", and

(C) by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) INVESTOR.—The term 'investor' means, with respect to an entity, a person with a financial relationship specified in subsection (a)(2) with the entity.".

(2) EXEMPTION FOR FINANCIAL RELATIONSHIPS WITH HOSPITAL UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—Section 1877(b) is amended by redesignating paragraph

(4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF CLINICAL LABORATORY SERVICES.—In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of clinical laboratory services.".

(3) REVISION OF REPORTING REQUIREMENTS.—Section 1877(f) (42 U.S.C. 1395nn(f)) is amended—

(A) by amending paragraph (2) to read as follows:

"(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)) in the entity, or whose immediate relatives have such an ownership or investment.";

(B) in the third sentence, by striking "1 year after the date of the enactment of this section" and inserting "October 1, 1991"; and

(C) by adding at the end the following new sentences: "The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.".

(4) DATE OF ISSUANCE OF REPORTS AND REGULATIONS.—(A) Section 6204 of the Omnibus Budget Reconciliation Act of 1989 is amended by striking subsection (f) and inserting the following:

"(f) STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION.—Not later than June 30, 1992, the Secretary of Health and Human Services shall submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in section 1877(f) of the Social Security Act (other than entities providing clinical laboratory services).".

(B) Section 6204(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "October 1, 1990" and inserting "October 1, 1991".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989.

(g) CASE MANAGEMENT DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (in this subsection referred to as "MCCA").

(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18–P–99379/5–01;

(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P–99399/4–01; and

(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18–P–99396/5.

(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.

(h) PROHIBITION OF USER FEES FOR SURVEY AND CERTIFICATION.—Section 1864 (42 U.S.C. 1395aa) is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a), or any renal dialysis facility subject to the requirements of section 1881(b)(1), for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this title.".

(i) DELEGATION OF AUTHORITY TO INSPECTOR GENERAL.—Section 1128A(j) (42 U.S.C. 1320a–7a(j)) is amended—

(i) by striking "(j)" and inserting "(j)(1)"; and

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

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

(j) MODIFICATION OF HOME HEALTH AGENCY DEFICIENCY STANDARDS.—

(1) IN GENERAL.—Effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, section

1891(a)(3)(D)(iii) of the Social Security Act (42 U.S.C. 1395bbb(a)(3)(D)(iii)) is amended by striking "which has been determined" and all that follows and inserting the following: "which, within the previous 2 years—

"(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

"(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D);

"(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of not less than $5,000; or

"(IV) has been subject to the remedies described in subsection (e)(1) or in clauses (ii) or (iii) of subsection (f)(2)(A).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act;

(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title.

(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

(v) pursuant to State action, was closed or had its residents transferred.

(k) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this title and the amendments made by this title.

(m) MISCELLANEOUS TECHNICAL CORRECTIONS.—

(1) The third sentence of subsections (a) and (b)(1) of section 1882 of the Social Security Act (42 U.S.C. 1395ss), as amended by section 203(a)(1)(A) of the Medicare Catastrophic Coverage Repeal Act, is amended by striking "(k)(4),".

(2) Section 1877(g)(5) of the Social Security Act, as added by section 6204(a) of OBRA-1989, is amended by adding at the end the following new sentence: "The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(3) Subsection (i) of section 1867 of the Social Security Act, as added by section 6211(f) of the Omnibus Budget Reconciliation Act of 1989, is amended to read as follows:

"(i) WHISTLEBLOWER PROTECTIONS.—A participating hospital may not penalize or take adverse action against a qualified medical

person described in subsection (c)(1)(A)(iii) or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.".

(4) Section 6213(d) of the Omnibus Budget Reconciliation Act of 1989 is amended by striking "take effect" and inserting "apply to services furnished on or after".

(5) Section 6217(a) of the Omnibus Budget Reconciliation Act of 1989 is amended in the matter preceding paragraph (1) by inserting after "payments" the following: "out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)".

(6) Section 1139(d) of the Social Security Act, as amended by section 6221 of Omnibus Budget Reconciliation Act of 1989, is amended by striking "interim report" and all that follows through "setting forth" and inserting the following: "interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth".

PART 4—PROVISIONS RELATING TO MEDICARE PART B PREMIUM AND DEDUCTIBLE

SEC. 4301. PART B PREMIUM.

Section 1839(e)(1) (42 U.S.C. 1395r(e)(1)) is amended—

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

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

"(B) Notwithstanding the provisions of subsection (a), the monthly premium for each individual enrolled under this part for each month in—

"(i) 1991 shall be $29.90,

"(ii) 1992 shall be $31.80,

"(iii) 1993 shall be $36.60,

"(iv) 1994 shall be $41.10, and

"(v) 1995 shall be $46.10.".

SEC. 4302. PART B DEDUCTIBLE.

Section 1833(b) (42 U.S.C. 1395l) is amended by inserting after "$75" the following: "for calendar years before 1991 and $100 for 1991 and subsequent years".

PART 5—MEDICARE SUPPLEMENTAL INSURANCE POLICIES

SEC. 4351. SIMPLIFICATION OF MEDICARE SUPPLEMENTAL POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subsection (b)(1)(B), by striking "through (4)" and inserting "through (5)";

(2) in subsection (c)—

(A) by striking "and" at the end of paragraph (3),

(B) by striking the period at the end of paragraph (4) and inserting "; and", and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) meets the applicable requirements of subsections (o) through (t).'; and

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

"(o) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p).

"(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B), the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

"(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

"(p)(1)(A) If, within 9 months after the date of the enactment of this subsection, the National Association of Insurance Commissioners (in this subsection referred to as the 'Association') promulgates—

"(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

"(ii) uniform language and definitions to be used with respect to such benefits,

"(iii) uniform format to be used in the policy with respect to such benefits, and

"(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'), subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the NAIC standards.

"(B) If the Association does not promulgate NAIC standards within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards') and subsection (g)(2)(A) shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, included a reference to the Federal standards.

"(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the NAIC standards or the Federal standards or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

"(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

"(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the NAIC or Federal standards, but

"(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

"(E) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

"(F) If benefits (including deductibles and coinsurance) under this title are changed and the Secretary determines, in consultation with the Association, that changes in the NAIC or Federal standards are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

"(2) The benefits under the NAIC or Federal standards shall provide—

"(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

"(B) for identification of a core group of basic benefits common to all policies, and

"(C) that, subject to paragraph (5)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

"(3) The benefits under paragraph (2) shall, to the extent possible—

"(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of the date of the enactment of this subsection; and

"(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

"(4)(A)(i) Except as provided in subparagraph (B), no State with a regulatory program approved under subsection (b)(1) may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable standards.

"(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable standards.

"(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable standards. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

"(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

"(B) A State with a regulatory program approved under subsection (b)(1) may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

"(6) The Secretary may waive the application of standards in regard to the limitation of benefits described in paragraph (4) in those States that on the date of enactment of this subsection had in place an alternative simplification program.

"(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholder or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

"(8) Any person who sells or issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

"(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the NAIC or Federal standards under this subsection.

"(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed

$25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with this subsection.".

SEC. 4352. GUARANTEED RENEWABILITY.

Section 1882 is amended by adding at the end the following new subsection:

"(q) The requirements of this subsection are as follows:

"(1) Each medicare supplemental policy shall be guaranteed renewable and—

"(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

"(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

"(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (2), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

"(A) provides for continuation of the benefits contained in the group policy, or

"(B) provides for such benefits as otherwise meets the requirements of this section.

"(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

"(A) offer the certificateholder the conversion opportunity described in paragraph (2), or

"(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

"(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.".

SEC. 4353. ENFORCEMENT OF STANDARDS.

(a) REQUIRING CONFORMITY WITH STANDARDS.—Section 1882 is amended—

(1) in the heading, by striking "voluntary"; and

(2) in subsection (a)—

(A) by inserting "(1)" after "(a)",

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

"(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(c) unless—

"(A) the State's regulatory program under subsection (b)(1) provides for the application and enforcement of the standards and requirements set forth in such subsection (including the NAIC standards or the Federal standards (as the case may be)) by the date specified in subsection (p)(1)(c); or

"(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, after the effective date of the NAIC or Federal standards with respect to the policy, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) PERIODIC REVIEW OF STATE REGULATORY PROGRAMS.—Section 1882(b) is amended—

(1) in paragraph (1), by striking "Supplemental Health Insurance Panel (established under paragraph (2))" and inserting "the Secretary",

(2) in paragraph (1), by striking "the Panel" and inserting "the Secretary",

(3) in subparagraphs (A) and (D) of paragraph (1), by inserting "and enforcement" after "application", and

(4) by amending paragraph (2) to read as follows:

"(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.".

(c) ENFORCEMENT BY STATES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by inserting "and" at the end of subparagraph (E);

(3) by inserting after subparagraph (E) the following:

"(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,"; and

(5) by adding at the end the following new sentence: "The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet

the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.".

(d) REQUIRING APPROVAL OF STATE FOR SALE IN THE STATE.—

(1) IN GENERAL.—Section 1882(d)(4)(B) (42 U.S.C. 1395ss(d)(4)(B)) is amended by striking the second sentence.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.

SEC. 4354. PREVENTING DUPLICATION.

(a) IN GENERAL.—Subsection (d)(3) of section 1882 (42 U.S.C. 1395ss) is amended—

(1) in subparagraph (A)—

(A) by striking "Whoever knowingly sells" and inserting "It is unlawful for a person to sell or issue",

(B) by striking "substantially",

(C) by striking ", shall be fined" and inserting ". Whoever violates the previous sentence shall be fined",

(D) in subparagraph (A), by inserting "or title XIX" after "other than this title",

(E) in subparagraph (A), by striking "$5,000" and inserting "$25,000 (or $15,000 in the case of a person other than the issuer of the policy)", and

(F) by adding at the end the following: "A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p).";

(2) by amending subparagraph (B) to read as follows:

"(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A or enrolled under part B, whether directly, through the mail, or otherwise, unless—

"(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in subclause (II), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under title XIX, whether as a qualified medicare beneficiary or otherwise, and

"(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

"(ii) The statement required by clause (i) shall be made on a form that—

"(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

"(II) states in substance that individuals 65 years of age or older may be eligible for benefits under the State medicaid program under title XIX and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such title and may be reinstituted upon loss of such entitlement, and

"(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

"(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has another medicare supplemental policy or indicates that the individual is entitled to any medical assistance under title XIX, the sale of such a policy shall be considered to be a violation of subparagraph (A).

"(II) Subclause (I) shall not apply in the case of an individual who has another policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer or seller's knowledge, duplicate coverage (taking into account any such replacement).

"(III) Subclause (I) also shall not apply if a State medicaid plan under title XIX pays the premiums for the policy, or pays less than an individual's (who is described in section 1905(p)(1)) full liability for medicare cost sharing as defined in section 1905(p)(3)(A).

"(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.".

(b) SUSPENSION OF POLICY DURING MEDICAID ENTITLEMENT.—Section 1882(q), as added by section 4352, is amended by adding at the end the following new paragraph:

"(2)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under title XIX of the Social Security Act, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automati-

cally reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

"(B) Nothing in this section shall be construed as affecting the authority of a State, under title XIX of the Social Security Act, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such title.

"(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act.

SEC. 4355. LOSS RATIOS AND REFUND OF PREMIUMS.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended—

(1) in subsection (c), by amending paragraph (2) to read as follows:

"(2) meets the requirements of subsection (r);";

(2) by striking the sentence following subsection (c)(4); and

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

"(r)(1) A medicare supplemental policy may not be issued or sold in any State unless—

"(A) the policy can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners, to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

"(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A).

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

"(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by policy number. Paragraph (1)(B) shall not apply to a policy with respect to the first 2 years in which it is in effect. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustments in the percentages under paragraph (1)(A) that may be appropriate in order to apply paragraph (1)(B) to the first 2 years in which policies are effective.

"(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

"(C) Such a refund or credit shall include interest from the end of the policy year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

"(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a policy year, not later than the third quarter of the succeeding policy year.

"(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

"(4) The Secretary shall submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate on loss-ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disllowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss-ratios). Such report shall include a list of the policies that failed to comply with such loss-ratio requirements or other requirements of this section.

"(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

"(B) The Secretary may independently perform such compliance audits.

"(6)(A) A person who issues a policy in violation of the loss ratio requirements of this subsection is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to policyholders for credits required under such paragraph.".

(b) ASSURING ACCESS TO LOSS RATIO INFORMATION.—Section 1882(b)(1)(C) (42 U.S.C. 1395ss(b)(1)(C)) is amended by striking the semicolon at the end and inserting a comma and the following:

"and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;".

(c) IMPLEMENTATION OF PROCESS TO APPROVE PREMIUM INCREASES.—Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)) is further amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by adding "and" at the end of subparagraph (F);

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

"(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase,".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to policies sold or issued more than 1 year after the date of the enactment of this Act.

SEC. 4356. CLARIFICATION OF TREATMENT OF PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.

(a) IN GENERAL.—The first sentence of section 1882(g)(1) is amended by inserting before the period at the end the following: "and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this title, including such services under a contract under under section 1876 or an agreement under section 1833".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4357. PRE-EXISTING CONDITION LIMITATIONS AND LIMITATION ON MEDICAL UNDERWRITING.

(a) IN GENERAL.—Section 1882 is amended—

(1) in subsection (c), in the matter before paragraph (1), by inserting "or the requirement described in subsection (s)" after "paragraph (3)", and

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

"(s)(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

"(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition for which an application is submitted during the 6 month period beginning with the first month in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B.

"(B) Subject to subparagraph (C), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for

which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

"(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

"(3) Any issuer of a medicare supplemental policy that fails to meet the requirements of paragraphs (1) and (2) is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of the enactment of this Act.

SEC. 4358. MEDICARE SELECT POLICIES.

(a) IN GENERAL.—Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following:

"(t)(1) If a policy meets the NAIC Model Standards and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

"(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts with the issuer of the policy;

"(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

"(C) the network offers sufficient access;

"(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

"(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the NAIC standards without reference to this subsection and the premium charged for such policy, and

"(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

"(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the NAIC standards and other requirements of this section without reference to this subsection.

"(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

"(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

"(B) imposes premiums on enrollees in excess of the premiums approved by the State,

"(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

"(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) to determine whether items and services (furnished to individuals entitled to benefits under this title and under that policy) are not allowable under section 1862(a)(1). Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E) of section 1842(b) shall apply to the entity.".

(b) CONFORMING AMENDMENTS.—(1) Section 1882(c)(1) (42 U.S.C. 1395ss(c)(1)) is amended by inserting "(except as otherwise provided by subsection (t))" before the semicolon.

(2) Section 1882(b)(1) (42 U.S.C. 1395ss(b)(1)), as previously amended, is amended—

(A) in subparagraph (A), by inserting ", except as otherwise provided by subparagraph (H)" before the semicolon;

(B) by striking "and" at the end of subparagraph (F);

(C) by inserting "and" at the end of subparagraph (G); and

(D) by adding after subparagraph (G) the following:

"(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t),".

(3) The first sentence of section 1154(a)(4)(B) (42 U.S.C. 1320c-3(a)(4)(B)) is amended by inserting "(or subject to review under section 1882(t))" after "section 1876".

(c) EFFECTIVE DATE.—The amendments made by this section shall only apply in 15 States (as determined by the Secretary of Health

and Human Services) and only during the 3-year period beginning with 1992.

(d) EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section and shall report to Congress on such evaluation by not later than January 1, 1995.

SEC. 4359. HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the "beneficiary assistance program") to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS.—The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED.—The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and not covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1882 of the Social Security Act and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL.—The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES.—The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT.—The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

SEC. 4360. HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

(a) GRANTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall make grants to States, with approved State regulatory programs under section 1882 of the Social Security Act, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under title XVIII of the Social Security Act (in this section referred to as "eligible individuals"). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) GRANT APPLICATIONS.—

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;

(ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act and information that may assist individuals in filing claims under such medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the services described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the assistance described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) SPECIAL GRANTS.—

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section and that such activities will continue to be maintained at such level.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2), the Secretary may waive some or all of the requirements de-

scribed in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) CRITERIA FOR ISSUING GRANTS.—In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2), including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under title XIX of the Social Security Act, and

(ii) administering funds appropriated under the Older Americans Act;

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance to the rural areas of such State.

(e) ANNUAL STATE REPORT.—A State that receives a grant under subsection (c) or (d) shall, not later than 180 days after receiving such grant, and annually thereafter, issue an annual report to the Secretary that includes information concerning—

(1) the number of individuals served by the State-wide health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training conferences convened under this section;

(3) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(4) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(5) in the case of the report issued 2 years after the date of enactment of this section, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(f) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, and 1993, to fund the grant programs described in this section.

SEC. 4361. MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE.

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by inserting after section 1888 the following:

"MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE

"SEC. 1889. The Secretary shall provide information via a toll-free telephone number on the programs under this title and on medicare supplemental policies as defined in section 1882(g)(1) (including the relationship of State programs under title XIX to such policies).".

(b) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.

Subtitle B—Medicaid

PART 1—REDUCTION IN SPENDING

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

PART 3—IMPROVEMENTS IN CHILD HEALTH

PART 1—REDUCTIONS IN SPENDING

SEC. 4401. REIMBURSEMENT FOR PRESCRIBED DRUGS.

(a) IN GENERAL.—

(1) DENIAL OF FEDERAL FINANCIAL PARTICIPATION UNLESS REBATE AGREEMENTS AND DRUG USE REVIEW IN EFFECT.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or", and

(B) by inserting after paragraph (9) the following new paragraph:

"(10) with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1927(a)(3), the manufacturer complies with the rebate requirements of section 1927(a) with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1927(g).".

(2) PROHIBITING STATE PLAN DRUG ACCESS LIMITATIONS FOR DRUGS COVERED UNDER A REBATE AGREEMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(A) by striking "and" at the end of paragraph (52),

(B) by striking the period at the end of paragraph (53) and inserting "; and", and

(C) by inserting after paragraph (53) the following new paragraph:

"(54)(A) provide that, any formulary or similar restriction (except as provided in section 1927(d)) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1927(a), which are prescribed for a medically accepted indication (as defined in subsection 1927(k)(6)), and

"(B) comply with the reporting requirements of section 1927(b)(2)(A) and the requirements of subsections (d) and (g) of section 1927.".

(3) REBATE AGREEMENTS FOR COVERED OUTPATIENT DRUGS, DRUG USE REVIEW, AND RELATED PROVISIONS.—Title XIX of the Social Security Act is amended by redesignating section 1927 as section 1928 and by inserting after section 1926 the following new section:

"PAYMENT FOR COVERED OUTPATIENT DRUGS

"SEC. 1927. (a) REQUIREMENT FOR REBATE AGREEMENT.—

"(1) IN GENERAL.—In order for payment to be available under section 1903(a) for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retro-

actively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

"(2) EFFECTIVE DATE.—Paragraph (1) shall first apply to drugs dispensed under this title on or after January 1, 1991.

"(3) AUTHORIZING PAYMENT FOR DRUGS NOT COVERED UNDER REBATE AGREEMENTS.—Paragraph (1), and section 1903(i)(10)(A), shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1-A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d), or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

"(4) EFFECT ON EXISTING AGREEMENTS.—In the case of a rebate agreement in effect between a State and a manufacturer on the date of the enactment of this section, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this title. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on the date of the enactment of this section provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

"(b) TERMS OF REBATE AGREEMENT.—

"(1) PERIODIC REBATES.—

"(A) IN GENERAL.—A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this title, a rebate each calendar quarter (or periodically in accordance with a schedule specified by the Secretary) in an amount specified in subsection (c) for covered outpatient drugs of the manufacturer dispensed under the plan during the quarter (or such other period as the Secretary may specify). Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

"(B) OFFSET AGAINST MEDICAL ASSISTANCE.—Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) or an agreement described in subsection (a)(4)) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1903(a)(1).

"(2) STATE PROVISION OF INFORMATION.—

"(A) STATE RESPONSIBILITY.—Each State agency under this title shall report to each manufacturer not later than 60 days after the end of each calendar quarter and in a form consistent with a standard reporting format established by the Secretary, information on the total number of dosage units of each covered outpatient drug dispensed under the plan during the quarter, and shall promptly transmit a copy of such report to the Secretary.

"(B) AUDITS.—A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

"(3) MANUFACTURER PROVISION OF PRICE INFORMATION.—

"(A) IN GENERAL.—Each manufacturer with an agreement in effect under this section shall report to the Secretary—

"(i) not later than 30 days after the last day of each quarter (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1)) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B)) for covered outpatient drugs for the quarter, and

"(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1)) as of October 1, 1990 for each of the manufacturer's covered outpatient drugs.

"(B) VERIFICATION SURVEYS OF AVERAGE MANUFACTURER PRICE.—The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1128A (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(C) PENALTIES.—

"(i) FAILURE TO PROVIDE TIMELY INFORMATION.—In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

"(ii) FALSE INFORMATION.—Any manufacturer with an agreement under this section that knowingly provides false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(D) CONFIDENTIALITY OF INFORMATION.—Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph is confidential and shall not be disclosed by the Secretary or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.

"(4) LENGTH OF AGREEMENT.—

"(A) IN GENERAL.—A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

"(B) TERMINATION.—

"(i) BY THE SECRETARY.—The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

"(ii) BY A MANUFACTURER.—A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until such period after the date of the notice as the

Secretary may provide (but not beyond the term of the agreement).

"(iii) EFFECTIVENESS OF TERMINATION.—Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

"(C) DELAY BEFORE REENTRY.—In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

"(c) AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—With respect to single source drugs and innovator multiple source drugs, each manufacturer shall remit a basic rebate to the State medical assistance plan. Except as otherwise provided in this subsection, the amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to each dosage form and strength of single source drugs and innovator multiple source drugs shall be equal to the product of—

"(A) the total number of units of each dosage form and strength dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2); and

"(B)(i) for quarters (or periods) beginning after December 31, 1990, and before January 1, 1993, the greater of—

"(I) the difference between the average manufacturer price (after deducting customary prompt payment discounts) and 87.5 percent of such price for the quarter (or other period), or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug (except that for calendar quarters beginning after December 31, 1990, and ending before January 1, 1992, the rebate shall not exceed 25 percent of the average manufacturer price, and for calendar quarters beginning after December 31, 1991, and ending before January 1, 1993, the rebate shall not exceed 50 percent of the average manufacturer price); and

"(ii) for quarters (or other periods) beginning after December 31, 1992, the greater of—

"(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

"(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.

"(C) For the purposes of this paragraph, the term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer to any wholesaler, retailer, nonprofit

entity, or governmental entity within the United States (excluding depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government). The best price shall be inclusive of cash discounts, free goods, volume discounts, and rebates (other than rebates under this section) and shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package, and shall not take into account prices that are merely nominal in amount;

"(D) In the case of a covered outpatient drug approved for marketing after October 1, 1990, any reference in this paragraph to 'October 1, 1990' shall be a reference to the first day of the first month during which the drug was marketed.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—(A) Each manufacturer shall remit an additional rebate to the State medical assistance plan in an amount equal to:

"(i) For calendar quarters (or other periods) beginning after December 31, 1990 and ending before January 1, 1994—

"(I) the total number of each dosage form and strength of a single source or innovator multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II)(aa) the average manufacturer price for each dosage form and strength, minus

"(bb) the average manufacturer price for each such dosage form and strength in effect on October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved;

"(ii) For calendar quarters (or other periods) beginning after December 31, 1993—

"(I) the total number of each dosage form and strength of a single source or innovative multiple source drug dispensed during the calendar quarter (or other period); multiplied by

"(II) the amount, if any, by which the weighted average manufacturer price for single source and innovator multiple source drugs of a manufacturer exceeds the weighted average manufacturer price for the manufacturer as of October 1, 1990, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. average) from October 1, 1990, to the month before the beginning of the calendar quarter (or other period) involved.

"(B)(i) For the purposes of subparagraph (A)(ii), the term 'weighted average manufacturer price' means (with respect to a calendar quarter or other period) the ratio of—

"(I) the sum of the products (for all covered drugs of the manufacturer purchased under a State program under this title) of—

"(aa) the average manufacturer price for each such covered drug; and

"(bb) the number of units of the covered drug sold to any State program under this title during such period, to

"(II) the total number of units of all such covered drugs sold under a State program under this title in such period, except that the Secretary may exclude certain new drugs from the calculation of the weighted average if the inclusion of any such drug in such calculation has the effect of—

"(aa) reducing the rebate otherwise calculated pursuant to subparagraph (A)(ii); or

"(bb) increasing the rebate otherwise calculated pursuant to subparagraph (A)(ii) (in cases where such calculation under the conditions outlined in clause (ii).

"(ii)(I) The Secretary may exclude drugs approved by the Food and Drug Administration on or after October 1, 1990, from the calculation of weighted average manufacturer price if inclus manufacturer demonstrates through a petition, in a form and manner prescribed by the Secretary, undue hardship on such manufacturer as a result of the inclusion of such drug in such calculation).

"(II) The Secretary may promulgate guidelines to restrict the conditions under which the Secretary may consider such petitions.

"(C) For each of 8 calendar quarters beginning after December 31, 1991, the Secretary shall compare the aggregate amount of the rebates under subparagraph (A)(i) to the aggregate amount of rebates under subparagraph (A)(ii). Based on any such comparison, the Secretary may propose and utilize an alternative formula for the purpose of calculating an aggregate rebate.

"(3) REBATE FOR OTHER DRUGS.—The amount of the rebate to a State for a calendar quarter (or other period specified by the Secretary) with respect to covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(A) the applicable percentage (as described in paragraph (4) of the average manufacturer price for each dosage form and strength of such drugs (after deducting customary prompt payment discounts) for the quarter (or other period), and

"(B) the number of units of such form and dosage dispensed under the plan under this title in the quarter (or other period) reported by the State under subsection (b)(2).

"(4) For the purposes of paragraph (3), the applicable percentage is—

"(A) with respect to calendar quarters beginning after December 31, 1990, and ending before January 1, 1994, 10 percent; and

"(B) with respect to calendar quarters beginning on or after December 31, 1993, 11 percent.

"(d) LIMITATIONS ON COVERAGE OF DRUGS.—

"(1) PERMISSIBLE RESTRICTIONS.—(A) Except as provided in paragraph (6), a State may subject to prior authorization any

covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

"(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

"(i) the prescribed use is not for a medically accepted indication (as defined in (k)(6));

"(ii) the drug is contained in the list referred to in paragraph (2); or

"(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

"(A) Agents when used for anorexia or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Drugs described in section 107(c)(3) of the Drug Amendments of 1962 and identical, similar, or related drugs (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations ('DESI' drugs)).

"(J) Barbiturates.

"(K) Benzodiazepines.

"(3) UPDATE OF DRUG LISTINGS.—The Secretary shall (except with respect to new drugs approved by the FDA for the first 6 months following the date of approval of such drugs shall not be subject to being listed in paragraph (2) under the provisions of this paragraph), by regulation, periodically update the list of drugs described in paragraph (2) or classes of drugs, or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

"(4) INNOVATOR MULTIPLE-SOURCE DRUGS.—Innovator multiple-source drugs shall be treated under applicable State and Federal law and regulation.

"(5) PRIOR AUTHORIZATION PROGRAMS.—A State plan under this title may not require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, the approval of the drug before its dispensing for any medically ac-

cepted indication (as defined in subsection (k)(6)) unless the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least a 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) TREATMENT OF NEW DRUGS.—A State may not exclude for coverage, subject to prior authorization, or otherwise restrict any new biological or drug approved by the Food and Drug Administration after the date of enactment of this section, for a period of 6 months after such approval.

"(7) OTHER PERMISSIBLE RESTRICTIONS.—A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, provided such limitations are necessary to discourage waste.

Nothing in this section shall restrict the ability of a State to address individual instances of fraud or abuse in any manner authorized under the Social Security Act.

"(8) DELAYED EFFECTIVE DATE.—The provisions of paragraph (5) shall become effective with respect to drugs dispensed under this title on or after July 1, 1991.

"(e) DENIAL OF FEDERAL FINANCIAL PARTICIPATION IN CERTAIN CASES.—The Secretary shall provide that no payment shall be made to a State under section 1903(a) for an innovator multiple-source drug dispensed on or after July 1, 1991, if, under applicable State law, a less expensive noninnovator multiple source drug (other than the innovator multiple-source drug) could have been dispensed.

"(f) PHARMACY REIMBURSEMENT.—

"(1) NO REDUCTIONS IN REIMBURSEMENT LIMITS.—(A) During the period of time beginning on January 1, 1991, and ending on December 31, 1994, the Secretary may not modify by regulation the formula used to determine reimbursement limits described in the regulations under 42 CFR 447.331 through 42 CFR 447.334 (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990) to reduce such limits for covered outpatient drugs.

(B) During the period of time described in subparagraph (A), any State that was in compliance with the regulations described in subparagraph (A) may not reduce the limits for covered outpatient drugs described in subparagraph (A) or dispensing fees for such drugs.

"(2) ESTABLISHMENT OF UPPER PAYMENT LIMITS.—HCFA shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

"(g) DRUG USE REVIEW.—

"(1) IN GENERAL.—

"(A) In order to meet the requirement of section 1903(i)(10)(B), a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

"(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

"(i) compendia which shall consist of the following:

"(I) American Hospital Formulary Service Drug Information;

"(II) United States Pharmacopeia-Drug Information; and

"(III) American Medical Association Drug Evaluations; and

"(ii) the peer-reviewed medical literature.

"(C) The Secretary, under the procedures established in section 1903, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

"(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1919, currently at section 483.60 of title 42, Code of Federal Regulations.

"(2) DESCRIPTION OF PROGRAM.—Each drug use review program shall meet the following requirements for covered outpatient drugs:

"(A) PROSPECTIVE DRUG REVIEW.—(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this title, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of

drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

"(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this title by pharmacists which includes at least the following:

"(I) The pharmacist must offer to discuss with each individual receiving benefits under this title or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

"(aa) The name and description of the medication.

"(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

"(cc) Special directions and precautions for preparation, administration and use by the patient.

"(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

"(ee) Techniques for self-monitoring drug therapy.

"(ff) Proper storage.

"(gg) Prescription refill information.

"(hh) Action to be taken in the event of a missed dose.

"(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this title:

"(aa) Name, address, telephone number, date of birth (or age) and gender.

"(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

"(cc) Pharmacist comments relevant to the individuals drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this title or caregiver of such individual refuses such consultation.

"(B) RETROSPECTIVE DRUG USE REVIEW.—The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1903(r)) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this title, or associated with specific drugs or groups of drugs.

"(C) APPLICATION OF STANDARDS.—The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

"(D) EDUCATIONAL PROGRAM.—The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

"(3) STATE DRUG USE REVIEW BOARD.—

"(A) ESTABLISHMENT.—Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the 'DUR Board') either directly or through a contract with a private organization.

"(B) MEMBERSHIP.—The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

"(i) The clinically appropriate prescribing of covered outpatient drugs.

"(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

"(iii) Drug use review, evaluation, and intervention.

"(iv) Medical quality assurance.

*The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * * licensed and actively practicing pharmacists.*

"(C) ACTIVITIES.—The activities of the DUR Board shall include but not be limited to the following:

"(i) Retrospective DUR as defined in section (2)(B).

"(ii) Application of standards as defined in section (2)(C).

"(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

"(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

"(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

"(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

"(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

"(D) ANNUAL REPORT.—Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

"(h) ELECTRONIC CLAIMS MANAGEMENT.—

"(1) IN GENERAL.—In accordance with chapter 35 of title 44, United States Code (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system, for the purpose of performing online, real time eligibility verifications, claims data capture, ad-

judication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

"(2) ENCOURAGEMENT.—In order to carry out paragraph (1)—

"(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1903(a)(3)(A)(i) (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

"(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

"(i) ANNUAL REPORT.—

"(1) IN GENERAL.—Not later than May 1 of each year the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives a report on the operation of this section in the preceding fiscal year.

"(2) DETAILS.—Each report shall include information on—

"(A) ingredient costs paid under this title for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

"(B) the total value of rebates received and number of manufacturers providing such rebates;

"(C) how the size of such rebates compare with the size or rebates offered to other purchasers of covered outpatient drugs;

"(D) the effect of inflation on the value of rebates required under this section;

"(E) trends in prices paid under this title for covered outpatient drugs; and

"(F) Federal and State administrative costs associated with compliance with the provisions of this title.

*"(j) EXEMPTION OF ORGANIZED HEALTH CARE SETTINGS.—(1) Covered outpatient drugs dispensed by *** Health Maintenance Organizations, including those organizations that contract under section 1903(m), are not subject to the requirements of this section.*

"(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

"(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions

described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c).

"(k) DEFINITIONS.—In this section—

"(1) AVERAGE MANUFACTURER PRICE.—The term 'average manufacturer price' means, with respect to a covered outpatient drug of a manufacturer for a calendar quarter, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade.

"(2) COVERED OUTPATIENT DRUG.—Subject to the exceptions in paragraph (3), the term 'covered outpatient drug' means—

"(A) of those drugs which are treated as prescribed drugs for purposes of section 1905(a)(12), a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

"(i) which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act or which is approved under section 505(j) of such Act;

"(ii)(I) which was commercially used or sold in the United States before the date of the enactment of the Drug Amendments of 1962 or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a 'new drug' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act to enforce section 502(f) or 505(a) of such Act; or

"(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

"(B) a biological product, other than a vaccine which—

"(i) may only be dispensed upon prescription,

"(ii) is licensed under section 351 of the Public Health Service Act, and

"(iii) is produced at an establishment licensed under such section to produce such product; and

"(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

"(3) LIMITING DEFINITION.—The term 'covered outpatient drug' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this title as part of payment for the following and not as direct reimbursement for the drug):

"(A) Inpatient hospital services.

"(B) Hospice services.

"(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

"(D) Physicians' services.

*"(E) Outpatient hospital services * * * *emergency room visits.*

"(F) Nursing facility sevices.

"(G) Other laboratory and x-ray services.

"(H) Renal dialysis.

Such term also does not include any such drug or product which is used for a medical indication which is not a medically accepted indication.

"(4) NONPRESCRIPTION DRUGS.—If a State plan for medical assistance under this title includes coverage of prescribed drugs as described in section 1905(a)(12) and permits coverage of drugs which may be sold without a prescription (commonly referred to as 'over-the-counter' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

"(5) MANUFACTURER.—The term 'manufacturer' means any entity which is engaged in—

"(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

"(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"(6) MEDICALLY ACCEPTED INDICATION.—The term 'medically accepted indication' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act, which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.

"(7) MULTIPLE SOURCE DRUG; INNOVATOR MULTIPLE SOURCE DRUG; NONINNOVATOR MULTIPLE SOURCE DRUG; SINGLE SOURCE DRUG.—

"(A) DEFINED.—

"(i) MULTIPLE SOURCE DRUG.—The term 'multiple source drug' means, with respect to a calendar quarter, a covered outpatient drug (not including any drug de-

scribed in paragraph (5)) for which there are 2 or more drug products which—

"(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of 'Approved Drug Products with Therapeutic Equivalence Evaluations'),

"(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

"(III) are sold or marketed in the State during the period.

"(ii) INNOVATOR MULTIPLE SOURCE DRUG.—The term 'innovator multiple source drug' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

"(iii) NONINNOVATOR MULTIPLE SOURCE DRUG.—The term 'noninnovator multiple source drug' means a multiple source drug that is not an innovator multiple source drug.

"(iv) SINGLE SOURCE DRUG.—The term 'single source drug' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributers operating under the new drug application.

"(B) EXCEPTION.—Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

"(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

"(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

"(8) STATE AGENCY.—The term 'State agency' means the agency designated under section 1902(a)(5) to administer or su-

pervise the administration of the State plan for medical assistance.".

(b) FUNDING.—

(1) DRUG USE REVIEW PROGRAMS.—Section 1903(a)(3) (42 U.S.C. 1936b(a)(3)) is amended—

(A) by striking "plus" at the end of subparagraph (C) and inserting "and", and

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

"(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1927(g); plus".

(2) TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS.—The per centum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.

(c) DEMONSTRATION PROJECTS.—

(1) PROSPECTIVE DRUG UTILIZATION REVIEW.—

(A) The Secretary of Health and Human Services shall provide, through competitive procurement by not later than January 1, 1992, for the establishment of at least 10 statewide demonstration projects to evaluate the efficiency and cost-effectiveness of prospective drug utilization review (as a component of on-line, real-time electronic point-of-sales claims management) in fulfilling patient counseling and in reducing costs for prescription drugs.

(B) Each of such projects shall establish a central electronic repository for capturing, storing, and updating prospective drug utilization review data and for providing access to such data by participating pharmacists (and other authorized participants).

(C) Under each project, the pharmacist or other authorized participant shall assess the active drug regimens of recipients in terms of duplicate drug therapy, therapeutic overlap, allergy and cross-sensitivity reactions, drug interactions, age precautions, drug regiment compliance, prescribing limits, and other appropriate elements.

(D) Not later than January 1, 1994, the Secretary shall submit to Congress a report on the demonstration projects conducted under this paragraph.

(2) DEMONSTRATION PROJECT ON COST-EFFECTIVENESS OF REIMBURSEMENT FOR PHARMACISTS' COGNITIVE SERVICES.—

(A) The Secretary of Health and Human Services shall conduct a demonstration project to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists under title XIX of the Social Security Act, whether or not a drug is dispensed, for drug use review services. For this purpose, the Secretary shall provide for no fewer than 5 dem-

onstration sites in different States and the participation of a significant number of pharmacists.

(B) Not later than January 1, 1995, the Secretary shall submit a report to the Congress on the results of the demonstration project conducted under subparagraph (A).

(d) STUDIES.—

(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS.—

(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

(B) The study conducted under this subsection shall include an assessment of—

(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section,

(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

(iii) the efficiency of mechanisms used by these institutions for billing and receiving payment for covered outpatient drugs dispensed under this title.

(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

(2) REPORT ON DRUG PRICING.—By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

(3) STUDY ON PRIOR APPROVAL PROCEDURES.—

(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act, including—

(i) the appeals provisions under such programs; and

(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS.—

(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to pharmacists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A).

(5) STUDY OF PAYMENTS FOR VACCINES.—The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act.

(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE.—The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such study no later than 1 year after the date of enactment of this subsection.

SEC. 4402. REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

(a) IN GENERAL.—Title XIX (42 U.S.C. 1396 et seq.) is amended—

(1) in section 1902(a)(25) (42 U.S.C. 1396a(a)(25))—

(A) by striking "and" at the end of subparagraph (E),

(B) by adding "and" at the end of subparagraph (F), and

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

"(G) that the State plan shall meet the requirements of section 1906 (relating to enrollment of individuals under group health plans in certain cases);"; and

(2) by inserting after section 1905 the following new section:

"ENROLLMENT OF INDIVIDUALS UNDER GROUP HEALTH PLANS

"SEC. 1906. (a) For purposes of section 1902(a)(25)(G) and subject to subsection (d), each State plan—

"(1) shall implement guidelines established by the Secretary, consistent with subsection (b), to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this title in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2));

"(2) shall require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this title and subject to subsection (b)(2), notwithstanding any other provision of this title, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

"(3) in the case of such enrollment (except as provided in subsection (c)(1)(B)), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this title (exceeding the amount otherwise permitted under section 1916), and shall treat coverage under the group health plan as a third party liability (under section 1902(a)(25)).

"(b)(1) In establishing guidelines under subsection (a)(1), the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

"(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2), such failure shall not affect the child's eligibility for benefits under this title.

"(c)(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1903(a), to be payments for medical assistance.

"(B) If all members of a family are not eligible for medical assistance under this title and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

"(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

"(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

"(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1902(a)(25) provides that payment for such benefits shall first be made by such plan.

"(d)(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the

Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title.

"(2) This section, and section 1902(a)(25)(G), shall only apply to a State that is one of the 50 States or the District of Columbia.

"(e) In this section:

"(1) The term 'group health plan' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(2) The term 'cost-effective' means, as established by the Secretary, that the reduction in expenditures under this title with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.".

(b) TREATMENT OF ERRONEOUS EXCESS PAYMENTS FOR MEDICAL ASSISTANCE.—Section 1903(u)(1)(C)(iv) (42 U.S.C. 1396b(u)(1)(C)(iv)) is amended by inserting before the period at the end the following: "or with respect to payments made in violation of section 1906".

(c) OPTIONAL MINIMUM 6-MONTH ELIGIBILITY.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following new paragraph:

"(11)(A) In the case of an individual who is enrolled with a group health plan under section 1906 and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

"(B) For purposes of subparagraph (A), the term 'minimum enrollment period' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (E)—

(A) by striking "and" at the end of subdivision (IX);

(B) by inserting "and" at the end of subdivision (X); and

(C) by adding at the end the following new subdivision:

"(XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1906 shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of

the same amount, duration, and scope of such private coverage to any other individuals;".

(2) Section 1905(a) (42 U.S.C. 1396d(a)) is amended by adding at the end the following: "The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of title XVIII for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof.".

(3) Section 1903(a)(1) (42 U.S.C. 1396b(a)(1)) is amended by striking "(including expenditures for" and all that follows through "or the cost thereof)".

(e) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

PART 2—PROTECTION OF LOW-INCOME MEDICARE BENEFICIARIES

SEC. 4501. PHASED-IN EXTENSION OF MEDICAID PAYMENTS FOR MEDICARE PREMIUMS FOR CERTAIN INDIVIDUALS WITH INCOME BELOW 120 PERCENT OF THE OFFICIAL POVERTY LINE.

(a) 1-YEAR ACCELERATION OF BUY-IN OF PREMIUMS AND COST SHARING FOR QUALIFIED MEDICARE BENEFICIARIES UP TO 100 PERCENT OF POVERTY LINE.—Section 1905(p)(2) (42 U.S.C. 1396d(p)(2)) is further amended—

(1) in subparagraph (B)—

(A) by adding "and" at the end of clause (ii);

(B) in clause (iii), by striking "95 percent, and" and inserting "100 percent."; and

(C) by striking clause (iv); and

(2) in subparagraph (C)—

(A) in clause (iii), by striking "90" and inserting "95";

(B) by adding "and" at the end of clause (iii);

(C) in clause (iv), by striking "95 percent, and" and inserting "100 percent."; and

(D) by striking clause (v).

(b) ENTITLEMENT.—Section 1902(a)(10)(E) (42 U.S.C. 1395b(a)(10)(E)(ii)) is amended—

(1) by striking ", and" at the end of clause (i) and inserting a semicolon;

(2) by adding "and" at the end of clause (ii); and

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

"(iii) for making medical assistance available for medicare cost sharing described in section 1905(p)(3)(A)(ii) subject to section 1905(p)(4), for individuals who would be qualified medicare beneficiaries described in section 1905(p)(1) but for the fact that their income exceeds the income level established by the State under section 1905(p)(2) but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved;".

(c) APPLICATION IN CERTAIN STATES AND TERRITORIES.—Section 1905(p)(4) (42 U.S.C. 1396d(p)(4)) is amended—

(1) in subparagraph (B), by inserting "or 1902(a)(10)(E)(iii)" after "subparagraph (B)", and

(2) by adding at the end the following:

"In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115, the Secretary shall require the State to meet the requirement of section 1902(a)(10)(E) in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this title."

(d) CONFORMING AMENDMENT.—Section 1843(h) (42 U.S.C. 1395v(h)) is amended by adding at the end the following new paragraph:

"(3) In this subsection, the term 'qualified medicare beneficiary' also includes an individual described in section 1902(a)(10)(E)(iii).".

(e) DELAY IN COUNTING SOCIAL SECURITY COLA INCREASES UNTIL NEW POVERTY GUIDELINES PUBLISHED.—

(1) IN GENERAL.—Section 1905(p) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(D)" after "supplementary social security income program", and

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

"(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under title II for a transition month (as defined in clause (ii)) in a year, such

income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such title which have occurred pursuant to section 215(i) for benefits payable for months beginning with December of the previous year.

"(ii) For purposes of clause (i), the term 'transition month' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.".

(2) CONFORMING AMENDMENTS.—Section 1902(m) (42 U.S.C. 1396a(m)) is amended—

(A) in paragraph (1)(B), by inserting ", except as provided in paragraph (2)(C)" after "supplemental security income program", and

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

"(C) The provisions of section 1905(p)(2)(D) shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1905(p).".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) shall apply to determinations of income for months beginning with January 1991.

PART 3—IMPROVEMENTS IN CHILD HEALTH

SEC. 4601. MEDICAID CHILD HEALTH PROVISIONS.

(a) PHASED-IN MANDATORY COVERAGE OF CHILDREN UP TO 100 PERCENT OF POVERTY LEVEL.—

(1) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(10)(A)(i)—

(i) by striking "or" at the end of subclause (V),

(ii) by striking the semicolon at the end of subclause (VI) and inserting ", or", and

(iii) by adding at the end the following new subclause:

"(VII) who are described in subparagraph (D) of subsection (l)(1) and whose family income does not exceed the income level the State is required to establish under subsection (l)(2)(C) for such a family;";

(B) in subsection (a)(10)(A)(ii)(IX), by striking "or clause (i)(VI)" and inserting ", clause (i)(VI), or clause (i)(VII)";

(C) in subsection (l)—

(i) in subparagraph (C) of paragraph (1) by inserting "children" after "(C)";

(ii) by striking subparagraph (D) of paragraph (1) and inserting the following:

"(D) children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age,";

(iii) by striking subparagraph (C) of paragraph (2) and inserting the following:

"(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.";

(iv) in paragraph (3) by inserting ", (a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI)";

(v) in paragraph (4)(A), by inserting "or subsection (a)(10)(A)(i)(VII)" after "(a)(10)(A)(i)(VI)"; and

(vi) in paragraph (4)(B), by striking "or (a)(10)(A)(i)(VI)" ", and inserting "(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)"; and

(D) in subsection (r)(2)(A), by inserting "(a)(10)(A)(i)(VII)," after "(a)(10)(A)(i)(VI),".

(2) CONFORMING AMENDMENT TO QUALIFIED CHILDREN.—Section 1905(n)(2) (42 U.S.C. 1396d(n)(2)) is amended by striking "age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)" and inserting "age of 19".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended—

(i) by striking "1902(a)(10)(A)(i)(IV)," and inserting "1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V),", and

(ii) by inserting "1902(a)(10)(A)(i)(VII)," after "1902(a)(10)(A)(i)(VI),".

(B) Subsections (a)(3)(C) and (b)(3)(C)(i) of section 1925 of such Act (42 U.S.C. 1396r-6), as amended by section 6411(i)(3) of the Omnibus Budget Reconciliation Act of 1989, are each amended by inserting "(i)(VII)," after "(i)(VI)".

(b) EFFECTIVE DATE.—(1) The amendments made by this subsection apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4602. MANDATORY USE OF OUTREACH LOCATIONS OTHER THAN WELFARE OFFICES.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2) of this title, is amended—

(1) by striking "and" at the end of paragraph (53),

(2) by striking the period at the end of paragraph (54) and inserting "; and", and

(3) by inserting after paragraph (54) the following new paragraph:

"(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX)—

"(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of title IV and which include facilities defined as disproportionate share hospitals under section 1923(a)(1)(A) and Federally-qualified health centers described in section 1905(1)(2)(B), and

"(B) using applications which are other than those used for applications for aid under such part.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4603. MANDATORY CONTINUATION OF BENEFITS THROUGHOUT PREGNANCY OR FIRST YEAR OF LIFE.

(a) IN GENERAL.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended—

(1) in the first sentence of paragraph (4), by inserting "(or would remain if pregnant)" after "remains"; and

(2) in paragraph (6)—

(A) by striking "At the option of a State, in" and inserting "In";

(B) by striking "the State plan may nonetheless treat the woman as being" and inserting "the woman shall be deemed to continue to be"; and

(C) by adding at the end the following new sentence: "The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1920 during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.".

(b) EFFECTIVE DATE.—

(1) INFANTS.—The amendment made by subsection (a)(1) shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or

after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN UNDER THE AGE OF 6 YEARS.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following new subsection:

"(s) In order to meet the requirements of subsection (a)(55), the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1923(b)(1), shall—

"(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

"(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

"(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).".

(b) CONFORMING AMENDMENT.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 4401(a)(2), is further amended—

(1) by striking "and" at the end of paragraph (53);

(2) by striking the period at the end of paragraph (54) and by inserting "; and"; and

(3) by inserting after paragraph (54) and before the end matter the following new paragraph:

"(55) provide, in accordance with subsection (s), for adjusted payments for certain inpatient hospital services.".

(c) PROHIBITION ON WAIVER.—Section 1915(b) (42 U.S.C. 1396n(b)) is amended in the matter preceding paragraph (1) by inserting "(other than subsection (s))" after "Section 1902".

(d) EFFECTIVE DATE.—(1) The amendments made by this subsection shall become effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet

these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 4605. PRESUMPTIVE ELIGIBILITY.

(a) EXTENSION OF PRESUMPTIVE ELIGIBILITY PERIOD.—Section 1920 (42 U.S.C. 1396r-1) is amended—

(1) in subsection (b)(1)(B)—

(A) by adding "or" at the end of clause (i),

(B) by striking clause (ii), and

(C) by amending clause (iii) to read as follows:

"(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and"; and

(2) in subsections (c)(2)(B) and (c)(3), by striking "within 14 calendar days after the date on which" and inserting "by not later than the last day of the month following the month during which".

(b) FLEXIBILITY IN APPLICATION.—Section 1920(c)(3) (42 U.S.C. 1396r-1(c)(3)) is amended by inserting before the period at the end the following: ", which application may be the application used for the receipt of medical assistance by individuals described in section 1902(l)(1)(A)".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendment made by subsection (b) shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986.

SEC. 4606. ROLE IN PATERNITY DETERMINATIONS.

(a) IN GENERAL.—Section 1912(a)(1)(B) (42 U.S.C. 1396k(a)(1)(B)) is amended by inserting "the individual is described in section 1902(l)(1)(A) or" after "unless (in either case)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4607. REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) ERROR RATE TRANSITION.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

PART 4—MISCELLANEOUS

Subpart A—Payments

SEC. 4701. STATE MEDICAID MATCHING PAYMENTS THROUGH VOLUNTARY CONTRIBUTIONS AND STATE TAXES.

(a) EXTENSION OF PROVISION ON VOLUNTARY CONTRIBUTIONS AND PROVIDER-SPECIFIC TAXES.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(b) STATE TAX CONTRIBUTIONS.—(1) Section 1902 (42 U.S.C. 1396a) as amended by section 4604, is further amended by adding at the end the following new subsection:

"(t) Except as provided in section 1903(i), nothing in this title (including sections 1903(a) and 1905(a)) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attributable to taxes (whether or not of general applicability) imposed with respect to the provision of such items or services.".

(2) Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(A) by striking the period at the end of paragraph (9) and inserting "; or"; and

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

"(10) with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State solely with respect to hospitals or facilities.".

(c) EFFECTIVE DATES.—The amendment made by subsection (b) shall take effect on January 1, 1991.

SEC. 4702. DISPROPORTIONATE SHARE HOSPITALS: COUNTING OF INPATIENT DAYS.

(a) CLARIFICATION OF MEDICAID DISPROPORTIONATE SHARE ADJUSTMENT CALCULATION.—Section 1923(b)(2) (42 U.S.C. 1396r-4(b)(2)) is amended by adding at the end the following new sentence: "In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 1990.

SEC. 4703. DISPROPORTIONATE SHARE HOSPITALS: ALTERNATIVE STATE PAYMENT ADJUSTMENTS AND SYSTEMS.

(a) ALTERNATIVE STATE PAYMENT ADJUSTMENTS.—Section 1923(c) (42 U.S.C. 1396r-4(c)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by adding "or" at the end of paragraph (2); and

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

"(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

"(A) applies equally to all hospitals of each type; and

"(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this title or to low-income patients.".

(b) CLARIFICATION OF SPECIAL RULE FOR STATE USING HEALTH INSURING ORGANIZATION.—Section 1923(e)(2) (42 U.S.C. 1396r-4(e)(2)) is amended by striking "during the 3-year period".

(c) CONFORMING AMENDMENT.—Section 1923(c)(2) (42 U.S.C. 1396r-4(c)(2)) is amended by inserting after "State" "or the hospital's low-income utilization rate (as defined in paragraph (b)(3))".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 412(a)(2) of the Omnibus Budget Reconciliation Act of 1987.

SEC. 4704. FEDERALLY QUALIFIED HEALTH CENTERS.

(a) CLARIFICATION OF USE OF MEDICARE PAYMENT METHODOLOGY.—Section 1902(a)(13)(E) (42 U.S.C. 1396a(a)(13)(E)) is amended—

(1) by striking "may prescribe" the first place it appears and inserting "prescribes", and

(2) by striking "on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph" and inserting "on the same methodology used under section 1833(a)(3)".

(b) MINIMUM PAYMENT RATES BY HEALTH MAINTENANCE ORGANIZATIONS.—(1) Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) is amended—

(A) by striking "and" at the end of clause (vii),

(B) by striking the period at the end of clause (viii) and inserting ", and", and

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

"(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1902(a)(13)(E), and (II) at the election of such center payments made by the entity to such a center for services described in 1905(a)(2)(C) are made at the rates of payment specified in section 1902(a)(13)(E).".

(2) Section 1903(m)(2)(B) (42 U.S.C. 1396b(m)(2)(A)) is amended by striking "(A)" and inserting "(A) except with respect to clause (ix) of subparagraph (A),".

(3) Section 1915(b) (42 U.S.C. 1396n(b)) is amended by inserting after "section 1902" "(other than sections 1902(a)(13)(E) and 1902(a)(10)(A) insofar as it requires provision of the care and services described in section 1905(a)(2)(C))".

(c) CLARIFICATION IN TREATMENT OF OUTPATIENTS.—Section 1905(l)(2) (42 U.S.C. 1396d(l)(2)) is amended—

(1) in subparagraph (A), by striking "outpatient" and inserting "patient",

(2) in subparagraph (B), by striking "facility" and inserting "entity", and

(3) by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

"(II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act;".

(d) TREATMENT OF INDIAN TRIBES.—The first sentence of section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended—

(1) by striking the period at the end and inserting a comma, and

(2) by adding, after and below clause (ii), the following:

"and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638).".

(e) TECHNICAL CORRECTION.—Section 6402 of the Omnibus Budget Reconciliation Act of 1989 is amended—

(1) by striking subsection (c), and

(2) by amending subsection (d) to read as follows:

"(c) EFFECTIVE DATE.—The amendments made by this section (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act.".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4705. HOSPICE PAYMENTS.

(a) IN GENERAL.—Section 1905(o)(3) (42 U.S.C. 1396d(o)(3)) is amended—

(1) by striking "a State which elects" and all that follows through "with respect to" the first place it appears,

(2) by striking "skilled nursing or intermediate care facility" in subparagraphs (A) and (C) and inserting "nursing facility or intermediate care facility for the mentally retarded",

(3) by striking "the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1902(a)(13)," and inserting "the additional amount described in section 1902(a)(13)(D)", and

(4) by striking the last sentence.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989.

SEC. 4706. LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21.

(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act, and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act relating to the failure of a psychiatric facility to comply with certification of need requirements—

(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act.

SEC. 4707. TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

SEC. 4708. BILLING FOR SERVICES OF SUBSTITUTE PHYSICIAN.

(a) UNDER MEDICAID.—Section 1902(a)(32) (42 U.S.C. 1396a(a)(32))—

(1) by striking "and" before "(B)",

(2) by inserting "and" at the end of subparagraph (B), and

(3) by adding at the end the following:

"(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were fur-

nished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

Subpart B—Eligibility and Coverage

SEC. 4711. HOME AND COMMUNITY-BASED CARE AS OPTIONAL SERVICE.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 6201, is further amended—

(1) by striking "and" at the end of paragraph (22);

(2) by redesignating paragraph (23) as paragraph (24); and

(3) by inserting after paragraph (22) the following new paragraph:

"(23) home and community care (to the extent allowed and as defined in section 1929) for functionally disabled elderly individuals; and".

(b) HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by section 4402 is further amended—

(1) by redesignating section 1929 as section 1930; and

(2) by inserting after section 1928 the following new section:

"HOME AND COMMUNITY CARE FOR FUNCTIONALLY DISABLED ELDERLY INDIVIDUALS

"SEC. 1929. (a) HOME AND COMMUNITY CARE DEFINED.—In this title, the term 'home and community care' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c), to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d)):

"(1) Homemaker/home health aide services.

"(2) Chore services.

"(3) Personal care services.

"(4) Nursing care services provided by, or under the supervision of, a registered nurse.

"(5) Respite care.

"(6) Training for family members in managing the individual.

"(7) Adult day care.

"(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

"(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

"(b) FUNCTIONALLY DISABLED ELDERLY INDIVIDUAL DEFINED.—

"(1) IN GENERAL.—In this title, the term 'functionally disabled elderly individual' means an individual who—

"(A) is 65 years of age or older,

"(B) is determined to be a functionally disabled individual under subsection (c), and

"(C) subject to section 1902(f) (as applied consistent with section 1902(r)(2)), is receiving supplemental security income benefits under title XVI (or under a State plan approved under title XVI) or, at the option of the State, is described in section 1902(a)(10)(C).

"(2) TREATMENT OF CERTAIN INDIVIDUALS PREVIOUSLY COVERED UNDER A WAIVER.—(A) In the case of a State which—

"(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1915(c) or 1915(d) with respect to individuals 65 years of age or older, and

"(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this title, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

"(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1115 that provides under the State plan under this title for personal care services for functionally disabled individuals, the term 'functionally disabled elderly individual' may include, at the option of the State, an individual who—

"(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under title XVI);

"(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

"(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1902(a)(10)(A)(ii)(V).

"(3) USE OF PROJECTED INCOME.—In applying section 1903(f)(1) in determining the eligibility of an individual (described in section 1902(a)(10)(C)) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

"(c) DETERMINATIONS OF FUNCTIONAL DISABILITY.—

"(1) IN GENERAL.—In this section, an individual is 'functionally disabled' if the individual—

"(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

"(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities

of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

"(2) ASSESSMENTS OF FUNCTIONAL DISABILITY.—

"(A) REQUESTS FOR ASSESSMENTS.—If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

"(i) is used to determine whether or not the individual is functionally disabled,

"(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

"(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

"(B) SPECIFICATION OF ASSESSMENT INSTRUMENT.—The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

"(i) one of the instruments designated under subparagraph (C)(ii); or

"(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

"(C) SPECIFICATION OF ASSESSMENT DATA SET AND INSTRUMENTS.—The Secretary shall—

"(i) not later than July 1, 1991—

"(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

"(II) establish guidelines for use of the data set; and

"(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

"(D) PERIODIC REVIEW.—Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

"(E) CONDUCT OF ASSESSMENT BY INTERDISCIPLINARY TEAMS.—An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

"(i) with public organizations; or

"(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

"(F) CONTENTS OF ASSESSMENT.—The interdisciplinary team must—

"(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

"(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1).

"(G) APPEAL PROCEDURES.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

"(d) INDIVIDUAL COMMUNITY CARE PLAN (ICCP).—

"(1) INDIVIDUAL COMMUNITY CARE PLAN DEFINED.—In this section, the terms 'individual community care plan' and 'ICCP' mean, with respect to a functionally disabled elderly individual, a written plan which—

"(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2);

"(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

"(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

"(2) QUALIFIED COMMUNITY CARE CASE MANAGER DEFINED.—In this section, the term 'qualified community care case manager' means a nonprofit or public agency or organization which—

"(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

"(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

"(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

"(D) has procedures for assuring the quality of case management services that includes a peer review process;

"(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

"(F) meets such other standards, established by the Secretary, as to assure that—

"(i) such a manager is competent to perform case management functions;

"(ii) individuals whose home and community care they manage are not at risk of financial exploitation due to such a manager; and

"(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

"(3) APPEALS PROCESS.—Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

"(e) CEILING ON PAYMENT AMOUNTS AND MAINTENANCE OF EFFORT.—

"(1) CEILING ON PAYMENT AMOUNTS.—Payments may not be made under section 1903(a) to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

"(A) the average number of individuals in the quarter receiving such care under this section;

"(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under title XVIII (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

"(C) the number of days in such quarter.

"(2) MAINTENANCE OF EFFORT.—

"(A) ANNUAL REPORTS.—As a condition for the receipt of payment under section 1903(a) with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1915(c) and other than home health care services described in section 1905(a)(7) and personal care services specified under regulations under section 1905(a)(23)), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

"(B) REDUCTION IN PAYMENT IF FAILURE TO MAINTAIN EFFORT.—If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1903(a) in an amount equal to the difference between the amounts so reported.

"(f) MINIMUM REQUIREMENTS FOR HOME AND COMMUNITY CARE.—

"(1) REQUIREMENTS.—Home and Community care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k). Such requirements shall include—

"(A) the requirement that individuals providing care are competent to provide such care; and

"(B) the rights specified in paragraph (2).

"(2) SPECIFIED RIGHTS.—The rights specified in this paragraph are as follows:

"(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

"(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

"(C) The right to confidentiality of personal and clinical records.

"(D) The right to privacy and to have one's property treated with respect.

"(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

"(F) The right to education or training for oneself and for members of one's family or household on the management of care.

"(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical re-

straints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

"(H) The right to be fully informed orally and in writing of the individual's rights.

"(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

"(J) Any other rights established by the Secretary.

"(g) MINIMUM REQUIREMENTS FOR SMALL COMMUNITY CARE SETTINGS.—

"(1) SMALL COMMUNITY CARE SETTINGS DEFINED.—In this section, the term 'small community care setting' means—

"(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

"(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

"(2) MINIMUM REQUIREMENTS.—A small community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

"(D) meet any applicable State or local requirements regarding certification or licensure;

"(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

"(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

"(h) MINIMUM REQUIREMENTS FOR LARGE COMMUNITY CARE SETTINGS.—

"(1) LARGE COMMUNITY CARE SETTING DEFINED.—In this section, the term 'large community care setting' means—

"(A) a nonresidential setting in which more than 8 individuals are served; or

"(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

"(2) MINIMUM REQUIREMENTS.—A large community care setting in which community care is provided under this section must—

"(A) meet such requirements as are published or developed by the Secretary under subsection (k);

"(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1919(c), to the extent applicable to such a setting;

"(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

"(D) meet the requirements of paragraphs (2) and (3) of section 1919(d) (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1919(d)(2) (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

"(3) DISCLOSURE OF OWNERSHIP AND CONTROL INTERESTS AND EXCLUSION OF REPEATED VIOLATORS.—A community care setting—

"(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1124(a)(3)) in the setting; and

"(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this title or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

"(i) SURVEY AND CERTIFICATION PROCESS.—

"(1) CERTIFICATIONS.—

"(A) RESPONSIBILITIES OF THE STATE.—Under each State plan under this title, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h). The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

"(B) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h).

"(C) FREQUENCY OF CERTIFICATIONS.—Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

"(2) REVIEWS OF PROVIDERS.—

"(A) IN GENERAL.—The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's per-

formance in providing the care required under ICCP's in accordance with the requirements of subsection (f).

"(B) SPECIAL REVIEWS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f), the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

"(3) SURVEYS OF COMMUNITY CARE SETTINGS.—

"(A) IN GENERAL.—The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

"(B) SURVEY PROTOCOL.—Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k).

"(C) PROHIBITION OF CONFLICT OF INTEREST IN SURVEY TEAM MEMBERSHIP.—A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) or who has a personal or familial financial interest in the setting being surveyed.

"(D) VALIDATION SURVEYS OF COMMUNITY CARE SETTINGS.—The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g), but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is binding and supersedes that of the State survey.

"(E) SPECIAL SURVEYS OF COMPLIANCE.—Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h), the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

"(4) INVESTIGATION OF COMPLAINTS AND MONITORING OF PROVIDERS AND SETTINGS.—Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h).

"(5) INVESTIGATION OF ALLEGATIONS OF INDIVIDUAL NEGLECT AND ABUSE AND MISAPPROPRIATION OF INDIVIDUAL PROPERTY.—The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

"(6) DISCLOSURE OF RESULTS OF INSPECTIONS AND ACTIVITIES.—

"(A) PUBLIC INFORMATION.—Each State, and the Secretary, shall make available to the public—

"(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

"(ii) copies of cost reports (if any) of such providers and settings filed under this title,

"(iii) copies of statements of ownership under section 1124, and

"(iv) information disclosed under section 1126.

"(B) NOTICES OF SUBSTANDARD CARE.—If a State finds that—

"(i) a provider of home or community care has provided care of substandard quality with respect to an

individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this title, or

"(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

"(C) ACCESS TO FRAUD CONTROL UNITS.—Each State shall provide its State medicaid fraud and abuse control unit (established under section 1903(q)) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

"(j) ENFORCEMENT PROCESS FOR PROVIDERS OF COMMUNITY CARE.—

"(1) STATE AUTHORITY.—

"(A) IN GENERAL.—If a State finds, on the basis of a review under subsection (i)(2) or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

"(B) CIVIL MONEY PENALTY.—

"(i) IN GENERAL.—Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A)) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(ii) DEADLINE AND GUIDANCE.—Each State which elects to provide home and community care under this

section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

"(2) SECRETARIAL AUTHORITY.—

"(A) FOR STATE PROVIDERS.—With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

"(B) OTHER PROVIDERS.—With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

"(C) CIVIL MONEY PENALTY.—If the Secretary finds on the basis of a review under subsection (i)(2) or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a). The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

"(k) SECRETARIAL RESPONSIBILITIES.—

"(1) PUBLICATION OF INTERIM REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

"(i) the requirements of subsection (c)(2) (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) (relating to qualifications for qualified case managers),

of subsection (f) (relating to minimum requirements for home and community care), of subsection (g) (relating to minimum requirements for small community care settings), and of subsection (h) (relating to minimum requirements for large community care settings, and

"(ii) survey protocols (for use under subsection (i)(3)(A)) which relate to such requirements.

"(B) MINIMUM PROTECTIONS.—Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

"(2) DEVELOPMENT OF FINAL REQUIREMENTS.—The Secretary shall develop, by not later than October 1, 1992—

"(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

"(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

"(3) NO DELEGATION TO STATES.—The Secretary's authority under this subsection shall not be delegated to States.

"(4) NO PREVENTION OF MORE STRINGENT REQUIREMENTS BY STATES.—Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

"(l) WAIVER OF STATEWIDENESS.—States may waive the requirement of section 1902(a)(1) (related to State wideness) for a program of home and community care under this section.

"(m) LIMITATION ON AMOUNT OF EXPENDITURES AS MEDICAL ASSISTANCE.—

"(1) LIMITATION ON AMOUNT.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

"(2) ASSURANCE OF ENTITLEMENT TO SERVICE.—A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) to individuals described in subsection (b) for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by

the State, and approved by the Secretary, for the provision of home and community care under this section.

"(3) LIMITATION ON ELIGIBILITY.—The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

"(4) ALLOCATION OF MEDICAL ASSISTANCE.—The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.".

(c) PAYMENT FOR HOME AND COMMUNITY CARE.—

(1) REASONABLE AND ADEQUATE PAYMENT RATES.—Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(13)—

(i) by striking "and" at the end of subparagraph (D),

(ii) by inserting "and" at the end of subparagraph (E), and

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

"(F) for payment for home and community care (as defined in section 1929(a) and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;"; and

(B) in subsection (h), by adding before the period at the end the following: "or to limit the amount of payment that may be made under a plan under this title for home and community care".

(2) DENIAL OF PAYMENT FOR CIVIL MONEY PENALTIES, ETC.—Section 1903(i)(8) of such Act (42 U.S.C. 1396b(i)(8)) is amended by inserting "(A)" after "medical assistance" and by inserting before the semicolon at the end the following: "or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this title or title XI or for legal expenses in defense of an exclusion or civil money penalty under this title or title XI if there is no reasonable legal ground for the provider's case".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking "(21)" and inserting "(22)".

(2) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking "through (20)" and inserting "through (21)".

(e) EFFECTIVE DATES.—

(1) Except as provided in this subsection, the amendments made by this section shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2)(A) The amendments made by subsection (c)(1) shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1).

(B) The amendment made by subsection (c)(2) shall apply to civil money penalties imposed after the date of the enactment of this Act.

(f) WAIVER OF PAPERWORK REDUCTION, ETC.—Chapter 35 of title 44, United States Code, and Executive Order 12291 shall not apply to information and regulations required for purposes of carrying out this Act and implementing the amendments made by this Act.

SEC. 4712. COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.

(a) PROVISION AS OPTIONAL SERVICE.—Section 1905(a) (42 U.S.C. 1396d(a)) as amended by section 4711 is further amended—

(1) by striking "and" at the end of paragraph (23);

(2) by redesignating paragraph (24) as paragraph (25); and

(3) by inserting after paragraph (23) the following new paragraph:

"(24) community supported living arrangements services (to the extent allowed and as defined in section 1930).".

(b) COMMUNITY SUPPORTED LIVING ARRANGEMENTS.—Title XIX (42 U.S.C. 1396 et seq.) as amended by sections 4402 and 4711 is further amended—

(1) by redesignating section 1930 as section 1931; and

(2) by inserting after section 1929 the following new section:

"COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES

"SEC. 1930. (a) COMMUNITY SUPPORTED LIVING ARRANGEMENTS SERVICES.—In this title, the term 'community supported living arrangements services' means one or more of the following services meeting the requirements of subsection (h) provided in a State eligible to provide services under this section (as defined in subsection (d)) to assist a developmentally disabled individual (as defined in subsection (b)) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

"(1) Personal assistance.

"(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

"(3) 24-hour emergency assistance (as defined by the Secretary).

"(4) Assistive technology.

"(5) Adaptive equipment.

"(6) Other services (as approved by the Secretary, except those services described in subsection (g)).

"(7) Support services necessary to aid an individual to participate in community activities.

"(b) DEVELOPMENTALLY DISABLED INDIVIDUAL DEFINED.—In this title the term, 'developmentally disabled individual' means an individual who as defined by the Secretary is described within the term 'mental retardation and related conditions' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

"(c) CRITERIA FOR SELECTION OF PARTICIPATING STATES.—The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

"(d) QUALITY ASSURANCE.—A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

"(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

"(2) the State will adopt standards for survey and certification that include—

"(A) minimum qualifications and training requirements for provider staff;

"(B) financial operating standards; and

"(C) a consumer grievance process;

"(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

"(4) the State will establish reporting procedures to make available information to the public;

"(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

"(6) the State will provide the services defined in subsection (a) in accordance with an individual support plan (as defined by the Secretary in regulations); and

"(7) the State plan amendment under this section shall be reviewed by the State Planning Council established under section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and the Protection and Advocacy System established under section 142 of such Act.

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

"(e) MAINTENANCE OF EFFORT.—States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

"(f) EXCLUDED SERVICES.—No Federal financial participation shall be allowed for the provision of the following services under this section:

"(1) Room and board.

"(2) Cost of prevocational, vocational and supported employment.

"(g) WAIVER OF REQUIREMENTS.—The Secretary may waive such provisions of this title as necessary to carry out the provisions of this section including the following requirements of this title—

"(1) comparability of amount, duration, and scope of services; and

"(2) statewideness.

"(h) MINIMUM PROTECTIONS.—

"(1) PUBLICATION OF INTERIM AND FINAL REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

"(B) MINIMUM PROTECTIONS.—Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d), that—

"(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

"(ii) a provider of community supported living arrangements services may not use individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

"(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

"(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

"(2) SPECIFIED REMEDIES.—If the Secretary finds that a provider has not met an applicable requirement under subsection (h), the Secretary shall impose a civil money penalty in an

amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(i) TREATMENT OF FUNDS.—Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

"(j) LIMITATION ON AMOUNTS OF EXPENDITURES AS MEDICAL ASSISTANCE.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).

SEC. 4713. PROVIDING FEDERAL MEDICAL ASSISTANCE FOR PAYMENTS FOR PREMIUMS FOR "COBRA" CONTINUATION COVERAGE WHERE COST EFFECTIVE.

(a) OPTIONAL PAYMENT OF COBRA PREMIUMS FOR QUALIFIED COBRA CONTINUATION BENEFICIARIES.—Section 1902 (42 U.S.C. 1396a) is amended—

(1) in subsection (a)(10)—

(A) by striking "and" at the end of subparagraph (D),

(B) by adding "and" at the end of subparagraph (E),

(C) by inserting after subparagraph (E) the following new subparagraph:

"(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2)) for qualified COBRA continuation beneficiaries described in section 1902(u)(1);", and

(D) in the matter following subparagraph (E), by striking "and" before "(X)" and by inserting before the semicolon at the end the following: ", and (XI) the medical assistance made available to an individual described in subsection (u)(1) who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2))"; and

(2) by adding after the subsections added by section 4604 and 4701(b) the following new subsection:

"(u)(1) Individuals described in this paragraph are individuals—

"(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved,

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

"(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this title resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

"(2) For purposes of subsection (a)(10)(F) and this subsection, the term 'COBRA premiums' means the applicable premium imposed with respect to COBRA continuation coverage.

"(3) In this subsection, the term 'COBRA continuation coverage' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act, section 4980B of the Internal Revenue Code of 1986, or title VI of the Employee Retirement Income Security Act of 1974.

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17), require or permit such treatment for other individuals.".

(b) CONFORMING AMENDMENT.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(1) by striking "or" at the end of clause (viii),

(2) by adding "or" at the end of clause (ix), and

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

"(x) individuals described in section 1902(u)(1),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1991.

SEC. 4714. PROVISIONS RELATING TO SPOUSAL IMPOVERISHMENT.

(a) CLARIFICATION OF NON-APPLICATION OF STATE COMMUNITY PROPERTY LAWS.—Section 1924(b)(2) (42 U.S.C. 1396r-1(b)(2)) as amended by subsection (a), is further amended by striking ", after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance" and inserting "for purposes of the post-eligibility income determination described in subsection (d)".

(b) CLARIFICATION OF TRANSFER OF RESOURCES TO COMMUNITY SPOUSE.—Section 1924(f)(1) (42 U.S.C. 1396r-5(f)(1)) is amended by striking "section 1917" and inserting "section 1917(c)(1)".

(c) CLARIFICATION OF PERIOD OF CONTINUOUS ELIGIBILITY.—Section 1924(c)(1) (42 U.S.C. 1396r-1(c)(1)) is amended by striking "the beginning of a continuous period of institutionalization of the institutionalized spouse" each place it appears and inserting "the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse".

(d) EFFECTIVE DATE.—The amendments made this section shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988.

SEC. 4715. DISREGARDING GERMAN REPARATION PAYMENTS FROM POST-ELIGIBILITY TREATMENT OF INCOME UNDER THE MEDICAID PROGRAM.

(a) IN GENERAL.—Section 1902(r)(1) (42 U.S.C. 1396a(r)(1)) is amended by inserting "there shall be disregarded reparation payments made by the Federal Republic of Germany and" after "under such a waiver".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act.

SEC. 4716. AMENDMENTS RELATING TO MEDICAID TRANSITION PROVISION.

(a) AMENDMENTS.—Subsection (f) of section 1925 (42 U.S.C. 1396s) is amended—

(1) in subsection (b)(2)(B)(i), by inserting at the end the following: "A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.";

(2) in subsection (b)(2)(B), by adding at the end the following new clause:

> *"(iii) CLARIFICATION ON FREQUENCY OF REPORTING.—A State may not require that a family receiving extended assistance under this subsection or subsection (a) report more frequently than as required under clause (i) or (ii).";* and

(3) in subsection (b)(3)(B), by adding at the end the following: "No such termination shall be effective earlier than 10 days after the date of mailing of such notice.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective as if included in the enactment of the Family Support Act of 1988.

SEC. 4717. CLARIFYING EFFECT OF HOSPICE ELECTION.

Section 1905(o)(1)(A) (42 U.S.C. 1396d(o)(1)(A)) is amended by inserting "and for which payment may otherwise be made under title XVIII" after "described in section 1812(d)(2)(A)".

SEC. 4718. MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.

(a) IN GENERAL.—For purposes of section 1903(f)(1)(B), for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining

the "highest amount which would ordinarily be paid to a family of the same size" (under the State's plan approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

SEC. 4719. CODIFICATION OF COVERAGE OF REHABILITATION SERVICES.

(a) IN GENERAL.—Section 1905(a)(13) (42 U.S.C. 1396d(a)(13)) is amended by inserting before the semicolon at the end the following: ", including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4720. PERSONAL CARE SERVICES FOR MINNESOTA.

(a) CLARIFICATION OF COVERAGE.—In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) PERSONAL CARE SERVICES DEFINED.—For purposes of this section, the term "personal care services" means services—

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location;

but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to—

(1) personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989; and

(2) such services furnished before October 1, 1994.

SEC. 4721. MEDICAID COVERAGE OF PERSONAL CARE SERVICES OUTSIDE THE HOME.

(a) IN GENERAL.—Section 1905(a)(7) (42 U.S.C. 1396d(a)(7)) is amended by striking "services" and inserting "services including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an indi-

vidual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility".

(b) EFFECTIVE DATE.—The amendment made by this section shall become effective with respect to personal care services provided on or after October 1, 1994.

SEC. 4722. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG DEPENDENCY TREATMENT SERVICES.

Section 1905(a) of the Social Security Act is amended by adding at the end the following new sentence: "No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.".

SEC. 4723. MEDICAID SPENDDOWN OPTION.

(a) IN GENERAL.—Section 1903(f)(2) (42 U.S.C. 1396b(f)(2)) is amended by—

(1) inserting "(A)" after "(2)"; and

(2) by adding before the period at the end the following: "or, (B) notwithstanding section 1916 at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) will be reduced by amounts paid to the State pursuant to this subparagraph."

(b) CONFORMING AMENDMENT.—Section 1902(a)(17) (42 U.S.C. 1396a(a)(17)) is amended by inserting after "insurance premiums" ", payments made to the State under section 1903(f)(2)(B),".

SEC. 4724. OPTIONAL STATE MEDICAID DISABILITY DETERMINATIONS INDEPENDENT OF THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by this title, is further amended by adding at the end the following new subsection:

"(v)(1) A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1614(a) of the Social Security Act.".

Subpart C—Health Maintenance Organizations

SEC. 4731. REGULATION OF INCENTIVE PAYMENTS TO PHYSICIANS.

(a) PHYSICIAN PAYMENT PLAN.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) as amended by this title is further amended—

(1) by striking ", and" at the end of clause (viii) and inserting a semicolon;

(2) by striking the period at the end of clause (ix) and inserting "; and"; and

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

"(x) any physician incentive plan that it operates meets the requirements described in section 1876(i)(8).".

(b) REPEAL OF PROHIBITION AGAINST PHYSICIAN INCENTIVE PAYMENTS.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is—

(1) REPEAL OF PROHIBITION.—Section 1128A(b)(1) (42 U.S.C. 1320a-7a(b)(1)) is amended by striking "or an entity with a contract under section 1903(m)".

(2) PENALTIES.—Section 1903(m)(5)(A) (42 U.S.C. 1396b(m)(5)(A)) is amended—

(A) by striking "or" at the end of clause (iii);

(B) by adding "or" at the end of clause (iv); and

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

"(v) fails to comply with the requirements of section 1876(i)(8),".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b)(2) shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) shall take effect on the date of the enactment of this Act.

SEC. 4732. SPECIAL RULES.

(a) WAIVER OF 75 PERCENT RULE FOR PUBLIC ENTITIES.—Section 1903(m)(2)(D) (42 U.S.C. 1396b(m)(2)(D)) is amended by striking "(i) special circumstances warrant such modification or waiver, and (ii)".

(b) EXTENDING SPECIAL TREATMENT TO MEDICARE COMPETITIVE MEDICAL PLANS.—

(1) 6-MONTH MINIMUM ENROLLMENT PERIOD OPTION.—Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by inserting "or with an eligible organization with a contract under section 1876" after "1903(m)(2)(A)".

(2) ENROLLMENT LOCK-IN.—Section 1903(m)(2)(F)(i) (42 U.S.C. 1396b(m)(2)(F)(i)) is amended—

(A) by striking "(G) or" and inserting "(G),", and

(B) adding at the end the following: "or with an eligible organization with a contract under section 1876 which meets the requirement of subparagraph (A)(ii), or".

(c) AUTOMATIC 1-MONTH REENROLLMENT FOR SHORT PERIODS OF INELIGIBILITY.—Section 1903(m)(2) is amended by adding at the end the following new subparagraph:

"(H) In the case of an individual who—

"(i) in a month is eligible for benefits under this title and enrolled with a health maintenance organization with a contract under this paragraph,

"(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

"(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.".

(d) ELIMINATION OF PROVISIONAL QUALIFICATION FOR HMOS.—Section 1903(m) is amended—

(1) in paragraph (2)(A)(i), by striking "(or the State as authorized by paragraph (3))", and

(2) by striking paragraph (3).

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4733. EXTENSION AND EXPANSION OF MINNESOTA PREPAID MEDICAID DEMONSTRATION PROJECT.

Section 507 of the Family Support Act of 1988 is amended—

(1) by striking "1991" and inserting "1996"; and

(2) by striking the period at the end and inserting the following: ", and shall amend such waiver to permit the State to expand such demonstration project to other counties if the amount of medical assistance provided under title XIX of such Act after such expansion will not exceed the amount of medical assistance provided under such title had the project not been expanded to other counties.".

SEC. 4734. TREATMENT OF CERTAIN COUNTY-OPERATED HEALTH INSURING ORGANIZATIONS.

Section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in paragraph (2)(A), by inserting "and in paragraph (3)" after "subparagraph (B)", and

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

"(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

"(B) A health insuring organization described in this subparagraph is one that—

"(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

"(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

"(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

"(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially

impairs access to covered services of adequate quality where medically necessary;

"(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

"(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

"(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

"(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.".

Subpart D—Demonstration Projects and Home and Community-Based Waivers

SEC. 4741. HOME AND COMMUNITY-BASED WAIVERS.

(a) TREATMENT OF ROOM AND BOARD.—(1) Subsections (c)(1) and (d)(1) of section 1915 (42 U.S.C. 1396n) are each amended by adding at the end the following: "For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.".

(b) ADJUSTMENT TO 1915(d) CEILING TO TAKE INTO ACCOUNT THE ADDED COSTS OF OBRA 87.—Section 1915(d)(5)(B)(iv) (42 U.S.C. 1396n(d)(5)(B)(iv)) is amended by striking "this title" the first place it appears and inserting "this title whose provisions become effective on or after such date".

SEC. 4742. TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1915(b)(4) (42 U.S.C. 1396n(b)(4)) is amended by inserting before the period at the end the following: "and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1902(a)(37)(A)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act.

(c) TREATMENT OF PERSONS WITH MENTAL RETARDATION OR A RELATED CONDITION IN A DECERTIFIED FACILITY.—

(1) IN GENERAL.—Section 1915(c)(7) (42 U.S.C. 1396n(c)(7)) is amended by adding at the end the following new subparagraph:

"(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981, but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act is terminated on or after the date of the enactment of this Act.

(d) SCOPE OF RESPITE CARE.—

(1) IN GENERAL.—Section 1915(c)(4) is amended by adding at the end the following:

"Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981.

(e) PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT.—In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act.

SEC. 4744. PROVISIONS RELATING TO FRAIL ELDERLY DEMONSTRATION PROJECT WAIVERS.

(a) EXPANSION OF WAIVERS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) in paragraph (1), by striking "10" and inserting "15"; and

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

"(3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.".

(b) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES.—(1) Section 1924(a) (42 U.S.C. 1396r-5(a)) is amended by adding at the end the following new paragraph:

"(5) APPLICATION TO INDIVIDUALS RECEIVING SERVICES FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS.—This section applies to individuals receiving institutional or noninstitutional services from any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.".

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 4745. DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act, for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(l) of such Act (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

(v) the project provides for coverage of benefits consistent with subsection (b); and

(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

(B) The Secretary may waive the requirements of clause (ii) of this paragraph with respect to those projects described in subparagraph (B) of paragraph (1).

(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

(5) WAIVER OF REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act) as may be required to provide for additional coverage of individuals under projects under this section.

(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act or the Federal medical assistance percentage specified in section 1905(b) of such Act.

(b) BENEFITS.—

(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act.

(2) LIMITS ON BENEFITS.—

(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical

assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

(c) PREMIUMS AND COST-SHARING.—

(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act for individuals entitled to benefits under part A of title IV of such Act.

(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

(e) LIMITS ON EXPENDITURES AND FUNDING.—

(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than $12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994.

(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance per-

centage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(f) EVALUATION AND REPORT.—

(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

(A) access to, and costs of, health care,

(B) private health care insurance coverage, and

(C) premiums and cost-sharing.

(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1995.

(g) DEFINITIONS.—In this section:

(1) The term "income official poverty line" means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(2) The term "project" refers to a demonstration project under subsection (a).

SEC. 4746. MEDICAID RESPITE DEMONSTRATION PROJECT EXTENDED.

Section 9414 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) by amending subsection (e) to read as follows:

"(e) DURATION.—The project under this section may continue until September 30, 1992."; and

(2) in subsection (d), by striking the last sentence and inserting in lieu thereof the following new sentence: "For the period beginning October 1, 1990, and ending September 30, 1992, Federal payments for the project shall not exceed amounts expended under the project in the preceding fiscal year.".

SEC. 4747. DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS.

(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act, and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

(A) general and preventative medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

(B) prescription drugs, including drugs for the purposes of preventative health care services;

(C) counseling and social services;

(D) substance abuse treatment services (including services for multiple substances abusers);

(E) home care services (including assistance in carrying out activities of daily living);

(F) case management;

(G) health education services;

(H) respite care for caregivers;

(I) dental services; and

(J) diagnostic and laboratory services.

(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act and shall terminate on the date that is 3 years after the date of commencement.

(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the

otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act.

(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purposes of this section.

(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.

Subpart E—Miscellaneous

SEC. 4751. REQUIREMENTS FOR ADVANCED DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE.

(a) IN GENERAL.—Section 1902 (42 U.S.C. 1396a(a)), as amended by sections 4401(a)(2), 4601(d), 4701(a), 4711(a), and 4722 of this title, is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (55),

(B) by striking the period at the end of paragraph (56) and inserting "; and", and

(C) by inserting after paragraph (56) the following new paragraphs:

"(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1903(m)(1)(A)) receiving funds under the plan shall comply with the requirements of subsection (w);

"(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w).''; and

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

"(w)(1) For purposes of subsection (a)(57) and sections 1903(m)(1)(A) and 1919(c)(2)(E), the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

"(A) to provide written information to each such individual concerning—

"(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

"(ii) the provider's or organization's written policies respecting the implementation of such rights;

"(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

"(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

"(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

"(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

"(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

"(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

"(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

"(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

"(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

"(E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

"(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.".

"(4) In this subsection, the term 'advance directive' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(b) CONFORMING AMENDMENTS.—

(1) Section 1903(m)(1)(A)(42 U.S.C. 1396b(m)(1)(A)) is amended—

(A) by inserting "meets the requirement of section 1902(w)" after "which" the first place it appears, and

(B) by inserting "meets the requirement of section 1902(a) and" after "which" the second place it appears.

(2) Section 1919(c)(2) of such Act (42 U.S.C. 1396r(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) INFORMATION RESPECTING ADVANCE DIRECTIVES.—A nursing facility must comply with the requirement of section 1902(w) (relating to maintaining written policies and procedures respecting advance directives).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act.

(d) PUBLIC EDUCATION CAMPAIGN.—

(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section, shall develop and imple-

ment a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, add a page to the medicare handbook with respect to the provisions of this section.

SEC. 4752. IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.

(a) USE OF UNIQUE PHYSICIAN IDENTIFIERS.—

(1) ESTABLISHMENT OF SYSTEM.—

(A) IN GENERAL.—Section 1902 (42 U.S.C. 1396a) as amended by sections 4601(d), 4701(a), 4711(a), 4722(a), and 4751(a) is further amended by adding at the end the following new subsection:

"(x) The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this title.".

(B) DEADLINE AND CONSIDERATIONS.—The system established under the amendment made by subparagraph (A) may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) REQUIRING INCLUSION WITH CLAIMS.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title, is amended—

(A) by striking the period at the end of paragraph (11) and inserting "; or", and

(B) by inserting after paragraph (11) the following new paragraph:

"(12) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x), unless the claim for the services includes the unique physician identifier provided under such system.".

(b) MAINTENANCE OF ENCOUNTER DATA BY HEALTH MAINTENANCE ORGANIZATIONS.—

(1) IN GENERAL.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)), as amended by this title, is amended—

(A) by striking "and" at the end of clause (ix),

(B) by striking the period at the end of clause (x) and inserting "; and", and

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

"(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act.

(c) MAINTENANCE OF LIST OF PHYSICIANS BY STATES.—

(1) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by this title, is further amended—

(A) by striking "and" at the end of paragraph (56),

(B) by striking the period at the end of paragraph (57) and inserting "; and", and

(C) by inserting after paragraph (57) the following new paragraph:

"(58) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)) of all physicians who are certified to participate under the State plan.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act.

(d) FOREIGN MEDICAL GRADUATE CERTIFICATION.—

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service shall provide, in the identifier system established under section 1902(x) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act) shall be issued an identifier under such system unless the individual—

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

(C) has held a license from 1 or more States continuously since 1958.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

(e) MINIMUM QUALIFICATIONS FOR BILLING FOR PHYSICIANS' SERVICES TO CHILDREN AND PREGNANT WOMEN.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by this title and subsection (a)(2) of this section, is further amended—

(1) by striking the period at the end of paragraph (13) and inserting "; or"; and

(2) by inserting after paragraph (13) the following new paragraph:

"(14) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to—

"(A) a child under 21 years of age, unless the physician—

"(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

"(vi) has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age; or

"(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician—

"(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

"(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B)),

"(iii) holds admitting privileges at a hospital participating in a State plan approved under this title,

"(iv) is a member of the National Health Service Corps,

"(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

"(vi) has been certified by the Secretary as qualified to provide physicians' services to pregnant women.".

(f) REPORTING OF MISCONDUCT OR SUBSTANDARD CARE.—

(1) IN GENERAL.—Section 1921(a) (42 U.S.C. 1396r-2(a)) is amended—

(A) in paragraph (1), in the matter before subparagraph (A), by inserting "(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)" after "health care practitioners"; and

(B) in paragraph (1), by adding at the end the following new subparagraph:

"(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.

SEC. 4753. CLARIFICATION OF AUTHORITY OF INSPECTOR GENERAL.

Section 1128A(j) (42 U.S.C. 1320a-7a(j)) is amended—

(1) by striking "(j)" and inserting "(j)(1)"; and

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

"(2) The Secretary may delegate authority granted under this section and under section 1128 to the Inspector General of the Department of Health and Human Services.".

SEC. 4754. NOTICE TO STATE MEDICAL BOARDS WHEN ADVERSE ACTIONS TAKEN.

(a) IN GENERAL.—Section 1902(a)(41) (42 U.S.C. 1396a(a)(41)) is amended by inserting "and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board" after "shall promptly notify the Secretary".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sanctions effected more than 60 days after the date of the enactment of this Act.

SEC. 4755. MISCELLANEOUS PROVISIONS.

(a) PSYCHIATRIC HOSPITALS.—

(1) CLARIFICATION OF COVERAGE OF INPATIENT PSYCHIATRIC HOSPITAL SERVICES.—

(A) IN GENERAL.—Section 1905(h)(1)(A) (42 U.S.C. 1396d(h)(1)(A)), as amended by section 2340(b) of the Deficit Reduction Act of 1984, is amended by inserting "or in another inpatient setting that the Secretary has specified in regulations" after "1861(f)".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall be effective as if included in the enactment of the Deficit Reduction Act of 1984.

(2) INTERMEDIATE SANCTIONS FOR PSYCHIATRIC HOSPITALS.—Section 1902 (42 U.S.C. 1396a) as amended by this title is further amended by adding at the end the following new subsection:

"(y)(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1905(h)) and further finds that the hospital's deficiencies—

"(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

"(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual ad-

mitted to such hospital after the effective date of the finding, or both.

"(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this title—

"(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

"(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1903(a) with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this title.

"(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

"(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

"(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

"(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.".

(b) STATE UTILIZATION REVIEW SYSTEMS.—Section 9432 of the Omnibus Budget Reconciliation Act of 1986 is amended—

(1) in subsection (a)—

(A) by inserting "(1)" after "IN GENERAL.—",

(B) by striking ", during the period" and all that follows through "Congress,", and

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

"(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program for ambulatory surgery, preadmission testing, or same-day surgery.";

(2) in subsection (b)(4), by inserting "and subsection (d)" after "In this subsection"; and

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

"(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

"(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

"(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.".

(c) ADDITIONAL MISCELLANEOUS PROVISIONS.—

(1) Effective July 1, 1990—

(A) section 1902(a)(10)(C)(iv) of the Social Security Act is amended by striking "through (20)" and inserting "through (21)", and

(B) section 1902(j) of such Act is amended by striking "through (21)" and inserting "through (22)".

(2) Effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)) is amended by adding at the end the following: "This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.".

(3) Section 505(b) (42 U.S.C. 705(b)) is amended in the matter preceding paragraph (1) by striking "requirement" and inserting "requirements".

PART 5—PROVISIONS RELATING TO NURSING HOME REFORM

SEC. 4801. TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

(a) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) PART-TIME NURSE AIDES NOT ALLOWED DELAY IN TRAINING.—Section 1919(b)(5)(A) (42 U.S.C. 1396r(b)(5)(A)) is amended—

(i) by striking "A nursing facility" and inserting "(i) Except as provided in clause (ii), a nursing facility";

(ii) by striking "(on a full-time, temporary, per diem, or other basis) and inserting "on a full-time basis";

(iii) by striking "(i)" and "(ii)" and inserting "(I)" and "(II)"; and

(iv) by adding at the end the following:

"(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in

the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).".

(3) REQUIREMENT TO OBTAIN INFORMATION FROM NURSE AIDE REGISTRY.—Section 1919(b)(5)(C) (42 U.S.C. 1396r(b)(5)(C)) is amended by striking "the State registry established under subsection (e)(2)(A) as to information in the registry" and inserting "any State registry established under subsection (e)(2)(A) that the facility believes will include information".

(4) RETRAINING OF NURSE AIDES.—Section 1919(b)(5)(D) (42 U.S.C. 1396r(b)(5)(D)) is amended by striking the period at the end and inserting ", or a new competency evaluation program.".

(5) CLARIFICATION OF NURSE AIDES NOT SUBJECT TO CHARGES.—Section 1919(f)(2)(A)(iv) (42 U.S.C. 1396r(f)(2)(A)(iv)) is amended—

(A) in subclause (I), by striking "and" at the end;

(B) in subclause (II), by inserting after "nurse aide" the following: "who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program";

(C) in subclause (II), by striking the period at the end and inserting ", and"; and

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

"(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a pro rata basis during the period in which the nurse aide is so employed.".

(6) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

(A) IN GENERAL.—Section 1919(f)(2)(B)(iii)(I) (42 U.S.C. 1396r(f)(2)(B)(iii)(I)) is amended to read as follows:

"(I) offered by or in a nursing facility which, within the previous 2 years—

"(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

"(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

"(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clause (i), (iii), or (iv) of subsection (h)(2)(A), clause (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enact-

ment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(ii) was subject to a denial of payment under either such title;

(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(v) pursuant to State action, was closed or had its residents transferred.

(7) CLARIFICATION OF STATE RESPONSIBILITY TO DETERMINE COMPETENCY.—Section 1919(f)(2)(B) (42 U.S.C. 1396r(f)(2)(B)) is amended in the second sentence by inserting "(through subcontract or otherwise)" after "may not delegate".

(8) EXTENSION OF ENHANCED MATCH RATE UNTIL OCTOBER 1, 1990.—Section 1903(a)(2)(B) (42 U.S.C. 1396b(a)(2)(B)) is amended by striking "July 1, 1990" and inserting "October 1, 1990".

(9) EFFECTIVE DATE.—Except as provided in paragraph (6), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW.—

(1) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

(2) CLARIFICATION WITH RESPECT TO ADMISSIONS AND READMISSION FROM A HOSPITAL.—Section 1919 of the Social Security Act (42 U.S.C. 1396r) is amended—

(A) in subsection (b)(3)(F), by striking "A nursing facility" and by inserting "Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A), a nursing facility"; and

(B) in subsection (e)(7)(A)—

(i) by redesignating the first 2 sentences as clause (i) with the following heading (and appropriate indentation):

"(i) IN GENERAL.—", and

(ii) by adding at the end the following:

"(ii) CLARIFICATION WITH RESPECT TO CERTAIN READMISSIONS.—The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

"(iii) EXCEPTION FOR CERTAIN HOSPITAL DISCHARGES.—The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

"(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

"(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

"(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.".

(3) DENIAL OF PAYMENTS FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY SERVICES.—Section 1919(e)(7) (42 U.S.C. 1395r(e)(7)) is amended—

(A) in subparagraph (D)—

(i) in the heading, by striking "WHERE FAILURE TO CONDUCT PREADMISSION SCREENING",

(ii) by designating the first sentence as clause (i) with the following heading (and appropriate indentation):

"(i) FOR FAILURE TO CONDUCT PREADMISSION SCREENING OR ANNUAL REVIEW.—", and

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

"(ii) FOR CERTAIN RESIDENTS NOT REQUIRING NURSING FACILITY LEVEL OF SERVICES.—No payment may be made under section 1903(a) with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility."; and

(B) in subparagraph (E), by striking "the requirement of this paragraph" and inserting "the requirements of subparagraphs (A) through (C) of this paragraph".

(4) NO DELEGATION OF AUTHORITY TO CONDUCT SCREENING AND REVIEWS.—Section 1919 is further amended—

(A) in subsection (b)(3)(F), by adding at the end the following:

"A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility)."; and

(B) in subsection (e)(7)(B), by adding at the end the following new clause:

"(iv) PROHIBITION OF DELEGATION.—A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).".

(5) ANNUAL REPORTS.—

(A) STATE REPORTS.—Section 1919(e)(7)(C) (42 U.S.C. 1396r(e)(7)(C)) is amended by adding at the end the following new clause:

"(iv) ANNUAL REPORT.—Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).".

(B) SECRETARIAL REPORT.—Section 4215 of the Omnibus Budget Reconciliation Act of 1987 is amended by adding at the end the following new sentence: "Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.".

(6) REVISION OF ALTERNATIVE DISPOSITION PLANS.—Section 1919(e)(7)(E) (42 U.S.C. 1396r(e)(7)(E)) is amended by adding at the end the following: "The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.".

(7) DEFINITION OF MENTALLY ILL.—Section 1919(e)(7)(G)(i) (42 U.S.C. 1396r(e)(7)(G)(i)) is amended—

(A) by striking "primary or secondary" and all that follows through "3rd edition)" and inserting "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)",

(B) by inserting before the period "or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness".

(8) SUBSTITUTION OF "SPECIALIZED SERVICES" FOR "ACTIVE TREATMENT".—Sections 1919(b)(3)(F) and 1919(e)(7) (42 U.S.C. 1396r(b)(3)(F), 1396r(e)(7)) are each amended by striking "active treatment" and "ACTIVE TREATMENT" each place either appears and inserting "specialized services" and "SPECIALIZED SERVICES", respectively.

(9) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(c) ENFORCEMENT PROCESS.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.

(d) SUPERVISION OF HEALTH CARE OF RESIDENTS OF NURSING FACILITIES BY NURSE PRACTITIONERS, CLINICAL NURSE SPECIALISTS, AND PHYSICIAN ASSISTANTS ACTING IN COLLABORATION WITH PHYSICIANS.—

(1) IN GENERAL.—Section 1919(b)(6)(A) (42 U.S.C. 1396r(b)(6)(A)) is amended by inserting "(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)" after "physician".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(e) OTHER AMENDMENTS.—

(1) ASSURANCE OF APPROPRIATE PAYMENT AMOUNTS.—

(A) IN GENERAL.—Section 1902(a)(13)(A) (42 U.S.C. 1396a(a)(13)(A)) is amended by inserting "(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this title)" after "take into account the costs".

(B) DETAILS IN PLAN AMENDMENT.—Section 4211(b)(2) of the Omnibus Budget Reconciliation Act of 1987 is amended by inserting after the first sentence the following: "Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.".

(2) DISCLOSURE OF INFORMATION OF QUALITY ASSESSMENT AND ASSURANCE COMMITTEES.—Section 1919(b)(1)(B) (42 U.S.C. 1396r(b)(1)(B)) is amended by adding at the end the following new sentence: "A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.".

(3) PERIOD FOR RESIDENT ASSESSMENT.—Section 1919(b)(3)(C)(i)(I) (42 U.S.C. 1396r(b)(3)(C)(i)(I)) is amended by striking "4 days" and inserting "not to exceed 14 days".

(4) CLARIFICATION OF RESPONSIBILITY FOR SERVICES FOR MENTALLY ILL AND MENTALLY RETARDED RESIDENTS.—Section 1919(b)(4)(A) (42 U.S.C. 1396r(b)(4)(A)) is amended—

(A) by striking "and" at the end of clause (v),

(B) by striking the period at the end of clause (vi) and inserting "; and", and

(C) by inserting after clause (vi) the following new clause:

"(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.".

(5) CLARIFICATION OF EXTENT OF STATE WAIVER AUTHORITY; NOTIFICATION OF WAIVERS.—Section 1919(b)(4)(C)(ii) (42 U.S.C. 1396r(b)(4)(C)(ii)) is amended—

(A) by striking "A State" and all that follows through "a facility if" and inserting "To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if";

(B) by striking "and" at the end of subclause (II);

(C) by striking the period at the end of subclause (III) and inserting a comma; and

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

"(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

"(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.".

(6) CLARIFICATION OF DEFINITION OF NURSE AIDE.—Section 1919(b)(5)(F)(i) (42 U.S.C. 1396r(b)(5)(F)(i)) is amended by striking "(G)), " and inserting "(G)) or a registered dietician,".

(7) CHARGES APPLICABLE IN CASES OF CERTAIN MEDICAID-ELIGIBLE INDIVIDUALS.—

(A) IN GENERAL.—Section 1919(c) (42 U.S.C. 1396r(c)) is amended—

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

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

"(7) LIMITATION ON CHARGES IN CASE OF MEDICAID-ELIGIBLE INDIVIDUALS.—

"(A) IN GENERAL.—A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this title, that exceed the payment amounts established by the State for such services under this title.

"(B) CERTAIN MEDICAID INDIVIDUALS DEFINED.—In subparagraph (A), the term 'certain medicaid-eligible individual' means an individual who is entitled to medical assistance for nursing facility services in the facility under this title but with respect to whom such benefits are not being paid because, in determining the amount of the individ-

ual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this title.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect on the date of the enactment of this Act, without regard to whether or not regulations to implement such amendments have been promulgated.

(8) RESIDENTS' RIGHTS TO REFUSE INTRA-FACILITY TRANSFERS TO MOVE THE RESIDENT TO A MEDICARE-QUALIFIED PORTION.—Section 1919(c)(1)(A) (42 U.S.C. 1396r(c)(1)(A)) is amended—

(A) by redesignating clause (x) as clause (xi) and by inserting after clause (ix) the following new clause:

"(x) REFUSAL OF CERTAIN TRANSFERS.—The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of title XVIII) to a portion of the facility that is such a skilled nursing facility."; and

(B) by adding at the end the following: "A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this title or a State's entitlement to Federal medical assistance under this title with respect to services furnished to such a resident.".

(9) RESIDENT ACCESS TO CLINICAL RECORDS.—Section 1919(c)(1)(A)(iv) (42 U.S.C. 1396r(c)(1)(A)(iv)) is amended by inserting before the period at the end the following: "and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request".

(10) INCLUSION OF STATE NOTICE OF RIGHTS IN FACILITY NOTICE OF RIGHTS.—Section 1919(c)(1)(B)(ii) (42 U.S.C. 1396r(c)(1)(B)(ii)) is amended by inserting "including the notice (if any) of the State developed under subsection (e)(6)" after "in such rights)".

(11) REMOVAL OF DUPLICATIVE REQUIREMENT FOR QUALIFICATIONS OF NURSING HOME ADMINISTRATORS.—Effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1919(f)(4) of the Social Security Act—

(A) paragraph (29) of section 1902(a) of such Act (42 U.S.C. 1396a(a)) is repealed; and

(B) section 1908 of such Act (42 U.S.C. 1396g) is repealed.

(12) CLARIFICATION OF NURSE AIDE REGISTRY REQUIREMENTS.—Section 1919(e)(2) (42 U.S.C. 1396r(e)(2)) is amended—

(A) in subparagraph (A), by striking the period and inserting the following: ", or any individual described in subsection (f)(2)(B)(ii) or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989."; and

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

"(C) PROHIBITION AGAINST CHARGES.—A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).".

(13) CLARIFICATION ON FINDINGS OF NEGLECT.—Section 1919(g)(1)(C) (42 U.S.C. 1396r(g)(1)(C)) is amended by adding at the end the following: "A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.".

(14) TIMING OF PUBLIC DISCLOSURE OF SURVEY RESULTS.—Section 1919(g)(5)(A)(i) (42 U.S.C. 1396r(g)(5)(A)(i)) is amended by striking "deficiencies and plans" and inserting "deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans".

(15) OMBUDSMAN PROGRAM COORDINATION WITH STATE SURVEY AND CERTIFICATION AGENCIES.—Section 1919(g)(5)(B) (42 U.S.C. 1396r(g)(5)(B)) is amended by striking "with respect" and inserting "or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h), with respect".

(16) DENIAL OF PAYMENT OF LEGAL FEES FOR FRIVOLOUS LITIGATION.—

(A) IN GENERAL.—Section 1903(i) (42 U.S.C. 1396b(i)), [[as amended by section X???(a)(1)(B) of this Act]], is amended—

(i) by striking "or" at the end of paragraph (9);

(ii) by striking the period at the end of paragraph (10) and inserting "; or"; and

(iii) by inserting after paragraph (10) the following new paragraph:

"(11) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action."

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply with respect to actions initiated on or after the date of the enactment of this Act.

(17) PROVISIONS RELATING TO STAFFING REQUIREMENTS.—

(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for

skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act, and shall include in such study recommendations regarding appropriate minimum ratios.

(18) STATE REQUIREMENTS RELATING TO PROGRAMS.—Amend 1919(e)(1)(A) to strike "under clause (i) or (ii) of subsection (f)(2)(A)" and insert "under subsection (f)(2)".

(19) EFFECTIVE DATES.—Except as provided in paragraphs (7), (1), and (1), the amendments made by this subsection shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987.

TITLE V—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

Subtitle A—Human Resource and Family Policy Amendments

SEC. 5001. TABLE OF CONTENTS.

SEC. 502. AMENDMENT OF SOCIAL SECURITY ACT.

Except as otherwise expressly provided, wherever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

CHAPTER 1—CHILD SUPPORT ENFORCEMENT

SEC. 5011. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES.

(a) AUTHORITY OF STATES TO REQUEST WITHHOLDING OF FEDERAL TAX REFUNDS FROM PERSONS OWING PAST DUE CHILD SUPPORT.—Section 464(a)(2)(B) (42 U.S.C. 664(a)(2)(B)) is amended by striking ", and before January 1, 1991".

(b) WITHHOLDING OF FEDERAL TAX REFUNDS AND COLLECTION OF PAST DUE CHILD SUPPORT ON BEHALF OF DISABLED CHILD OF ANY AGE, AND OF SPOUSAL SUPPORT INCLUDED IN ANY CHILD SUPPORT ORDER.—Section 464(c) (42 U.S.C. 664(c)) is amended—

(1) in paragraph (2), by striking "minor child." and inserting "qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)."; and

(2) by adding at the end the following:

"(3) For purposes of paragraph (2), the term 'qualified child' means a child—

"(A) who is a minor; or

"(B)(i) who, while a minor, was determined to be disabled under title II or XVI; and

"(ii) for whom an order of support is in force.".

(c) EFFECTIVE DATE.—The amendments made by subsection (b) shall take effect on January 1, 1991.

SEC. 5012. EXTENSION OF COMMISSION ON INTERSTATE CHILD SUPPORT.

(a) REAUTHORIZATION.—Section 126 of the Family Support Act of 1988 (42 U.S.C. 666 note; Public Law 100-485) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by striking "1990" and inserting "1991"; and

(B) in paragraph (2), by striking "1991" and inserting "1992";

(2) in subsection (e), by adding at the end the following:

"(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

"(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code."; and

(3) in subsection (f)(1), by striking "1991" and inserting "1992".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5013. CHILD SUPPORT ENFORCEMENT WAIVER.

(a) IN GENERAL.— The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of Texas waiving (with respect to cases where a court has issued an order for child support) the following requirements under the State plan for child and spousal support that are described in subparagraphs (A) and (B) of section 454(6) of the Social Security Act, with respect to a project, based in the county of Bexar, of delinquency monitoring for child support enforcement:

(1) The submission of a written application by an individual requesting child support collection services.

(2) The payment of an application fee with respect to an application for such services.

(b) CONTENTS OF WAIVER AGREEMENT.—In the agreement between the Secretary and the State of Texas described in subsection (a), the waiver granted under such agreement shall provide the following:

(1) The waiver shall apply only with respect to the provision of child support collection services.

(2) Before the provision of any child support collection services, the organizational unit designated under section 454(3) of the Social Security Act (in this section referred to as the "State agency") shall provide written notification to each custodial parent of the right of such parent to refuse such services.

(3) The State shall ensure that, to the extent possible, each parent of the child on behalf of whom such services are provided (regardless of whether such parent is a custodial parent) is to receive written notice at the time such services are provided, explaining—

(A) the legal rights of parents with respect to the child support collection services provided; and

(B) the responsibilities of the State agency in providing such child support collection services (including the monitoring of delinquent child support payments).

(4) A case record shall be deemed to have been established by the State agency upon notification of a custodial parent of the option to receive the child support enforcement services described in this subsection.

(5) Any period of enforcement by the State agency under this section with respect to the collection of delinquent child support payments shall be deemed to begin on the first day of any such delinquency.

(d) STUDY AND REPORT.—

(1) STUDY REQUIRED.—As a condition precedent to granting the waiver described in subsection (a), the State agency shall agree to conduct a study of the cost-effectiveness to the Federal Government and to the State of Texas of the monitoring of delinquent child support payments under the State plan under section 454 of the Social Security Act.

(2) CONDUCT OF STUDY.—

(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in accordance with the criteria established by the Secretary in accordance with subparagraph (B).

(B) CRITERIA.—Not later than February 1, 1991, the Secretary shall establish the criteria required by subparagraph (A), in consultation with—

(i) 1 or more representatives of organizations representing child support administrators;

(ii) 1 or more representatives of the General Accounting Office;

(iii) 1 or more representatives of the State of Texas; and

(iv) such other individuals or organizations with experience in the evaluation of child support programs, as the Secretary may designate.

(3) REPORT.—Not later than 3 months after the expiration of the waiver described in subsection (a), the State agency shall

submit to the Secretary and to the Congress a report that includes the findings of the study required by this subsection.

(e) DURATION OF WAIVER.—The waiver described in subsection (a) shall be effective for not more than 2 years.

(f) MATCHING PAYMENTS.—

(1) GENERAL EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out child support enforcement programs with respect to which the waiver described in subsection (a) applies, the Secretary shall pay the State an amount equal to the lesser of—

(A) 66 percent of such expenditures; or

(B) $500,000.

(2) STUDY EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out the study required by subsection (d), the Secretary shall pay the State an amount equal to 66 percent of such expenditures.

CHAPTER 2—UNEMPLOYMENT COMPENSATION

SEC. 5021. AMOUNTS TRANSFERRED TO STATE UNEMPLOYMENT COMPENSATION PROGRAM ACCOUNTS.

(a) ALLOCATION OF AMOUNTS.—Paragraph (2) of section 903(a) (42 U.S.C. 1103(a)(2)) is amended to read as follows:

"(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

"(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

"(B) shall bear the same ratio to the total amount to be so transferred as—

"(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

"(ii) the total amount of wages subject to such tax during such year."

(b) USE OF TRANSFERRED AMOUNTS.—Paragraph (2) of section 903(c) (42 U.S.C. 1103(c)(2)) is amended—

(1) by striking "and" at the end of subparagraph (C), and

(2) by striking so much of such paragraph as follows subparagraph (C) and inserting the following:

"(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

"(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b), exceeds

"(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

"(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

"(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fiscal years beginning after the date of the enactment of this Act.

CHAPTER 3—SUPPLEMENTAL SECURITY INCOME

SEC. 5031. EXCLUSION FROM INCOME AND RESOURCES OF VICTIMS' COMPENSATION PAYMENTS.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting "; and"; and

(3) by adding at the end the following:

"(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.".

(c) VICTIMS COMPENSATION AWARD NOT REQUIRED TO BE ACCEPTED AS CONDITION OF RECEIVING BENEFITS.—Section 1631(a) (42 U.S.C. 1383(a)) is amended by adding at the end the following:

"(9) Benefits under this title shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5032. ATTAINMENT OF AGE 65 NOT TO SERVE AS BASIS FOR TERMINATION OF ELIGIBILITY UNDER SECTION 1619(b).

(a) IN GENERAL.—Section 1619(b)(1) (42 U.S.C. 1392h(b)(1)) is amended by striking "under age 65".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5033. EXCLUSION FROM INCOME OF IMPAIRMENT-RELATED WORK EXPENSES.

(a) IN GENERAL.—Section 1612(b)(4)(B)(ii) (42 U.S.C. 1382a(b)(4)(B)(ii)) is amended by striking "(for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act.

SEC. 5034. TREATMENT OF ROYALTIES AND HONORARIA AS EARNED INCOME.

(a) IN GENERAL.—Section 1612(a) (42 U.S.C. 1382a(a)) is amended—

(1) in paragraph (1)—

(A) by striking "and" at the end of subparagraph (C); and

(B) by adding at the end the following:

"(E) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and"; and

(2) in paragraph (2)(F), by inserting "not described in paragraph (1)(E)" before the period.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted.

SEC. 5035. CERTAIN STATE RELOCATION ASSISTANCE EXCLUDED FROM SSI INCOME AND RESOURCES.

(a) EXCLUSION FROM INCOME.—Section 1612(b) (42 U.S.C. 1382a(b)), as amended by section 5031(a) of this Act, is amended—

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting a semicolon; and

(3) by inserting after paragraph (17) the following:

"(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(b) EXCLUSION FROM RESOURCES.—Section 1613(a) (42 U.S.C. 1382b(a)), as amended by section 5031(b) of this Act, is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by inserting after paragraph (9) the following:

"(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for calendar months beginning in the 3-year period that begins on the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5036. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIAN OR OTHER QUALIFIED SPECIALIST.

(a) IN GENERAL.—Section 1614(a)(3) (42 U.S.C. 1382c(a)(3)) is amended by adding at the end the following:

"(H) In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years and to whom section 221(h) does not apply, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the child (as determined by the Secretary) evaluates the case of such child.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to determinations made 6 or more months after the date of the enactment of this Act.

SEC. 5037. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES FURNISHED DURING CERTAIN MONTHS OF NONPAYMENT OF SSI BENEFITS.

(a) IN GENERAL.—Section 1615 (42 U.S.C. 1382d) is amended by adding at the end the following:

"(e) The Secretary may reimburse the State agency described in subsection (d) for the costs described therein incurred in the provision of rehabilitation services—

"(1) for any month for which an individual received—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66; and

"(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

"(A) benefits under section 1611 or 1619(a);

"(B) assistance under section 1619(b); or

"(C) a federally administered State supplementary payment under section 1616 of this Act or section 212(b) of Public Law 93-66.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to claims for reimbursement pending on or after such date.

SEC. 5038. EXTENSION OF PERIOD OF PRESUMPTIVE ELIGIBILITY FOR BENEFITS.

(a) IN GENERAL.—Section 1631(a)(4)(B) (42 U.S.C. 1383(a)(4)(B)) is amended by striking "3" and inserting "6".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5039. CONTINUING DISABILITY OR BLINDNESS REVIEWS NOT REQUIRED MORE THAN ONCE ANNUALLY.

(a) IN GENERAL.—Section 1619 (42 U.S.C. 1382h) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

"(c) Subsection (a)(2) and section 1631(j)(2)(A) shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.".

(b) CONFORMING AMENDMENT.—Section 1631(j)(2)(A) (42 U.S.C. 1383(j)(2)(A)) is amended by inserting "(other than subsection (c) thereof)" after "1619" the 1st place such term appears.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 5040. CONCURRENT SSI AND FOOD STAMP APPLICATIONS BY INSTITUTIONALIZED INDIVIDUALS.

Section 1631 (42 U.S.C. 1383) is amended—

(1) in subsection (m), by striking the second sentence; and

(2) by adding at the end the following:

"Concurrent SSI and Food Stamp Applications by Institutionalized Individuals

"(n) The Secretary and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subsection shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).".

SEC. 5041. NOTIFICATION OF CERTAIN INDIVIDUALS ELIGIBLE TO RECEIVE RETROACTIVE BENEFITS.

In notifying individuals of their eligibility to receive retroactive supplemental security income benefits as a result of Sullivan v. Zebley, 110 S. Ct. 2658 (1990), the Secretary shall include written notice, in language that is easily understandable, explaining—

(1) the 6-month limitation on the exclusion from resources under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7));

(2) the potential effects under title XVI of the Social Security Act, attributable to the receipt of such payment, including—

(A) potential discontinuation of eligibility; and

(B) potential reductions in the amount of benefits;

(3) the possibility of establishing a trust account that would not be considered as income or resources for the purposes of such title if the trust met certain conditions; and

(4) that legal assistance in establishing such a trust may be available through legal referral services offered by a State or local bar association, or through the Legal Services Corporation.

CHAPTER 4—AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 5051. OPTIONAL MONTHLY REPORTING AND RETROSPECTIVE BUDGETING.

(a) OPTIONAL MONTHLY REPORTING.—Section 402(a)(14) (42 U.S.C. 602(a)(14)) is amended—

(1) by striking "with respect to" and all that follows through "(A) provide" and insert "provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A)";

(2) by striking "(with the prior approval of the Secretary in recent work history and earned income cases)"; and

(3) by striking "upon a determination" and all that follows through "paragraph".

(b) OPTIONAL RETROSPECTIVE BUDGETING.—Section 402(a)(13) (42 U.S.C. 602(a)(13)) is amended by striking all that precedes subparagraph (A) and inserting the following:

"(13) at the option of the State, but only with respect to any one or more categories of families required to report monthly to the State agency pursuant to paragraph (14), provide that—".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect with respect to reports pertaining to, or aid payable for, months beginning in or after October 1990.

SEC. 5052. CHILDREN RECEIVING FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS NOT TREATED AS MEMBER OF FAMILY UNIT FOR PURPOSES OF DETERMINING ELIGIBILITY FOR, OR AMOUNT OF, AFDC BENEFIT.

(a) IN GENERAL.—Part A of title IV (42 U.S.C. 601 et seq.) is amended by inserting after section 408 the following:

"EXCLUSION FROM AFDC UNIT OF CHILD FOR WHOM FEDERAL, STATE, OR LOCAL FOSTER CARE MAINTENANCE OR ADOPTION ASSISTANCE PAYMENTS ARE MADE

"SEC. 409. (a) Notwithstanding any other provision of this title (other than subsection (b))—

"(1) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part; and

"(2) the income and resources of such child shall be excluded from the income and resources of a family under this part.

"(b) Subsection (a) shall not apply in the case of a child with respect to whom adoption assistance payments are made under part E or under State or local law, if application of such subsection would reduce the benefits under this part of the family of which the child would otherwise be regarded as a member.".

(b) CONFORMING REPEAL.—Section 478 (42 U.S.C. 678) is hereby repealed.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) and the repeal made by subsection (b) shall apply with respect to benefits

for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5053. ELIMINATION OF TERM "LEGAL GUARDIAN".

(a) IN GENERAL.—Section 402(a)(39) (42 U.S.C. 602(a)(39)) is amended—

(1) by striking "or legal guardian"; and

(2) by striking "or legal guardians".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5054. REPORTING OF CHILD ABUSE AND NEGLECT.

(a) CONCERNING AFDC APPLICANTS AND RECIPIENTS.—

(1) IN GENERAL.—Section 402(a)(16) (42 U.S.C. 602(a)(16)) is amended to read as follows:

"(16) provide that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 402(a)(9) (42 U.S.C. 602(a)(9)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(b) CONCERNING RECIPIENTS OF FOSTER CARE OR ADOPTION ASSISTANCE.—

(1) IN GENERAL.—Section 471(a)(9) (42 U.S.C. 671(a)(9)) is amended to read as follows:

"(9) provides that the State agency will—

"(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

"(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;".

(2) CONFORMING AMENDMENTS.—Section 471(a)(8) (42 U.S.C. 671(a)(8)) is amended—

(A) in subparagraph (C), by striking "and"; and

(B) by inserting ", and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect" before the 1st semicolon.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months beginning on or after the

first day of the 6th calendar month following the month in which this Act is enacted.

SEC. 5055. DISCLOSURE OF INFORMATION ABOUT AFDC APPLICANTS AND RECIPIENTS AUTHORIZED FOR PURPOSES DIRECTLY CONNECTED TO STATE FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Section 402(a)(9)(A) (42 U.S.C. 602(a)(9)(A)) is amended by striking "or D" and inserting ", D, or E".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5056. REPATRIATION.

(a) IN GENERAL.—Section 1113 (42 U.S.C. 1313) is amended—

(1) in subsection (d), by striking "on or after October 1, 1989" and inserting "after September 30, 1991"; and

(2) by adding at the end the following:

"(e)(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

"(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective for fiscal years beginning after September 30, 1989.

SEC. 5057. TECHNICAL AMENDMENT TO NATIONAL COMMISSION ON CHILDREN.

Section 1139(d) (42 U.S.C. 1320b-9(d)) is amended in the matter preceding paragraph (1), by striking "an interim report no later than March 31, 1991, and a final report no later than September 30, 1990" and inserting "an interim report no later than September 30, 1990, and a final report no later than March 31, 1991".

SEC. 5058. EXTENSION OF PROHIBITION AGAINST IMPLEMENTATION OF PROPOSED REGULATIONS ON EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.

Section 8005 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 606 note) is amended in each of subsections (a)(2) and (c) by striking "1990" and inserting "1991".

SEC. 5059. AMENDMENTS TO MINNESOTA FAMILY INVESTMENT PLAN DEMONSTRATION.

Section 8015 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 602 note) is amended—

(1) in subsection (a), by striking "part A" and inserting "parts A and F";

(2) in subsection (b)(3), by striking "(e)" and inserting "(d)";

(3) in subsection (b)(6), by inserting "or that is assigned to and found eligible for the project" after "in the project";

(4) in subsection (b)(8)(B)(ii), by inserting "(except that the age of the youngest child may be age 1 under the project even if the State plan specifies age 3)" after "such compliance";

(5) in subsection (b)(8)(B)(ii)(I), by inserting "and" after the semicolon;

(6) in subsection (b)(8)(B)(ii), by striking "; and" after "age of 1 year" and all that follows through the end of subclause (III) and inserting "(except that, in a 2-parent family, this clause applies only to 1 parent).";

(7) by amending subsection (b)(9) to read as follows:

"(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.";

(8) in subsection (b)(10)(A)—

(A) by inserting ", except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," after "ensure that"; and

(B) by striking "cash";

(9) in subsection (b), by adding at the end the following:

"(12) LIABILITY FOR COSTS.—For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been liable for had the project not been implemented, except for costs for evaluating the project.";

(10) in subsection (c)(1)(B), by striking "50" and inserting "25";

(11) in subsection (c)(2), by striking "part A" and inserting "parts A and F";

(12) in subsection (d)(1)(B)(ii)—

(A) by inserting "except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282," before "permit"; and

(B) by striking "cash";

(13) in subsection (d)(1)(B)(iii), by striking "section 402(a)(19)(C) of such Act" and inserting "subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan)"; and

(14) by adding at the end the following:

"(i) CONSTRUCTION.—For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act, the Food Stamp Act of 1977, or this section—

"(1) families participating in the project shall be considered to be recipients of aid under such part; and

"(2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.".

SEC. 5060. GOOD CAUSE EXCEPTION TO REQUIRED COOPERATION FOR TRANSITIONAL CHILD CARE BENEFITS.

(a) IN GENERAL.—Section 402(g)(1)(A)(vi)(II) (42 U.S.C. 602(g)(1)(A)(vi)(II)) is amended to read as follows:

"(II) refused to cooperate with the State in establishing and enforcing his or her child support obligations, without good cause as

determined by the State agency in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child for whom child care is to be provided.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5061. TECHNICAL CORRECTIONS REGARDING PENALTY FOR FAILURE TO PARTICIPATE IN JOBS PROGRAM.

(a) IN GENERAL.—Section 407(b)(1)(B) (42 U.S.C. 607(b)(1)(B)) is amended—

(1) in clause (iii)—

(A) by striking "—" and all that follows through "(II)"; and

(B) by striking "and " at the end;

(2) in clause (iv), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(v) that, if and for so long as the child's parent described in subparagraph (A)(i), unless meeting a condition of section 402(a)(19)(C), is, without good cause, not participating (or available for participation) in a program under part F, or if exempt under such section by reason of clause (vii) thereof or because there has not been established or provided under part F a program in which such parent can effectively participate, is not registered with the public employment offices in the State, the needs of such parent shall not be taken into account in determining the need of such parent's family under section 402(a)(7), and the needs of such parent's spouse shall not be so taken into account unless such spouse is participating in such a program, or if not participating solely by reason of section 402(a)(19)(C)(vii) or because there has not been established or provided under part F a program in which such spouse can effectively participate, is registered with the public employment offices of the State; and if neither parents' needs are so taken into account, the payment provisions of section 402(a)(19)(G)(i)(I) shall apply.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

SEC. 5062. TECHNICAL CORRECTIONS REGARDING AFDC-UP ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Section 407(d)(1) (42 U.S.C. 607(d)(1)) is amended—

(1) by striking "a calendar quarter (A)" and inserting "(A) a calendar quarter";

(2) by striking "or" at the end of subparagraph (A); and

(3) by inserting ", and (C) a calendar quarter ending before October 1990 in which such individual participated in a community work experience program under section 409 (as in effect for a State immediately before the effective date for that State of the amendments made by title II of the Family Support Act of 1988) or the work incentive program established under part C

(as in effect for a State immediately before such effective date)" before the semicolon.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5063. FAMILY SUPPORT ACT DEMONSTRATION PROJECTS.

Section 505 of the Family Support Act of 1988 (42 U.S.C. 1315; P.L. 100–385) is amended—

(1) in subsection (a), by inserting "in each of the fiscal years 1990, 1991, and 1992," before "shall"; and

(2) in subsection (e), by striking "September 30, 1989" and inserting "September 30 of the fiscal year specified in the agreement described in subsection (a)".

SEC. 5064. STUDY OF JOBS PROGRAMS OPERATED BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS.

(a) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States (in this section referred to as the "Comptroller") shall conduct a study of the implementation of section 482(i) of the Social Security Act (42 U.S.C. 682(i)) relating to job opportunities and basic skills training programs (in this section referred to as "JOBS programs") operated by Indian tribes and Alaska Native organizations (as defined in paragraph (5) of such section 482(i)).

(b) REQUIREMENTS FOR STUDY.—In conducting the study described in subsection (a), the Comptroller shall—

(1) identify any problems associated with the implementation of section 482(i) of the Social Security Act; and

(2) assess (to the extent practicable) the effectiveness of the JOBS programs operated by Indian tribes and Alaska Native organizations.

(c) REPORT.—Upon completion of the study described in subsection (a), the Comptroller shall submit a report to the appropriate committees of the Congress that includes—

(1) a summary of the findings of the study; and

(2) recommendations with respect to proposed legislation or changes in administrative policy to improve the effectiveness of JOBS programs conducted pursuant to section 482(i) of the Social Security Act.

CHAPTER 5—CHILD WELFARE AND FOSTER CARE

SEC. 5071. ACCOUNTING FOR ADMINISTRATIVE COSTS.

(a) RECLASSIFICATION.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting "provision of child placement services and for the" before "proper and efficient".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 5072. SECTION 427 TRIENNIAL REVIEWS.

(a) AMENDMENTS TO SECTION 10406 OF OBRA 1989.—Section 10406 of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 627 note) is amended—

(1) by striking "1991" and inserting "1992";

(2) by striking "1990" and inserting "1991"; and

(3) in the section heading, by striking "1990" and inserting "1991".

(b) CONFORMING AMENDMENT.—The item relating to section 10406 in the table of contents appearing immediately after section 10000 of such Act is amended by striking "1990" and inserting "1991".

SEC. 5073. INDEPENDENT LIVING INITIATIVES.

(a) IN GENERAL.—Section 477(a)(2)(C) (42 U.S.C. 677(a)(2)(C)) is amended—

(1) by inserting "who has not attained age 21" after "may at the option of the State also include any child"; and

(2) by striking ", but such child" and all that follows through "care".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to payments made under part E of title IV of the Social Security Act for fiscal years beginning in or after fiscal year 1991.

CHAPTER 6—CHILD CARE

SEC. 5081. GRANTS TO STATES FOR CHILD CARE.

(a) RULES GOVERNING PROVISION OF CHILD CARE TO ELIGIBLE FAMILIES.—Section 402 (42 U.S.C. 602) is amended by adding at the end the following:

"(i)(1) Each State agency may, to the extent that it determines that resources are available, provide child care in accordance with paragraph (2) to any low income family that the State determines—

"(A) is not receiving aid under the State plan approved under this part;

"(B) needs such care in order to work; and

"(C) would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided.

"(2) The State agency may provide child care pursuant to paragraph (1) by—

"(A) providing such care directly;

"(B) arranging such care through providers by use of purchase of service contracts or vouchers;

"(C) providing cash or vouchers in advance to the family;

"(D) reimbursing the family; or

"(E) adopting such other arrangements as the agency deems appropriate.

"(3)(A) A family provided with child care under paragraph (1) shall contribute to such care in accordance with a sliding scale formula established by the State agency based on the family's ability to pay.

"(B) The State agency shall make payment for the cost of child care provided under paragraph (1) with respect to a family in an amount that is the lesser of—

"(i) the actual cost of such care; and

"(ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).

"(4) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this subsection—

"(A) shall not be treated as income or as a deductible expense for purposes of any other Federal or federally assisted program that bases eligibility for or amount of benefits upon need; and

"(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.

"(5) Amounts expended by the State agency for child care under paragraph (1) shall be treated as amounts for which payment may be made to a State under section 403(n) only to the extent that—

"(A) such amounts are paid in accordance with paragraph (3)(B);

"(B) the care involved meets applicable standards of State and local law;

"(C) the provider of the care—

"(i) in the case of a provider who is not an individual that provides such care solely to members of the family of the individual, is licensed, regulated, or registered by the State or locality in which the care is provided; and

"(ii) allows parental access; and

"(D) such amounts are not used to supplant any other Federal or State funds used for child care services.

"(6)(A)(i) Each State shall prepare reports annually, beginning with fiscal year 1993, on the activities of the State carried out with funds made available under section 403(n).

"(ii) The State shall make available for public inspection within the State copies of each report required by this paragraph, shall transmit a copy of each such report to the Secretary, and shall provide a copy of each such report, on request, to any interested public agency.

"(iii) The Secretary shall annually compile, and submit to the Congress, the State reports transmitted to the Secretary pursuant to clause (ii).

"(B) Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—

"(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services;

"(ii) the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules;

"(iii) the child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of service specified in clause (i); and

"(iv) the enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

"(C) Within 12 months after the date of the enactment of this subsection, the Secretary shall establish uniform reporting requirements for use by the States in preparing the information required by this paragraph, and make such other provision as may be necessary or appropriate to ensure that compliance with this subsection will not be unduly burdensome on the States.

"(D) Not later than July 1, 1992, the Secretary shall issue a report on the implementation of this subsection, based on such information as has been made available to the Secretary by the States.".

(b) PAYMENTS TO STATES.—Section 403 (42 U.S.C. 603) is amended by adding at the end the following:

"(n)(1) In addition to any payment under subsection (a) or (l), each State shall be entitled to payment from the Secretary of an amount equal to the lesser of—

"(A) the Federal medical assistance percentage (as defined in section 1905(b)) of the expenditures by the State in providing child care services pursuant to section 402(i), and in administering the provision of such child care services, for any fiscal year; and

"(B) the limitation determined under paragraph (2) with respect to the State for the fiscal year.

"(2)(A) The limitation determined under this paragraph with respect to a State for any fiscal year is the amount that bears the same ratio to the amount specified in subparagraph (B) for such fiscal year as the number of children residing in the State in the second preceding fiscal year bears to the number of children residing in the United States in the second preceding fiscal year.

"(B) The amount specified in this subparagraph is—

"(i) $300,000,000 for fiscal year 1991;

"(ii) $300,000,000 for fiscal year 1992;

"(iii) $300,000,000 for fiscal year 1993;

"(iv) $300,000,000 for fiscal year 1994; and

"(v) $300,000,000 for fiscal year 1995, and for each fiscal year thereafter.

"(C) If the limitation determined under subparagraph (A) with respect to a State for a fiscal year exceeds the amount paid to the State under this subsection for the fiscal year, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year shall be increased by the amount of such excess.

"(3) Amounts appropriated for a fiscal year to carry out this part shall be made available for payments under this subsection for such fiscal year.".

(c) AMENDMENTS TO GRANTS TO STATES TO IMPROVE CHILD CARE LICENSING AND REGISTRATION REQUIREMENTS, AND TO MONITOR CHILD CARE PROVIDED TO CHILDREN RECEIVING AFDC.—

(1) GRANTS INCREASED AND EXTENDED.—Section 402(g)(6)(D) (42 U.S.C. 602(g)(6)(D)) is amended by inserting ", and $50,000,000 for each of fiscal years 1992, 1993, and 1994" before the period.

(2) NEW PURPOSES FOR GRANTS.—Section 402(g)(6)(A) (42 U.S.C. 602(g)(6)(A)) is amended by striking "and to monitor child care provided to children receiving aid under the State plan approved under subsection (a)" and inserting "to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers".

(3) HALF OF GRANT REQUIRED TO BE EXPENDED FOR TRAINING OF CHILD CARE PROVIDERS.—Section 402(g)(6) (42 U.S.C. 602(g)(6)) is amended by adding at the end the following:

"(E) Each State to which the Secretary makes a grant under this paragraph shall expend not less than 50 percent of the amount of the grant to provide for the training of child care providers.".

(d) COORDINATION WITH OTHER PROGRAMS FOR CHILDREN.—Section 402(g)(7) (42 U.S.C. 602(g)(7)) is amended by inserting "and subsection (i)" after "this subsection".

(e) EFFECTIVE DATE.—Except as otherwise expressly provided, the amendments made by this section shall take effect on October 1, 1990.

SEC. 5082. CHILD CARE AND DEVELOPMENT BLOCK GRANT.

Chapter 8 of subtitle A of title IV of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) is amended—

(1) by redesignating subchapters C, D, and E, as subchapters D, E, and F, respectively; and

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

"Subchapter C—Child Care and Development Block Grant

"SEC. 658A. SHORT TITLE.

"This subchapter may be cited as the 'Child Care and Development Block Grant Act of 1990'.

"SEC. 658B. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subchapter, $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

"SEC. 658C. ESTABLISHMENT OF BLOCK GRANT PROGRAM.

"The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

"SEC. 658D. LEAD AGENCY.

"(a) DESIGNATION.—The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 658E, an appropriate State agency that complies with the requirements of subsection (b) to act as the lead agency.

"(b) DUTIES.—

"(1) IN GENERAL.—The lead agency shall—

"(A) administer, directly or through other State agencies, the financial assistance received under this subchapter by the State;

"(B) develop the State plan to be submitted to the Secretary under section 658E(a);

"(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

"(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

"(2) DEVELOPMENT OF PLAN.—In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government. Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.

"SEC. 658E. APPLICATION AND PLAN.

"(a) APPLICATION.—To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

"(1) an assurance that the State will comply with the requirements of this subchapter; and

"(2) a State plan that meets the requirements of subsection (c).

"(b) PERIOD COVERED BY PLAN.—The State plan contained in the application under subsection (a) shall be designed to be implemented—

"(1) during a 3-year period for the initial State plan; and

"(2) during a 2-year period for subsequent State plans.

"(c) REQUIREMENTS OF A PLAN.—

"(1) LEAD AGENCY.—The State plan shall identify the lead agency designated under section 658D.

"(2) POLICIES AND PROCEDURES.—The State plan shall:

"(A) PARENTAL CHOICE OF PROVIDERS.—Provide assurances that—

"(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter, other than through assistance provided under paragraph (3)(C), are given the option either—

"(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

"(II) to receive a child care certificate as defined in section 658P(2);

"(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

"(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.

"(B) UNLIMITED PARENTAL ACCESS.—Provide assurances that procedures are in effect within the State to ensure that child care providers who provide services for which assist-

ance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers.

"(C) PARENTAL COMPLAINTS.—Provide assurances that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request.

"(D) CONSUMER EDUCATION.—Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.

"(E) COMPLIANCE WITH STATE AND LOCAL REGULATORY REQUIREMENTS.—Provide assurances that—

"(i) all providers of child care services within the State for which assistance is provided under this subchapter comply with all licensing or regulatory requirements (including registration requirements) applicable under State and local law; and

"(ii) providers within the State that are not required to be licensed or regulated under State or local law are required to be registered with the State prior to payment being made under this subchapter, in accordance with procedures designed to facilitate appropriate payment to such providers, and to permit the State to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to regulatory requirements in the State, and that such providers shall be permitted to register with the State after selection by the parents of eligible children and before such payment is made.

This subparagraph shall not be construed to prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers within the State that provide services for which assistance is provided under this subchapter than the standards or requirements imposed on other child care providers in the State.

"(F) ESTABLISHMENT OF HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

"(i) the prevention and control of infectious diseases (including immunization);

"(ii) building and physical premises safety; and

"(iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on the date of enactment of this subchapter under State or local law.

"(G) COMPLIANCE WITH STATE AND LOCAL HEALTH AND SAFETY REQUIREMENTS.—Provide assurances that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

"(H) REDUCTION IN STANDARDS.—Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on the date of enactment of this subchapter, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 658K.

"(I) REVIEW OF STATE LICENSING AND REGULATORY REQUIREMENTS.—Provide assurances that not later than 18 months after the date of the submission of the application under section 658E, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on the date of the enactment of this subchapter.

"(J) SUPPLEMENTATION.—Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.

"(3) USE OF BLOCK GRANT FUNDS.—

"(A) GENERAL REQUIREMENT.—The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) and (C).

"(B) CHILD CARE SERVICES.—Subject to the reservation contained in subparagraph (C), the State shall use amounts provided to the State for each fiscal year under this subchapter for—

"(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in section 658E(c)(2)(A), with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs; and

"(ii) activities designed to improve the availability and quality of child care.

"(C) ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE AND TO INCREASE THE AVAILABILITY OF EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL CARE SERVICES.—The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 658G) and to provide before- and after-school and early childhood development services (as described in section 658H).

"(4) PAYMENT RATES.—

"(A) IN GENERAL.—The State plan shall provide assurances that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs. Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.

"(B) CONSTRUCTION.—Nothing in this paragraph shall be construed to create a private right of action.

"(5) SLIDING FEE SCALE.—The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

"(d) APPROVAL OF APPLICATION.—The Secretary shall approve an application that satisfies the requirements of this section.

"SEC. 658F. LIMITATIONS ON STATE ALLOTMENTS.

"(a) NO ENTITLEMENT TO CONTRACT OR GRANT.—Nothing in this subchapter shall be construed—

"(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

"(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

"(b) CONSTRUCTION OF FACILITIES.—

"(1) IN GENERAL.—No funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

"(2) SECTARIAN AGENCY OR ORGANIZATION.—In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 658E(c)(2)(F).

"SEC. 658G. ACTIVITIES TO IMPROVE THE QUALITY OF CHILD CARE.

"A State that receives financial assistance under this subchapter shall use not less than 20 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year for one or more of the following:

"(1) RESOURCE AND REFERRAL PROGRAMS.—Operating directly or providing financial assistance to private nonprofit organizations or public organizations (including units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.

"(2) GRANTS OR LOANS TO ASSIST IN MEETING STATE AND LOCAL STANDARDS.—Making grants or providing loans to child care providers to assist such providers in meeting applicable State and local child care standards.

"(3) MONITORING OF COMPLIANCE WITH LICENSING AND REGULATORY REQUIREMENTS.—Improving the monitoring of compliance with, and enforcement of, State and local licensing and regulatory requirements (including registration requirements).

"(4) TRAINING.—Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and the care of children with special needs.

"(5) COMPENSATION.—Improving salaries and other compensation paid to full- and part-time staff who provide child care services for which assistance is provided under this subchapter.

"SEC. 658H. EARLY CHILDHOOD DEVELOPMENT AND BEFORE- AND AFTER-SCHOOL SERVICES.

"(a) IN GENERAL.—A State that receives financial assistance under this subchapter shall use not less than 75 percent of the amounts reserved by such State under section 658E(c)(3)(C) for each fiscal year to establish or expand and conduct, through the provision of grants or contracts, early childhood development or before- and after-school child care programs, or both.

"(b) PROGRAM DESCRIPTION.—Programs that receive assistance under this section shall—

"(1) in the case of early childhood development programs, consist of services that are not intended to serve as a substitute for a compulsory academic programs but that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

"(2) in the case of before- and after-school child care programs—

"(A) be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that regular instructional services are not in session; and

"(B) not be intended to extend or replace the regular academic program.

"(c) PRIORITY FOR ASSISTANCE.—In awarding grants and contracts under this section, the State shall give the highest priority to geographic areas within the State that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act of 1965, and shall then give priority to—

"(1) any other areas with concentrations of poverty; and

"(2) any areas with very high or very low population densities.

"SEC. 658I. ADMINISTRATION AND ENFORCEMENT.

"(a) ADMINISTRATION.—The Secretary shall—

"(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

"(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

"(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

"(b) ENFORCEMENT.—

"(1) REVIEW OF COMPLIANCE WITH STATE PLAN.—The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 658E(c) for the State, and shall have the power to terminate payments to the State in accordance with paragraph (2).

"(2) NONCOMPLIANCE.—

"(A) IN GENERAL.—If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

"(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 658E(c) for the State; or

"(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

"(B) ADDITIONAL SANCTIONS.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this

subchapter, and disqualification from the receipt of financial assistance under this subchapter.

"(C) NOTICE.—The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

"(3) ISSUANCE OF RULES.—The Secretary shall establish by rule procedures for—

"(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

"(B) imposing sanctions under this section.

"SEC. 658J. PAYMENTS.

"(a) IN GENERAL.—Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 658E(d) shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 658O for such fiscal year.

"(b) METHOD OF PAYMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

"(2) LIMITATION.—The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 658E(c)(3).

"(c) SPENDING OF FUNDS BY STATE.—Payments to a State from the allotment under section 658O for any fiscal year may be expended by the State in that fiscal year or in the succeeding fiscal year.

"SEC. 658K. ANNUAL REPORT AND AUDITS.

"(a) ANNUAL REPORT.—Not later than December 31, 1992, and annually thereafter, a State that receives assistance under this subchapter shall prepare and submit to the Secretary a report—

"(1) specifying the uses for which the State expended funds specified under paragraph (3) of section 658E(c) and the amount of funds expended for such uses;

"(2) containing available data on the manner in which the child care needs of families in the State are being fulfilled, including information concerning—

"(A) the number of children being assisted with funds provided under this subchapter, and under other Federal child care and pre-school programs;

"(B) the type and number of child care programs, child care providers, caregivers, and support personnel located in the State;

"(C) salaries and other compensation paid to full- and part-time staff who provide child care services; and

"(D) activities in the State to encourage public-private partnerships that promote business involvement in meeting child care needs;

"(3) describing the extent to which the affordability and availability of child care services has increased;

"(4) if applicable, describing, in either the first or second such report, the findings of the review of State licensing and regulatory requirements and policies described in section 658E(c), including a description of actions taken by the State in response to such reviews;

"(5) containing an explanation of any State action, in accordance with section 658E, to reduce the level of child care standards in the State, if applicable; and

"(6) describing the standards and health and safety requirements applicable to child care providers in the State, including a description of State efforts to improve the quality of child care;

during the period for which such report is required to be submitted.

"(b) AUDITS.—

"(1) REQUIREMENT.—A State shall, after the close of each program period covered by an application approved under section 658E(d) audit its expenditures during such program period from amounts received under this subchapter.

"(2) INDEPENDENT AUDITOR.—Audits under this subsection shall be conducted by an entity that is independent of any agency administering activities that receive assistance under this subchapter and be in accordance with generally accepted auditing principles.

"(3) SUBMISSION.—Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

"(4) REPAYMENT OF AMOUNTS.—Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitles under this subchapter.

"SEC. 658L. REPORT BY SECRETARY.

"Not later than July 31, 1993, and annually thereafter, the Secretary shall prepare and submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 658K. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

"SEC. 658M. LIMITATIONS ON USE OF FINANCIAL ASSISTANCE FOR CERTAIN PURPOSES.

"(a) SECTARIAN PURPOSES AND ACTIVITIES.—No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 658E(c)(2)(A)(i)(I) or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

"(b) TUITION.—With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

"(1) any services provided to such students during the regular school day;

"(2) any services for which such students receive academic credit toward graduation; or

"(3) any instructional services which supplant or duplicate the academic program of any public or private school.

"SEC. 658N. NONDISCRIMINATION.

"(a) RELIGIOUS NONDISCRIMINATION.—

"(1) CONSTRUCTION.—nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

"(B) EXCEPTION.—A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

"(2) DISCRIMINATION AGAINST CHILD.—

"(A) IN GENERAL.—A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

"(B) NON-FUNDED CHILD CARE SLOTS.—Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

"(3) EMPLOYMENT IN GENERAL.—

"(A) PROHIBITION.—A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

"(B) QUALIFIED APPLICANTS.—If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

"(C) PRESENT EMPLOYEES.—This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on the date of enactment of this subchapter.

"(4) EMPLOYMENT AND ADMISSION PRACTICES.—Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary

shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

"(b) EFFECT ON STATE LAW.—Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

"SEC. 6580. AMOUNTS RESERVED; ALLOTMENTS.

"(a) AMOUNTS RESERVED.—

"(1) TERRITORIES AND POSSESSIONS.—The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands to be allotted in accordance with their respective needs.

"(2) INDIANS TRIBES.—The Secretary shall reserve not more than 3 percent of the amount appropriated under section 658B in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c).

"(b) STATE ALLOTMENT.—

"(1) GENERAL RULE.—From the amounts appropriated under section 658B for each fiscal year remaining after reservations under subsection (a), the Secretary shall allot to each State an amount equal to the sum of—

"(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

"(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

"(2) YOUNG CHILD FACTOR.—The term 'young child factor' means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

"(3) SCHOOL LUNCH FACTOR.—The term 'school lunch factor' means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the

States as determined annually by the Department of Agriculture.

"(4) ALLOTMENT PERCENTAGE.—

"(A) IN GENERAL.—The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

"(B) LIMITATIONS.—If an allotment percentage determined under subparagraph (A)—

"(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

"(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

"(C) PER CAPITA INCOME.—For purposes of subparagraph (A), per capita income shall be—

"(i) determined at 2-year intervals;

"(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

"(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

"(c) PAYMENTS FOR THE BENEFIT OF INDIAN CHILDREN.—

"(1) GENERAL AUTHORITY.—From amounts reserved under subsection (a)(2), the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

"(2) APPLICATIONS AND REQUIREMENTS.—An application for a grant or contract under this section shall provide that:

"(A) COORDINATION.—The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

"(B) SERVICES ON RESERVATIONS.—In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

"(C) REPORTS AND AUDITS.—The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

"(3) CONSIDERATION OF SECRETARIAL APPROVAL.—In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

"(A) the availability of child care services provided in accordance with this subchapter by the State or States in

which the applicant proposes to carry out a program to provide child care services; and

"(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

"(4) THREE-YEAR LIMIT.—Grants or contracts under this section shall be for periods not to exceed 3 years.

"(5) DUAL ELIGIBILITY OF INDIAN CHILDREN.—The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

"(d) DATA AND INFORMATION.—The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b).

"(e) REALLOTMENTS.—

"(1) IN GENERAL.—Any portion of the allotment under subsection (b) to a State that the Secretary determines is not required to carry out a State plan approved under section 658E(d), in the period for which the allotment is made available, shall be reallotted by the Secretary to other States in proportion to the original allotments to the other States.

"(2) LIMITATIONS.—

"(A) REDUCTION.—The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 658E(d).

"(B) REALLOTMENTS.—The amount of such reduction shall be similarly reallotted among States for which no reduction in an allotment or reallotment is required by this subsection.

"(3) AMOUNTS REALLOTTED.—For purposes of any other section of this subchapter, any amount reallotted to a State under this subsection shall be considered to be part of the allotment made under subsection (b) to the State.

"(f) DEFINITION.—For the purposes of this section, the term 'State' includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 658P. DEFINITIONS.

"As used in this subchapter:

"(1) CAREGIVER.—The term 'caregiver' means an individual who provides a service directly to an eligible child on a person-to-person basis.

"(2) CHILD CARE CERTIFICATE.—The term 'child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services. Nothing in this subchapter shall preclude the use of such certificates for sectarian

child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

"(3) ELEMENTARY SCHOOL.—The term 'elementary school' means a day or residential school that provides elementary education, as determined under State law.

"(4) ELIGIBLE CHILD.—The term 'eligible child' means an individual—

"(A) who is less than 13 years of age;

"(B) whose family income does not exceed 75 percent of the State median income for a family of the same size; and

"(C) who—

"(i) resides with a parent or parents who are working or attending a job training or educational program; or

"(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

"(5) ELIGIBLE CHILD CARE PROVIDER.—The term 'eligible child care provider' means—

"(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

"(i) is licensed, regulated, or registered under State law as described in section 658E(c)(2)(E); and

"(ii) satisfies the State and local requirements, including those referred to in section 658E(c)(2)(F); applicable to the child care services it provides; or

"(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, niece, or nephew of such provider, if such provider is registered and complies with any State requirements that govern child care provided by the relative involved.

"(6) FAMILY CHILD CARE PROVIDER.—The term 'family child care provider' means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

"(7) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given it in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(b)).

"(8) LEAD AGENCY.—The term 'lead agency' means the agency designated under section 658B(a).

"(9) PARENT.—The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(10) SECONDARY SCHOOL.—The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law.

"(11) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services unless the context specifies otherwise.

"(12) SLIDING FEE SCALE.—The term 'sliding fee scale' means a system of cost sharing by a family based on income and size of the family.

"(13) STATE.—The term 'State' means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(14) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given it in section 4(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(c)).

"SEC. 658Q. PARENTAL RIGHTS AND RESPONSIBILITIES.

"Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

"SEC. 658R. SEVERABILITY.

"If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.".

Subtitle B—Old-Age, Survivors, and Disability Insurance

SEC. 5100. TABLE OF CONTENTS.

SEC. 5101. AMENDMENT OF THE SOCIAL SECURITY ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 5102. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1), in the matter following subparagraph (C), by inserting "or" after "hearing,", and by striking "pending, or (iii) June 1991." and inserting "pending."; and

(2) by striking paragraph (3).

SEC. 5103. REPEAL OF SPECIAL DISABILITY STANDARD FOR WIDOWS AND WIDOWERS.

(a) IN GENERAL.—Section 223(d)(2) (42 U.S.C. 423(d)(2)) is amended—

(1) in subparagraph (A), by striking "(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) or (f))";

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 216(i)(1) (42 U.S.C. 416(i)(1)) is amended by striking "(2)(C)" and inserting "(2)(B)".

(2) Section 223(f)(1)(B) (42 U.S.C. 423(f)(1)(B)) is amended to read as follows:

"(B) the individual is now able to engage in substantial gainful activity; or".

(3) Section 223(f)(2)(A)(ii) (42 U.S.C. 423(f)(2)(A)(ii)) is amended to read as follows:

"(ii) the individual is now able to engage in substantial gainful activity, or".

(4) Section 223(f)(3) (42 U.S.C. 423(f)(3)) is amended by striking "therefore—" and all that follows and inserting "therefore the individual is able to engage in substantial gainful activity; or".

(5) Section 223(f) is further amended, in the matter following paragraph (4), by striking "(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband)" each place it appears.

(c) TRANSITIONAL RULES RELATING TO MEDICAID AND MEDICARE ELIGIBILITY.—

(1) DETERMINATION OF MEDICAID ELIGIBILITY.—Section 1634(d) (42 U.S.C. 1383c(d)) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(B) by striking "(d) If any person—" and inserting "(d)(1) This subsection applies with respect to any person who—";

(C) in subparagraph (A) (as redesignated), by striking "as required" and all that follows through "but not entitled" and inserting "being then not entitled";

(D) in subparagraph (B) (as redesignated), by striking "section 1616(a)," and inserting "section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66).''; and

(E) by striking "such person shall" and all that follows and inserting the following new paragraph:

"(2) For purposes of title XIX, each person with respect to whom this subsection applies—

"(A) shall be deemed to be a recipient of supplemental security income benefits under this title if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

"(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93-66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of title XVIII.''.

(2) INCLUSION OF MONTHS OF SSI ELIGIBILITY WITHIN 5-MONTH DISABILITY WAITING PERIOD AND 24-MONTH MEDICARE WAITING PERIOD.—

(A) WIDOW'S BENEFITS BASED ON DISABILITY.—Section 202(e)(5) (42 U.S.C. 402(e)(5)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

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

(iii) by inserting "(A)" after "(5)"; and

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

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.''.

(B) WIDOWER'S BENEFITS BASED ON DISABILITY.—Section 202(f)(6) (42 U.S.C. 402(f)(6)) is amended—

(i) in subparagraph (B), by striking "(i)" and "(ii)" and inserting "(I)" and "(II)", respectively;

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

(iii) by inserting "(A)" after "(6)"; and

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

"(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.".

(C) MEDICARE BENEFITS.—Section 226(e)(1) (42 U.S.C. 426(e)(1)) is amended—

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

(ii) by inserting "(A)" after "(e)(1)"; and

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

"(B) For purposes of subsection (b)(2)(A)(iii), each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) of this Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.".

(d) DEEMED DISABILITY FOR PURPOSES OF ENTITLEMENT TO WIDOW'S AND WIDOWER'S INSURANCE BENEFITS FOR WIDOWS AND WIDOWERS ON SSI ROLLS.—

(1) WIDOW'S INSURANCE BENEFITS.—Section 202(e) (42 U.S.C. 402(e)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(2) WIDOWER'S INSURANCE BENEFITS.—Section 202(f) (42 U.S.C. 402(f)) is amended by adding at the end the following new paragraph:

"(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under title XVI, or State supplementary payments of the type referred to in section 1616(a) (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section (other than paragraphs (1) and (2)(C) of subsection (c)) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) shall apply with respect to items and services furnished after December 1990.

(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

(A) is entitled to disability insurance benefits under section 223 of the Social Security Act for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act, or State supplementary payments of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for January 1991,

(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990, and

(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

SEC. 5104. DEPENDENCY REQUIREMENTS APPLICABLE TO A CHILD ADOPTED BY A SURVIVING SPOUSE.

(a) IN GENERAL.—Section 216(e) (42 U.S.C. 416(e)) is amended in the second sentence—

(1) by striking "at the time of such individual's death living in such individual's household" and inserting "either living

with or receiving at least one-half of his support from such individual at the time of such individual's death"; and

(2) by striking "; except" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.

SEC. 5105. REPRESENTATIVE PAYEE REFORMS.

(a) IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SELECTION AND RECRUITMENT PROCESS.—

(1) AUTHORITY FOR CERTIFICATION OF PAYMENTS TO REPRESENTATIVE PAYEES.—

(A) TITLE II.—Section 205(j)(1) (42 U.S.C. 405(j)) is amended to read as follows:

"REPRESENTATIVE PAYEES

"(j)(1) If the Secretary determines that the interest of any individual under this title would be served thereby, certification of payment of such individual's benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's 'representative payee'). If the Secretary or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1631(a)(2), the Secretary shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or to the individual.".

(B) TITLE XVI.—

(i) IN GENERAL.—Section 1631(a)(2)(A) (42 U.S.C. 1383(a)(2)(A)) is amended to read as follows:

"(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

"(ii) Upon a determination by the Secretary that the interest of such individual would be served thereby, or in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's 'representative payee') for the use and benefit of the individual or eligible spouse.

"(iii) If the Secretary or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 205(j)(1), the Secretary shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment

of benefits to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse.".

(ii) CONFORMING AMENDMENTS.—Section 1631(a)(2)(C) (42 U.S.C. 1383(a)(2)(C)) is amended—

(I) in clause (i), by striking "a person other than the individual or spouse entitled to such payment" and inserting "representative payee of an individual or spouse";

(II) in clauses (ii), (iii), and (iv), by striking "other person to whom such payment is made" each place it appears and inserting "representative payee"; and

(III) in clause (v)—

(aa) by striking "person receiving payments on behalf of another" and inserting "representative payee"; and

(bb) by striking "person receiving such payments" and inserting "representative payee".

(2) PROCEDURE FOR SELECTING REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j)(2) (42 U.S.C. 405(j)(2)) is amended to read as follows:

"(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

"(i) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

"(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Secretary in regulations).

"(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this title or title XVI,

"(II) verify such person's social security account number (or employer identification number),

"(III) determine whether such person has been convicted of a violation of section 208 or 1632, and

"(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1631(a)(2)(A)(iii) by reason of misuse of funds paid as benefits under this title or title XVI.

"(ii) The Secretary shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

"(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked

on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1631(a)(2)(A)(iii), by reason of misuse of funds paid as benefits under this title or title XVI, and

"(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 208 or 1632.

"(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

"(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

"(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1631(a)(2)(A)(ii) has previously been terminated as described in section 1631(a)(2)(B)(ii)(IV), or

"(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(ii) The Secretary shall prescribe regulations under which the Secretary may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

"(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual,

"(II) a legal guardian or legal representative of such individual,

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary,

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

"(III) no other more suitable representative payee can be found.

"(D)(i) Subject to clause (ii), if the Secretary makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

"(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (i) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Secretary's determination, legally incompetent or under the age of 15.

"(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Secretary determines is in the best interest of the individual entitled to such benefits.

"(E)(i) Any individual who is dissatisfied with a determination by the Secretary to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Secretary to the same extent as is provided in subsection (b), and to judicial review of the Secretary's final decision as is provided in subsection (g).

"(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Secretary shall provide written notice of the Secretary's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

"(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

(ii) TITLE XVI.—Section 1631(a)(2)(B) (42 U.S.C. 1383(a)(2)(B)) is amended to read as follows:

"(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

"(I) an investigation by the Secretary of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

"(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Secretary in regulations).

"(ii) As part of the investigation referred to in clause (i)(I), the Secretary shall—

"(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under title II or this title;

"(II) verify the social security account number (or employer identification number) of such person;

"(III) determine whether such person has been convicted of a violation of section 208 or 1632; and

"(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 205(j), by reason of misuse of funds paid as benefits under title II or this title.

"(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

"(I) such person has previously been convicted as described in clause (ii)(III);

"(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 205(j) has previously been revoked as described in section 205(j)(2)(B)(i)(IV); or

"(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

"(iv) The Secretary shall prescribe regulations under which the Secretary may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this title would be paid to such person pursuant to subparagraph (A)(ii).

"(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

"(I) a relative of such individual if such relative resides in the same household as such individual;

"(II) a legal guardian or legal representative of such individual;

"(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

"(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the payment of benefits under this title to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee

to whom the payment of such benefits would serve the best interests of such individual; or

"(V) an individual who is determined by the Secretary, on the basis of written findings and under procedures which the Secretary shall prescribe by regulation, to be acceptable to serve as a representative payee.

"(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Secretary, that—

"(I) such individual poses no risk to the beneficiary;

"(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

"(III) no other more suitable representative payee can be found.

"(vii) Subject to clause (viii), if the Secretary makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Secretary may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

"(viii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (vii) shall be for a period of not more than 1 month.

"(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Secretary's determination, legally incompetent, under the age 15 years, or a drug addict or alcoholic referred to in section 1611(e)(3)(A).

"(ix) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Secretary determines is in the best interests of the individual entitled to such benefits.

"(x) Any individual who is dissatisfied with a determination by the Secretary to pay such individual's benefits to a representative payee under this title, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Secretary, and to judicial review of the Secretary's final decision, to the same extent as is provided in subsection (c).

"(xi) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Secretary shall provide written notice of the Secretary's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

"(I) is under the age of 15,

"(II) is an unemancipated minor under the age of 18, or

"(III) is legally incompetent,

then such notice shc ll be provided solely to the legal guardian or legal representative of such individual.

"(xii) Any notice described in clause (xi) shall be clearly written in language that is easily understandable to the reader, shall iden-

tify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (x) of such individual or of such individual's legal guardian or legal representative—

"(I) to appeal a determination that a representative payee is necessary for such individual,

"(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

"(III) to review the evidence upon which such designation is based and submit additional evidence.".

(B) REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act, of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(3) PROVISION FOR COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—

(i) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4)(A) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

"(i) 10 percent of the monthly benefit involved, or

"(ii) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

"(B) For purposes of this paragraph, the term 'qualified organization' means any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee and which, in accordance with any applicable regulations of the Secretary—

"(i) regularly provides services as the representative payee, pursuant to this subsection or section 1631(a)(2), concurrently to 5 or more individuals,

"(ii) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual, and

"(iii) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(D) This paragraph shall cease to be effective on July 1, 1994.".

(ii) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended—

(I) by redesignating subparagraph (D) as subparagraph (E);

(II) by inserting after subparagraph (C) the following:

"(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

"(I) 10 percent of the monthly benefit involved, or

"(II) $25.00 per month.

Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

"(ii) For purposes of this subparagraph, the term 'qualified organization' means any community-based nonprofit social service agency which—

"(I) is bonded or licensed in each State in which the agency serves as a representative payee;

"(II) in accordance with any applicable regulations of the Secretary—

"(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 205(j)(4) concurrently to 5 or more individuals;

"(bb) demonstrates to the satisfaction of the Secretary that such agency is not otherwise a creditor of any such individual; and

"(cc) was in existence on October 1, 1988.

The Secretary shall prescribe regulations under which the Secretary may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

"(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 6 months, or both.

"(iv) This subparagraph shall cease to be effective on July 1, 1994.".

(B) STUDIES AND REPORTS.—

(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A).

(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.

(4) STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.

(5) EFFECTIVE DATES.—

(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) shall take effect July 1, 1991, and shall apply only with respect to—

(i) certifications of payment of benefits under title II of the Social Security Act to representative payees made on or after such date; and

(ii) provisions for payment of benefits under title XVI of such Act to representative payees made on or after such date.

(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.

(b) IMPROVEMENTS IN RECORDKEEPING AND AUDITING REQUIREMENTS.—

(1) IMPROVED ACCESS TO CERTAIN INFORMATION.—

(A) IN GENERAL.—Section 205(j)(3) (42 U.S.C. 605(j)(3)) is amended—

(i) by striking subparagraph (B);

(ii) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively;

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

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

"(E) The Secretary shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

"(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1631(a)(2), and

"(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1631(a)(2).

"(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1631(a)(2) and which are located in the area served by such servicing office.".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.

(2) STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act, which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term "high-risk representative payee" means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

(iii) is a creditor of such individual, or

(iv) is in such other category of payees as the Secretary may determine appropriate.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).

(3) DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II, benefits under title XVI, or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employ-

ment income of the same individual shall be counted as 1 individual.

(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

(E) STATE.—For purposes of this paragraph, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(c) RESTITUTION.—

(1) TITLE II.—Section 205(j) (42 U.S.C. 405(j)) is amended by redesignating paragraph (5) (as so redesignated by subsection (a)(3)(A)(i) of this section) as paragraph (6) and by inserting after paragraph (4) (as added by subsection (a)(3)(A)(i)) the following new paragraph:

"(5) In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(2) TITLE XVI.—Section 1631(a)(2) (42 U.S.C. 1383(a)(2)) is amended by redesignating subparagraph (E) (as so redesignated by subsection (a)(3)(A)(ii)(I) of this section) as subparagraph (F) and by inserting after subparagraph (D) (as added by subsection (a)(3)(A)(i)(III)) the following new subparagraph:

"(E) RESTITUTION.—In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.".

(d) REPORTS TO THE CONGRESS.—

(1) IN GENERAL.—

(A) TITLE II.—Section 205(j)(5) (as so redesignated by subsection (c)(1) of this section) is amended to read as follows:

"(5) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds,

how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.".

(B) TITLE XVI.—Section 1631(a)(2)(E) (42 U.S.C. 1383(a)(2)(E)), as so redesignated by subsection (c)(2) of this section, is amended to read as follows:

"(E) The Secretary shall include as a part of the annual report required under section 704 information with respect to the implementation of the preceding provisions of this paragraph, including—

"(i) the number of cases in which the representative payee was charged;

"(ii) the number of cases discovered where there has been a misuse of funds;

"(iii) how any such cases were dealt with by the Secretary;

"(iv) the final disposition of such cases (including any criminal penalties imposed); and

"(v) such other information as the Secretary determines to be appropriate.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to annual reports issued for years after 1991.

(3) FEASIBILITY STUDY REGARDING INVOLVEMENT OF DEPARTMENT OF VETERANS AFFAIRS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in cooperation with the Secretary of Veterans Affairs, shall conduct a study of the feasibility of designating the Department of Veterans Affairs as the lead agency for purposes of selecting, appointing, and monitoring representative payees for those individuals who receive benefits paid under title II or XVI of the Social Security Act and benefits paid by the Department of Veterans Affairs. Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of such study, together with any recommendations.

SEC. 5106. FEES FOR REPRESENTATION OF CLAIMANTS IN ADMINISTRATIVE PROCEEDINGS.

(a) IN GENERAL.—

(1) TITLE II.—Subsection (a) of section 206 (42 U.S.C. 406(a)) is amended—

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

(B) in the fifth sentence, by striking "Whenever" and inserting "Except as provided in paragraph (2)(A), whenever"; and

(C) by striking the sixth sentence and all that follows through "Any person who" in the seventh sentence and inserting the following:

"(2)(A) In the case of a claim of entitlement to past-due benefits under this title, if—

"(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Secretary prior to the time of the Secretary's determination regarding the claim,

"(ii) the fee specified in the agreement does not exceed the lesser of—

"(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1127(a)), or

"(II) $4,000, and

"(iii) the determination is favorable to the claimant,

then the Secretary shall approve that agreement at the time of the favorable determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Secretary may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 215(i) since such date. The Secretary shall publish any such increased amount in the Federal Register.

"(B) For purposes of this subsection, the term 'past-due benefits' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 223.

"(C) In the case of a claim with respect to which the Secretary has approved an agreement pursuant to subparagraph (A), the Secretary shall provide the claimant and the person representing the claimant a written notice of—

"(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1127(a)) and the dollar amount of the past-due benefits payable to the claimant,

"(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

"(iii) a description of the procedures for review under paragraph (3).

"(3)(A) The Secretary shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(C)—

"(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Secretary to reduce the maximum fee, or

"(ii) the person representing the claimant submits a written request to the Secretary to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Secretary to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

"(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Secretary determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Secretary for such purpose.

"(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Secretary or by an administrative law judge or other person (other than such adjudicator) who is designated by the Secretary.

"(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

"(4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this title and the person representing the claimant is an attorney, the Secretary shall, notwithstanding section 205(i), certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1127(a)) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1127(a)).

"(B) The Secretary shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.

"(5) Any person who".

(2) TITLE XVI.—Paragraph (2)(A) of section 1631(d) (42 U.S.C. 1383(d)(2)(A)) is amended to read as follows:

"(2)(A) The provisions of section 206(a) (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of title II, except that paragraph (2) thereof shall be applied—

"(i) by substituting 'section 1127(a) or 1631(g)' for 'section 1127(a)'; and

"(ii) by substituting 'section 1631(a)(7)(A) or the requirements of due process of law' for 'subsection (g) or (h) of section 223'.".

(b) PROTECTION OF ATTORNEY'S FEES FROM OFFSETTING SSI BENEFITS.—Subsection (a) of section 1127 (42 U.S.C. 1320a-6(a)) is amended by adding at the end the following new sentence: "A benefit under title II shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 206(a)(4).".

(c) LIMITATATION OF TRAVEL EXPENSES FOR REPRESENTATION OF CLAIMANTS AT ADMINISTRATIVE PROCEEDINGS.—Section 201(j) (42

U.S.C. 401(j)), section 1631(h) (42 U.S.C. 1383(h)), and section 1817(i) (42 U.S.C. 1395i(i)) are each amended by adding at the end the following new sentence: "The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.

SEC. 5107. APPLICABILITY OF ADMINISTRATIVE RES JUDICATA; RELATED NOTICE REQUIREMENTS.

(a) IN GENERAL.—

(1) TITLE II.—Section 205(b) (42 U.S.C. 405(b)) is amended by adding at the end the following new paragraph:

"(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary shall describe in clear and specific language the effect on possible entitlement to benefits under this title of choosing to reapply in lieu of requesting review of the determination.".

(2) TITLE XVI.—Section 1631(c)(1) (42 U.S.C. 1383(c)(1)) is amended—

(A) by inserting "(A)" after "(c)(1)"; and

(B) by adding at the end the following:

"(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this title or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this title if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 221.

"(ii) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Secretary

shall describe in clear and specific language the effect on possible eligibility to receive payments under this title of choosing to reapply in lieu of requesting review of the determination.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to adverse determinations made on or after July 1, 1991.

SEC. 5108. DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to implement the accountability procedures described in subsection (b) in each of not fewer than 3 telephone service centers operated by the Social Security Administration. Telephone service centers shall be selected for implementation of the accountability procedures so as to permit a thorough evaluation of such procedures as they would operate in conjunction with the service technology most recently employed by the Social Security Administration. Each such demonstration project shall commence not later than 180 days after the date of the enactment of this Act and shall remain in operation for not less than 1 year and not more than 3 years.

(b) ACCOUNTABILITY PROCEDURES.—

(1) IN GENERAL.—During the period of each demonstration project developed and carried out by the Secretary of Health and Human Services with respect to a telephone service center pursuant to subsection (a), the Secretary shall provide for the application at such telephone service center of accountability procedures consisting of the following:

(A) In any case in which a person communicates with the Social Security Administration by telephone at such telephone service center and provides in such communication his or her name, address, and such other identifying information as the Secretary determines necessary and appropriate for purposes of this subparagraph, the Secretary must thereafter promptly provide such person a written receipt which sets forth—

(i) the name of any individual representing the Social Security Administration with whom such person has spoken in such communication,

(ii) the date of the communication;

(iii) a description of the nature of the communication,

(iv) any action that an individual representing the Social Security Administration has indicated in the communication will be taken in response to the communication, and

(v) a description of the information or advice offered in the communication by an individual representing the Social Security Administration.

(B) Such person must be notified during the communication by an individual representing the Social Security Administration that, if adequate identifying information is provided to the Administration, a receipt described in subparagraph (A) will be provided to such person.

(C) A copy of any receipt required to be provided to any person under subparagraph (A) must be—

(i) included in the file maintained by the Social Security Administration relating to such person, or

(ii) if there is no such file, otherwise retained by the Social Security Administration in retrievable form until the end of the 5-year period following the termination of the project.

(2) EXCLUSION OF CERTAIN ROUTINE TELEPHONE COMMUNICATIONS.—The Secretary may exclude from demonstration projects carried out pursuant to this section routine telephone communications which do not relate to potential or current eligibility or entitlement to benefits.

(c) REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report on the progress of the demonstration projects conducted pursuant to this section, together with any related data and materials which the Secretary may consider appropriate. The report shall be submitted not later than 90 days after the termination of the project.

(2) SPECIFIC MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall—

(A) assess the costs and benefits of the accountability procedures,

(B) identify any major difficulties encountered in implementing the demonstration project, and

(C) assess the feasibility of implementing the accountability procedures on a national basis.

SEC. 5109. NOTICE REQUIREMENTS.

(a) REQUIREMENTS.—

(1) TITLE II.—Section 205 (42 U.S.C. 405) is amended by inserting after subsection (r) the following new subsection:

"NOTICE REQUIREMENTS

"(s) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(2) TITLE XVI.—Section 1631 (42 U.S.C. 1383) is amended by adding at the end the following:

"NOTICE REQUIREMENTS

"(n) The Secretary shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this title by the Secretary or by a State agency—

"(1) is written in simple and clear language, and

"(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to notices issued on or after July 1, 1991.

SEC. 5110. TELEPHONE ACCESS TO THE SOCIAL SECURITY ADMINISTRATION.

(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later 180 days after such date.

SEC. 5111. AMENDMENTS RELATING TO SOCIAL SECURITY ACCOUNT STATEMENTS.

(a) IN GENERAL.—Section 1142 (42 U.S.C. 1320b–13), as added by section 10308 of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2485), is amended—

(1) by striking "SEC. 1142." and inserting "SEC. 1143."; and

(2) in subsection (c)(2), by striking " a biennial" and inserting "an annual".

(b) DISCLOSURE OF ADDRESS INFORMATION BY INTERNAL REVENUE SERVICE TO SOCIAL SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Section 6103(m) of the Internal Revenue Code of 1986 (relating to disclosure of taxpayer identity information) is amended by adding at the end the following new paragraph:

"(7) SOCIAL SECURITY ACCOUNT STATEMENT FURNISHED BY SOCIAL SECURITY ADMINISTRATION.—Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.".

(2) SAFEGUARDS.—Section 6103(p)(4) of such Code (relating to safeguards) is amended, in the matter following subparagraph (f)(iii), by striking "subsection (m)(2), (4), or (6)" and inserting "paragraph (2), (4), (6), or (7) of subsection (m)".

(3) UNAUTHORIZED DISCLOSURE PENALTIES.—Paragraph (2) of section 7213(a) of such Code (relating to unauthorized disclosure of returns and return information) is amended by striking "(m)(2), (4), or (6)" and inserting "(m)(2), (4), (6), or (7)".

SEC. 5112. TRIAL WORK PERIOD DURING ROLLING FIVE-YEAR PERIOD FOR ALL DISABLED BENEFICIARIES.

(a) IN GENERAL.—Section 222(c) (42 U.S.C. 422(c)) is amended—

(1) in paragraph (4)(A), by striking ", beginning on or after the first day of such period," and inserting ", in any period of 60 consecutive months,"; and

(2) by striking paragraph (5).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1992.

SEC. 5113. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM.

(a) IN GENERAL.—Section 225(b) (42 U.S.C. 425(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in paragraph (2), by striking "Commissioner of Social Security" and inserting "Secretary".

(b) PAYMENTS AND PROCEDURES.—Section 1631(a)(6) (42 U.S.C. 1383(a)(6)) is amended—

(1) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) such individual is participating in a program of vocational rehabilitation services approved by the Secretary, and"; and

(2) in subparagraph (B), by striking "Commissioner of Social Security" and inserting "Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.

SEC. 5114. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS.

(a) IN GENERAL.—Section 228(a)(2) (42 U.S.C. 428(a)(2)) is amended by striking "(B)" and inserting "(B)(i) attained such age after 1967 and before 1972, and (ii)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to benefits payable on the basis of applications filed after the date of the enactment of this Act.

SEC. 5115. ELIMINATION OF ADVANCED CREDITING TO THE TRUST FUNDS OF SOCIAL SECURITY PAYROLL TAXES.

(a) IN GENERAL.—Section 201(a) (42 U.S.C. 401(a)) is amended—

(1) in the first sentence following clause (4)—

(A) by striking "monthly on the first day of each calendar month" both places it appears and inserting "from time to time";

(B) by striking "to be paid to or deposited into the Treasury during such month" and inserting "paid to or deposited into the Treasury"; and

(2) in the last sentence, by striking "Fund;" and inserting "Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on the first day of the month following the month in which this Act is enacted.

SEC. 5116. ELIMINATION OF ELIGIBILITY FOR RETROACTIVE BENEFITS FOR CERTAIN INDIVIDUALS ELIGIBLE FOR REDUCED BENEFITS.

(a) IN GENERAL.—Section 202(j)(4) (42 U.S.C. 402(j)(4)) is amended—

(1) in subparagraph (A), by striking "if the effect" and all that follows and inserting "if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q)."; and

(2) in subparagraph (B), by striking clauses (i) and (iv) and by redesignating clauses (ii), (iii), and (v) as clauses (i), (ii), and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits filed on or after January 1, 1991.

SEC. 5117. CONSOLIDATION OF OLD METHODS OF COMPUTING PRIMARY INSURANCE AMOUNTS.

(a) CONSOLIDATION OF COMPUTATION METHODS.—

(1) IN GENERAL.—Section 215(a)(5) (42 U.S.C. 415(a)(5)) is amended—

(A) by striking "For purposes of" and inserting "(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of";

(B) by striking the last sentence; and

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

"(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of section 215 as in effect in December 1978, without regard to subsection (b)(4) and (c) of such section as so in effect.

"(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under section 215(b)).

"(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of section 215(a) (as in effect in December 1978) shall be increased to $11.50.

"(iv) In the case of an individual to whom section 215(d) applies, the primary insurance amount of such individual shall be the greater of—

"(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

"(II) the primary insurance amount computed under section 215(d).

"(C) An individual is described in this subparagraph if—

"(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

"(ii) such individual's primary insurance amount computed under this section as in effect immediately before the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 would have been computed under the provisions described in subparagraph (D).

"(D) The provisions described in this subparagraph are—

"(i) the provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

"(ii) the provisions of section 209 as in effect prior to the enactment of the Social Security Act Amendments of 1950, and

"(iii) the provisions of section 215(d) as in effect prior to the enactment of the Social Security Amendments of 1977.

"(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) for each year after 1978.".

(2) COMPUTATION OF PRIMARY INSURANCE BENEFIT UNDER 1939 ACT.—

(A) DIVISION OF WAGES BY ELAPSED YEARS.—Section 215(d)(1) (42 U.S.C. 415(d)(1)) is amended—

(i) in subparagraph (A), by inserting "and subject to section 104(j)(2) of the Social Security Amendments of 1972" after "thereof"; and

(ii) by striking "(B) For purposes" in subparagraph (B) and all that follows through clause (ii) of such subparagraph and inserting the following:

"(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)—

"(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

"(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

"(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

"(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.".

(B) CREDITING OF WAGES TO YEARS.—Clause (iii) of section 215(d)(1)(B) (42 U.S.C. 415(d)(1)(B)(iii)) is amended to read as follows:

"(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) as in effect in December 1977) immediately preceding the earliest

year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and".

(C) APPLICABILITY.—Section 215(d) is further amended—

(i) in paragraph (2)(B), by striking "except as provided in paragraph (3),";

(ii) by striking paragraph (2)(C) and inserting the following:

"(C)(i) who becomes entitled to benefits under section 202(a) or 223 or who dies, or

"(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) or under section 231."; and

(iii) by striking paragraphs (3) and (4).

(3) CONFORMING AMENDMENTS.—

(A) Section 215(i)(4) (42 U.S.C. 415(i)(4)) is amended in the first sentence by inserting "and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990" after "as then in effect".

(B) Section 203(a)(8) (42 U.S.C. 403(a)(8)) is amended in the first sentence by inserting "and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990," after "December 1978" the second place it appears.

(C) Section 215(c) (42 U.S.C. 415(c)) is amended by striking "This" and inserting "Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this".

(D) Section 215(f)(7) (42 U.S.C. 415(f)(7)) is amended by striking the period at the end of the first sentence and inserting ", including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990".

(E)(i) Section 215(d) (42 U.S.C. 415(d)) is further amended by redesignating paragraph (5) as paragraph (3).

(ii) Subsections (a)(7)(A), (a)(7)(C)(ii), and (f)(9)(A) of section 215 (42 U.S.C. 415) are each amended by striking "subsection (d)(5)" each place it appears and inserting "subsection (d)(3)".

"(iii) Section 215(f)(9)(B) (42 U.S.C. 415(f)(9)(B)) is amended by striking "subsection (a)(7) or (d)(5)" each place it appears and inserting "subsection (a)(7) or (d)(3)".

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a

person becomes entitled to benefits under section 202 or 223 on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted, except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.

(b) BENEFITS IN CASE OF VETERANS.—Section 217(b) (42 U.S.C. 417(b)) is amended—

(1) in the first sentence of paragraph (1), by striking "Any" and inserting "Subject to paragraph (3), any"; and

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

"(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 202, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after the month in which the Omnibus Budget Reconciliation Act of 1990 was enacted.

"(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 202 based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.".

(c) APPLICABILITY OF ALTERNATIVE METHOD FOR DETERMINING QUARTERS OF COVERAGE WITH RESPECT TO WAGES IN THE PERIOD FROM 1937 TO 1950.—

(1) APPLICABILITY WITHOUT REGARD TO NUMBER OF ELAPSED YEARS.—Section 213(c) (42 U.S.C. 413(c)) is amended—

(A) by inserting "and 215(d)" after "214(a)"; and

(B) by striking "except where—" and all that follows and inserting the following: "except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.".

(2) APPLICABILITY WITHOUT REGARD TO DATE OF DEATH.—Section 155(b)(2) of the Social Security Amendments of 1967 is amended by striking "after such date".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply only with respect to individuals who—

(A) make application for benefits under section 202 of the Social Security Act after the 18-month period following the month in which this Act is enacted, and

(B) are not entitled to benefits under section 227 or 228 of such Act for the month in which such application is made.

SEC. 5118. SUSPENSION OF DEPENDENT'S BENEFITS WHEN THE WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY.

(a) IN GENERAL.—Section 223(e) (42 U.S.C. 623(e)) is amended by—

(1) by inserting "(1)" after "(e)"; and

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

"(2) No benefit shall be payable under section 202 on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) is not payable under paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to benefits for months after the date of the enactment of this Act.

SEC. 5119. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE.—Section 216(h)(1) (42 U.S.C. 416(h)(1)) is amended—

(1) in subparagraph (A)—

(A) by inserting "(i)" after "(h)(1)(A)"; and

(B) by striking "If such courts" in the second sentence and inserting the following:

"(ii) If such courts"; and

(2) in subparagraph (B)—

(A) by inserting "(i)" after "(B)";

(B) by striking "The provisions of the preceding sentence" in the second sentence and inserting the following:

"(ii) The provisions of clause (i)";

(C) by striking "(i) if another" in the second sentence and all that follows through "or (ii)";

(D) by striking "The entitlement" in the third sentence and inserting the following:

"(iii) The entitlement";

(E) by striking "subsection (b), (c), (e), (f), or (g)" the first place it appears in the third sentence and inserting "subsection (b) or (c)",

(F) by striking "wife, widow, husband, or widower" the first place it appears in the third sentence and inserting "wife or husband";

(G) by striking "(i) in which" in the third sentence and all that follows through "in which such applicant entered" and inserting "in which such person enters";

(H) by striking "For purposes" in the fourth sentence and inserting the following:

"(iv) For purposes";

and

(I) by striking "(i)" and "(ii)" in the fourth sentence and inserting "(I)" and "(II)", respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE.—Section 216(h)(1)(B)(i) (as amended by subsection (a)) is further amended—

(1) by striking "where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual" and inserting "where under subsection (b), (c), (d),

(f), or (g) such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual";

(2) by striking "and such applicant" and all that follows through "files the application,";

(3) by striking "subsections (b), (c), (f), and (g)" and inserting "subsections (b), (c), (d), (f), and (g)"; and

(4) by adding at the end the following new sentences: "Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.".

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM.—Section 203(a)(3) (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) In any case in which—

"(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

"(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

"(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.".

(d) CONFORMING AMENDMENT.—Section 203(a)(6) (42 U.S.C. 403(a)(6)) is amended by inserting "(3)(D)," after "(3)(C),".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) APPLICATION REQUIREMENT.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).

SEC. 5120. VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Pursuant to section 505 of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services shall develop and carry out under this section demonstration projects in each of not fewer than three States. Each such demonstration project shall be designed to assess the advantages and disadvantages of permitting disabled beneficiaries (as defined in paragraph (3)) to select, from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activity. Each such demonstration project shall commence as soon as practicable after the date of the enactment of this Act and shall remain in operation until the end of fiscal year 1993.

(2) SCOPE AND PARTICIPATION.—Each demonstration project shall be of sufficient scope and open to sufficient participation by disabled beneficiaries so as to permit meaningful determinations under subsection (b).

(3) DISABLED BENEFICIARY.—For purposes of this section, the term "disabled beneficiary" means an individual who is entitled to disability insurance benefits under section 223 of the Social Security Act or benefits under section 202 of such Act based on such individual's own disability.

(b) MATTERS TO BE DETERMINED.—In the course of each demonstration project conducted under this section, the Secretary shall determine the following:

(1) the extent to which disabled beneficiaries participate in the process of selecting providers of rehabilitation services, and their reasons for participating or not participating;

(2) notable characteristics of participating disabled beneficiaries (including their impairments), classified by the type of provider selected;

(3) the various needs for rehabilitation demonstrated by participating disabled beneficiaries, classified by the type of provider selected;

(4) the extent to which providers of rehabilitation services which are not agencies or instrumentalities of States accept referrals of disabled beneficiaries under procedures in effect under section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for such services and the most effective way of reimbursing such providers in accordance with such provisions;

(5) the extent to which providers participating in the demonstration projects enter into contracts with third parties for services and the types of such services;

(6) whether, and if so the extent to which, disabled beneficiaries who select their own providers of rehabilitation services are more likely to engage in substantial gainful activity and thereby terminate their entitlement under section 202 or 223 of the Social Security Act than those who do not;

(7) the cost effectiveness of permitting disabled beneficiaries to select their providers of vocational rehabilitation services, and the comparative cost effectiveness of different types of providers; and

(8) the feasibility of establishing a permanent national program for allowing disabled beneficiaries to choose their own qualified vocational rehabilitation provider and any additional safeguards which would be necessary to assure the effectiveness of such a program.

(c) PROCEDURAL REQUIREMENTS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select for participation in each demonstration project under this section disabled beneficiaries for whom there is a reasonable likelihood that rehabilitation services provided to them will result in performance by them of substantial gainful activity for a continuous period of nine months prior to termination of the project.

(2) SELECTION OF PROVIDERS OF REHABILITATION SERVICES.—The Secretary shall select qualified rehabilitation agencies to serve as providers of rehabilitation services in the geographic area covered by each demonstration project conducted under this section. The Secretary shall make such selection after consultation with disabled individuals and organizations representing such individuals. With respect to each demonstration project, the Secretary may approve on a case-by-case basis additional qualified rehabilitation agencies from outside the geographic area covered by the project to serve particular disabled beneficiaries.

(3) REIMBURSEMENT OF PROVIDERS.—

(A) Except as provided in subparagraph (B), providers of rehabilitation services under each demonstration project under this section shall be reimbursed in accordance with the procedures in effect under the provisions of section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for services provided under such section.

(B) The Secretary may contract with providers of rehabilitation services under each demonstration project under this section on a fee-for-service basis in order to—

(i) conduct vocational evaluations directed at identifying those disabled beneficiaries who have reasonable potential for engaging in substantial gainful activity and thereby terminating their entitlement to benefits under section 202 or 223 of the Social Security Act if provided with vocational rehabilitation services as participants in the project, and

(ii) develop jointly with each disabled beneficiary so identified an individualized, written rehabilitation program.

(C) Each written rehabilitation program developed pursuant to subparagraph (B)(ii) for any participant shall include among its provisions—

(i) a statement of the participant's rehabilitation goal,

(ii) a statement of the specific rehabilitation services to be provided and of the identity of the provider to furnish such services,

(iii) the projected date for the initiation of such services and their anticipated duration, and

(iv) objective criteria and an evaluation procedure and schedule for determining whether the stated rehabilitation goal is being achieved.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an interim written report on the progress of the demonstration projects conducted under this section not later than April 1, 1992, together with any related data and materials which the Secretary considers appropriate. The Secretary shall submit a final written report to such Committees addressing the matters to be determined under subsection (b) not later than April 1, 1994.

(e) STATE.—For purposes of this section, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

(f) CONTINUATION OF DEMONSTRATION AUTHORITY.—Section 505(c) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1310 note) is amended to read as follows:

"(c) The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990) no later than October 1, 1993.".

SEC. 5121. EXEMPTION FOR CERTAIN ALIENS, RECEIVING AMNESTY UNDER THE IMMIGRATION AND NATIONALITY ACT, FROM PROSECUTION FOR MISREPORTING OF EARNINGS OR MISUSE OF SOCIAL SECURITY ACCOUNT NUMBERS OR SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 208 (42 U.S.C. 408) is amended by adding at the end the following:

"(d)(1) Except as provided in paragraph (2), an alien—

"(A) whose status is adjusted to that of lawful temporary resident under section 210 or 245A of the Immigration and Nationality Act or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

"(B) whose status is adjusted to that of permanent resident—

"(i) under section 202 of the Immigration Reform and Control Act of 1986, or

"(ii) pursuant to section 249 of the Immigration and Nationality Act, or

"(C) who is granted special immigrant status under section 101(a)(27)(I) of the Immigration and Nationality Act,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) if such conduct is alleged to have occurred prior to 60 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1990.

"(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C)) consisting of—

"(A) selling a card that is, or purports to be, a social security card issued by the Secretary,

"(B) possessing a social security card with intent to sell it, or

"(C) counterfeiting a social security card with intent to sell it.

"(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) were not committed.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—So much of section 208 as precedes subsection (d) (as added by subsection (a) of this section) is amended—

(1) in subsection (a), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; (2) in subsection (g), by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; (3) by redesignating subsections (a) through (h) as paragraphs (1) through (8), respectively; (4) by inserting "(a)" before "Whoever"; (5) by inserting "(b)" at the beginning of the next-to-last undesignated paragraph; and (6) by inserting "(c)" at the beginning of the last undesignated paragraph.

SEC. 5122. REDUCTION OF AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE APPLICABLE IN DETERMINING SPECIAL MINIMUM PRIMARY INSURANCE AMOUNT.

(a) IN GENERAL.—Section 215(a)(1)(C)(ii) (42 U.S.C. 415(a)(1)(C)(ii)) is amended by striking "of not less than 25 percent" the first place it appears and all that follows through "1977) if" and inserting "of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e)) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e)) could be counted for such year if".

(b) RETENTION OF CURRENT AMOUNT OF WAGES NEEDED TO EARN A YEAR OF COVERAGE FOR PURPOSES OF WINDFALL ELIMINATION PROVISION.—Section 215(a)(7)(D) (42 U.S.C. 415(a)(7)(D)) is amended—

(1) in the first sentence, by striking "(as defined in paragraph (1)(C)(ii))"; and

(2) by adding at the end (after the table) the following new flush sentence:

"For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.".

SEC. 5123. CHARGING OF EARNINGS OF CORPORATE DIRECTORS.

(a) IN GENERAL.—

(1) Title II is amended by moving the last undesignated paragraph of section 211(a) of such title (as added by section 9022(a) of the Omnibus Budget Reconciliation Act of 1987) to the end of section 203(f)(5) of such title.

(2) The undesignated paragraph moved to section 203(f)(5) of the Social Security Act by paragraph (1) is amended—

(A) by striking "Any income of an individual which results from or is attributable to" and inserting "(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to",

(B) by striking "the income is actually paid" and inserting "the income, on which the computation of such net earnings from self-employment is based, is actually paid"; and

(C) by striking "unless it was" and inserting "unless such income was".

(3) The last undesignated paragraph of section 1402(a) of the Internal Revenue Code of 1986 (as added by section 9022(b) of the Omnibus Budget Reconciliation Act of 1987) is repealed.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.

SEC. 5124. COLLECTION OF EMPLOYEE SOCIAL SECURITY AND RAILROAD RETIREMENT TAXES ON TAXABLE GROUP-TERM LIFE INSURANCE PROVIDED TO RETIREES.

(a) SOCIAL SECURITY TAXES.—Section 3102 of the Internal Revenue Code of 1986 (relating to deduction of tax from wages) is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the wages which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3101 on such payments, and

"(C) the tax imposed by section 3101 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes wages, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(b) RAILROAD RETIREMENT TAXES.—Section 3202 of such Code (relating to deduction of tax from compensation) is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULE FOR CERTAIN TAXABLE GROUP-TERM LIFE INSURANCE BENEFITS.—

"(1) IN GENERAL.—In the case of any payment for group-term life insurance to which this subsection applies—

"(A) subsection (a) shall not apply,

"(B) the employer shall separately include on the statement required under section 6051—

"(i) the portion of the compensation which consists of payments for group-term life insurance to which this subsection applies, and

"(ii) the amount of the tax imposed by section 3201 on such payments, and

"(C) the tax imposed by section 3201 on such payments shall be paid by the employee.

"(2) BENEFITS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any payment for group-term life insurance to the extent—

"(A) such payment constitutes compensation, and

"(B) such payment is for coverage for periods during which an employment relationship no longer exists between the employee and the employer."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to coverage provided after December 31, 1990.

SEC. 5125. TIER 1 RAILROAD RETIREMENT TAX RATES EXPLICITLY DETERMINED BY REFERENCE TO SOCIAL SECURITY TAXES.

(a) TAX ON EMPLOYEES.—Subsection (a) of section 3201 of the Internal Revenue Code of 1986 (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "employee:" and all that follows and inserting "employee. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 for the calendar year."

(b) TAX ON EMPLOYEE REPRESENTATIVES.—Paragraph (1) of section 3211(a) of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "representative:" and all that follows and inserting "representative. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3101 and subsections (a) and (b) of section 3111 for the calendar year."

(c) TAX ON EMPLOYERS.—Subsection (a) of section 3221 of such Code (relating to rate of tax) is amended—

(1) by striking "following" and inserting "applicable", and

(2) by striking "employer:" and all that follows and inserting "employer. For purposes of the preceding sentence, the term 'applicable percentage' means the percentage equal to the sum of the rates of tax in effect under subsections (a) and (b) of section 3111 for the calendar year."

SEC. 5126. TRANSFER TO RAILROAD RETIREMENT ACCOUNT.

Subsection (c)(1)(A) of section 224 of the Railroad Retirement Solvency Act of 1983 (relating to section 72(r) revenue increase transferred to certain railroad accounts) is amended by striking "1990" and inserting "1992".

SEC. 5127. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK.—Section 203(b)(2) (42 U.S.C. 403(b)(2)) is amended—

(1) by striking "(2) When" and all that follows through "2 years, the benefit" and inserting the following:

"(2)(A) Except as provided in subparagraph (B), in any case in which—

"(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) for any month, and

"(ii) such person has been divorced for not less than 2 years, the benefit"; and

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

"(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.".

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES.—Section 203(d)(1)(B) (42 U.S.C. 403(d)(1)(B)) is amended—

(1) by striking "(B) When" and all that follows through "2 years, the benefit" and inserting the following:

"(B)(i) Except as provided in clause (ii), in any case in which—

"(I) a divorced spouse is entitled to monthly benefits under section 202(b) or (c) for any month, and

"(II) such divorced spouse has been divorced for not less than 2 years,

the benefit"; and

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

"(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

SEC. 5128. MODIFICATION OF THE PREEFFECTUATION REVIEW REQUIREMENT APPLICABLE TO DISABILITY INSURANCE CASES.

(a) IN GENERAL.—Section 221(c)(3) (42 U.S.C. 421(c)(3)) is amended to read as follows:

"(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

"(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this title, and

"(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

"(B) In conducting reviews pursuant to subparagraph (A), the Secretary shall, to the extent feasible, select for review those determinations which the Secretary identifies as being the most likely to be incorrect.

"(C) Not later than April 1, 1992, and annually thereafter, the Secretary shall submit to the Committee on Ways and Means of the

House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Secretary based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.

SEC. 5129. RECOVERY OF OASDI OVERPAYMENTS BY MEANS OF REDUCTION IN TAX REFUNDS.

(a) ADDITIONAL METHOD OF RECOVERY.—Section 204(a)(1)(A) (42 U.S.C. 404(a)(1)(A)) is amended by inserting after "payments to such overpaid person," the following: "or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, United States Code,".

(b) RECOVERY BY MEANS OF REDUCTION IN TAX REFUNDS.—Section 3720A of title 31, United States Code (relating to collection of debts owed to Federal agencies) is amended—

(1) in subsection (a), by striking "OASDI overpayment and";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting the following new subsection after subsection (e):

"(f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

"(2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of an OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

"(B) In any case in which an individual files for a waiver under section 204(b) of the Social Security Act within the 60-day period referred to in subsection (b)(2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.".

(c) INTERNAL REVENUE CODE PROVISIONS.—

(1) IN GENERAL.—Subsection (d) of section 6402 of the Internal Revenue Code of 1986 (relating to collection of debts owed to Federal agencies) is amended—

(A) in paragraph (1), by striking "any OASDI overpayment and"; and

(B) by striking paragraph (3) and inserting the following new paragraph:

"(3) TREATMENT OF OASDI OVERPAYMENTS.—

"(A) REQUIREMENTS.—Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

"(B) NOTICE; PROTECTION OF OTHER PERSONS FILING JOINT RETURN.—

"(i) NOTICE.—In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

"(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

"(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

"(ii) ADJUSTMENTS BASED ON PROTECTIONS GIVEN TO OTHER TAXPAYERS ON JOINT RETURN.—If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

"(C) DEPOSIT OF AMOUNT OF REDUCTION INTO APPROPRIATE TRUST FUND.—In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Secretary of Health and Human Services, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Secretary of Health and Human Services.

"(D) OASDI OVERPAYMENT.—For purposes of this paragraph, the term 'OASDI overpayment' means any overpayment of benefits made to an individual under title II of the Social Security Act.".

(2) PRESERVATION OF REMEDIES.—Subsection (e) of section 6402 of such Code (relating to review of reductions) is amended in the last sentence by inserting before the period the following: "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to re-

coveries of overpayments of benefits under section 204 of the Social Security Act".

(d) EFFECTIVE DATE.—The amendments made by this section—

(1) shall take effect January 1, 1991, and

(2) shall not apply to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984 (98 Stat. 1153) do not apply.

SEC. 5130. MISCELLANEOUS TECHNICAL CORRECTIONS.

(a) IN GENERAL.—

(1) AMENDMENT RELATING TO SECTION 7088 OF PUBLIC LAW 100–690.—Section 208 (42 U.S.C. 408) is amended, in the last undesignated paragraph, by striking "section 405(c)(2) of this title" and inserting "section 205(c)(2)".

(2) AMENDMENTS RELATING TO SECTION 322 OF PUBLIC LAW 98–21.—Paragraphs (1) and (2) of section 322(b) of the Social Security Amendments of 1983 (Public Law 98–21, 97 Stat. 121) are each amended by inserting "the first place it appears" before "the following".

(3) AMENDMENT RELATING TO SECTION 1011B(b)(4) OF PUBLIC LAW 100–647.—Section 211(a) (42 U.S.C. 411(a)) is amended by redesignating the second paragraph (14) as paragraph (15).

(4) AMENDMENT RELATING TO SECTION 2003(d) OF PUBLIC LAW 100–647.—Paragraph (3) of section 3509(d) of the Internal Revenue Code of 1986 (as amended by section 2003(d) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647; 102 Stat. 3598)) is further amended by striking "subsection (d)(4)" and inserting "subsection (d)(3)".

(5) AMENDMENT RELATING TO SECTION 10208 OF PUBLIC LAW 101–239.—Section 209(a)(7)(B) (42 U.S.C. 409(a)(7)(B)) is amended by striking "subparagraph (B)" in the matter following clause (ii) and inserting "clause (ii)".

(b) EFFECTIVE DATES.—The amendments made by subsection (a) shall be effective as if included in the enactment of the provision to which it relates.

TITLE VI—ENERGY AND ENVIRONMENTAL PROGRAMS

Subtitle A—Abandoned Mine Reclamation

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the "Abandoned Mine Reclamation Act of 1990".

SEC. 6002. ABANDONED MINE RECLAMATION FUND.

(a) SOURCES OF DEPOSITS.—Section 401(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(b)) is amended as follows:

(1) Amend paragraph (1) to read as follows:

"(1) the reclamation fees levied under section 402;".

(2) Strike "and" at the end of paragraph (3); strike the period at the end of paragraph (4) and insert "; and"; and add the following new paragraph at the end:

"(5) interest credited to the fund under subsection (e).".

(b) USE OF MONEY.—Section 401(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231(c)) is amended as follows:

(1) In paragraph (1), strike "402(g)(2)" and insert "402(g)(1)".

(2) Amend paragraph (2) to read as follows:

"(2) for transfer on an annual basis to the Secretary of Agriculture for use under section 406.".

(3) In paragraph (6), strike "by contract" and insert "conducted in accordance with section 3501 of the Omnibus Budget Reconciliation Act of 1986" after "projects".

(4) Strike "and" at the end of paragraph (9).

(5) Strike paragraph (10) and insert the following:

"(10) for use under section 411;

"(11) for the purpose of section 507(c), except that not more than $10,000,000 shall annually be available for such purpose; and

"(12) all other necessary expenses to accomplish the purposes of this title.".

(c) INTEREST.—Section 401 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 231) is amended by adding the following new subsection at the end:

"(e) INTEREST.—The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the fund in public debt securities with maturities suitable for the needs of such fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the fund.".

SEC. 6003. RECLAMATION FEES.

(a) DUE DATE.—Section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) is amended by striking "fifteen years after the date of enactment of this Act unless extended by an Act of Congress" and inserting "September 30, 1995".

(b) STATEMENT.—Section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(c)) is amended by adding the following at the end thereof: "Such statement shall include an identification of the permittee of the surface coal mining operation, any operator in addition to the permittee, the owner of the coal, the preparation plant, ripple, or loading point for the coal, and the person purchasing the coal from the operator. The report shall also specify the number of the permit required under section 506 and the mine safety and health identification number. Each quarterly report shall contain a notification of any changes in the information required by this subsection since the date of the preceding quarterly report. The information contained in the quarterly reports under this subsection shall be maintained by the Secretary in a computerized database.".

(c) AUDITS.—Section 402(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(d)) is amended by inserting "(1)" after "(d)" and by adding the following at the end thereof;

"(2) The Secretary shall conduct such audits of coal production and the payment of fees under this title as may be necessary to ensure full compliance with the provisions of this title. For purposes of performing such audits the Secretary (or any duly designated officer, employee, or representative of the Secretary) shall, at the reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person subject to the provisions of this title. The Secretary may at any time conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants, as may be necessary in the judgment of the Secretary to ensure full and complete payment of the fees under this notice.".

(d) NOTICE.—Section 402(f) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(f)) is amended by adding the following at the end thereof: "Whenever the Secretary believes that any person has not paid the full amount of the fee payable under subsection (a) the Secretary shall notify the Federal agency responsible for ensuring compliance with the provisions of section 4121 of the Internal Revenue Code of 1986.".

SEC. 6004. ALLOCATION OF FUNDS.

Section 402(g) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)) is amended to read as follows:

"(g) ALLOCATION OF FUNDS.—(1) Moneys deposited into the fund shall be allocated by the Secretary to accomplish the purposes of this title as follows:

"(A) 50 percent of the reclamation fees collected annually in any State (other than fees collected with respect to Indian lands) shall be allocated annually by the Secretary to the State, subject to such State having each of the following:

"(i) An approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible pursuant to section 404 (in the case of a State not certified under section 411(a)) or pursuant to section 411(b) (in the case of a State certified under section 411(a)).

"(B) 50 percent of the reclamation fees collected annually with respect to Indian lands shall be allocated annually by the Secretary to the Indian tribe having jurisdiction over such lands, subject to such tribe having each of the following:

"(i) an approved abandoned mine reclamation program pursuant to section 405.

"(ii) Lands and waters which are eligible pursuant to section 404 (in the case of an Indian tribe not certified under section 411(a)) or pursuant to section 411(b) (in the case of a tribe certified under section 411(a)).

"(C) The funds allocated by the Secretary under this paragraph to States and Indian tribes shall only be used for annual reclamation project construction and program administration grants.

"(D) To the extent not expended within 3 years after the date of any grant award under this paragraph, such grant shall be available for expenditure by the Secretary in any area under paragraph (2), (3), (4), or (5).

"(2) 20 percent of the amounts available in the fund in any fiscal year which are not allocated under paragraph (1) in that fiscal year (including that interest accruing as provided in section 401(e) and including funds available for reallocation pursuant to paragraph (1)(D)), shall be allocated to the Secretary only for the purpose of making the annual transfer to the Secretary of Agriculture under section 401(c)(2).

"(3) Amounts available in the fund which are not allocated to States and Indian tribes under paragraph (1) or allocated under paragraphs (2) and (5) are authorized to be expended by the Secretary for any of the following:

"(A) For the purpose of section 507(c), either directly or through grants to the States, subject to the limitation contained in section 401(c)(11).

"(B) For the purpose of section 410 (relating to emergencies).

"(C) For the purpose of meeting the objectives of the fund set forth in section 403(a) for eligible lands and waters pursuant to section 404 in States and on Indian lands where the State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405.

"(D) For the administration of this title by the Secretary.

"(4)(A) Amounts available in the fund which are not allocated under paragraphs (1), (2), and (5) or expended under paragraph (3) in any fiscal year are authorized to be expended by the Secretary under this paragraph for the reclamation or drainage abatement of lands and waters within unreclaimed sites which are mined for coal or which were affected by such mining, wastebanks, coal processing or other coal mining processes and left in an inadequate reclamation status.

"(B) Funds made available under this paragraph may be used for reclamation or drainage abatement at a site referred to in subparagraph (A) if the Secretary makes either of the following findings:

"(i) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date on which the Secretary approved a State program pursuant to section 503 for a State in which the site is located, and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(ii) A finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before the date of enactment of this paragraph, and that the surety of such mining operator became insolvent during such period, and as of the date of enactment of this paragraph, funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site.

"(C) In determining which sites to reclaim pursuant to this paragraph, the Secretary shall follow the priorities stated in paragraphs (1) and (2) of section 403(a). The Secretary shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community.

"(D) Amounts collected from the assessment of civil penalties under section 518 are authorized to be appropriated to carry out this paragraph.

"(E) Any State may expend grants made available under paragraphs (1) and (5) for reclamation and abatement of any site referred to in subparagraph (A) if the State, with the concurrence of the Secretary, makes either of the findings referred to in clause (i) or (ii) of subparagraph (B) and if the State determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for eligible lands and waters pursuant to section 404 under the priorities stated in paragraphs (1) and (2) of section 403(a).

"(F) For the purposes of the certification referred to in section 411(a), sites referred to in subparagraph (A) of this paragraph shall be considered as having the same priorities as those stated in section 403(a) for eligible lands and waters pursuant to section 404. All sites referred to in subparagraph (A) of this paragraph within any State shall be reclaimed prior to such State making the certification referred to in section 411(a).

"(5) The Secretary shall allocate 40 percent of the amount in the fund after making the allocation referred to in paragraph (1) for making additional annual grants to States and Indian tribes which are not certified under section 411(a) to supplement grants received by such States and Indian tribes pursuant to paragraph (1)(C) until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State or Indian tribe. The allocation of such funds for the purpose of making such expenditures shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Funds allocated or expended by the Secretary under paragraphs (2), (3), or (4) of this subsection for any State or Indian tribe shall not be deducted against any allocation of funds to the State or Indian tribe under paragraph (1) or under this paragraph.

"(6) Any State may receive and retain, without regard to the 3-year limitation referred to in paragraph (1)(D), up to 10 percent of the total of the grants made annually to such State under paragraphs (1) and (5) if such amounts are deposited into either—

"(A) a special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) after September 30, 1995, or

"(B) an acid mine drainage abatement and treatment fund established under State law as provided in paragraph (7).

"(7)(A) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans ap-

proved by the Secretary. Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices.

"(B) The plan shall include, but shall not be limited to, each of the following:

"(i) An identification of the qualified hydrologic unit.

"(ii) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

"(iii) An identification of the sources of acid mine drainage within the hydrologic unit.

"(iv) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydologic unit.

"(v) The cost of undertaking the proposed abatement and treatment measures.

"(vi) An identification of existing and proposed sources of funding for such measures.

"(vii) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

"(C) The Secretary may approve any plan under this paragraph only after determining that such plan meets the requirements of this paragraph. In conducting an analysis of the items referred to in clauses (iv), (v), and (vii) the Director of the Office of Surface Mining shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Secretary shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under section 406.

"(D) For purposes of this paragraph, the term 'qualified hydrologic unit' means a hydrologic unit—

"(i) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

"(ii) which contains lands and waters which are—

"(I) eligible pursuant to section 404 and include any of the priorities stated in paragraph (1), (2), or (3) of section 403(a); and

"(II) proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage.

"(8) Of the funds available for expenditure under this subsection in any fiscal year, the Secretary shall allocate annually not less than $2,000,000 for expenditure in each State, and for each Indian tribe, having an approved abandoned mine reclamation program pursuant to section 405 and eligible lands and waters pursuant to section 404 so long as an allocation of funds to such State or such tribe is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a).".

SEC. 6005. FUND OBJECTIVES.

Section 403 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1233) is amended as follows:

(1) Insert "(a) PRIORITIES.—" after "SEC. 403.".

(2) Insert ", except as provided for under section 411," after "title".

(3) Add at the end the following new subsections:

"(b) UTILITIES AND OTHER FACILITIES.—(1) Any State or Indian tribe not certified under section 411(a) may expend up to 30 percent of the funds allocated to such State or Indian tribe in any year through the grants made available under paragraphs (1) and (5) of section 402(g) for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

"(2) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, section 404 shall not be construed to prohibit a State or Indian tribe referred to in paragraph (1) from using funds referred to in such paragraph for the purposes of this subsection if the State or Indian tribe determines that such adverse effects occurred predominantly prior to August 3, 1977.

"(c) INVENTORY.—For the purposes of assisting in the planning and evaluation of reclamation projects pursuant to section 405, and assisting in making the certification referred to in section 411(a), the Secretary shall maintain an inventory of eligible lands and waters pursuant to section 404 which meet the priorities stated in paragraphs (1) and (2) of subsection (a). Under standardized procedures established by the Secretary, States and Indian tribes with approved abandoned mine reclamation programs pursuant to section 405 may offer amendments to update the inventory as it applies to eligible lands and waters under the jurisdiction of such States or tribes. The Secretary shall provide such States and tribes with the financial and technical assistance necessary for the purpose of making inventory amendments. The Secretary shall compile and maintain an inventory for States and Indian lands in the case when a State or Indian tribe does not have an approved abandoned mine reclamation program pursuant to section 405. On a regular basis, but not less than annually, the projects completed under this title shall be so noted on the inventory under standardized procedures established by the Secretary.".

SEC. 6006. ELIGIBLE LANDS AND WATERS.

Section 404 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1234) is amended by inserting ", except as provided for under section 411" after "processes", and by adding the following at the end thereof: "For other provisions relating to lands and waters eligible for such expenditures, see section 402(g)(4), section 403(b)(1), and section 409.".

SEC. 6007. STATE RECLAMATION PROGRAMS.

Section 405 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1235) is amended by adding the following at the end thereof:

"(1) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.".

SEC. 6008. CLARIFICATION.

Section 406(d) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(d)) is amended by striking "experimental".

SEC. 6009. VOIDS AND TUNNELS.

Section 409 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1239) is amended—

(1) in subsection (a) by striking "chairman of any tribe" and inserting in lieu thereof "the governing body of an Indian tribe";

(2) in subsection (b), by striking "or Indian reservations under the provisions of subsection 402(g)" and inserting "or Indian tribes under the provisions of paragraphs (1) and (5) of section 402(g)"; and

(3) by amending subsection (c) to read as follows:

"(c)(1) The Secretary may make expenditures and carry out the purposes of this section in such States where requests are made by the Governor or governing body of an Indian tribe for those reclamation projects which meet the priorities stated in section 403(a)(1), except that for the purposes of this section the reference to coal in section 403(a)(1) shall not apply.

"(2) The provisions of section 404 shall apply to this section, with the exception that such mined lands need not have been mined for coal.

"(3) The Secretary shall not make any expenditures for the purposes of this section in those States which have made the certification referred to in section 411(a).".

SEC. 6010. CERTIFICATION.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 et seq.) is amended as follows:

(1) Redesignate sections 411, 412, and 413 as sections 412, 413, and 414, respectively.

(2) Insert after section 410 the following new section:

"SEC. 411. CERTIFICATION.

"(a) CERTIFICATION OF COMPLETION OF COAL RECLAMATION.—The Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program under section 405 may certify to the Secretary that all of the priorities stated in section 403(a) for eligible lands and waters pursuant to section 404 have been achieved. The Secretary, after notice in the Federal Register and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

"(b) ELIGIBLE LANDS, WATERS, AND FACILITIES.—If the Secretary has concurred in a State or tribal certification under subsection (a), for purposes of determining the eligibility of lands and waters for annual grants under section 402(g)(1), section 404 shall not apply, and eligible lands, waters, and facilities shall be those—

"(1) which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

"(2) for which there is no continuing reclamation responsibility under State or other Federal laws. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date referred to in paragraph (1) the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

"(c) PRIORITIES.—Expenditures of moneys for lands, waters, and facilities referred to in subsection (b) shall reflect the following objectives and priorities in the order stated (in lieu of the priorities set forth in section 403):

"(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices.

"(2) The protection of public health, safety, general welfare from adverse effects of mineral mining and processing practices.

"(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

"(d) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this section.

"(e) UTILITIES AND OTHER FACILITIES.—Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communiies impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in subsection (c).

"(f) Notwithstanding subsection (e), where the Secretary has concurred in the certification referenced in subsection (a) and where the Governor of a State or the head of a governing body of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development and the Secretary concurs in such need, then the State or Indian tribe, as the case may be, may use annual grants made available under section 402(g)(1) to carry out such activities or construction.

"(g) APPLICATION OF OTHER PROVISIONS.—The provisions of sections 407 and 408 shall apply to subsections (a) through (e) of this section, except that for purposes of this section the references to coal in sections 407 and 408 shall not apply.".

SEC. 6011. SMALL OPERATOR ASSISTANCE.

Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1257(c)) is amended by striking "100,000" and inserting "300,000".

SEC. 6012. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) is amended as follows:

(1) Redesignate the items relating to sections 411, 412, and 413 as items 412, 413, and 414, respectively.

(2) Insert after the item relating to section 410 the following: "Sec. 411. Certification.".

(b) REFERENCE.—Section 712 (b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1302(b)) is amended to read as follows:

"(b) For the implementation and funding of section 507(c), see the provisions of section 401(c)(11).".

(c) REPEAL.—Section 406(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236(i)) is repealed.

(d) TECHNICAL CORRECTIONS.—The following provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231 and following) are amended as follows:

(1) Section 405(a) is amended by striking out "perparation" and inserting "preparation".

(2) Section 405(h) is amended by striking out "Upon approved" and inserting "Upon approval".

(3) Section 406(a) is amended by striking out "including owners" and inserting "(including owners".

(4) Section 407(a)(4) is amended by striking out the period and inserting a semicolon.

(5) Section 407(a) is amended by striking out "Then" and inserting "then".

(6) Section 407(e) is amended by striking out "paragraph (1), of this subsection" and inserting "paragraph (1) of subsection (c)".

(7) Section 407(g)(2) is amended by striking out "the use of" and inserting "the use or".

SEC. 6013. SAVINGS CLAUSE.

Nothing in this subtitle shall be construed to affect the certifications made by the State of Wyoming, the State of Montana, and the State of Louisiana to the Secretary of the Interior prior to the date of enactment of this subtitle that such State has completed the reclamation of eligible abandoned coal mine lands.

SEC. 6014. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect at the beginning of the first fiscal year immediately following the fiscal year in which this subtitle is enacted.

Subtitle B—NRC User Fees and Annual Charges

SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) shall be made not later than September 30, 1995.

(b) FEES FOR SERVICE OR THING OF VALUE.—Pursuant to section 9701 of title 31, United States Code, any person who receives a service of thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES.—

(1) PERSONS SUBJECT TO CHARGE.—Any licensee of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) AGGREGATE AMOUNT OF CHARGES.—The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Commission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) in such fiscal year.

(3) AMOUNT PER LICENSEE.—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(d) DEFINITION.—As used in this section, the term "Nuclear Waste Fund" means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) CONFORMING AMENDMENT TO COBRA.—Paragraph (1)(A) of section 7601 of the Consolidated Omnibus Budget Reconcilation Act of 1985 (Public Law 99-272) is amended by striking "except that for fiscal year 1990 such maximum amount shall be estimated to be equal to 45 percent of the costs incurred by the Commission for fiscal year 1990" and inserting "except as otherwise provided by law".

Subtitle C—Amendments to Coastal Zone Management Act of 1972

SEC. 6201. SHORT TITLE.

This subtitle may be cited as the "Coastal Zone Act Reauthorization Amendments of 1990".

SEC. 6202. FINDINGS AND PURPOSE OF THIS SUBTITLE.

(a) FINDINGS.—Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have growm from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of manmade gases, released into the atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in significant global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(9) All coastal States should have coastal zone management programs in place that conform to the Coastal Zone Management Act of 1972, as amended by this Act.

(b) PURPOSE.—It is the purpose of Congress in this subtitle to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

SEC. 6203. FINDINGS AND POLICY OF COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) FINDINGS.—(1) Section 302(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451(d)) is amended by inserting "habitat areas of the" immediately before "coastal zone".

(2) Section 302(f) of the Coastal Zone Management Act of 1972 (26 U.S.C. 1451(f)) is amended by inserting "exclusive economic zone," immediately after "territorial sea,".

(3) Section 302 of the Coastal Zone Management Act of 1972 &16 U.S.C. 1451) is amended by adding at the end the following new subsections:

"(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

"(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

"(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.".

(b) POLICY.—(1) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended by striking "as well as the need for" and inserting in lieu thereof "as well as the needs for compatible".

(2) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking "of subsidence" and inserting in lieu thereof the following: "likely to be affected by or vulnerable to sea level rise, land subsidence,".

(3) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by paragraph (1), is amended—

(A) by redesignating subparagraphs (C) through (I) as subparagraphs (D) through (J), respectively; and

(B) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,".

(4) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 14522)), as amended by paragraphs (1) AND (3), is further amended—

(A) by striking "and" at the end of subparagraph (I), as so redesignated by paragraph (3);

(B) by striking the semicolon in subparagraph (J), as so redesignated by paragraph (3), and inserting in lieu thereof a comma; and

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

"(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and".

(5) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting "including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes," immediately after "hazardous areas,".

(6) Section 303 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452) is amended by striking "and" at the end of paragraph (3); by striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon; and by adding at the end the following new paragraphs:

"(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

"(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.".

SEC. 6204. DEFINITIONS.

(a) COASTAL ZONE.—The third sentence of section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended—

(1) by inserting ", and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise" immediately before the period at the end; and

(2) by striking "the United States territorial sea." and inserting in lieu thereof "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the

Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, as applicable.".

(b) ENFORCEABLE POLICY.—Section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) is amended by inserting after paragraph (6) the following

"(6a) The term 'enforceable policy' means State policies which are legally binding through constitutional provisions, law, regulations land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.".

(c) WATER USE.—Section 304(18) of the Coastal Zone Management Act of 1971 (16 U.S.C. 1453(18)) is amended by striking all after "means" and inserting in lieu therof "a use, activity, or project conducted in or on waters within the coastal zone.".

SEC. 6205. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454) is amended to read as follows:

"MANAGEMENT PROGRAM DEVELOPMENT GRANTS

"SEC. 305. (a) In fiscal years 1991, 1992, and 1993, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than two grants pursuant to this subsection.

"(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306.".

SEC. 6206. ADMINISTRATIVE GRANTS.

(a) IN GENERAL.—Section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) is amended to read as follows:

"ADMINISTRATIVE GRANTS

"SEC. 306. (a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratiois of Federal-to-State contributions for the applicable fiscal year:

"(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

"(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

"(b) The Secretary may make a grant to a coastal state under subsection (a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection (d);

"(c) Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

"(d) Before approving a management program submitted by a coastal state, the Secretary shall find the following:

"(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303.

"(2) The management program includes each of the following required program elements:

"(A) An identification of the boundaries of the coastal zone subject to the management program.

"(B) A definition of what shall constitute permissible land uses and water users within the coastal zone which have a direct and significant impact on the coastal waters.

"(C) An inventory and designation of areas of particular concern within the coastal zone.

"(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

"(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

"(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

"(G) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

"(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

"(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the

impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

"(3) The State has—

"(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

"(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

"(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

"(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interestate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that—

"(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

"(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

"(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government—

"(I) shall consider the comments;

"(II) may, in its discretion, hold a public hearing on the comments; and

"(III) may not take any action within the 30-day period to implement the management program decision.

"(4) The State has held public hearings in the development of the management program.

"(5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

"(6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

"(7) The State is organized to implement the management program.

"(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local signifi-

cance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interestate energy plan or program.

"(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

"(10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in acccordance with the management program. Such authority shall include power—

"(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

"(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

"(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

"(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

"(B) Direct State land and water use planning and regulation.

"(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

"(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

"(13) The management program provides for—

"(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

"(B) specific and enforceable standards to protect such resources.

"(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

"(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

"(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

"(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

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

"(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period of not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

"(3)(A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

"(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expand funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307.".

(b) ADDITIONAL PROGRAM REQUIREMENTS.—Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972, as amended by this subtitle (including a State which submitted a program before the date of enactment of this Act), shall demonstrate to the Secretary—

(1) that the program complies with section 306(d)(14) and (15) of that Act, by not later than 3 years after the date of the enactment of this Act; and

(2) that the program complies with section 306(d)(16) of that Act, by not later than 30 months after the date of publication of final guidance under section 6217(g) of this Act.

SEC. 6207. RESOURCE MANAGEMENT IMPROVEMENT GRANTS.

Section 306A(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a(b)(1)) is amended by adding before the period at the end the following: ", or for the purpose of restoring and enhancing

shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts".

SEC. 6208. COASTAL ZONE MANAGEMENT CONSISTENCY.

(a) FEDERAL AGENCY ACTIVITIES.—Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

"(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

"(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.".

(b) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 307(c)(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(2)) is amended by inserting "the enforceable policies of" before "approved State management programs".

(2) Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(A)) is amended in the first sentence—

(A) by inserting ", in or outside of the coastal zone," after "to conduct an activity";

(B) by striking "land or water uses in" and inserting "any land or water use or natural resource of"; and

(C) by inserting "the enforceable policies of" after the words "the proposed activity complies with".

(3) Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(3)(B)) is amended in the first sentence—

(A) by striking "land use or water use in" and inserting "land or water use or natural resource of"; and

(B) by inserting "the enforceable policies of" after "such plan complies".

(4) Section 307(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(d)) is amended—

(A) by striking "affecting" and inserting ", in or outside of the coastal zone, affecting any land or water use of natural resource of"; and

(B) by inserting "the enforceable policies of" after "that are inconsistent with".

(c) FEDERAL FEE.—Section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended by adding at the end the following:

"(i) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee. The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).".

SEC. 6209. COASTAL ZONE MANAGEMENT FUND.

Section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456) is amended to read as follows:

"COASTAL ZONE MANAGEMENT FUND

"SEC. 308. (a)(1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990, and any repayment schedule established pursuant to this Act as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

"(A) Modify the terms and conditions of such loan.

"(B) Refinance the loan.

"(C) Recommend to the Congress that legislation be enacted to forgive the loan.

"(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

"(b)(1) The Secretary shall establish and maintain a fund, to be known as the 'Coastal Zone Management Fund' (hereinafter in this

section referred to as the 'Fund'), which shall consist of amounts retained and deposited into the Fund under subsection (a).

"(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

"(A) Expenses incident to the administration of this title, in an amount not to exceed—

"(i) $5,000,000 for fiscal year 1991;

"(ii) $5,225,000 for fiscal year 1992;

"(iii) $5,460,000 for fiscal year 1993;

"(iv) $5,705,830 for fiscal year 1994; and

"(v) $5,962,593 for fiscal year 1995.

"(B) After use under subparagraph (A)—

"(i) projects to address management issues which are regional in scope, including interstate projects;

"(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

"(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

"(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314;

"(v) program development grants as authorized by section 305; and

"(vi) to provide financial support to coastal States for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306.

"(3) On December 1, of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.".

SEC. 6210. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452b) is amended to read as follows:

"COASTAL ZONE ENHANCEMENT GRANTS

"SEC. 309. (a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives:

"(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

"(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lake level rise.

"(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

"(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

"(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

"(6) Preparing and implementing special area management plans for important coastal areas.

"(7) Planning for the use of ocean resources.

"(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

"(b) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

"(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each propsoal in terms of benefits to the public.

"(d) Within 12 months following the date of enactment of this section, and consistent with the notice and participation requirements established in section 317, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

"(1) specific and detailed criteria that must be addressed by a coastal State (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives.

"(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal States; and

"(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

"(e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

"(f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

"(g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary

shall suspend the State's eligibility for further funding under this section for at least one year.".

SEC. 6211. TECHNICAL ASSISTANCE.

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 309 the following new section:

"TECHNICAL ASSISTANCE

"SEC. 310. (A) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

"(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

"(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

"(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.".

SEC. 6212. COASTAL ZONE MANAGEMENT REVIEW.

(a) PUBLIC PARTICIPATION.—Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

"(b) In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting

held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.".

(b) INTERIM SANCTIONS.—Subsection (c) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(c)) is amended to read as follows:

"(c)(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

"(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with—

"(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

"(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

"(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.".

(c) FINAL SANCTIONS.—Section 312(d) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(d)) is amended to read as follows:

"(d) The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).".

(d) REPEAL.—Subsection (f) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is repealed.

SEC. 6213. COASTAL ZONE MANAGEMENT AWARDS.

The Coastal Zone Management Act of 1972 is amended by inserting after section 313 the following:

"WALTER B. JONES EXCELLENCE IN COASTAL ZONE MANAGEMENT AWARDS

"SEC. 313. (a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308, implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

"(b) The Secretary shall elect annually—

"(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

"(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles emobied in this title; and

"(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

"(c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

"(d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

"(e) Using sums in the Coastal Zone Management Fund established under section 308, the Secretary shall establish and execute appropriate awards, to be known as the 'Walter B. Jones Awards', including—

"(1) cash awards in an amount not to exceed $5,000 each;

"(2) research grants; and

"(3) public ceremonies to acknowledge such awards.".

SEC. 6214. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) AMENDMENT TO SECTION HEADING.—The heading for section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) is amended by striking "RESERVE RESEARCH" and inserting in lieu thereof "RESEARCH RESERVE".

(b) GRANTS FOR ACQUISITION OF LANDS AND WATERS.—Section 315(e)(3)(A) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(3)(A)) is amended by striking "per centum" and inserting in lieu thereof "percent", and by striking "$4,000,000" and inserting in lieu thereof "$5,000,000".

(c) GRANTS FOR OPERATIONS AND EDUCATION.—Section 315(e)(3)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)(B)) is amended—

(1) by striking "50 per centum" and inserting in lieu thereof "70 percent"; and

(2) by inserting immediately before the period at the end the following: "; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System".

(d) CLERICAL AMENDMENT.—Section 315(e)(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461(e)) is amended by striking "of subsection (e)" each place it appears.

SEC. 6215. AUTHORIZATION OF APPROPRIATIONS.

Section 318(a) of the Coastal Zone Management Act of 1972 (16 U.S.C 1464) is amended by striking all after "Secretary—" and inserting in lieu thereof the following:

"(1) such sums, not to exceed $750,000 for each of the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1993, as may be necessary for grants under section 305, to remain available until expended;

"(2) such sums, not to exceed $42,000,000 for the fiscal year ending September 30, 1991, $48,890,000 for the fiscal year ending September 30, 1992, $58,870,000 for the fiscal year ending September 30, 1993, $67,930,000 for the fiscal year ending September 30, 1994, and $90,090,000 for the fiscal year

ending September 30, 1995, as may be necessary for grants under sections 306, 306A, and 309, to remain available until expended;

"(3) such sums, not to exceed $6,000,000 for the fiscal year ending September 30, 1991, $6,270,000 for the fiscal year ending September 30, 1992, $6,552,000 for the fiscal year ending September 30, 1993, $6,847,000 for the fiscal year ending September 30, 1994, and $7,155,000 for the fiscal year ending September 30, 1995, as may be necessary for grants under section 315, to remain available until expended; and

"(4) such sums, not to exceed $10,000,000 for each the fiscal years occurring during the period beginning October 1, 1990, and ending September 30, 1995, as may be necessary for activities under section 310 and for administrative expenses incident to the administration of this title; except that expenditures for such administrative expenses shall not exceed $5,000,000 in any such fiscal year.".

SEC. 6216. CONFORMING AMENDMENTS.

(a) Section 306a(b)(1) of the Coastal Zone Management of 1972 (16 U.S.C. 1455a(b)(1)) is amended by striking "306(c)(9)" and inserting in lieu thereof "306(d)(9)".

(b) Section 312(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458(a)) is amended by striking "through (I)" and inserting in lieu thereof "through (K)".

SEC. 6217. PROTECTING COASTAL WATERS.

(a) IN GENERAL.—

(1) PROGRAM DEVELOPMENT.—Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) PROGRAM COORDINATION.—A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972, as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act, as the program under that section relates to land and water uses affecting coastal waters.

(b) PROGRAM CONTENTS.—Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) IDENTIFYING CRITICAL COASTAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) MANAGEMENT MEASURES.—The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) TECHNICAL ASSISTANCE.—The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) PROGRAM SUBMISSION, APPROVAL, AND IMPLEMENTATION.—

(1) REVIEW AND APPROVAL.—Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) IMPLEMENTATION OF APPROVED PROGRAM.—If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through—

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972, as amended by this Act.

(3) WITHHOLDING COASTAL MANAGEMENT ASSISTANCE.—If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972, as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) WITHHOLDING WATER POLLUTION CONTROL ASSISTANCE.—If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) TECHNICAL ASSISTANCE.—The Secretary and the Administrator shall provide technical assistance to coastal State and local governments in developing and implementing programs under this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) INLAND COASTAL ZONE BOUNDARIES.—

(1) REVIEW.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972, and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) RECOMMENDATION.—If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972, the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) AMOUNT.—The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) STATE SHARE.—The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) ALLOCATION.—Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972, except that the Secretary may use not

more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) GUIDANCE FOR COASTAL NONPOINT SOURCE POLLUTION CONTROL.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) CONTENT.—Guidance under this subsection shall include, at a minimum—

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) PUBLICATION.—The Administrator, in consultation with the Secretary, shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) NOTICE AND COMMENT.—The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) MANAGEMENT MEASURES.—For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) AUTHORIZATIONS OF APPROPRIATIONS.—

(1) ADMINISTRATOR.—There is authorized to be appropriated to the Administrator for use for carrying out this section not

more than $1,000,000 for each of fisal years 1992, 1993, and 1994.

(2) SECRETARY.—(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972, as amended by this Act, not more than $1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

(i) $6,000,000 for fiscal year 1992;
(ii) $12,000,000 for fiscal year 1993;
(iii) $12,000,000 for fiscal year 1994; and
(iv) $12,000,000 for fiscal year 1995.

(i) DEFINITIONS.—In this section—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);

(3) each of the terms "coastal waters", and "coastal zone" has the meaning that term has in the Coastal Management Act of 1972;

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972;

(5) the term "land use" includes a use of waters adjacent to coastal waters; and

(6) the term "Secretary" means the Secretary of Commerce.

Subtitle D—Extension of Superfund for 3 years

SEC. 6301. 3-YEAR EXTENSION OF COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended—

(1) by inserting after "Reauthorization Act of 1986," in subsection (a) the following: "and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994,";

(2) by striking "5-fiscal-year period" in subsection (c)(11) and inserting "8-fiscal year period";

(3) by striking "and 1991" in subsection (c)(12) and inserting "1991, 1992, 1993, and 1994";

(4) by striking "1990 and 1991" in subsection (m) and inserting "1990, 1991, 1992, 1993, and 1994";

(5) by striking "and 1991" in subsection (n)(1) and inserting "1991, 1992, 1993, and 1994";

(6) by striking subsection (n)(2)(E) and inserting the following new subparagraph:

"(E) for each of the fiscal years 1991, 1992, 1993, and 1994, $35,000,000.";

(7) by striking "and 1991" in subsection (n)(3) and inserting "1991, 1992, 1993, and 1994"; and

(8) by inserting after subparagraph (E) of subsection (p)(1) the following new subparagraphs:

(F) For fiscal year 1992, $212,500,000.

(G) For fiscal year 1993, $212,500,000.

(H) For fiscal year 1994, $212,500,000.".

Subtitle E—Shale Oil Contract Modification

SEC. 6401. SHALE OIL CONTRACT MODIFICATION.

Section 7404(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by adding at the end the following sentence: "The Secretary of the Treasury shall have the authority to negotiate and excecute agreements modifying an existing contract relating to the production of synthetic crude oil from oil shale, entered into under the Defense Production Act Amendments of 1980 and subsequently transferred to the Secretary of the Treasury for administration, provided the terms and conditions of any modification(s) are revenue neutral or result in a fiscal savings to the United States Government, and in no event would increase the financial exposure of the United States Government under the contract: Provided, however, That the Secretary of the Treasury shall have no authority to increase the total amount of funds originally authorized for the existing contract: And provided further, That the Secretary shall have no authority to negotiate and execute any agreement modifying the existing contract if such modification(s) would increase or accelerate the financial support per unit for the synthetic fuel to be produced under the contract.".

Subtitle F—Environmental Protection Agency Fees

SEC. 6501. ENVIRONMENTAL PROTECTION AGENCY FEES.

(a) ASSESSMENT AND COLLECTION.—The Administrator of the Environmental Protection Agency shall, by regulation, assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Environment Protection Agency.

(b) AMOUNT OF FEES AND CHARGES.—Fees and charges assessed pursuant to this section shall be in such amounts as may be necessary to ensure that the aggregate amount of fees and charges collected pursuant to this section, in excess of the amount of fees and charges collected under current law—

(1) in fiscal year 1991, is not less than $28,000,000; and

(2) in each of fiscal years 1992, 1993, 1994, and 1995, is not less than $38,000,000.

(c) LIMITATION ON FEES AND CHARGES.—(1) The maximum aggregate amount of fees and charges in excess of the amounts being collected under current law which may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to the Federal Water Pollution Control Act is $10,000,000; and

(B) for services and activities in programs within the jurisdiction of the House Committee on Energy and Commerce and ad-

ministered by the Environmental Protection Agency through the Administrator, shall be limited to such sums collected as of the date of enactment of this Act pursuant to sections 26(b) and 305(e)(2) of the Toxic Substances Control Act, and such sums specifically authorized by the Clean Air Act Amendments of 1990.

(2) Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Environmental Protection Agency other than those specified subparagraphs (A) and (B) of paragraph (1).

(d) RULE OF CONSTRUCTION.—Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to the Independent Office Appropriations Act (31 U.S.C. 9701).

(e) USES OF FEES.—Fees and charges collected pursuant to this section shall be deposited into a special account for environmental services in the Treasury of the United States. Subject to appropriation Acts, such funds shall be available to the Environment Protection Agency to carry out the activities for which such fees and charges are collected. Such funds shall remain available until expended.

SEC. 6601. SHORT TITLE.

This subtitle may be cited as the "Pollution Prevention Act of 1990".

SEC. 6602. FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds that:

(1) The United States of America annually produces millions of tons of pollution and spends tens of billions of dollars per year controlling this pollution.

(2) There are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.

(3) The opportunities for source reduction are often not realized because existing regulations, and the industrial resources they require for compliance, focus upon treatment and disposal, rather than source reduction; existing regulations do not emphasize multi-media management of pollution; and businesses need information and technical assistance to overcome institutional barriers to the adoption of source reduction practices.

(4) Source reduction is fundamentally different and more desirable than waste management and pollution control. The Environmental Protection Agency needs to address the historical lack of attention to source reduction.

(5) As a first step in preventing pollution through source reduction, the Environmental Protection Agency must establish a source reduction program which collects and disseminates information, provides financial assistance to States, and implements the other activities provided for in this subtitle.

(b) POLICY.—The Congress hereby declares it to be the national policy of the United States that pollution should be prevented or re-

duced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

SEC. 6603. DEFINITIONS.

For purposes of this subtitle—

(1) The term "Administrator" means the Administrator of the Envirnmental Protection Agency.

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "toxic chemical" means any substance on the list described in section 313(c) of the Superfund Amendments and Reauthorization Act of 1986.

(4) The term "release" has the same meaning as provided by section 329(8) of the Superfund Amendments and Reauthorization Act of 1986.

(5)(A) The term "source reduction" means any practice which—

(i) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(B) The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) The term "multi-media" means water, air, and land.

(7) The term "SIC codes" refers to the 2-digit code numbers used for classification of economic activity in the Standard Industrial Classification Manual.

SEC. 6604. EPA ACTIVITIES.

(a) AUTHORITIES.—The Administrator shall establish in the Agency an office to carry out the functions of the Administrator under this subtitle. The office shall be independent of the Agency's single-medium program offices but shall have the authority to review and advise such offices on their activities to promote a multimedia approach to source reduction. The office shall be under the direction of such officer of the Agency as the Administrator shall designate.

(b) FUNCTIONS.—The Administrator shall develop and implement a strategy to promote source reduction. As part of the strategy, the Administrator shall—

(1) establish standard methods of measurement of source reduction;

(2) ensure that the Agency considers the effect of its existing and proposed programs on source reduction efforts and shall review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction;

(3) coordinate source reduction activities in each Agency Office and coordinate with appropriate offices to promote source reduction practices in other Federal agencies, and generic research and development on techniques and processes which have broad applicability;

(4) develop improved, methods of coordinating, streamlining and assuring public access to data collected under Federal environmental statutes;

(5) facilitate the adoption of source reduction techniques by businesses. This strategy shall include the use of the Source Reduction Clearinghouse and State matching grants provided in this subtitle to foster the exchange of information regarding source reduction techniques, the dissemination of such information to businesses, and the provision of technical assistance to businesses. The strategy shall also consider the capabilities of various businesses to make use of source reduction techniques;

(6) identify, where appropriate, measurable goals which reflect the policy of this subtitle, the tasks necessary to achieve the goals, dates at which the principal tasks are to be accomplished, required resources, organizational responsibilities, and the means by which progress in meeting the goals will be measured;

(8) establish an advisory panel of technical experts comprised of representatives from industry, the States, and public interest groups, to advise the Administrator on ways to improve collection and dissemination of data;

(9) establish a training program on source reduction opportunities, including workshops and guidance documents, for State and Federal permit issuance, enforcement, and inspection officials working within all agency program offices.

(10) identify and make recommendations to Congress to eliminate barriers to source reduction including the use of incentives and disincentives;

(11) identify opportunities to use Federal procurement to encourage source reduction;

(12) develop, test and disseminate model source reduction auditing procedures designed to highlight source reduction opportunities; and

(13) establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs.

SEC. 6605. GRANTS TO STATES FOR STATE TECHNICAL ASSISTANCE PROGRAMS.

(a) GENERAL AUTHORITY.—The Administrator shall make matching grants to States for programs to promote the use of source reduction techniques by businesses.

(b) CRITERIA.—When evaluating the requests for grants under this section, the Administrator shall consider, among other things, whether the proposed State program would accomplish the following:

(1) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to business seeking assistance and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques. Such training may be provided through local engineering schools or any other appropriate means.

(c) MATCHING FUNDS.—Federal funds used in any State program under this section shall provide no more than 50 per centum of the funds made available to a State in each year of that State's participation in the program.

(d) EFFECTIVENESS.—The Administrator shall establish appropriate means for measuring the effectiveness of the State grants made under this section in promoting the use of source reduction techniques by businesses.

(e) INFORMATION.—States receiving grants under this section shall make information generated under the grants available to the Administrator.

SEC. 6606. SOURCE REDUCTION CLEARINGHOUSE.

(a) AUTHORITY.—The Administrator shall establish a Source Reduction Clearinghouse to compile information including a computer data base which contains information on management, technical, and operational approaches to source reduction. The Administrator shall use the clearinghouse to—

(1) serve as a center for source reduction technology transfer;

(2) mount active outreach and education programs by the States to further the adoption of source reduction technologies; and

(3) collect and compile information reported by States receiving grants under section 6605 on the operation and success of State source reduction programs.

(b) PUBLIC AVAILABILITY.—The Administrator shall make available to the public such information on source reduction as is gathered pursuant to this subtitle and such other pertinent information and analysis regarding source reduction as may be available to the Administrator. The data base shall permit entry and retrieval of information to any person.

SEC. 6607. SOURCE REDUCTION AND RECYCLING DATA COLLECTION.

(a) REPORTING REQUIREMENTS.—Each owner or operator of a facility required to file an annual toxic chemical release form under section 313 of the Superfund Amendments and Reauthorization Act

of 1986 ("SARA") for any toxic chemical source reduction and recycling report for the preceeding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be reported in the annual toxic chemical release form filed by the owner or operator under section 313(c) of that Act. This section shall take effect with the annual report filed under section 313 for the first full calendar year beginning after the enactment of this subtitle.

(b) ITEMS INCLUDED IN REPORT.—The toxic chemical source reduction and recycling report required under subsection (a) shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment, or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (7). When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used.

(3) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Administrator finds other categories to be more appropriate.

(A) Equipment, technology, process, or procedure modifications.

(B) Reformulation or redesign of products.

(C) Substitution of raw materials.

(D) Improvement in management, training, inventory control, materials handling, or other general operational phases of industrial facilities.

(4) The amount expected to be reported under paragraphs (1) and (2) for the two calendar years immediately following the calendar year for which the report is filed. Such amout shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2).

(5) A ratio of production in the production year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some varable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical. The Administrator is encouraged to develop production indexes to accommodate individual industries for use on a voluntary basis.

(6) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal

audits, participative team management, and material balance audits. Each type of source reduction listed under paragraph (3) should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(7) The amount of any toxic chemical released into the environment which resulted from a castatrophic event, remedial action, or other one-time event, and is not associated with production processess during the reporting year.

(8) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year. For the first year of reporting under this subsection, comparison with the previous year is required only to the extent such information is available.

(c) SARA PROVISIONS.—The provisions of sections 322, 325(c), and 326 of the Superfund Amendments and Reauthorization Act of 1986 shall apply to the reporting requirements of this section in the same manner as to the reports required under section 313 of that Act. The Administrator may modify the form required for purposes of reporting information under section 313 of that Act to the extent he deems necessary to include the additional information required under this section.

(d) ADDITIONAL OPTIONAL INFORMATION.—Any person filing a report under this section for any year may include with the report additional information regarding source reduction, recycling, and other pollution control techniques in earlier years.

(e) AVAILABILITY OF DATA.—Subject to section 322 of the SuperFund Amendments and Reauthorization Act of 1986, the Administrator shall make data collected under this section publicly available in the same manner as the data collected under section 313 of the Superfund Amendments and Reauthorization Act of 1986.

SEC. 6608. EPA REPORT.

(a) BIENNIAL REPORTS.—The Administrator shall provide Congress with a report within eighteen months after enactment of this subtitle and biennially thereafter, containing a detailed description of the actions taken to implement the strategy to promote source reduction developed under section 4(b) and the results of such actions. The report shall include an assessment of the effectiveness of the clearinghouse and grant program established under this subtitle in promoting the goals of the strategy, and shall evaluate data gaps and data duplication with respect to data collected under Federal environmental statutes.

(b) SUBSEQUENT REPORTS.—Each biennial report submitted under subsection (a) after the first report shall contain each of the following:

(1) An analysis of the data collected under section 6607 on an industry-by-industry basis for not less than five SIC codes or other categories as the Administrator deems appropriate. The analysis shall begin with those SIC codes or other categories of facilities which generate the largest quantities of toxic chemical waste. The analysis shall include an evaluation of trends in source reduction by industry, firm size, production, or other useful means. Each such subsequent report shall cover five SIC

codes or other categories which were not covered in a prior report until all SIC codes or other categories have been covered.

(2) An analysis of the usefulness and validity of the data collected under section 6607 for measuring trends in source reduction and the adoption of source reduction by business.

(3) Identification of regulatory and nonregulatory barriers to source reduction, and of opportunities for using existing regulatory programs, and incentives and disincentives to promote and assist source reduction.

(4) Identification of industries and pollutants that require priority assistance in multi-media source reduction.

(5) Recommendations as to incentives needed to encourage investment and research and development in source reduction.

(6) Identification of opportunities and development of priorities for research and development in source reduction methods and techniques.

(7) An evaluation of the cost and technical feasibility, by industry and processes, of source reduction opportunities and current activities and an identification of any industries for which there are significant barriers to source reduction with an analysis of the basis of this identification.

(8) An evaluation of methods of coordinating, streamlining, and improving public access to data collected under Federal environmental statutes.

(9) An evaluation of data gaps and data duplication with respect to data collected under Federal environmental statutes.

In the report following the first biennial report provided for under this subsection, paragraphs (3) through (9) may be included at the discretion of the Administrator.

SEC. 6609. SAVINGS PROVISIONS.

(a) Nothing in this subtitle shall be construed to modify or interfere with the implementation of title III of the Superfund Amendments and Reauthorization Act of 1986.

(b) Nothing contained in this subtitle shall be construed, interpreted or applied to supplant, displace, preempt or otherwise diminish the responsibilities and liabilities under other State or Federal law, whether statutory or common.

SEC. 6610. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Administrator $8,000,000 for each of the fiscal years 1991, 1992 and 1993 for functions carried out under this subtitle (other than State grants), and $8,000,000 for each of the fiscal years 1991, 1992 and 1993, for grant programs to States issued pursuant to section 6605.

TITLE VII—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

Subtitle A—Civil Service

SEC. 7001. ELIMINATION OF LUMP-SUM RETIREMENT BENEFIT.

(a) LUMP-SUM BENEFIT.—(1) Sections 8343a and 8420a of title 5, United States Code, are each amended by adding at the end the following:

"(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

"(2) Nothing in this subsection shall prevent an election from being made by any individual—

"(A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding—

"(i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

"(ii) the Vice President;

"(iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

"(iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

"(v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

"(vi) any individual holding a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

"(B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

"(3) This subsection shall cease to be effective as of October 1, 1995.".

(2) Section 4005 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2135) is amended—

(A) in subsection (a), by striking "October 1, 1990." and inserting "December 2, 1990."; and

(B) by adding at the end the following:

"(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would

not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

"(1) paragraph (2)(A) thereof; or

"(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990.".

(C)(i) Section 6001(b)(2) of the Omnibus Budget Reconciliation Act of 1987 (5 U.S.C. 8343a note) and section 4005(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2135) are each amended by striking "described in paragraph (1)." and inserting "on which the payment described in paragraph (1) is paid.".

(ii) The amendments made by clause (i) shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act.

(D) Section 2 of Public Law 101-227 (103 Stat. 1943) is repealed.

(3) Section 8348(a)(1)(B) of title 5, United States Code, is amended by inserting "in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law)," before "and in withholding".

(4)(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to "December 1, 1990" shall be deemed to read "December 1, 1991".

(B) This paragraph applies with respect to any individual who—

(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672, 673, 673b, 674, 675, or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.

(b) PRIOR REFUNDS.—(1) Section 8334(d) of title 5, United States Code, is amended—

(A) by striking "(d)" and inserting "(d)(1)"; and

(B) by adding at the end the following:

"(2)(A) This paragraph applies with respect to any employee or Member who—

"(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

"(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

"(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

"(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

"(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.".

(2)(A) Section 8334 of title 5, United States Code, is amended in paragraphs (1) and (2) of subsection (e), and in subsection (h), by striking "(d)," and inserting "(d)(1),".

(B) Section 8334(f) and section 8339(i)(1) of title 5, United States Code, are amended by striking "(d)" and inserting "(d)(1)".

(C) Section 8339(e) of title 5, United States Code, is amended by striking "8334(d)" and inserting "8334(d)(1)".

(D) The second sentence of section 8342(a) of title 5, United States Code, is amended by inserting "or 8334(d)(2)" after "8343a".

(3) The amendments made by this subsection shall be effective with respect to any annuity having a commencement date later than December 1, 1990.

SEC. 7002. REFORMS IN THE HEALTH BENEFITS PROGRAM.

(a) HOSPITALIZATION-COST-CONTAINMENT MEASURES.—Section 8902 of title 5, United States Code, is amended by adding at the end the following:

"(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier—

"(1) to implement hospitalization-cost-containment measures, such as measures—

"(A) for verifying the medical necessity of any proposed treatment or surgery;

"(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

"(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

"(D) involving case management, if the circumstances so warrant; and

"(2) to establish incentives to encourage compliance with measures under paragraph (1).".

(b) IMPROVED CASH MANAGEMENT.—Section 8909(a) of title 5, United States Code, is amended by adding at the end (as a flush left sentence) the following:

"Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).".

(c) EXEMPTION FROM STATE PREMIUM TAXES.—Section 8909 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

"(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.".

(d) IMPROVED COORDINATION WITH MEDICARE.—Section 8910 of title 5, United States Code, is amended by adding at the end the following:

"(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.".

(e) AMENDMENTS TO PUBLIC LAW 101-76.—Public Law 101-76 (103 Stat. 556) is amended—

(1) in subsection (a)(1), by striking "contract year 1990 or 1991," and inserting "each of contract years 1990 through 1993 (inclusive),"; and

(2) in subsection (c), by striking "contract year 1991," and inserting "a contract year (or any period thereafter),".

(f) APPLICATION OF CERTAIN MEDICARE LIMITS TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER.—(1) Section 8904 of title 5, United States Code, is amended by inserting "(a)" before the first sentence and by adding at the end of the section the following new subsection:

"(b)(1) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under

this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sections 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

"(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

"(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

"(B) For purposes of this paragraph, the term 'Medicare program information' includes the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc).".

(2) The amendments made by this subsection shall apply with respect to contract years beginning on or after January 1, 1992.

(g) EFFECTIVE DATE.—Except as provided in subsection (f), the amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1991.

Subtitle B—Postal Service

SEC. 7101. FUNDING OF COLAS FOR POSTAL SERVICE ANNUITANTS AND SURVIVOR ANNUITANTS.

(a) EXPANDED SCOPE OF COVERAGE; CHANGE IN PRORATION RULE.—Section 8348(m)(1) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) REPEAL OF PROVISION RELATING TO CERTAIN EARLIER COLAS.—Section 4002(b) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239; 103 Stat. 2134) is repealed.

(c) PROVISION RELATING TO PRE-1991 COLAS.—(1) For the purpose of this subsection—

(A) the term "pre-1991 COLA" means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)-(N) of paragraph (3);

(B) the term "post-1990 fiscal year" means a fiscal year after fiscal year 1990; and

(C) the term "pre-1991 fiscal year" means a fiscal year before fiscal year 1991.

(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect, subject to section 7104.

(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to—

(A) $6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

(B) $7,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1978;

(C) $10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

(D) $20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

(E) $26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

(F) $28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

(G) $30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

(H) $5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

(I) $19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

(J) $7,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1986;

(K) $8,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

(L) $36,800,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

(M) $51,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

(N) $63,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on October 1, 1990.

SEC. 7102. FUNDING OF HEALTH BENEFITS FOR POSTAL SERVICE RETIREES AND SURVIVORS OF POSTAL SERVICE EMPLOYEES OR RETIREES.

(a) EXPANDED SCOPE OF COVERAGE.—Section 8906(g)(2) of title 5, United States Code, is amended by striking "October 1, 1986," each place it appears and inserting "July 1, 1971,".

(b) CONTRIBUTIONS TO BE PRORATED.—Section 8906(g)(2) of title 5, United States Code, as amended by subsection (a), is further amended—

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

(2) by adding at the end the following:

"(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.

SEC. 7103. PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987.

(a) DEFINITION.—For the purpose of this section, the term "pre-1987 fiscal year" means a fiscal year before fiscal year 1987.

(b) FOR PAST RETIREMENT COLAS.—As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 7101) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund—

(1) $216,000,000, not later than September 30, 1991;

(2) $266,000,000, not later than September 30, 1992;

(3) $316,000,000, not later than September 30, 1993;

(4) $416,000,000, not later than September 30, 1994; and

(5) $471,000,000, not later than September 30, 1995.

(c) FOR PAST HEALTH BENEFITS.—As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 7102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund—

(1) $56,000,000, not later than September 30, 1991;

(2) $47,000,000, not later than September 30, 1992;

(3) $62,000,000, not later than September 30, 1993;

(4) $56,000,000, not later than September 30, 1994; and

(5) $234,000,000, not later than September 30, 1995.

Subtitle C—Miscellaneous

SEC. 7201. COMPUTER MATCHING OF FEDERAL BENEFITS INFORMATION AND PRIVACY PROTECTION.

(a) SHORT TITLE.—This section may be cited as the "Computer Matching and Privacy Protection Amendments of 1990".

(b) VERIFICATION REQUIREMENTS AMENDMENT.—(1) Subsection (p) of section 552a of title 5, United States Code, is amended to read as follows:

"(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

"(A)(i) the agency has independently verified the information; or

"(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

"(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

"(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

"(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

"(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

"(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

"(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

"(A) the amount of any asset or income involved;

"(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

"(C) the period or periods when the individual actually had such asset or income.

"(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be ad-

versely affected or significantly threatened during any notice period required by such paragraph.".

(2) Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act.

(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT.—Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2, shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of—

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under section 2(b).

SEC. 7202. PORTABILITY OF BENEFITS FOR EMPLOYEES CONVERTING TO THE CIVIL SERVICE SYSTEM.

(a) SHORT TITLE.—This section may be cited as the "Portability of Benefits for Nonappropriated Fund Employees Act of 1990".

(b) DEFINITIONAL AMENDMENT.—Section 2105(c) of title 5, United States Code, is amended—

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

"(1) laws administered by the Office of Personnel Management, except—

"(A) section 7204;

"(B) as otherwise specifically provided in this title;

"(C) the Fair Labor Standards Act of 1938; or

"(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or"; and

(2) in paragraph (2), by striking "chapter 84" and inserting "chapter 84 (except to the extent specifically provided therein)".

(c) AMENDMENT RELATING TO ORDER OF RETENTION.—Section 3502(a)(C) of title 5, United States Code, is amended to read as follows:

"(C) is entitled to credit for—

"(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(d) AMENDMENT RELATING TO PAY ON A CHANGE OF POSITION.—Section 5334 of title 5, United States Code, is amended by adding at the end the following:

"(g) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c). In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.".

(e) AMENDMENT RELATING TO PERIODIC STEP INCREASES.—Section 5335 of title 5, United States Code, is amended by adding at the end the following:

"(g) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.".

(f) AMENDMENT RELATING TO GRADE AND PAY RETENTION.—Section 5365(b) of title 5, United States Code, is amended by adding at the end, as a flush left sentence, the following:

"Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).".

(g) AMENDMENT RELATING TO PAY FOR ACCUMULATED AND ACCRUED LEAVE.—Section 5551(a) of title 5, United States Code, is amended by adding at the end the following new sentence: "For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).".

(h) AMENDMENTS RELATING TO TRANSFERS BETWEEN POSITIONS UNDER DIFFERENT LEAVE SYSTEMS.—Section 6308 of title 5, United States Code, is amended—

(1) by inserting "(a)" before "The annual"; and

(2) by adding at the end the following:

"(b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.".

(i) AMENDMENTS TO INCLUDE ADDITIONAL SERVICE FOR LEAVE ACCRUAL PURPOSES.—(1) Section 6312 is amended to read as follows:

"§ 6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees

"(a) Credit shall be given in determining years of service for the purpose of section 6303(a) for—

"(1) service as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or an association of producers described in section 10(b) of the Agricultural Adjustment Act; and

"(2) service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) by an employee who has moved without a break in service of more than 3 days to a position subject to this subchapter in the Department of Defense or the Coast Guard, respectively.

"(b) The provisions of subsections (a) and (b) of section 6308 for transfer of leave between leave systems shall apply to the leave systems established for such county office employees and employees of such Department of Defense and Coast Guard nonappropriated fund instrumentalities, respectively.".

(2) The item relating to section 6312 in the table of sections for chapter 63 of title 5, United States Code, is amended to read as follows:

"6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees.".

(j) AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1) Section 8331 of title 5, United States Code, is amended—

(A) by striking "and" at the end of paragraph (1)(J);

(B) by inserting "and" after the semicolon at the end of paragraph (1)(K);

(C) by inserting after paragraph (1)(K) the following:

"(L) an employee described in section 2105(c) who has made an election under section 8347(p)(1) to remain covered under this subchapter;";

(D) in paragraph (1)(ii), by striking the matter following "Government employees" through the semicolon and inserting "(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c));"; and

(E) in paragraph (7), by striking "and Gallaudet College;" and inserting "Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8347 of title 5, United States Code, is amended by adding at the end the following:

"(p)(1) Under regulations prescribed by the Office of Personnel Management, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this subchapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c); and

"(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.".

(k) AMENDMENTS RELATING TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—(1) Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (11)—

(i) by striking "and" at the end of subparagraph (A);

(ii) by inserting "and" after the semicolon at the end of subparagraph (B);

(iii) by inserting after subparagraph (B) the following:

"(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;";

(iv) by striking "or" at the end of clause (ii);

(v) by inserting "or" after the semicolon at the end of clause (iii); and

(vi) by inserting after clause (iii) the following:

"(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);"; and

(B) in paragraph (15), by striking "and Gallaudet College;" and inserting ", Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);".

(2) Section 8461 of title 5, United States Code, is amended by adding at the end the following:

"(n)(1) Under regulations prescribed by the Office, an employee of the Department of Defense or the Coast Guard who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) has 5 or more years of civilian service creditable under this chapter; and

"(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

"(2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), who—

"(A) has not previously made or had an opportunity to make an election under this subsection;

"(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term 'vested participant' is defined by such system;

"(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described by section 2105(c); and

"(D) is not eligible to make an election under section 8347(p),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or

most recent employment described by section 2105(c) rather than be subject to this chapter.".

(l) AMENDMENTS RELATING TO HEALTH BENEFITS.—Section 8901(3)(A) of title 5, United States Code, is amended—

(1) by striking "or" at the end of clause (ii);

(2) by inserting "or" after the semicolon at the end of clause (iii); and

(3) by inserting after clause (iii) the following:

"(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(p)(2) or 8461(n)(2) to remain subject to such a system;".

(m) APPLICABILITY.—(1) The amendments made by this section shall apply with respect to any individual who, on or after January 1, 1987—

(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act, receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section shall complete such election within 180 days after the date of enactment of this Act.

(n) CLARIFYING PROVISIONS RELATING TO TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM.—(1) For the purpose of this section, the term "nonappropriated fund instrumentality" means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

(2)(A) If an individual makes an election under section 8347(p)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment

of this Act, becomes eligible to make an election under section 8347(p)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

(4) If an individual makes an election under section 8347(p)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.

Subtitle D—Coordination

SEC. 7301. COORDINATION.

For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987, this title and the amendments made by this title shall be considered an exception under subsection (b) of such section.

TITLE VIII—VETERANS' PROGRAMS

TABLE OF CONTENTS

Subtitle A—Compensation, DIC, and Pension

SEC. 8001. LIMITATION ON COMPENSATION BENEFITS FOR CERTAIN INCOMPETENT VETERANS.

(a) IN GENERAL.—(1) Chapter 55 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3205. Limitation on compensation payments for certain incompetent veterans

"(a) In any case in which a veteran having neither spouse, child, nor dependent parent is rated by the Secretary in accordance with regulations as being incompetent and the value of the veteran's estate (excluding the value of the veteran's home) exceeds $25,000, further payment of compensation to which the veteran would otherwise be entitled may not be made until the value of such estate is reduced to less than $10,000.

"(b)(1) Subject to paragraph (2) of this subsection, if a veteran denied payment of compensation pursuant to subsection (a) is subsequently rated as being competent, the Secretary shall pay to the veteran a lump sum equal to the total of the compensation which was denied the veteran pursuant to such paragraph. The Secretary shall make the lump-sum payment as soon as practicable after the end of the 90-day period beginning on the date of the competency rating.

"(2) A lump-sum payment may not be made under paragraph (1) to a veteran who, within such 90-day period, dies or is again rated by the Secretary as being incompetent.

"(3) The costs of administering this subsection shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(c) This section expires on September 30, 1992.".

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

"3205. Limitation on compensation payments for certain incompetent veterans."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to payment of compensation for months after October 1990.

SEC. 8002. ELIMINATION OF PRESUMPTION OF TOTAL DISABILITY IN DETERMINATION OF PENSION FOR CERTAIN VETERANS.

(a) ELIMINATION OF PRESUMPTION.—That portion of subsection (a) of section 502 of title 38, United States Code, preceding paragraph (1) is amended to read as follows:

"(a) For the purposes of this chapter, a person shall be considered to be permanently and totally disabled if such a person is unemployable as a result of disability reasonably certain to continue throughout the life of the disabled person, or is suffering from—".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to claims filed after October 31, 1990.

SEC. 8003. REDUCTION IN PENSION FOR CERTAIN VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE.

(a) IN GENERAL.—Section 3203 of title 38, United States Code, is amended by adding at the end the following:

"(f)(1) For the purposes of this subsection—

"(A) the term 'Medicaid plan' means a State plan for medical assistance referred to in section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)); and

"(B) the term 'nursing facility' means a nursing facility described in section 1919 of such Act (42 U.S.C. 1396r).

"(2) If a veteran having neither spouse nor child is covered by a Medicaid plan for services furnished such veteran by a nursing facility, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the month of admission to such nursing facility.

"(3) Notwithstanding any provision of title XIX of the Social Security Act, the amount of the payment paid a nursing facility pursuant to a Medicaid plan for services furnished a veteran may not be reduced by any amount of pension permitted to be paid such veteran under paragraph (2) of this subsection.

"(4) A veteran is not liable to the United States for any payment of pension in excess of the amount permitted under this subsection that is paid to or for the veteran by reason of the inability or failure of the Secretary to reduce the veteran's pension under this subsection unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make a reduction in pension under this subsection.

"(5) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

"(6) This subsection expires on September 30, 1992.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 1, 1990, or the date of the enactment of this Act, whichever is later.

SEC. 8004. INELIGIBILITY OF REMARRIED SURVIVING SPOUSES OR MARRIED CHILDREN FOR REINSTATEMENT OF BENEFITS ELIGIBILITY UPON BECOMING SINGLE.

(a) IN GENERAL.—Section 103 of title 38, United States Code, is amended—

(1) in subsection (d)—
(A) by striking out "(1)"; and
(B) by striking out paragraphs (2) and (3); and
(2) in subsection (e)—
(A) by striking out "(1)"; and
(B) by striking out paragraph (2).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to claims filed after October 31, 1990, and shall not operate to reduce or terminate benefits to any individual whose benefits were predicated on section 103(d)(2), 103(d)(3), or 103(e)(2) before the effective date of those amendments.

SEC. 8005. COST-OF-LIVING INCREASES IN COMPENSATION RATES.

(a) POLICY REGARDING FISCAL YEAR 1991.—The fiscal year 1991 cost-of-living adjustments in the rates of compensation payable under chapter 11 of title 38, United States Code, and of the dependency and indemnity compensation payable under chapter 13 of such title will be no more than a 5.4 percent increase, with all increased monthly rates rounded down to the next lower dollar. The effective date for such adjustments will not be earlier than January 1, 1991.

(b) INCREASE PAYABLE AS OF JANUARY 1992.—The amount of compensation or dependency and indemnity compensation payable to any individual for the month of January 1992 who is entitled to such benefits as of January 1, 1992, shall be increased for such month by the amount equal to the amount of the monthly increase provided for that individual's benefit level as of January 1, 1991, pursuant to the adjustments described in subsection (a).

Subtitle B—Health-Care Benefits

SEC. 8011. MEDICAL-CARE COST RECOVERY.

(a) APPLICABILITY.—Section 629(a)(2) of title 38, United States Code, is amended—
(1) by striking out "or" at the end of clause (C);
(2) by striking out the period at the end of clause (D) and inserting in lieu thereof "; or"; and
(3) by adding at the end the following new clause:
"(E) for which care and services are furnished before October 1, 1993, under this chapter to a veteran who—
"(i) has a service-connected disability; and
"(ii) is entitled to care (or payment of the expenses of care) under a health-plan contract.".

(b) MAXIMUM AMOUNT RECOVERABLE.—Clause (B) of section 629(c)(2) of such title is amended by striking out "in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with" and inserting in lieu thereof "if provided by".

(c) ESTABLISHMENT OF MEDICAL-CARE COST RECOVERY FUND.—Section 629(g) of such title is amended to read as follows:

"(g)(1) There is established in the Treasury a fund to be known as the Department of Veterans Affairs Medical-Care Cost Recovery Fund (hereafter referred to in this section as the 'Fund').

"(2) Amounts recovered or collected under this section shall be deposited in the Fund.

"(3) Sums in the Fund shall be available to the Secretary for the following:

"(A) Payment of necessary expenses for the identification, billing, and collection of the cost of care and services furnished under this chapter, and for the administration and collection of payments required under section 610(f) of this title for hospital care or nursing home care, under section 612(f) of this title for medical services, and under section 622A of this title for medications, including—

"(i) the costs of computer hardware and software, word processing and telecommunications equipment, other equipment, supplies, and furniture;

"(ii) personnel training and travel costs;

"(iii) personnel and administrative costs for attorneys in the Office of General Counsel of the Department and for support personnel of such office;

"(iv) other personnel and administrative costs; and

"(v) the costs of any contract for identification, billing, or collection services.

"(B) Payment of the Secretary for reasonable charges, as determined by the Secretary, imposed for (i) services and utilities (including light, water, and heat) furnished by the Secretary, (ii) recovery and collection activities under this section, and (iii) administration of the Fund.

"(4) Not later than January 1 of each year, there shall be deposited into the Treasury as miscellaneous receipts an amount equal to the amount of the unobligated balance remaining in the Fund at the close of business on September 30 of the preceding year minus any part of such balance that the Secretary determines is necessary in order to enable the Secretary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs described in paragraph (3).".

(d) TRANSFER TO FUND.—

(1) AMOUNT TO BE TRANSFERRED.—The Secretary of the Treasury shall transfer $25,000,000 from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the Department of Veterans Affairs Medical-Care Cost Recovery Fund established by section 629(g) of title 38, United States Code (as amended by subsection (c)). The amount so transferred shall be available until the end of September 30, 1991, for the support of the equivalent of 800 full-time employees and other expenses described in paragraph (3) of such section.

(2) REIMBURSEMENT OF LOAN GUARANTY REVOLVING FUND.—Notwithstanding section 629(g) of title 38, United States Code (as amended by subsection (c)), the first $25,000,000 recovered or collected by the Department of Veterans Affairs during fiscal year 1991 as a result of third-party medical recovery activities shall be credited to the Department of Veterans Affairs Loan Guaranty Revolving Fund.

(3) THIRD-PARTY MEDICAL RECOVERY ACTIVITIES DEFINED.—For the purposes of this subsection, the term "third-party medi-

cal recovery activities" means recovery and collection activities carried out under section 629 of title 38, United States Code.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 1, 1990.

SEC. 8012. COPAYMENT FOR MEDICATIONS.

(a) COPAYMENT REQUIRED.—(1) Subchapter III of chapter 17 of title 38, United States Code, is amended by inserting after section 622 the following new section:

"§ 622A. Copayment for medications

"(a)(1) Subject to paragraph (2), the Secretary shall require a veteran (other than a veteran with a service-connected disability rated 50 percent or more) to pay the United States $2 for each 30-day supply of medication furnished such veteran under this chapter on an outpatient basis for the treatment of a non-service-connected disability or condition. If the amount supplied is less than a 30-day supply, the amount of the charge may not be reduced.

"(2) The Secretary may not require a veteran to pay an amount in excess of the cost to the Secretary for medication described in paragraph (1).

"(b) Amounts collected under this section shall be deposited in the Department of Veterans Affairs Medical-Care Cost Recovery Fund.

"(c) The provisions of subsection (a) expire on September 30, 1991.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 622 the following new item:

"622A. Copayment for medications.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to medication furnished to a veteran after October 31, 1990, or the date of the enactment of this Act, whichever is later.

SEC. 8013. MODIFICATION OF HEALTH-CARE CATEGORIES AND COPAYMENTS.

(a) INPATIENT CARE.—(1) Subsection (a) of section 610 of title 38, United States Code, is amended—

(A) in paragraph (1)(I), by striking out "622(a)(1)" and inserting in lieu thereof "622(a)"; and

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

"(2) In the case of a veteran who is not described in paragraph (1) of this subsection, the Secretary may, to the extent resources and facilities are available, furnish hospital care and nursing home care to a veteran which the Secretary determines is needed for a nonservice-connected disability, subject to the provisions of subsection (f) of this section.".

(2) Subsection (f) of such section is amended—

(A) by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(f)(1) The Secretary may not furnish hospital care or nursing home care under this section to a veteran who is eligible for such care under subsection (a)(2) of this section unless the veteran agrees

to pay to the United States the applicable amount determined under paragraph (2) of this subsection.

"(2) A veteran who is furnished hospital care or nursing home care under this section and who is required under paragraph (1) of this subsection to agree to pay an amount to the United States in order to be furnished such care shall be liable to the United States for an amount equal to—

"(A) the lesser of—

"(i) the cost of furnishing such care, as determined by the Secretary; or

"(ii) the amount determined under paragraph (3) of this subsection; and

"(B) an amount equal to $10 for every day the veteran receives hospital care and $5 for every day the veteran receives nursing home care."; and

(B) in subparagraphs (A) and (B) of paragraph (3), by striking out "(2)(B)" each place it appears and inserting in lieu thereof "(2)(A)(ii)".

(b) OUTPATIENT CARE.—Subsection (f) of section 612 of such title is amended—

(1) in paragraph (1), by striking out "610(a)(2)(B)" and inserting in lieu thereof "610(a)(2)";

(2) by redesignating paragraphs (5) and (7) as (3) and (4), respectively; and

(3) by striking paragraphs (3), (4), and (6).

(c) INCOME THRESHOLDS.—(1) Subsection (a) of section 622 of such title is amended—

(A) in paragraph (1)—

(i) by striking out "(1)" at the beginning of the subsection;

(ii) by redesignating clauses (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(iii) by striking out "Category A threshold" in paragraph (3), as so redesignated, and inserting in lieu thereof "amount set forth in subsection (b)";

(B) by striking out paragraph (2).

(2) Subsection (b) of such section is amended to read as follows:

"(b)(1) For purposes of subsection (a)(3), the income threshold for the calendar year beginning on January 1, 1990, is—

"(A) $17,240 in the case of a veteran with no dependents; and

"(B) $20,688 in the case of a veteran with one dependent, plus $1,150 for each additional dependent.

"(2) For a calendar year beginning after December 31, 1990, the amounts in effect for purposes of this subsection shall be the amounts in effect for the preceding calendar year as adjusted under subsection (c) of this section.".

(3) Subsection (c) of such section is amended by striking out "paragraphs (1) and (2) of".

(4) Paragraph (2) of subsection (d) of such section is amended to read as follows:

"(2) A determination described in this paragraph is a determination that for purposes of subsection (a)(3) of this section a veteran's attributable income is not greater than the amount determined under subsection (b) of this section.".

(5) Subsection (e) of such section is amended—

(A) in paragraph (1), by striking out "the Category A threshold or the Category B threshold, as appropriate" and inserting in lieu thereof "the amount determined under subsection (b) of this section"; and

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

"(2) A veteran is described in this paragraph for the purposes of subsection (a) of this section if—

"(A) the veteran has an attributable income greater than the amount determined under subsection (b) of this section; and

"(B) the current projections of such veteran's income for the current year are that the veteran's income for such year will be substantially below the amount determined under subsection (b).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to hospital care and medical services received after October 31, 1990, or the date of the enactment of this Act, whichever is later.

(e) SUNSET.—The amendments made by this section expire on September 30, 1991.

Subtitle C—Education and Employment

SEC. 8021. LIMITATION OF REHABILITATION PROGRAM ENTITLEMENT TO SERVICE-DISABLED VETERANS RATED AT 20 PERCENT OR MORE.

(a) IN GENERAL.—Section 1502(1) of title 38, United States Code, is amended by inserting "at a rate of 20 percent or more" after "compensable" both places it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to veterans and other persons originally applying for assistance under chapter 31 of title 38, United States Code, on or after November 1, 1990.

Subtitle D—Housing and Loan Guaranty Assistance

SEC. 8031. ELECTION OF CLAIM UNDER GUARANTY OF MANUFACTURED HOME LOANS.

(a) IN GENERAL.—Paragraph (3) of section 1812(c) of title 38, United States Code, is amended to read as follows:

"(3)(A) The Secretary's guaranty may not exceed the lesser of (i) the lesser of $20,000 or 40 percent of the loan, or (ii) the maximum amount of the guaranty entitlement available to the veteran as specified in paragraph (4) of this subsection.

"(B) A claim under the Secretary's guaranty shall, at the election of the holder of a loan, be made by the filing of an accounting with the Secretary—

"(i) within a reasonable time after the receipt by such holder of an appraisal by the Secretary of the value of the security for the loan; or

"(ii) after liquidation of the security for the loan.

"(C) If the holder of a loan applies for payment of a claim under clause (i) of subparagraph (B) of this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the amount of the appraisal referred to in such clause; or

"(ii) the amount equal to the guaranty under this section.

"(D) If the holder of a loan files for payment of a claim under clause (ii) of subparagraph (B) this paragraph, the amount of such claim payable by the Secretary shall be the lesser of—

"(i) the amount equal to the excess, if any, of the total indebtedness over the greater of the value of the property securing the loan, as determined by the Secretary, or the amount of the liquidation or resale proceeds; or

"(ii) the amount equal to the guaranty under this section.

"(E) In any accounting filed pursuant to subparagraph (B)(ii) of this subsection, the Secretary shall permit to be included therein accrued unpaid interest from the date of the first uncured default to such cutoff date as the Secretary may establish, and the Secretary shall allow the holder of the loan to charge against the liquidation or resale proceeds accrued interest from the cutoff date established to such further date as the Secretary may determine and such costs and expenses as the Secretary determines to be reasonable and proper.

"(F) The liability of the United States under the guaranty provided for by this paragraph shall decrease or increase pro rata with any decrease or increase of the amount of the unpaid portion of the obligation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to claims filed with the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

SEC. 8032. LOAN FEE.

Section 1829(a) of title 38, United States Code, is amended—

(1) in paragraph (2), by striking out "The amount" and inserting in lieu thereof "Except as provided in paragraph (6) of this subsection, the amount"; and

(2) by adding at the end the following:

"(6) With respect to each loan closed during the period beginning on November 1, 1990, and ending on September 30, 1991, each amount specified in paragraph (2) of this subsection shall be increased by 0.625 percent of the total loan amount.".

Subtitle E—Burial and Grave Marker Benefits

SEC. 8041. HEADSTONE OR MARKER ALLOWANCE.

(a) IN GENERAL.—Section 906 of title 38, United States Code, is amended—

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

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

(b) EFFECTIVE DATE.—This section shall apply to deaths occurring on or after November 1, 1990.

SEC. 8042. PLOT ALLOWANCE ELIGIBILITY.

(a) In General.—Section 903(b)(2) of title 38, United States Code, is amended by inserting "(other than a veteran whose eligibility for benefits under this subsection is based on being a veteran of any war)" after "(2) if such veteran".

(b) Effective Date.—This section shall apply to deaths occurring on or after November 1, 1990.

Subtitle F—Miscellaneous

SEC. 8051. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) DISCLOSURE OF TAX INFORMATION.—(1) Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended—

(A) by striking out "and" at the end of clause (vi);

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

(C) by adding at the end the following:

"(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of such title; and

"(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). Clause (viii) shall not apply after September 30, 1992."

(2) The heading of paragraph (7) of section 6103(l) of such Code is amended by striking out "OR THE FOOD STAMP ACT OF 1977" and inserting in lieu thereof ", THE FOOD STAMP ACT OF 1977, OR TITLE 38, UNITED STATES CODE".

(b) USE OF INCOME INFORMATION FOR NEEDS-BASED PROGRAMS.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Use of income information from other agencies: notice and verification

"(a) The Secretary shall notify each applicant for a benefit or service described in subsection (c) of this section that income information furnished by the applicant to the Secretary may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under

section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. The Secretary shall periodically transmit to recipients of such benefits and services additional notifications of such matters.

"(b) The Secretary may not, by reason of information obtained from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, terminate, deny, suspend, or reduce any benefit or service described in subsection (c) of this section until the Secretary takes appropriate steps to verify independently information relating to the following:

"(1) The amount of the asset or income involved.

"(2) Whether such individual actually has (or had) access to such asset or income for the individual's own use.

"(3) The period or periods when the individual actually had such asset or income.

"(c) The benefits and services described in this subsection are the following:

"(1) Needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Secretary.

"(2) Parents' dependency and indemnity compensation provided under section 415 of this title.

"(3) Health-care services furnished under sections 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of this title.

"(4) Compensation paid under chapter 11 of this title at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

"(d) In the case of compensation described in subsection (c)(4) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment information referred to in subsection (b) of this section only if the Secretary finds that the amount and duration of the earnings reported in that information clearly indicate that the individual may no longer be qualified for a rating of total disability.

"(e) The Secretary shall inform the individual of the findings made by the Secretary on the basis of verified information under subsection (b) of this section, and shall give the individual an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility for the benefit or service involved.

"(f) The Secretary shall pay the expenses of carrying out this section from amounts available to the Department for the payment of compensation and pension.

"(g) The authority of the Secretary to obtain information from the Secretary of the Treasury or the Secretary of Health and Human Services under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 expires on September 30, 1992.".

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

"3117. Use of income information from other agencies: notice and verification.".

(c) NOTICE TO CURRENT BENEFICIARIES.—(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the en-

actment of this Act) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 (as added by subsection (a)).

(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.

(d) GAO STUDY.—The Comptroller General of the United States shall conduct a study of the effectiveness of the amendments made by this section and shall submit a report on such study to the Committees on Veterans' Affairs and Ways and Means of the House of Representatives and the Committees on Veterans' Affairs and Finance of the Senate not later than January 1, 1992.

SEC. 8052. LINE OF DUTY.

(a) ELIMINATION OF COMPENSATION IN CERTAIN CASES.—Title 38, United States Code, is amended—

(1) in section 105(a), by striking out "the result of the person's own willful misconduct" in the first sentence and inserting in lieu thereof "a result of the person's own willful misconduct or abuse of alcohol or drugs";

(2) in section 310, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs"; and

(3) in section 331, by striking out "the result of the veteran's own willful misconduct" and inserting in lieu thereof "a result of the veteran's own willful misconduct or abuse of alcohol or drugs".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to claims filed after October 31, 1990.

SEC. 8053. REQUIREMENT FOR CLAIMANTS TO REPORT SOCIAL SECURITY NUMBERS; USES OF DEATH INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) MANDATORY REPORTING OF SOCIAL SECURITY NUMBERS.—Section 3001 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(c)(1) Any person who applies for or is in receipt of any compensation or pension benefit under laws administered by the Secretary shall, if requested by the Secretary, furnish the Secretary with the social security number of such person and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, such person applies for or is in receipt of such benefit. A person is not required to furnish the Secretary with a social security number for any person to whom a social security number has not been assigned.

"(2) The Secretary shall deny the application of or terminate the payment of compensation or pension to a person who fails to furnish the Secretary with a social security number required to be furnished pursuant to paragraph (1) of this subsection. The Secretary may thereafter reconsider the application or reinstate payment of compensation or pension, as the case may be, if such person furnishes the Secretary with such social security number.

"(3) The costs of administering this subsection shall be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.".

(b) REVIEW OF DEPARTMENT OF HEALTH AND HUMAN SERVICES DEATH INFORMATION TO IDENTIFY DECEASED RECIPIENTS OF COMPENSATION AND PENSION BENEFITS.—(1) Chapter 53 of title 38, United States Code, as amended by section 8051(b), is further amended by adding at the end the following new section:

"§ 3118. Review of Department of Health and Human Services death information

"(a) The Secretary shall periodically compare Department of Veterans Affairs information regarding persons to or for whom compensation or pension is being paid with information in the records of the Department of Health and Human Services relating to persons who have died for the purposes of—

"(1) determining whether any such persons to whom compensation and pension is being paid are deceased;

"(2) ensuring that such payments to or for any such persons who are deceased are terminated in a timely manner; and

"(3) ensuring that collection of overpayments of such benefits resulting from payments after the death of such persons is initiated in a timely manner.

"(b) The Department of Health and Human Services death information referred to in subsection (a) of this section is death information available to the Secretary from or through the Secretary of Health and Human Services, including death information available to the Secretary of Health and Human Services from a State, pursuant to a memorandum of understanding entered into by such Secretaries. Any such memorandum of understanding shall include safeguards to assure that information made available under it is not used for unauthorized purposes or improperly disclosed.".

(2) The table of sections at the beginning of such chapter, as amended by section 8051(b), is further amended by adding at the end the following:

"3118. Review of Department of Health and Human Services death information.".

TITLE IX—TRANSPORTATION

Subtitle A—Surface Transportation

SEC. 9001. SENSE OF CONGRESS THAT HIGHWAY USER TAXES SHOULD BE DEDICATED TO THE HIGHWAY TRUST FUND.

(a) FINDINGS.—Congress finds that—

(1) highway motor fuel taxes have in the past been dedicated to the Highway Trust Fund and used for the development of the surface transportation system;

(2) extraordinary budget pressures have led to consideration of the need for a temporary, 5-year highway motor fuels tax for deficit reduction;

(3) any portion of the new taxes deposited into the Highway Trust Fund shall be available to accommodate our country's vital transportation needs;

(4) adequate funding of transportation is a key component of a national strategy for economic growth; and

(5) use of the highway motor fuels taxes for deficit reduction should be temporary so that we can return as soon as possible to the dedicated user fee principle in order to ensure fairness to highway users and to ensure that needed transportation infrastructure improvements are made.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) any increase in motor fuel excise taxes that are deposited in the Highway Trust Fund shall be available for surface transportation purposes;

(2) the Budget Resolutions for fiscal years 1991 through 1995 should accommodate the Nation's transportation needs and the section 302(a) allocations should provide budget authority and outlays attributable to the increase in deposits into the Highway Trust Fund as a result of any increases in motor fuels taxes through implementation of this Act;

(3) Congress reaffirms the principle that highway motor fuel taxes should be deposited in the Highway Trust Fund; and

(4) to the extent the highway motor fuel taxes are used for deficit reduction during the 5-year period beginning with fiscal year 1991, the Congress should return to the dedicated user fee principle as soon as possible but no later than the end of fiscal year 1995.

Subtitle B—Aviation Safety and Capacity Expansion

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This subtitle may be cited as the "Aviation Safety and Capacity Expansion Act of 1990".

(b) TABLE OF CONTENTS.—

SEC. 9102. CONSTRUCTION OF FIREFIGHTING TRAINING FACILITIES.

Section 503(a)(2) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2202(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) any acquisition of land for, or work involved to construct, a burn area training structure on or off the airport for the purpose of providing live fire drill training for aircraft rescue and firefighting personnel required to receive such training by a regulation of the Department of Transportation, including basic equipment and minimum structures to support such training in accordance with standards of the Federal Aviation Administration.".

SEC. 9103. DECLARATION OF POLICY.

Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is amended—

(1) in paragraph (5) by inserting ", including as they may be applied between category and class of aircraft" after "discriminatory practices"; and

(2) in paragraph (13) by inserting "and should not unjustly discriminate between categories and classes of aircraft" after "attempted".

SEC. 9104. AIRPORT IMPROVEMENT PROGRAM.

Section 505 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2204) is amended—

(1) in subsection (a) by striking "'13,816,700,000" and inserting '$13,916,700,000"; and

(2) in subsection (b) by striking "September 30, 1987" and inserting "September 30, 1992".

SEC. 9105. AIRWAY IMPROVEMENT PROGRAM.

(a) RENAMING OF AIRWAY PLAN.—Section 504(b)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2203(b)(1)) is amended by inserting after the second sentence the following new sentence: "For fiscal year 1991 and thereafter, the revised plan shall be known as the 'Airway Capital Investment Plan'.".

(b) AIRWAY FACILITIES AND EQUIPMENT.—The first sentence of section 506(a)(1) of such Act (49 U.S.C. App. 2205(a)(1)) is amended by striking "September 30, 1981," and all that follows through the period and inserting the following: "September 30, 1990, aggregate amounts not to exceed $2,500,000,000 for fiscal year 1991 and $5,500,000,000 for the fiscal years ending before October 1, 1992.".

SEC. 9106. FAA OPERATIONS.

Section 106 of title 49, United States Code, is amended by adding at the end the following new subsection:

"(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated for operations of the Administration $4,088,000,000 for fiscal year 1991 and $4,412,600,000 for fiscal year 1992.".

SEC. 9107. OPERATION AND MAINTENANCE OF AVIATION SYSTEM.

(a) ELIMINATION OF PENALTY.—Section 506(c)(3)(B)(i) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(c)(3)(B)(i)) is amended—

(1) by inserting "and" after "1989"; and

(2) by striking "$3,770,000,000" and all that follows through "1992,".

(b) FUNDING.—Section 506(c) of such Act (49 U.S.C. App. 2205(c)) is amended by adding at the end the following new paragraph:

"(4) FISCAL YEARS 1991–1992.—The amount appropriated from the Trust Fund for the purposes of clauses (A) and (B) of paragraph (1) of this subsection for each of fiscal years 1991 and 1992 may not exceed—

"(A) 75 percent of the amount of funds made available under section 505, subsections (a) and (b) of this section, and section 106(k) of title 49, United States Code, for such fiscal year; less

"(B) the amount of funds made available under section 505 and subsections (a) and (b) of this section for such fiscal year.".

SEC. 9108. WEATHER SERVICE.

The second sentence of section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended—

(1) by striking "and" the first place it appears and inserting a comma; and

(2) by inserting before the period the following: ", $34,521,000 for fiscal year 1991, and $35,389,000 for fiscal year 1992".

SEC. 9109. MILITARY AIRPORT PROGRAM.

(a) DECLARATION OF POLICY.—Section 502(a) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201(a)) is further amended—

(1) by striking "and" at the end of paragraph (12);

(2) by striking the period at the end of paragraph (13) and inserting "; and"; and

(3) by adding at the end the following:

"(14) special emphasis should be placed on the conversion of appropriate former military air bases to civil use and on the identification and improvement of additional joint-use facilities.".

(b) SET-ASIDE.—Section 508(d) of such Act (49 U.S.C. App. 2204(d)) is amended by striking paragraph (5) and inserting the following:

"(5) MILITARY AIRPORT SET-ASIDE.—Not less than 1.5 percent of the funds made available under section 505 in each of fiscal years 1991 and 1992 shall be distributed during such fiscal year to sponsors of current or former military airports designated by the Secretary under subsection (f) for the purpose of developing current and former military airports to improve the capacity of the national air transportation system.

"(6) REALLOCATION.—If the Secretary determines that he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), (4), or (5) of this subsection for any fiscal year because the number of qualified applications submitted in compliance with this title is insufficient to meet such amount, the portion of such amount the Secretary determines will not be distributed shall be available for obligation during such fiscal year for other airports and for other purposes authorized by section 505 of this title.".

(c) DESIGNATION OF FORMER MILITARY AIRPORTS.—Section 508 of such Act is further amended by adding at the end the following new subsection:

"(f) DESIGNATION OF CURRENT OR FORMER MILITARY AIRPORTS.—

"(1) DESIGNATION.—The Secretary shall designate not more than 8 current or former military airports for participation in the grant program established under subsection (d)(5) and this subsection. At least 2 such airports shall be designated within 6 months after the date of the enactment of this subsection and the remaining airports shall be designated for participation no later than September 30, 1992.

"(2) SURVEY.—The Secretary shall conduct a survey of current and former military airports to identify which ones have the greatest potential to improve the capacity of the national air transportation system. The survey shall also identify the capital development needs of such airports in order to make them part of the national air transportation system and shall identify which capital development needs are eligible for grants under section 505. The survey shall be completed by September 30, 1991.

"(3) LIMITATION.—In selecting airports for participation in the program established under subsection (d)(5) and this subsection and in conducting the survey under paragraph (2), the Secretary shall consider only those current or former military airports whose conversion in whole or in part to civilian commercial or reliever airport as part of the national air transportation system would enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

"(4) PERIOD OF ELIGIBILITY.—An airport designated by the Secretary under this subsection shall remain eligible to participate in the program under subsection (d)(5) and this subsection for the 5 fiscal years following such designation. An airport that does not attain a level of enplaned passengers during such 5 fiscal year period which qualifies it as a small hub airport as defined as of January 1, 1990, or reliever airport may be redes-

ignated by the Secretary for participation in the program for such additional fiscal years as may be determined by the Secretary.

"(5) ADDITIONAL FUNDING.—Notwithstanding the provisions of section 513(b), not to exceed $5,000,000 per airport of the sums to be distributed at the discretion of the Secretary under section 507(c) for any fiscal year may be used by the sponsor of a current or former military airport designated by the Secretary under this subsection for construction, improvement, or repair of terminal building facilities, including terminal gates used by aircraft for enplaning and deplaning revenue passengers. Under no circumstances shall any gates constructed, improved, or repaired with Federal funding under this paragraph be subject to long-term leases for periods exceeding 10 years or majority in interest clauses.".

SEC. 9110. PASSENGER FACILITY CHARGES.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended—

(1) in subsection (a) by inserting "except as provided in subsection (e) and" before "except that"; and

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

"(e) AUTHORITY FOR IMPOSITION OF PASSENGER FACILITY CHARGES.—

"(1) IN GENERAL.—Subject to the provisions of this subsection, the Secretary may grant a public agency which controls a commercial service airport authority to impose a fee of $1.00, $2.00, or $3.00 for each paying passenger of an air carrier enplaned at such airport to finance eligible airport-related projects to be carried out in connection with such airport or any other airport which such agency controls. For purposes of this subsection, financing an eligible airport-related project includes making payments for debt service on bonds and other indebtedness incurred to carry out such project.

"(2) USE OF REVENUES AND RELATIONSHIP BETWEEN FEES AND REVENUES.—The Secretary may grant a public agency which controls a commercial service airport authority to impose a fee under this subsection to finance specific projects only if the Secretary finds, on the basis of an application submitted for such authority—

"(A) that the amount and duration of the proposed fee will result in revenues (including interest and other returns on such revenues) which do not exceed amounts necessary to finance the specific projects; and

"(B) that each of the specific projects is an eligible airport-related project which will—

"(i) preserve or enhance capacity, safety, or security of the national air transportation system,

"(ii) reduce noise resulting from an airport which is part of such system, or

"(iii) furnish opportunities for enhanced competition between or among air carriers.

"(3) LIMITATION REGARDING PASSENGERS OF AIR CARRIERS RECEIVING ESSENTIAL AIR SERVICE COMPENSATION.—If a passenger

of an air carrier is being provided air service to an eligible point under section 419 for which compensation is being paid under such section, a public agency which controls any other airport may not impose a fee pursuant to this subsection for enplanement of such passenger with respect to such air service.

"(4) LIMITATION REGARDING OBLIGATIONS.—No fee may be imposed pursuant to this subsection for a project which is not approved by the Secretary under this subsection on or before September 30, 1992—

"(A) if, during fiscal years 1991 and 1992, the amount available for obligation, in the aggregate, under section 505 of Airport and Airway Improvement Act of 1982 is less than $3,700,000,000; or

"(B)(i) if, during fiscal year 1991, the amount available for obligation, in the aggregate, under section 419 is less than $26,600,000; or

"(ii) if, during fiscal year 1992, the amount available for obligation, in the aggregate, under section 419 is less than $38,600,000.

"(5) LINKAGE.—The Secretary may not grant a public agency authority to impose a fee pursuant to this subsection unless the Secretary has—

"(A) issued a final rule establishing a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft pursuant to section 9304(a) of the Airport Noise and Capacity Act of 1990; and

"(B) issued a notice of proposed rulemaking to consider more efficient allocation of existing capacity at high density airports under section 9126 of the Aviation Safety and Capacity Expansion Act of 1990.

"(6) TWO ENPLANEMENTS PER TRIP LIMITATION.—Enplaned passengers on whom a fee may be imposed by a public agency pursuant to this subsection include passengers of air carriers originating or connecting at the commercial service airport which the agency controls. A fee may not be collected pursuant to this subsection from a passenger with respect to any enplanement of such passenger, on a one-way trip and on a trip in each direction of a round trip, after the second enplanement for which a fee has been collected pursuant to this subsection from such passenger.

"(7) AIR CARRIER RATES, FEES, AND CHARGES.—

"(A) TREATMENT OF FEE REVENUES.—Revenues derived from fees collected pursuant to this subsection shall not be treated as airport revenues for the purpose of establishing a rate, fee, or charge pursuant to a contract between a public agency which controls a commercial service airport and an air carrier.

"(B) CAPITAL COSTS.—Except as provided by subparagraph (C), a public agency which controls a commercial service airport shall not include in its rate base by means of depreciation, amortization, or any other method that portion of the capital costs of a project paid for using revenues derived from fees collected pursuant to this subsection for the purpose of establishing

a rate, fee, or charge pursuant to a contract between such agency and an air carrier.

"(C) FACILITIES FINANCED WITH FEE REVENUES.—With respect to a project for terminal development, gates and related areas, or a facility which is occupied or utilized by 1 or more air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by air carriers which use such facilities shall be no less than the rates, fees, and charges paid by carriers using similar facilities at the airport which were not financed using revenues derived from collection of a fee imposed pursuant to this subsection.

"(8) EXCLUSIVITY OF AUTHORITY.—No State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom. No contract between an air carrier and a public agency which controls a commercial service airport entered into before, on, or after the date of the enactment of this subsection shall impair the authority of the public agency to impose fees pursuant to this subsection and to use the revenues derived from such fees in accordance with this subsection.

"(9) NONEXCLUSIVITY OF CONTRACTUAL AGREEMENTS.—No project carried out through the use of a fee collected pursuant to this subsection may be subject to an exclusive long-term lease or use agreement of an air carrier, as defined by the Secretary by regulation. No lease or use agreement of an air carrier with respect to a project constructed or expanded through the use of such fee may restrict the public agency which controls the airport from funding, developing, or assigning new capacity at the airport with revenues derived from fees imposed pursuant to this subsection.

"(10) COLLECTION AND HANDLING OF FEES BY AIR CARRIERS.—The regulations issued by the Secretary to carry out this subsection shall—

"(A) require air carriers and their agents to collect fees imposed by public agencies pursuant to this subsection;

"(B) establish procedures regarding handling and remittance of the amounts so collected;

"(C) ensure that such amounts are promptly paid to the public agency for which they are collected less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses (net of interest accruing to the air carrier and agent after collection and prior to remittance) incurred in the collection and handling of such fees; and

"(D) require that the amount of fees collected pursuant to this subsection with respect to any air transportation be noted on the ticket for such air transportation.

"(11) APPLICATION PROCESS.—

"(A) SUBMISSION.—A public agency which controls a commercial service airport and is interested in imposing a fee

pursuant to this subsection shall submit to the Secretary an application for authority to impose such fee.

"(B) CONTENT.—An application submitted under this paragraph shall contain such information and be in such form as the Secretary may require by regulation.

"(C) OPPORTUNITY FOR CONSULTATION.—Before submission of an application under this paragraph, a public agency shall provide reasonable notice to, and an opportunity for consultation with, air carriers operating at the airport. The Secretary shall issue regulations which define reasonable notice and contain the following requirements at a minimum:

"(i) A public agency must provide written notice—

"(I) of individual projects being considered for funding through imposition of a fee pursuant to this subsection; and

"(II) of the date and location of a meeting to present such projects to air carriers operating at the airport.

"(ii) Not later than 30 days after the issuance of a written notice under clause (i), each air carrier operating at the airport must provide to the public agency written notice of receipt of such notice. Failure of an air carrier to provide such notice may be deemed as certification of agreement with the project by such air carrier under clause (iv).

"(iii) Not later than 45 days after the issuance of written notice under clause (i), the public agency must conduct a meeting to provide air carriers—

"(I) descriptions of projects;

"(II) justifications for projects; and

"(III) a detailed financial plan for projects.

"(iv) Not later than 30 days after the date of such meeting, each air carrier must provide the public agency with certification of agreement or disagreement with projects (or total plan for such projects). The failure of an air carrier to submit such certification shall be deemed as certification of agreement with the project by such air carrier. Any certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons will void the certification of disagreement.

"(D) NOTICE AND OPPORTUNITY FOR COMMENT.—After receiving an application under this paragraph, the Secretary shall provide notice and an opportunity for comment by air carriers and other interested persons concerning such application.

"(E) APPROVAL.—A fee may only be imposed pursuant to this subsection if the Secretary approves an application granting authority for the imposition of such fee. Not later than 120 days after the date of receipt of such an application, the Secretary shall make a final decision regarding approval of such application.

"(12) RECORDKEEPING AND AUDITS.—

"(A) WITH RESPECT TO COLLECTION OF FEES.—The Secretary shall issue regulations requiring such recordkeeping and auditing of accounts maintained by an air carrier and any agency thereof which is collecting a fee imposed pursuant to this subsection and by the public agency which is imposing such fee as may be necessary to ensure compliance with this subsection.

"(B) WITH RESPECT TO USE OF REVENUES.—The Secretary shall periodically audit and review the use by a public agency which controls an airport of revenues derived from a fee imposed pursuant to this subsection. Upon such review and after a public hearing, the Secretary may terminate the authority of such agency to impose such fee, in whole or in part, to the extent the Secretary determines that revenues derived therefrom are not being used in accordance with this subsection.

"(C) SET-OFF.—If the Secretary determines that a fee imposed pursuant to this subsection is excessive or that the revenues derived from such fee are not being used in accordance with this subsection, the Secretary may set off such amounts as may be necessary to ensure compliance with this subsection against amounts otherwise payable to the public agency under the Airport and Airway Improvement Act of 1982.

"(13) TERMS AND CONDITIONS.—Authority granted to impose a fee pursuant to this subsection shall be subject to such terms and conditions as the Secretary may establish to carry out the objectives of this subsection.

"(14) ISSUANCE OF REGULATIONS.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall issue such regulations as may be necessary to carry out this subsection. Such regulations may prescribe the time and form by which a fee imposed pursuant to this subsection shall take effect.

"(15) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) AIR CARRIER.—The term 'air carrier' includes a foreign air carrier.

"(B) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms 'airport', 'commercial service airport', and 'public agency' have the meaning such terms have under section 503 of the Airport and Airway Improvement Act of 1982.

"(C) ELIGIBLE AIRPORT-RELATED PROJECT.—The term 'eligible airport-related project' means—

"(i) a project for airport development under the Airport and Airway Improvement Act of 1982;

"(ii) a project for airport planning under such Act;

"(iii) a project for terminal development described in section 513(b) of such Act;

"(iv) a project for airport noise capability planning under section 103(b) of the Aviation Safety and Noise Abatement Act of 1979;

"(v) a project to carry out noise compatibility measures which are eligible for assistance under section 104 of the Aviation Safety and Noise Abatement Act of 1979 without regard to whether or not a program has been approved for such measures under such section; and

"(vi) a project for construction of gates and related areas at which passengers are enplaned or deplaned.

"(D) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.".

SEC. 9111. REDUCTION IN AIRPORT IMPROVEMENT PROGRAM APPORTIONMENTS FOR LARGE AND MEDIUM HUB AIRPORTS IMPOSING PASSENGER FACILITY CHARGES.

Section 507(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(b)) is amended by adding at the end the following new paragraph:

"(7) REDUCTION IN APPORTIONMENTS TO CERTAIN LARGE AND MEDIUM HUBS.—

"(A) GENERAL RULE.—The amount which, but for this paragraph, would be apportioned under this section (other than subsection (a)(2)) for a fiscal year to a sponsor of an airport that annually has 0.25 percent or more of the total annual enplanements in the United States and for which a fee is imposed in such fiscal year pursuant to section 1113(e) of the Federal Aviation Act of 1958 shall be reduced by an amount equal to 50 percent of the projected revenues derived from such fee in such fiscal year.

"(B) LIMITATIONS.—The maximum reduction in an apportionment to a sponsor of an airport as a result of this paragraph in a fiscal year shall be 50 percent of the amount which, but for this paragraph, would be apportioned to such airport under this section.".

SEC. 9112. USE OF PFC REDUCED APPORTIONMENT FUNDS.

(a) ADDITION OF FUNDS TO EXISTING DISCRETIONARY FUND.—Section 507(c)(1) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2206(c)(1)) is amended by inserting after the first sentence the following new sentences: "Twenty-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall be added to such discretionary fund. Fifty percent of amounts added to such discretionary fund pursuant to the preceding sentence shall be used for making grants for projects at small hub airports (as such term is defined in section 419(k) of the Federal Aviation Act of 1958).".

(b) SMALL AIRPORT FUND.—Section 507 of such Act is amended by redesignating subsections (d) and (e), and any references thereto, as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) SMALL AIRPORT FUND.—

"(1) ESTABLISHMENT.—Seventy-five percent of the amounts which are not apportioned under this section as a result of subsection (b)(7) shall constitute a small airport fund to be distributed at the discretion of the Secretary.

"(2) SET-ASIDE FOR GENERAL AVIATION AIRPORTS.—One-third of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of public-use airports (other than commercial service airports) for any purpose for which funds are made available under section 505.

"(3) SET-ASIDE FOR NONHUB AIRPORTS.—Two-thirds of the amounts in the small airport fund established by this subsection and distributed by the Secretary under this subsection in a fiscal year shall be used for making grants to sponsors of commercial service airports each of which annually has less than 0.05 percent of the total annual enplanements in the United States for any purpose for which funds are made available under section 505.

"(4) TREATMENT OF AIRPORTS PARTICIPATING IN STATE BLOCK PROGRAM.—An airport in a State which is participating in the State block grant program under section 534 shall be eligible to receive grants pursuant to this subsection to the same extent that the airport would be eligible to receive such grants if the State was not participating in such program.".

(c) PROHIBITION ON REDUCED FUNDING.—It is the sense of Congress that the Secretary should not reduce funding under the discretionary fund established under section 507(c) of the Airport and Airway Improvement Act of 1982 for small commercial service and general aviation airports as a result of additional funds made available to such airports under this section, including amendments made by this section.

SEC. 9113. SMALL COMMUNITY AIR SERVICE PROGRAM.

(a) DEFINITION OF ELIGIBLE POINT.—Section 419(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1389(a)) is amended to read as follows:

"(a) ELIGIBLE POINT DEFINED.—

"(1) GENERAL RULE.—For purposes of this section, the term 'eligible point' means any point in the United States—

"(A) which was defined as an eligible point under this section as in effect before October 1, 1988;

"(B) which received scheduled air transportation at any time after January 1, 1990; and

"(C) which is not listed in the Department of Transportation Orders 89-9-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

"(2) LIMITATION ON USE OF PER PASSENGER SUBSIDY.—The Secretary may not determine that a point described in paragraph (1) is not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section.".

(b) FUNDING.—

(1) IN GENERAL.—Section 419 of such Act is amended by redesignating subsection (1), and any reference thereto, as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) FUNDING.—

"(1) CONTRACT AUTHORITY.—The Secretary is authorized to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of compensation under this section. Approval by the Secretary of such an agreement shall be deemed a contractual obligation of the United States for payment of the Federal share of such compensation.

"(2) AMOUNTS AVAILABLE.—There shall be available to the Secretary from the Airport and Airway Trust Fund to incur obligations under this section $38,600,000 per fiscal year for each of fiscal years 1992, 1993, 1994, 1995, 1996, 1997, and 1998. Such amounts shall remain available until expended.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect October 1, 1991.

(c) CONFORMING AMENDMENTS.—Section 333 of Public Law 100-457 and section 325(a) of Public Law 101-164 are repealed.

SEC. 9114. STATE BLOCK GRANT PILOT PROGRAM.

Section 534 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2227) is amended—

(1) in subsection (a) by striking "1991" and inserting "1992"; and

(2) in subsection (d) by striking "not later than 90 days before its scheduled termination" and inserting "not later than January 31, 1992".

SEC. 9115. AUXILIARY FLIGHT SERVICE STATION PROGRAM.

(a) GENERAL RULE.—The Secretary of Transportation shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall report to Congress with the plan and schedule for implementation of this section.

SEC. 9116. AIRPORT AND AIRWAY IMPROVEMENTS FOR THE VIRGIN ISLANDS.

(a) AIR SPACE STUDY.—The Administrator of the Federal Aviation Administration shall conduct an air space study of the Caribbean and Miami air traffic control regions for the purpose of determining methods of improving air safety and report to Congress the results of such study.

(b) OPERATIONS OF AIRPORT TOWERS FOR ST. THOMAS AND ST. CROIX.—The Administrator may not enter into contracts with private persons for operation of the airport control towers for St. Thomas and St. Croix, Virgin Islands, before the 30th day following the date on which a report is submitted to Congress under subsection (a).

(c) REPLACEMENT OF RADAR FACILITIES FOR ST. THOMAS.—The Administrator shall take such action as may be necessary to ensure that the radar facilities for the airport on St. Thomas, Virgin Islands, which were destroyed by Hurricane Hugo are replaced and

operational by the 120th day following the date of the enactment of this Act.

SEC. 9117. ENGINE CONDITION MONITORING SYSTEMS.

(a) STUDY.—The Administrator of the Federal Aviation Administration shall conduct a study of the potential use of engine condition monitoring systems on aircraft. In conducting such study, the Administrator shall evaluate—

(1) the availability of technology for such systems;

(2) the capabilities of such systems in terms of enhancing safety and reducing maintenance costs associated with civil and military aircraft;

(3) the commercial viability of developing computer software to enable maintenance workers to efficiently use data gathered by such systems;

(4) the costs and benefits of using such systems as compared to engine fault detection methods which rely on the use of data relating to historical performance and statistical failure;

(5) the types of aircraft engine failures which may be prevented by using such systems; and

(6) the operational reliability of such systems.

(b) REPORT TO CONGRESS.—Not later than 12 months after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study conducted pursuant to this section together with such legislative and administrative recommendations as the Administrator considers appropriate.

SEC. 9118. PROCUREMENT AUTHORITY.

(a) IN GENERAL.—Section 303 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1344) is amended to read as follows:

"SEC. 303. PROCUREMENT AUTHORITY.

"(a) ACQUISITION AND DISPOSAL OF PROPERTY.—Subject to subsection (b), the Administrator, on behalf of the United States, is authorized, where appropriate—

"(1) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease for a term not to exceed 20 years, or otherwise, personal property or services and real property or interests therein, including, in the case of air navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith;

"(2) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interest therein; except that, other than for airport and airway property and technical equipment used for the special purposes of the Federal Aviation Administration, such disposition shall be made in accordance with the Federal Property and Administrative Services Act of 1949; and

"(3) to construct, improve, or renovate laboratories and other test facilities and to purchase or otherwise acquire real property required therefor.

"(b) SPECIAL RULES FOR CERTAIN ACQUISITIONS.—

"(1) ACQUISITIONS BY CONDEMNATION.—Any acquisition by condemnation under subsection (a) may be made in accordance with the provision of the Act of August 1, 1888 (40 U.S.C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U.S.C. 258a–258e–1; 46 Stat. 1421), or any other applicable Act; except that, in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land.

"(2) ACQUISITIONS OF PUBLIC BUILDINGS.—The Administrator may, under subsection (a) construct or acquire by purchase, condemnation, or lease a public building, or interest in a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services.

"(c) PROCUREMENT PROCEDURES.—In procuring personal property or services and real property and interests therein under subsection (a), the Administrator may use procedures other than competitive procedures in circumstances which are set forth in section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)).

"(d) SOLE SOURCE APPROVAL BY ADMINISTRATOR.—For procurements by the Federal Aviation Administration, the Administrator shall be the senior procurement executive referred to in paragraph (3) of section 16 of Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purposes of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)).

"(e) MULTIYEAR SERVICE CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, the Administrator may enter into contracts for periods of not more than 5 years for the following types of services (and items of supply related to such services) for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

"(A) operation, maintenance, and support of facilities and installations;

"(B) operation, maintenance, or modification of aircraft, vehicles, and other highly complex equipment;

"(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

"(D) base services (for example, ground maintenance, in-plane refueling; bus transportation; refuse collection and disposal).

"(2) FINDINGS.—The Administrator may enter into a contract described in paragraph (1) only if the Administrator finds that—

"(A) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

"(B) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized workforce; and

"(C) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

"(3) GUIDANCE PRINCIPLES.—In entering into contracts described in paragraph (1), the Administrator shall be guided by the following principles:

"(A) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, the due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

"(B) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed 3 years, at prices not to include charges for plant, equipment, and other nonrecurring costs, already amortized.

"(C) Consideration shall be given to the desirability of reserving in the Federal Aviation Administration the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

"(4) TERMINATION.—In the event funds are not made available for the continuation of a contract described in paragraph (1) into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(f) MULTIYEAR PROPERTY ACQUISITION CONTRACTS.—

"(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, to the extent that funds are otherwise available for obligation, the Administrator may make multiyear contracts (other than contracts described in paragraph (6)) for the purchase of property, whenever the Administrator finds—

"(A) that the use of such a contract will promote the safety or efficiency of the National Airspace System and will result in reduced total costs under the contract;

"(B) that the minimum need for the property to be purchased is expected to remain substantially unchanged

during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

"(C) that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request funding for the contract at the level required to avoid contract cancellation;

"(D) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive; and

"(E) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

"(2) REGULATIONS.—

"(A) GENERAL RULE.—The Administrator shall issue regulations for acquisition of property under this subsection to promote the use of multiyear contracting as authorized by paragraph (1) in a manner that will allow the most efficient use of multiyear contracting.

"(B) CANCELLATION PROVISIONS.—The regulations issued under this paragraph may provide for cancellation provisions in multiyear contracts described in paragraph (1) to the extent that such provisions are necessary and in the best interests of the United States. Such cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

"(C) BROADENING INDUSTRIAL BASE.—In order to broaden the aviation industrial base, the regulations issued under this paragraph shall provide that, to the extent practicable—

"(i) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

"(ii) upon accrual of any payment or other benefit under such a multiyear contract to any subcontract, vendor, or supplier company participating in such contractor, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

"(D) PROTECTION OF FEDERAL INTERESTS.—The regulations issued under this paragraph shall also provide that, to the extent practicable, the administration of this subsection, and of the regulations issued under this subsection, shall not be carried out in a manner to preclude or curtail the existing ability of the Federal Aviation Administration to—

"(i) provide for competition in the production of items to be delivered under such a contract; or

"(ii) provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

"(3) SPECIAL RULE FOR CONTRACTS WITH HIGH CANCELLATION CEILING.—Before any contract described in paragraph (1) that

contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the Administrator shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

"(4) ADVANCE PROCUREMENT.—Contracts made under this subsection may be used for the advance procurement of components, parts, and materials necessary to the manufacture of equipment to be used in the National Airspace System, and contracts may be made under this subsection for such advance procurement, if feasible and practicable, in order to achieve economic-lot purchases and more efficient production rates.

"(5) TERMINATION.—In the event funds are not made available for the continuation of a contract made under this subsection into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

"(A) appropriations originally available for the performance of the contract concerned;

"(B) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

"(C) funds appropriated for those payments.

"(6) LIMITATION ON APPLICABILITY.—This subsection does not apply to contracts for the construction, alteration, or major repair or improvements to real property or contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

"(7) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than 1, but not more than 5, fiscal years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

"(8) PRICE OPTIONS.—The Administrator may incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.".

(b) CONFORMING AMENDMENT.—The portion of the table of contents contained in the first section of such Act relating to section 303 is amended to read as follows:

"Sec. 303. Procurement authority.
"(a) Acquisition and disposal of property.
"(b) Special rules for acquisitions.
"(c) Procurement procedures.
"(d) Sole source approval by Administrator.
"(e) Multiyear service contracts.
"(f) Multiyear property acquisition contracts.".

SEC. 9119. EXPANDED EAST COAST PLAN.

(a) ENVIRONMENTAL IMPACT STATEMENT.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(b) AIR SAFETY INVESTIGATION.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall conduct an investigation to determine the effects on air safety of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan.

(c) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the environmental impact statement and investigation conducted pursuant to this section. Such report shall also contain such recommendations for modification of the Expanded East Coast Plan as the Administrator considers appropriate or an explanation of why modification of such plan is not appropriate.

(d) IMPLEMENTATION OF MODIFICATIONS.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall implement modifications to the Expanded East Coast Plan recommended under subsection (c).

SEC. 9120. TRANSFER OF FORMAT OF GEODETIC NAVIGATION INFORMATION.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration and the Administrator of the National Oceanic and Atmospheric Administration shall complete the transfer of geodetic coordinate navigation information from NAD–27 format to NAD–83 format.

SEC. 9121. SENSITIVE SECURITY INFORMATION.

Section 316(d)(2) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1357(d)(2)) is amended—

(1) by inserting "security or" before "research and development activities"; and

(2) by striking "subsection" and inserting "title".

SEC. 9122. REPORTS.

Section 107 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1307) is amended in subsections (b) and (c) by striking "each April 1 thereafter" each place it appears and inserting "through April 1, 1990".

SEC. 9123. ATLANTIC CITY AIRPORT.

Section 312 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (101 Stat. 1528) is repealed.

SEC. 9124. NATURAL DISASTER REGULATION.

Title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421–1432) is amended by inserting after section 612 the following new section:

"SEC. 613. SAFETY REGULATION.

"(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section, the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

"(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a ligitimate scientific purpose.

"(c) STATUS OF STUDIES.—Not later than the 90th day following the date of the enactment of this section, the Administrator shall report to Congress on the status of the studies and reports required by the Act entitled 'An Act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national airport system units', approved August 18, 1987 (101 Stat. 674-678; 16 U.S.C. 1a-1 note).".

SEC. 9125. FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.

Section 1113 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513) is amended by adding at the end the following new subsection:

"(f) FLIGHT TAKEOFF OR LANDING REQUIREMENT FOR STATE TAXATION.—No State (as such term is defined under subsection (d)(2)(E)) or political subdivision thereof shall levy or collect any tax on or with respect to any flight of a commercial aircraft or any activity or service on board such aircraft unless such aircraft takes off or lands in such State or political subdivision as part of such flight.".

SEC. 9126. ALLOCATION OF EXISTING CAPACITY AT CERTAIN AIRPORTS.

(a) RULEMAKING.—The Secretary of Transportation shall, by July 1, 1991, initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density traffic airports in order to provide improved opportunities for operations by new entrant air carriers.

(b) DEFINITION.—In this section, the term "new entrant air carrier", as used with respect to a high density traffic airport, means an air carrier having less than 12 operating rights at such airport.

SEC. 9127. CERTIFICATE TRANSFERS.

Section 401(h) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

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

"(2) CERTIFICATION.—The Secretary of Transportation shall, upon any transfer of a certificate, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

"(3) ACCOMPANYING REPORT.—A certification under this subsection shall be accompanied by a report analyzing the effects of the transfer on—

"(A) the viability of each of the carriers involved in the transfer;

"(B) competition in the domestic airline industry, and

"(C) the trade position of the United States in the international air transportation market.".

SEC. 9128. SEVERABILITY.

If any provision of this subtitle (including an amendment made by this subtitle), or the application thereof to any person or circumstance, is held invalid, the remainder of this subtitle and the application of such provision to other persons of circumstances shall not be affected thereby.

SEC. 9129. BUY AMERICAN.

(a) GENERAL RULE.—Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this subtitle, section 106(k) of title 49, United States Code, or the Airport and Airway Improvement Act of 1982 (other than section 506(b)) for any project unless steel and manufactured products used in such project are produced in the United States.

(b) LIMITATIONS ON APPLICABILITY.—The provisions of subsection (a) of this section shall not apply where the Secretary finds—

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(3) in the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982 that (A) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment described in this paragraph, and (B) final assembly of the facility or equipment described in this paragraph has taken place in the United States; or

(4) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) CALCULATION OF COMPONENTS COSTS.—For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

SEC. 9130. PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.

If the Secretary of Transportation determines that any person intentionally affixes a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall declare that person ineligible to receive a Federal contract or grant in conjunction with the issuance of any contract made under this subtitle for a period of not less than 3 years and not more than 5 years. The Secretary may bring action against such person to enforce this subsection in any United States district court.

SEC. 9131. RESTRICTIONS ON CONTRACT AWARDS.

No person or enterprise domiciled or operating under the laws of a foreign government may enter into a contract or subcontract made pursuant to this subtitle if that government unfairly maintains, in

government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to section 305(g)(1)(A) of the Trade Agreements Act of 1979.

Subtitle C—Federal Aviation Administration Research, Engineering, and Development

SEC. 9201. SHORT TITLE.

This subtitle may be cited as the "Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990".

SEC. 9202. AVIATION RESEARCH AUTHORIZATION OF APPROPRIATIONS.

Paragraph (2) of section 506(b) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(b)(2)) is amended by striking subparagraph (A) and all that follows through the period at the end of such paragraph and inserting the following:

"(A) for fiscal year 1991—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities; and

"(B) for fiscal year 1992—

"(i) $135,800,000 solely for air traffic control projects and activities;

"(ii) $19,100,000 solely for air traffic control advanced computer projects and activities;

"(iii) $3,400,000 solely for navigation projects and activities;

"(iv) $9,700,000 solely for aviation weather projects and activities;

"(v) $16,500,000 solely for aviation medicine projects and activities;

"(vi) $70,100,000 solely for aircraft safety projects and activities; and

"(vii) $5,400,000 solely for environmental projects and activities.

Not less than 3 percent of the funds made available under this paragraph for a fiscal year shall be available to the Administrator for making grants under section 312(g) of the Federal Aviation Act of 1958.".

SEC. 9203. ENHANCED AIRPORT CAPACITY.

Section 506(b)(4) of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2205(b)(4)) is amended—

(1) in subparagraph (A) by striking "and 1990" and inserting "1990, 1991, and 1992"; and

(2) in subparagraph (B) by striking "and 1990" and inserting "1990, 1991, and 1992".

SEC. 9204. WEATHER SERVICES.

Section 506(d) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2205(d)) is amended by striking the second sentence and inserting the following: "Expenditures for the purposes of carrying out this subsection shall be limited to $34,521,000 for fiscal year 1991 and $35,389,000 for fiscal year 1992.".

SEC. 9205. AVIATION RESEARCH GRANT PROGRAM.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353) is amended by adding the following new subsection:

"(g) RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation.

"(2) APPLICATIONS.—A university, college, or nonprofit organization interested in receiving a grant under this subsection may submit to the Administrator an application for such grant. Such application shall be in such form and contain such information as the Administrator may require.

"(3) SELECTION.—The Administrator shall establish a solicitation, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the mission of the Federal Aviation Administration, (B) an equitable geographical distribution of grant funds under this subsection, and (C) the inclusion of historically black colleges and universities and other minority institutions for funding consideration under this subsection.

"(4) RECORDS.—Each person awarded a grant under this subsection shall maintain such records as the Administrator may require as being necessary to facilitate an effective audit and evaluation of the use of grant funds.

"(5) REPORTS.—The Administrator shall make an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the research grant program conducted under this subsection.".

(b) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(g) Research grant program.".

SEC. 9206. STUDY BY THE GENERAL ACCOUNTING OFFICE OF MULTIYEAR CONTRACTING AUTHORITY.

The Comptroller General of the United States shall conduct a study of the advisability of granting to the Administrator of the Federal Aviation Administration specific statutory authority—

(1) to lease real property or interests therein for terms not to exceed 20 years, including, in the case of air navigation facilities and airports (as such terms are defined in section 101 (8) and (9) of the Federal Aviation Act of 1958) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and in connection therewith;

(2) to procure personal property or services and real property and interests therein with procedures other than competitive procedures under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c));

(3) to serve as the senior procurement executive under section 16 of the Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purpose of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii));

(4) to let multiyear contracts for services, including the operation, maintenance, and support of facilities and installations; the operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment; specialized training necessitating high quality instructor skills; and base services; and

(5) to let multiyear contracts for the purchase of property.

The study also shall examine the implementation of section 2306 (g) and (h) of title 10, United States Code, by the Department of Defense, and shall assess the usefulness of granting similar authority to the Federal Aviation Administration. The Comptroller General shall submit a report on the results of the study, along with any comments of the Administrator of the Federal Aviation Administration, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate within 6 months after the date of enactment of this Act.

SEC. 9207. BUY-AMERICAN REQUIREMENT.

(a) DETERMINATION BY ADMINISTRATOR.—If the Administrator, with the concurrence of the Secretary of Commerce and the United States Trade Representative, determines that the public interest so requires, the Administrator is authorized to award to a domestic firm a contract made pursuant to the issuance of any grant made under this subtitle that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 51 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 6 percent.

In determining under this subsection whether the public interest so requires, the Administrator shall take into account United States international obligations and trade relations.

(b) LIMITED APPLICATION.—This section shall not apply to the extent to which—

(1) such applicability would not be in the public interest;

(2) compelling national security considerations require otherwise; or

(3) the United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(c) LIMITATION.—This section shall apply only to contracts made related to the issuance of any grant made under this subtitle for which—

(1) amounts are authorized by this subtitle (including the amendments made by this subtitle) to be made available; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

(d) REPORT TO CONGRESS.—The Administrator shall report to the Congress on contracts covered under this section and entered into with foreign entities in fiscal years 1991 and 1992 and shall report to the Congress on the number of contracts that meet the requirements of subsection (a) but which are determined by the United States Trade Representative to be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. The Administrator shall also report to the Congress on the number of contracts covered under this subtitle (including the amendments made by this subtitle) and awarded based upon the parameters of this section.

(e) DEFINITIONS.—For purposes of this section—

(1) the term "Administrator" means the Administrator of the Federal Aviation Administration;

(2) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(3) the term "foreign firm" means a business entity not described in paragraph (2).

SEC. 9208. CATASTROPHIC FAILURE PREVENTION RESEARCH PROGRAM.

(a) GENERAL AUTHORITY.—Section 312(b) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1353(b)) is amended by inserting after "inflight aircraft fires," the following: "to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft,".

(b) GRANT PROGRAM.—Section 312 of such Act is amended by adding at the end the following new subsection:

"(h) CATASTROPHIC FAILURE PREVENTION RESEARCH GRANT PROGRAM.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations (A) to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft, and (B) to establish centers of excellence for continuing such research.

"(2) SELECTION AND EVALUATION PROCESSES.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the research described in paragraph (1).".

(c) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of such Act which appears under the heading:

"Sec. 312. Development planning."

is amended by adding at the end the following:

"(h) Catastrophic failure prevention research grant program.".

SEC. 9209. AVIATION RESEARCH AND CENTERS OF EXCELLENCE.

(a) IN GENERAL.—Section 312 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353) is amended by adding at the end the following new subsection:

"(i) AVIATION RESEARCH AND CENTERS OF EXCELLENCE.—

"(1) GENERAL AUTHORITY.—The Administrator may make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable.

"(2) RESPONSIBILITIES.—The responsibilities of each regional center of air transportation excellence established under this subsection shall include, but not be limited to, the conduct of research concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system, and the interpretation, publication, and dissemination of the results of such research. In conducting such research, each center may contract with nonprofit research organizations and other appropriate persons.

"(3) APPLICATION.—Any college or university interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

"(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

"(A) The extent to which the needs of the State in which the applicant is located are representative of the needs of

the region for improved air transportation services and facilities.

"(B) The demonstrated research and extension resources available to the applicant for carrying out this subsection.

"(C) The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

"(D) The extent to which the applicant has an established air transportation program.

"(E) The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

"(F) The projects which the applicant proposes to carry out under the grant.

"(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional center of air transportation excellence and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

"(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operating the regional center of air transportation excellence and related research activities carried out by the grant recipient.

"(7) ALLOCATION OF FUNDS.—Funds made available to carry out this subsection shall be allocated by the Administrator in a geographically equitable manner.".

(b) RESEARCH ADVISORY COMMITTEE.—

(1) Section 312(f)(2) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(2)) is amended by adding at the end the following new sentence: "In addition, the committee shall review the research and training to be carried out by the regional centers of air transportation excellence established under subsection (h).".

(2) Section 312(f)(3) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(f)(3)) is amended—

(A) by striking "20" and inserting "30"; and

(B) by striking the last sentence and inserting the following: "The Administrator in appointing the members of the committee shall ensure that the research centers of air transportation excellence, universities, corporations, associations, consumers, and other Government agencies are represented.".

(c) RESEARCH AUTHORITY OF ADMINISTRATOR.—Section 312(c) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1353(c)) is amended by inserting after the third sentence the following: "The Administrator shall undertake or supervise research programs concerning airspace and airport planning and design, airport capacity enhance-

ment techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system.".

(d) CONFORMING AMENDMENT.—That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 relating to section 312 of that Act is amended by adding at the end the following:

"(i) Aviation research and centers of excellence.".

Subtitle D—Aviation Noise Policy

SEC. 9301. SHORT TITLE.

This subtitle may be cited as the "Airport Noise and Capacity Act of 1990".

SEC. 9302. FINDINGS.

The Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;

(3) a noise policy must be implemented at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft, combined with the use of revenues, including those available from passenger facility charges, for noise management;

(6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of passenger facility charges is the issuance by the Secretary of Transportation of a final rule establishing procedures for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

SEC. 9303. NATIONAL AVIATION NOISE POLICY.

(a) DEVELOPMENT.—Not later than July 1, 1991, the Secretary of Transportation (hereinafter in this subtitle referred to as the "Secretary") shall issue regulations establishing a national aviation noise policy which takes into account the findings, determinations, and provisions of this subtitle, including the phaseout and nonaddition of Stage 2 aircraft as provided in this subtitle and implementation dates and reporting requirements consistent with this subtitle and existing law.

(b) BASIS.—The national aviation noise policy shall be based upon a detailed economic analysis of the impact of the phaseout date for

Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airline and aircargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry.

(c) RECOMMENDATIONS.—Not later than July 1, 1991, the Secretary shall transmit to Congress recommendations on—

(1) the need for changes in the standards and procedures which govern the rights of State and local governments (including airport authorities) to restrict aircraft operations for the purpose of limiting aircraft noise;

(2) the need for changes in the standards and procedures which govern law suits by persons adversely affected by aircraft noise;

(3) the need for changes in standards and procedures for Federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects;

(4) the need for changes in the Federal program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land impacted by aircraft noise;

(5) whether any changes in policy recommended in paragraphs (1) through (4) should be accomplished through regulatory, administrative, or legislative action; and

(6) specific legislative proposals necessary for implementing the national aviation noise policy.

SEC. 9304. NOISE AND ACCESS RESTRICTION REVIEWS.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROGRAM.—The national aviation noise policy to be established under this subtitle shall require the establishment, by regulation, in accordance with the provisions of this section of a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

(2) LIMITATIONS ON APPLICABILITY.—

(A) APPLICABILITY DATE FOR STAGE 2 AIRCRAFT.—With respect to Stage 2 aircraft, the requirements set forth in subsection (c) shall apply only to restrictions proposed after October 1, 1990.

(B) APPLICABILITY DATE FOR STAGE 3 AIRCRAFT.—With respect to Stage 3 aircraft, the requirements set forth in subsections (b) and (d) shall apply only to restrictions that first become effective after October 1, 1990.

(C) SPECIFIC EXEMPTIONS.—Subsections (b), (c), and (d) shall not apply to—

(i) a local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on the date of the enactment of this Act;

(ii) a local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before the date of the enactment of this Act;

(iii) an intergovernmental agreement including airport aircraft noise or access restriction in effect on the date of the enactment of this Act;

(iv) a subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on the date of the enactment of this Act that does not reduce or limit aircraft operations or affect aircraft safety;

(v)(I) a restriction which was adopted by an airport operator on or before October 1, 1990, and which was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction or a part thereof is subsequently allowed by a court to take effect; and

(II) in any case in which a restriction described in subclause (I) is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of the date of the enactment of this Act; and

(vi) a local action which represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction where the initial portion of such program was adopted during calendar year 1988 and was in effect on the date of the enactment of this Act.

(C) ADDITIONAL WORKING GROUP EXEMPTIONS.—Subsections (b) and (d) shall not apply where the Federal Aviation Administration has prior to the date of the enactment of this Act formed a working group (outside the process established by part 150 of title 14 of the Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an air carrier or air carrier constituting a majority of the air carrier users of such airport, subsections (b) and (d) shall apply only to local actions to enforce such agreement.

(b) LIMITATION ON STAGE 3 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction on the operation of a Stage 3 aircraft, including but not limited to—

(1) a restriction as to noise levels generated on either a single event or cumulative basis;

(2) a limit, direct or indirect, on the total number of Stage 3 aircraft operations;

(3) a noise budget or noise allocation program which would include Stage 3 aircraft;

(4) a restriction imposing limits on hours of operations; and

(5) any other limit on Stage 3 aircraft;

shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request

for approval in accordance with the program established pursuant to this section.

(c) LIMITATION ON STAGE 2 AIRCRAFT RESTRICTIONS.—No airport noise or access restriction shall include a restriction on operations of Stage 2 aircraft, unless the airport operator publishes the proposed noise or access restriction and prepares and makes available for public comment at least 180 days before the effective date of the restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed noise or access restriction;

(2) a description of alternative restrictions; and

(3) a description of the alternative measures considered which do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction.

(d) APPROVAL OF STAGE 3 AIRCRAFT RESTRICTIONS.—

(1) IN GENERAL.—Not later than the 180th day after the date on which the Secretary receives an airport or aircraft operator's request for approval of a noise or access restriction on the operation of a Stage 3 aircraft, the Secretary shall approve or disapprove such request.

(2) REQUIRED FINDINGS.—The Secretary shall not approve a noise or access restriction applying to Stage 3 aircraft operations unless the Secretary finds the following conditions to be supported by substantial evidence:

(A) The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory.

(B) The proposed restriction does not create an undue burden on interstate or foreign commerce.

(C) The proposed restriction is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace.

(D) The proposed restriction does not conflict with any existing Federal statute or regulation.

(E) There has been an adequate opportunity for public comment with respect to the restriction.

(F) The proposed restriction does not create an undue burden on the national aviation system.

(e) INELIGIBILITY FOR PFC'S AND AIP FUNDS.—Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first became effective after October 1, 1990, shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under section 9304 (a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

(f) REEVALUATION.—The Secretary may reevaluate any noise restrictions previously agreed to or approved under subsection (d) upon the request of any aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise

environment of the affected airport and that a review and reevaluation pursuant to the criteria established under subsection (d) of the previously approved or agreed to noise restriction is therefore justified.

(g) PROCEDURES FOR REEVALUATION.—The Secretary shall establish by regulation procedures under which reevaluations under subsection (f) are to be accomplished. A reevaluation under subsection (f) of a restriction shall not occur less than 2 years after a determination under subsection (d) has been made with respect to such restriction.

(h) EFFECT ON EXISTING LAW.—Except to the extent required by the application of the provisions of this section, nothing in this subtitle shall be deemed to eliminate, invalidate, or supersede—

(1) existing law with respect to airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) the authority of the Secretary to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

SEC. 9305. DETERMINATION REGARDING NOISE RESTRICTIONS ON CERTAIN STAGE 2 AIRCRAFT.

The Secretary shall determine by a study the applicability of subsections (a), (b), (c), and (d) of section 9304 to noise restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds. In making such determination, the Secretary shall consider—

(1) noise levels produced by such aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding such airports;

(4) international standards and accords with respect to aircraft noise; and

(5) such other factors which the Secretary deems necessary.

SEC. 9306. FEDERAL LIABILITY FOR NOISE DAMAGES.

In the event that a proposed airport aircraft noise or access restriction is disapproved, the Federal Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims Court.

SEC. 9307. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.

Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restriction not in compliance with this subtitle.

SEC. 9308. PROHIBITION ON OPERATION OF CERTAIN AIRCRAFT NOT COMPLYING WITH STAGE 3 NOISE LEVELS.

(a) GENERAL RULE.—After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels, as determined by the Secretary.

(b) WAIVER.—

(1) APPLICATION.—If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

(2) GRANTING OF WAIVER.—The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

(3) LIMITATION.—A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

(c) COMPLIANCE SCHEDULE.—The Secretary shall, by regulation, establish a schedule for phased-in compliance with the prohibition set forth in subsection (a). The period of such phase-in shall begin on the date of the enactment of this Act and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

(d) EXEMPTION FOR NONCONTIGUOUS AIR SERVICE.—This section and section 9309 shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or a territory or possession of the United States on or after the date of the enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

(e) VIOLATIONS.—Violations of this section and section 9309 and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title VI.

(f) JUDICIAL REVIEW.—Actions taken by the Secretary under this section and section 9309 shall be subject to judicial review in accordance with section 1006 of the Federal Aviation Act of 1958.

(g) REPORTS.—Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

(h) DEFINITIONS.—As used in this section, the following definitions apply:

(1) AIR CARRIER; AIR TRANSPORTATION; UNITED STATES.—The terms "air carrier", "air transportation", and "United States" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958.

(2) STAGE 3 NOISE LEVELS.—The term "Stage 3 noise levels" means the Stage 3 noise levels set forth in part 36 of title 14, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

SEC. 9309. NONADDITION RULE.

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, no person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after the date of the enactment of this Act unless—

(1) it complies with the Stage 3 noise levels, or

(2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before such date of enactment.

(b) EXEMPTION FOR COMPLYING MODIFICATIONS.—The Secretary may provide an exemption from the requirements of subsection (a) to permit a person to obtain modifications to an aircraft to meet the Stage 3 noise levels.

(c) LIMITATION ON STATUTORY CONSTRUCTION.—For the purposes of this section, an aircraft shall not be considered to have been imported into the United States if such aircraft—

(1) on the date of the enactment of this Act, is owned—

(A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);

(B) by an individual who is a citizen of the United States; or

(C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and

(2) enters into the United States not later than 6 months after the date of the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

TITLE X—MISCELLANEOUS USER FEES AND OTHER PROVISIONS

Subtitle A—Customs User Fees and Other Trade Provisions

PART I—CUSTOMS USER FEES

SEC. 10001. CUSTOMS USER FEES.

(a) EXTENSION OF EFFECTIVE PERIOD FOR FEES.—Paragraph (3) of section 13031(j) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking out "1991" and inserting "1995".

(b) ADJUSTMENT OF FEES FOR FORMALLY-ENTERED MERCHANDISE.—Paragraph (9) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(9)) is amended to read as follows:

"(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.17 percent ad valorem, unless adjusted under subparagraph (B).

"(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.19 percent nor less than 0.15 percent) that would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

"(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under section 613A of the Tariff Act of 1930 with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

"(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

"(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

"(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

"(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of

such adjustment, and the methodology used to determine such adjustment; and

"(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

"(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

"(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

"(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

"(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

"(C) If for any fiscal year, the Secretary of the Treasury determines not to make an adjustment under subparagraph (B), the Secretary shall, within the time prescribed under subparagraph (B)(iii)(I), submit a written report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the reasons for maintaining the current fee and the methodology used for computing such fee.

"(D) Any fee charged under this paragraph, whether or not adjusted under subparagraph (B), is subject to the limitations in subsection (b)(8)(A).".

(c) AGGREGATION OF MERCHANDISE PROCESSING FEES.—Section 111(f)(1)(B) of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "determined in" and inserting "currently in effect under".

(d) CUSTOMS SERVICE ADMINISTRATION.—Section 113 of the Customs and Trade Act of 1990 is amended—

(1) by inserting "and" after the semicolon at the end of subsection (a)(1);

(2) by striking out the semicolon at the end of subsection (a)(2) and inserting a period;

(3) by striking out paragraphs (3), (4), and (5) of subsection (a); and

(4) by striking out "Committees referred to in subsection (a)(5)" in subsection (b) and inserting "Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate".

(e) MERCHANDISE PROCESSING FEES FOR CERTAIN SMALL AIRPORTS.—

(1) Section 13031(a)(10)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(10)(C)) is amended by striking "applies," and inserting "applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release,".

(2) Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended by inserting ", if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year" in subparagraph (B)(ii) before the end period.

(f) MANUAL ENTRIES AND RELEASES.—Clause (ii) of section 13031(b)(8)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(C)(ii)) is amended to read as follows:

"(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—

"(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or

"(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (b), (c), and (d) shall take effect on the date of the enactment of the Act providing full-year appropriations for the Customs Service for fiscal year 1992, and shall apply to fiscal years beginning on and after October 1, 1991.

(2) MERCHANDISE PROCESSING FEES FOR SMALL AIRPORTS.—The amendments made by subsection (e) shall take effect as if included in section 111 of the Customs and Trade Act of 1990.

(3) MANUAL ENTRIES AND RELEASES.—The amendment made by subsection (f) shall take effect on the date of the enactment of this Act.

PART II—TECHNICAL CORRECTIONS

SEC. 10011. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE.

(a) REDESIGNATIONS.—

(1) IN GENERAL.—Each subheading of the Harmonized Tariff Schedule of the United States that is listed in column A is redesignated as the subheading listed in column B opposite such column A subheading:

Column A	*Column B*
5111.20.60	*5111.20.90*
5111.30.60	*5111.30.90*
5111.90.70	*5111.90.90*
5112.19.10	*5112.19.20*
5112.19.60	*5112.19.90*
5112.90.60	*5112.90.90*
6116.10.10	*6116.10.08*
6116.10.15	*6116.10.18*
6116.10.25	*6116.10.45*
6116.10.35	*6116.10.70*
6116.10.60	*6116.10.90*
6116.92.10	*6116.92.08*
6116.92.20	*6116.92.60*

Column A	Column B
6116.92.30	6116.92.90
6116.93.10	6116.93.08
6116.93.15	6116.93.60
6116.93.20	6116.93.90
6116.99.30	6116.99.35
6116.99.60	6116.99.50
6116.99.90	6116.99.80
6216.00.10	6216.00.08
6216.00.15	6216.00.12
6216.00.20	6216.00.18
6216.00.27	6216.00.28
6216.00.31	6216.00.32
6216.00.34	6216.00.35
6216.00.38	6216.00.39
6216.00.44	6216.00.46
6216.00.49	6216.00.52
6216.00.50	6216.00.80
6216.00.60	6216.00.90
6702.90.40	6702.90.35
6702.90.60	6702.90.65
8712.00.10	8712.00.15
8712.00.20	8712.00.25
8712.00.30	8712.00.35
8714.94.20	8714.94.15
8714.94.50	8714.94.60
9022.90.80	9022.90.90
9603.10.20	9603.10.25
9603.10.70	9603.10.90

(2) STAGED RATE REDUCTION.—Any staged reductions of a special rate of duty set forth in a subheading of the Harmonized Tariff Schedule of the United States listed in column A in paragraph (1) that were proclaimed by the President before October 1, 1990, and are scheduled to take effect on or after October 1, 1990, shall also apply to the corresponding special rates of duty set forth in the corresponding subheading listed in column B opposite such column A subheading.

(b) MISCELLANEOUS AMENDMENTS.—The Harmonized Tariff Schedule of the United States is further amended as follows:

(1) Chapter 61 is amended by striking out subheading 6116.10.50.

(2) Chapter 62 is amended by striking out subheadings 6216.00.23, 6216.00.29, and 6216.00.47.

(3) Subheading 6116.10.90, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the superior heading for subheading 6116.10.70, as redesignated by subsection (a).

(4) Subheading 6216.00.28, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by inserting the article description for such subheading at the same degree of indentation as the superior heading for subheading 6216.00.18, as redesignated by subsection (a).

(5) Subheading 6216.00.32, as redesignated by subsection (a), is amended—

(A) by striking out the superior heading for such subheading, and

(B) by striking out the article description and inserting "With fourchettes", with the new article description having the same degree of indentation as the article description for subheading 6216.00.35, as redesignated by subsection (a).

(6) Subheading 6216.00.52, as redesignated by subsection (a), is amended by inserting the article description for such subheading at the same degree of indentation as subheading 6216.00.46, as redesignated by subsection (a).

(7) The article descriptions for subheadings 6116.10.08, 6116.92.08, 6116.93.08, 6116.99.35, 6216.00.08, 6216.00.35, and 6216.00.46, as redesignated by subsection (a), are each amended to read as follows: "Other gloves, mittens, and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens, and mitts".

(8) The superior heading for subheadings 8712.00.25 and 8712.00.35, as redesignated by subsection (a), is amended by striking out "65" and inserting "63.5".

(9) Heading 9902.30.07 is amended by striking out "2929.90.10" and inserting "2929.10.40".8

(10) Heading 9902.30.08 is amended by striking out "2907.29.30" and inserting "2907.19.50".

(11) Heading 9902.30.42 is amended by striking out "19532-03-07" and inserting "19532-03-7".

(12) The article description for heading 9902.30.56 is amended by striking out "hydroxethyl" and inserting "hydroxyethyl".

(13) Heading 9902.30.83 (as enacted by section 388 of the Customs and Trade Act of 1990) is redesignated as heading 9902.31.11 and, as so redesignated, is amended by striking out "piperadinyl" and inserting "piperidinyl".

(14) Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.70.20	Fiberglass tire cord fabric woven from electrically nonconductive continuous fiberglass filaments 9 microns in diameter or 10 microns in diameter and impregnated with resorcinol formaldehyde latex treatment for adhesion to polymeric compounds (provided for in subheading 7019.20.10, 7019.20.20, or 7019.20.50)	Free	No change	No change	On or before 12/31/92	"

(15) Heading 9902.84.83 is amended by striking out "(A,C,E,IL)" and inserting "(A,C,CA,E,IL)".

(16) Heading 9902.87.14 is amended by striking out "brakes," the first place it appears.

(17) The article description for heading 9902.94.01 is amended by striking out "Furniture seats" and inserting "Furniture, seats,".

(c) EFFECTIVE DATE.—

(1) Subject to paragraphs (2) and (3), the amendments made by subsections (a) and (b) apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 1, 1990.

(2) Any amendment made by subsection (a) or (b) to a provision of the Harmonized Tariff Schedule of the United States that was the subject of an amendment made by title III of the Customs and Trade Act of 1990 shall—

(A) be treated as applying to that provision as established or amended by such title III; and

(B) if the amendment made by such title III has retroactive application under section 485(b) of such Act, be treated as applying with respect to entries made after the relevant applicable date (as defined in paragraph (2)(A) of such section 485(b)).

(3) Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer before April 1, 1991, any entry—

(A) which was made after December 31, 1988, and before October 1, 1990; and

(B) with respect to which there would have been a lesser duty if any amendment made by subsection (b) (1) through (7) applied to such entry;

shall be liquidated or reliquidated as though such amendment applied to such entry.

SEC. 10012. TECHNICAL AMENDMENTS TO CERTAIN CUSTOMS LAWS.

(a) CUSTOMS FORFEITURE FUND.—

(1) Paragraph (5) of section 121 of the Customs and Trade Act of 1990 is repealed and subsection (f) of section 613A of the Tariff Act of 1930 shall be applied as if the amendment made by such paragraph (5) had not been enacted.

(2) Paragraph (2) of such section 613A(f) of the Tariff Act of 1930 (as in effect after the application of paragraph (1)) is amended to read as follows:

"(2)(A) Subject to subparagraph (B), there are authorized to be appropriated from the Fund not to exceed $20,000,000 for each fiscal year to carry out the purposes set forth in subsections (a)(3) and (b) for such fiscal year.

"(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

"(i) $14,855,000 for fiscal year 1991.

"(ii) $15,598,000 for fiscal year 1992.".

(b) CERTAIN ENTRIES.—Section 484 of the Customs and Trade Act of 1990 (Public Law 101-382) is amended by striking out "1801-000027" and inserting "1801-7-000027".

(c) EFFECTIVE DATE.—The provisions of this section take effect August 21, 1990.

SEC. 10013. STAGED RATE REDUCTION FOR ETBE.

(a) IN GENERAL.—Section 484G(b) of the Customs and Trade Act of 1990 is amended to read as follows:

"(b) STAGED RATE REDUCTION.—The President may proclaim such modifications to the rates of duty set forth in subheading 9901.00.52

with respect to goods originating in the territory of Canada as will result in reduction of such rates in equal annual stages and will make such products free of duty effective January 1, 1998.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in section 484G of the Customs and Trade Act of 1990.

Subtitle B—Patent and Trademark Office User Fees

SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

(a) SURCHARGES.—There shall be a surcharge, during fiscal years 1991 through 1995, of 69 percent, rounded by standard arithmetic rules, on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code.

(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office—

(1) in fiscal year 1991—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) $91,000,000 shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, and the additional surcharge receipts, totalling $18,807,000, shall be available only to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office,

(2) in fiscal years 1992 through 1995—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office, and

(3) shall remain available until expended.

(c) REVISIONS.—In fiscal years 1991 through 1995, surcharges established under subsection (a) may be revised periodically by the Commissioner of Patents and Trademarks, subject to the provisions of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected:

(1) $109,807,000 in fiscal year 1991.

(2) $95,000,000 in fiscal year 1992.

(3) $99,000,000 in fiscal year 1993.

(4) $103,000,000 in fiscal year 1994.

(5) $107,000,000 in fiscal year 1995.

(d) REPEAL.—Section 105(a) of Public Law 100-703 (102 Stat. 4675) is repealed.

(e) REPORT ON FEES.—The Commissioner of Patents and Trademarks shall study the structure of all fees collected by the Patent and Trademark Office and, not later than May 1, 1991, shall submit to the Congress a report on all fees to be collected by the office in fiscal years 1992 through 1995. The report shall include a proposed schedule of fees that would distribute the surcharges provided by subsection (a) among all fees collected by the office, and recommendations for any statutory changes that may be necessary to implement the proposals contained in the report.

SEC. 10102. FEDERAL AGENCY STATUS.

For the purposes of Federal law, the Patent and Trademark Office shall be considered a Federal agency. In particular, the Patent and Trademark Office shall be subject to all Federal laws pertaining to the procurement of goods and services that would apply to a Federal agency using appropriated funds, including the Federal Property and Administrative Services Act of 1949 and the Office of Federal Procurement Policy Act.

SEC. 10103. EFFECT ON OTHER LAW.

Except for section 10101(d), nothing in this subtitle affects the provisions of Public Law 100-703 (102 Stat. 4674 and following).

Subtitle C—Science and Technology User Fees

SEC. 10201. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION USER FEES.

(a) AMENDMENTS.—Section 409 of the Act of November 17, 1988 (15 U.S.C. 1534) is amended—

(1) in subsection (a), by striking "archived" and all that follows and inserting in lieu thereof "and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration.";

(2) in subsection (b)(1)—

(A) by inserting ", information, and products" immediately after "data" the first place it appears; and

(B) by striking "data is" and inserting in lieu thereof "data, information, and products are";

(3) in subsection (b)(2)—

(A) by inserting ", information, or products" immediately after "data" the first place it appears; and

(B) by striking "data exchange basis" and inserting in lieu thereof "basis of exchanging such data, information, and products";

(4) in subsection (b), by inserting at the end the following new paragraph:

"(3) The Secretary shall waive the assessment of fees authorized by subsection (a) as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic Atmospheric Administration.";

(5) by amending paragraph (1) of subsection (d) to read as follows:

"(1) The initial schedule of fees established by the National Environmental Satellite, Data, and Information Service for archived data shall remain in effect for the 3-year period beginning on the date that the fees under that schedule take effect.";

(6) in subsections (d), (e), and (f)(1), by inserting "by the National Environmental Satellite, Data, and Information Service for archived data" immediately after "under this section" each place it appears; and

(7) in subsection (g), by striking the period at the end and inserting in lieu thereof the following: ", including the authority of the Secretary pursuant to section 1307 of title 44, United States Code. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44, United States Code.".

(b) EFFECT OF AMENDMENTS.—(1) The increase in revenues to the United States attributable to the amendments made by subsection (a) shall not exceed—

(A) $2,000,000 for each of the fiscal years 1991, 1992, and 1993; and

(B) $3,000,000 for each of the fiscal years 1994 and 1995.

(2) Increases in revenues to the United States described in paragraph (1) shall be achieved by the Secretary of Commerce through fair and equitable increases in fees for services offered by the various programs of the National Oceanic and Atmospheric Administration.

(3) The Secretary of Commerce shall notify the Congress of any changes in fee schedules under section 409 of the Act of November 17, 1988 (15 U.S.C. 1534), before such changes take effect.

SEC. 10202. RADON MEASUREMENT PROFICIENCY.

Section 305(e) of the Toxic Substances Control Act is amended by adding at the end the following new paragraphs:

"(5) RESEARCH.—The Administrator shall, in conjunction with other Federal agencies, conduct research to develop, test, and evaluate radon and radon progeny measurement methods and protocols. The purpose of such research shall be to assess the ability of those methods and protocols to accurately assess exposure to radon progeny. Such research shall include—

"(A) conducting comparisons among radon and radon progeny measurement techniques;

"(B) developing measurement protocols for different building types under varying operating conditions; and

"(C) comparing the exposures estimated by stationary monitors and protocols to those measured by personal monitors, and issue guidance documents that—

"(i) provide information on the results of research conducted under this paragraph; and

"(ii) describe model State radon measurement and mitigation programs.

"(6) MANDATORY PROFICIENCY TESTING PROGRAM STUDY.—(A) The Administrator shall conduct a study to determine the feasi-

bility of establishing a mandatory proficiency testing program that would require that—

"(i) any product offered for sale, or device used in connection with a service offered to the public, for the measurement of radon meets minimum performance criteria; and

"(ii) any operator of a device, or person employing a technique, used in connection with a service offered to the public for the measurement of radon meets a minimum level of proficiency.

"(B) The study shall also address procedures for—

"(i) ordering the recall of any product sold for the measurement of radon which does not meet minimum performance criteria;

"(ii) ordering the discontinuance of any service offered to the public for the measurement of radon which does not meet minimum performance criteria; and

"(iii) establishing adequate quality assurance requirements for each company offering radon measurement services to the public to follow.

The study shall identify enforcement mechanisms necessary to the success of the program. The Administrator shall report the findings of the study with recommendations to Congress by March 1, 1991.

"(7) USER FEE.—In addition to any charge imposed pursuant to paragraph (2), the Administrator shall collect user fees from persons seeking certification under the radon proficiency program in an amount equal to $1,500,000 to cover the Environmental Protection Agency's cost of conducting research pursuant to paragraph (5) for each of the fiscal years 1991, 1992, 1993, 1994, and 1995. Such funds shall be deposited in the account established pursuant to paragraph (3).".

SEC. 10203. DEPARTMENT OF ENERGY USER FEE STUDY.

The Secretary of Energy shall undertake a study of the Department of Energy's user fee assessment and collection practices, and shall make recommendations on ways to—

(1) reasonably increase revenues to the United States through user fees, consistent with the mission of the Department; and

(2) improve user fee collection practices.

The Secretary of Energy shall submit a report containing such findings and recommendations to the Congress within 6 months after the date of enactment of this Act. There are authorized to be appropriated to the Secretary of Energy for carrying out this section not to exceed $500,000 for fiscal year 1991, from funds otherwise available to the Department of Energy.

SEC. 10204. DEPARTMENT OF TRANSPORTATION COMMERCIAL SPACE LAUNCH STUDY.

(a) The Secretary of Transportation shall report on actions by the Department of Transportation for the assessment and collection of licensing fees under the Commercial Space Launch Act (49 U.S.C. App. 2601 et seq.).

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

SEC. 10205. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY COST RECOVERY STUDY.

(a) The Secretary of Commerce shall undertake a study of current practices at, and any suggested improvements consistent with the mission of, the National Institute of Standards and Technology for recovering the costs of services and materials provided to private and nonprofit organizations, including services provided on a proprietary basis to users of Institute facilities.

(b) The Secretary shall submit a report containing such findings to the Congress within 6 months after the date of enactment of this Act.

Subtitle D—Travel and Tourism Facilitation Fee

SEC. 10301. UNITED STATES TRAVEL AND TOURISM FACILITATION FEE.

(a) UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE.—The International Travel Act of 1961 (22 U.S.C. 2121 et seq.) is amended by adding at the end the following:

"SEC. 306. (a) To the extent not inconsistent with treaties or international agreements entered into by the United States, the Secretary, on a calendar quarterly basis beginning January 1, 1991, shall charge and collect from each commercial airline and passenger cruise ship line transporting passengers to the United States, a United States Travel and Tourism Administration Facilitation Fee, in an amount determined under subsection (b).

"(b)(1) During the period from January 1, 1991, through December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to one dollar multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(2) Commencing in 1991, the Secretary shall each year determine and publish the amount of the fee described in subsection (a) for the 12-month period commencing on January 1 of the succeeding calendar year, as follows:

"(A) The Secretary (in consultation with the Attorney General and the Secretary of State) shall estimate the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) expected to enter the United States during such succeeding calendar year, based upon the number of such aliens who entered the United States during the previous calendar year (as reported or estimated by the Attorney General) and such other available information as the Secretary deems reliable.

"(B) The Secretary shall divide the amount appropriated to the United States Travel and Tourism Administration for the fiscal year during which such determination is made by the number of aliens described in subparagraph (A) expected by the Secretary to enter the United States during the calendar year described in such subparagraph, as estimated by the Secretary

under such subparagraph, and shall round the result up to the nearest quarter-dollar.

"(C) The Secretary shall publish in the Federal Register the estimate required by subparagraph (A), together with a description of the information supporting such estimate, and the amount of the fee determined under subparagraph (B) which shall be applicable during the 12-month period commencing on January 1 of the succeeding calendar year.

"(D) For each calendar quarter beginning after December 31, 1991, the Secretary shall charge each commercial airline and passenger cruise ship line an amount equal to the fee amount determined under subparagraph (B) and applicable under subparagraph (C) multiplied by the number of aliens described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(B)) arriving at any port within the United States aboard a commercial aircraft or cruise ship of such airline or passenger cruise ship line during that calendar quarter.

"(3) Neither the estimate of the Secretary under paragraph (2)(A) nor the amount determined by the Secretary under paragraph (2)(B) shall be subject to judicial review.

"(c) Each commercial airline and passenger cruise ship line shall remit the fee charged by the Secretary under subsection (b), in United States dollars, no later than 31 days after the close of the calendar quarter of the arrival of the aliens on which the calculation of the fee is based.

"(d) The Secretary shall deposit the fees received pursuant to subsection (c) in the general fund of the Treasury as offsetting receipts and ascribed to the travel and tourism activities of the Secretary.

"(e) Beginning on October 1, 1992, the aggregate amounts collected for the fee charged under this section shall at least equal the appropriations made for the travel and tourism activities of the Secretary under this Act, but at no time shall the aggregate of amounts collected for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(f) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this section.".

(b) CIVIL PENALTIES AND ENFORCEMENT.—The International Travel Act of 1961, as amended by subsection (a), is amended by adding at the end the following:

"SEC. 307. (a) Any commercial airline or commercial cruise ship line which is found by the Secretary or the Secretary's designee, after notice and an opportunity for a hearing, to have failed to pay to the Secretary, by the due date, the fee charged by the Secretary under section 306(a), may be ordered by the Secretary or the Secretary's designee to pay any fee amount outstanding plus interest on any late payment and, in addition, to pay a civil penalty not to exceed $5,000 for each day payment to the Secretary is not made or was made late. The amount of such civil penalty shall be assessed by the Secretary or the Secretary's designee by written notice. In determining the amount of such penalty, the Secretary or the Secretary's designee shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to

pay, and such other matters as justice may require. Each day a payment to the Secretary required by this Act is late shall constitute a separate violation of this Act.

"(b) If any commercial airline or cruise ship line fails to pay as ordered by the Secretary or the Secretary's designee, the Attorney General may, upon request of the Secretary, bring a civil action in any appropriate United States district court for the recovery of the amount ordered to be paid.

"(c) Before requesting the Attorney General to bring a civil action, the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under subsection (a).

"(d) For the purpose of conducting any hearing under subsection (a), the Secretary or the Secretary's designee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the United States district court for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or the Secretary's designee or to appear and produce papers, books, and documents before the Secretary or the Secretary's designee, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.".

Subtitle E—Coast Guard User Fees

SEC. 10401. ESTABLISHMENT AND COLLECTION OF FEES FOR COAST GUARD SERVICES.

(a) IN GENERAL.—Section 2110 of title 46, United States Code, is amended to read as follows:

"§ 2110. Fees

"(a)(1) Except as otherwise provided in this title, the Secretary shall establish a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31.

"(2) The Secretary may not establish a fee or charge under paragraph (1) for inspection or examination of a non-self-propelled tank vessel under part B of this title that is more than $500 annually.

"(3) The Secretary may, by regulation, adjust a fee or charge collected under this subsection to accommodate changes in the cost of providing a specific service or thing of value, but the adjusted fee or charge may not exceed the total cost of providing the service or thing of value for which the fee or charge is collected, including the cost of collecting the fee or charge.

"(4) The Secretary may not collect a fee or charge under this subsection that is in conflict with the international obligations of the United States.

"(5) The Secretary may not collect a fee or charge under this subsection for any search or rescue service.

"(b)(1) The Secretary shall establish a fee or charge as provided in paragraph (2) of this subsection, and collect it annually in fiscal years 1991, 1992, 1993, 1994, and 1995, from the owner or operator of each recreational vessel that is greater than 16 feet in length.

"(2) The fee or charge established under paragraph (1) of this subsection is as follows:

"(A) for vessels greater than 16 feet in length but less than 20 feet, not more than $25;

"(B) for vessels of at least 20 feet in length but less than 27 feet, not more than $35;

"(C) for vessels of at least 27 feet in length but less than 40 feet, not more than $50; and

"(D) for vessels of at least 40 feet in length, not more than $100.

"(3) The fee or charge established under this subsection applies only to vessels operated on the navigable waters of the United States where the Coast Guard has a presence.

"(4) The fee or charge established under this subsection does not apply to a—

"(A) public vessel; or

"(B) vessel deemed to be a public vessel under section 827 of title 14.

"(c) In addition to the collection of fees and charges established under subsections (a) and (b), the Secretary may recover appropriate collection and enforcement costs associated with delinquent payments of the fees and charges.

"(d)(1) The Secretary may employ any Federal, State, or local agency or instrumentality, or any private enterprise or business, to collect a fee or charge established under this section. A private enterprise or business selected by the Secretary to collect fees or charges—

"(A) shall be subject to reasonable terms and conditions agreed to by the Secretary and the enterprise or business;

"(B) shall provide appropriate accounting to the Secretary; and

"(C) may not institute litigation as part of that collection.

"(2) A Federal agency shall account for the agency's costs of collecting the fee or charge under this subsection as a reimbursable expense, and the costs shall be credited to the account from which expended.

"(e) A person that violates this section by failing to pay a fee or charge established under this section is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.

"(f) When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) to a vessel for which a fee or charge established under this section has not been paid until the fee or charge is paid or until a bond is posted for the payment.

"(g) The Secretary may exempt a person from paying a fee or charge established under this section if the Secretary determines that it is in the public interest to do so.

"(h) Fees and charges collected by the Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(i) The collection of a fee or charge under this section does not alter or expand the functions, powers, responsibilities, or liability of the United States under any law for the performance of services or the provision of a thing of value for which a fee or charge is collected under this section.".

(b) CLERICAL AMENDMENT.—The analysis of chapter 21 of title 46, United States Code, is amended by striking the item relating to section 2110 and inserting the following:

"2110. Fees.".

SEC. 10402. TONNAGE DUTIES.

(a) VESSELS ENTERING FROM FOREIGN PORT OR PLACE.—Section 36 of the Act entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes", approved August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121) is amended in the second paragraph—

(1) by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year," and inserting "9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter";

(2) by inserting after "Newfoundland," the following: "and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46, United States Code) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place,"; and

(3) by striking "six cents per ton, not to exceed thirty cents per ton per annum," and inserting "27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter".

(b) CONFORMING AMENDMENT.—The Act entitled "An Act concerning tonnage duties on vessels entering otherwise than by sea", approved March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "two cents per ton, not to exceed in the aggregate ten cents per ton in any one year" and inserting "9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter".

(c) OFFSETTING RECEIPTS.—Increased tonnage charges collected as a result of the amendments made by subsection (a) shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

Subtitle F—Railroad User Fees

SEC. 10501. AMENDMENTS TO FEDERAL RAILROAD SAFETY ACT OF 1970.

(a) USER FEES.—The Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

"SEC. 216. USER FEES.

"(a)(1) The Secretary shall establish by regulation, after notice and comment, a schedule of fees to be assessed equitably to railroads, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors, but shall not be based on the proportion of industry revenues attributable to a railroad or class of railroads.

"(2) The Secretary shall establish procedures for the collection of such fees. The Secretary may use the services of any Federal, State, or local agency or instrumentality to collect such fees, and may reimburse such agency or instrumentality a reasonable amount for such services.

"(3) Fees established under this section shall be assessed to railroads subject to this Act and shall cover the costs of administering this Act, other than activities described in section 202(a)(2).

"(b) The Secretary shall assess and collect fees described in subsection (a) with respect to each fiscal year before the end of such fiscal year.

"(c) All fees collected under subsection (b) shall be deposited into the general fund of the United States Treasury as offsetting receipts and shall be used, to the extent provided in advance in appropriations Acts, only to carry out activities under this Act.

"(d) Fees established under subsection (a) shall be assessed in an amount sufficient to cover activities described in subsection (c) beginning on March 1, 1991, but at no time shall the aggregate of fees received for any fiscal year under this section exceed 105 percent of the aggregate of appropriations made for such fiscal year for activities to be funded by such fees.

"(e)(1) Within 90 days after the end of each fiscal year in which fees are collected pursuant to this section, the Secretary shall report to the Congress—

"(A) the amount of fees collected during that fiscal year;

"(B) the impact of such fee collections on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

"(C) the total cost of Federal safety activities for each such other mode of transportation, including the portion of that total cost, if any, defrayed by Federal user fees.

"(2) With respect to any fiscal year for which the Secretary's report submitted under paragraph (1) finds—

"(A) any impact of fees collected under this section either on the financial health of the railroad industry, or on its competitive position relative to competing modes of transportation; or

"(B) any significant difference in the burden of Federal user fees borne by the railroad industry and those applicable to competing modes of transportation,

the Secretary shall, within 90 days after submission of such report, prepare and submit to the Congress specific recommendations for legislation to correct any such impact or difference.

"(f) This section shall expire on September 30, 1995.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out this Act not to exceed $46,884,000 for fiscal year 1991.".

TITLE XI—REVENUE PROVISIONS

SEC. 11001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This title may be cited as the "Revenue Reconciliation Act of 1990".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—Except as otherwise expressly provided in this title, no amendment made by tnis title shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) TABLE OF CONTENTS.—

TITLE XI—REVENUE PROVISIONS

Subtitle A—Individual Income Tax Provisions

PART I—PROVISIONS AFFECTING HIGH-INCOME INDIVIDUALS

SEC. 11101. ELIMINATION OF PROVISION REDUCING MARGINAL TAX RATE FOR HIGH-INCOME TAXPAYERS.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $32,450	15% of taxable income.
Over $32,450 but not over $78,400	$4,867.50, plus 28% of the excess over $32,450.
Over $78,400	$17,733.50, plus 31% of the excess over $78,400.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $26,050	15% of taxable income.
Over $26,050 but not over $67,200	$3,907.50, plus 28% of the excess over $26,500.
Over $67,200	$15,429.50, plus 31% of the excess over $67,200.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $19,450	15% of taxable income.
Over $19,450 but not over $47,050	$2,917.50, plus 28% of the excess over $19,450.
Over $47,050	$10,645.50, plus 31% of the excess over $47,050.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	*The tax is:*
Not over $16,225	*15% of taxable income.*
Over $16,225 but not over $39,200	*$2,433.75, plus 28% of the excess over $16,225.*
Over $39,200	*$8,866.75, plus 31% of the excess over $39,200.*

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	*The tax is:*
Not over $3,300	*15% of taxable income.*
Over $3,300 but not over $9,900	*$495, plus 28% of the excess over $3,300.*
Over $9,900	*$2,343, plus 31% of the excess over $9,900."*

(b) REPEAL OF PHASEOUT.—

(1) IN GENERAL.—Section 1 is amended by striking subsection (g) (relating to phaseout of 15-percent rate and personal exemptions).

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) (relating to adjustments for inflation) is amended by striking "subsection (g)(4),".

(c) 28 PERCENT MAXIMUM CAPITAL GAINS RATE.—Subsection (j) of section 1 (relating to maximum capital gains rate) is amended to read as follows:

"(j) MAXIMUM CAPITAL GAINS RATE.—If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of—

"(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

"(A) taxable income reduced by the amount of the net capital gain, or

"(B) the amount of taxable income taxed at a rate below 28 percent, plus

"(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1).".

(d) TECHNICAL AMENDMENTS.—

(1)(A) Subsection (f) of section 1 is amended—

(i) by striking "1988" in paragraph (1) and inserting "1990", and

(ii) by striking "1987" in paragraph (3)(B) and inserting "1989".

(B) Subparagraph (B) of section 32(i)(1) is amended by striking "1987" and inserting "1989".

(C) Subparagraph (C) of section 41(e)(5) is amended—

(i) by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end of clause (i),

(ii) by striking "1987" in clause (ii) and inserting "1989", and

(iii) by adding at the end of clause (ii) the following new sentence: "Such substitution shall be in lieu of the substitution under clause (i).".

(D) Subparagraph (B) of section 63(c)(4) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(E) Clause (ii) of section 135(b)(2)(B) is amended by striking ", determined by substituting 'calendar year 1989' for 'calendar year 1987' in subparagraph (B) thereof".

(F) Subparagraph (B) of section 151(d)(3) is amended by striking "1987" and inserting "1989".

(G) Clause (ii) of section 513(h)(2)(C) is amended by inserting ", by substituting 'calendar year 1987' for 'calendar year 1989' in subparagraph (B) thereof" before the period at the end.

(2) Section 1 is amended by striking subsection (h) and redesignating subsections (i) and (j) as subsections (g) and (h), respectively.

(3) Subsection (j) of section 59 is amended—

(A) by striking "section 1(i)" each place it appears and inserting "section 1(g)", and

(B) by striking "section 1(i)(3)(B)" in paragraph (2)(C) and inserting "section 1(g)(3)(B)".

(4) Paragraph (4) of section 691(c) is amended by striking "1(j)" and inserting "1(h)".

(5)(A) Clause (i) of section 904(b)(3)(D) is amended by striking "subsection (j)" and inserting "subsection (h)".

(B) Subclause (I) of section 904(b)(3)(E)(iii) is amended by striking "section 1(j)" and inserting "section 1(h)".

(6) Clause (iv) of section 6103(e)(1)(A) is amended by striking "section 1(j)" and inserting "section 1(g)".

(7)(A) Subparagraph (A) of section 7518(g)(6) is amended by striking "1(j)" and inserting "1(h)".

(B) Subparagraph (A) of section 607(h)(6) of the Merchant Marine Act, 1936 is amended by striking "1(j)" and inserting "1(h)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11102. INCREASE IN RATE OF INDIVIDUAL ALTERNATIVE MINIMUM TAX.

(a) GENERAL RULE.—Subparagraph (A) of section 55(b)(1) (relating to tentative minimum tax) is amended by striking "21 percent" and inserting "24 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1990.

SEC. 11103. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new section:

"SEC. 68. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS.

"(a) GENERAL RULE.—In the case of an individual whose adjusted gross income exceeds the applicable amount, the amount of the itemized deductions otherwise allowable for the taxable year shall be reduced by the lesser of—

"(1) 3 percent of the excess of adjusted gross income over the applicable amount, or

"(2) 80 percent of the amount of the itemized deductions otherwise allowable for such taxable year.

"(b) APPLICABLE AMOUNT.—

"(1) IN GENERAL.—For purposes of this section, the term 'applicable amount' means $100,000 ($50,000 in the case of a separate return by a married individual within the meaning of section 7703).

"(2) INFLATION ADJUSTMENTS.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof.

"(c) EXCEPTION FOR CERTAIN ITEMIZED DEDUCTIONS.—For purposes of this section, the term 'itemized deductions' does not include—

"(1) the deduction under section 213 (relating to medical, etc. expenses),

"(2) any deduction for investment interest (as defined in section 163(d)), and

"(3) the deduction under section 165(a) for losses described in subsection (c)(3) or (d) of section 165.

"(d) COORDINATION WITH OTHER LIMITATIONS.—This section shall be applied after the application of any other limitation on the allowance of any itemized deduction.

"(e) EXCEPTION FOR ESTATES AND TRUSTS.—This section shall not apply to any estate or trust.

"(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 1995.".

(b) COORDINATION WITH MINIMUM TAX.—Paragraph (1) of section 56(b) is amended by adding at the end thereof the following new subparagraph:

"(F) SECTION 68 NOT APPLICABLE.—Section 68 shall not apply.".

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 1(f)(6) is amended by inserting "section 68(b)(2)" after "section 63(c)(4),".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 68. Overall limitation on itemized deductions.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11104. PHASEOUT OF PERSONAL EXEMPTIONS.

(a) GENERAL RULE.—Subsection (d) of section 151 is amended to read as follows:

"(d) EXEMPTION AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'exemption amount' means $2,000.

"(2) EXEMPTION AMOUNT DISALLOWED IN CASE OF CERTAIN DEPENDENTS.—In the case of an individual with respect to whom a deduction under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the exemption amount applicable to such individual for such individual's taxable year shall be zero.

"(3) PHASEOUT.—

"(A) IN GENERAL.—In the case of any taxpayer whose adjusted gross income for the taxable year exceeds the threshold amount, the exemption amount shall be reduced by the applicable percentage.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means 2 percentage points for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds the threshold amount. In the case of a married individual filing a separate return, the preceding sentence shall be applied by substituting '$1,250' for '$2,500'. In no event shall the applicable percentage exceed 100 percent.

"(C) THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'threshold amount' means—

"(i) $150,000 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

"(ii) $125,000 in the case of a head of a household (as defined in section 2(b)),

"(iii) $100,000 in the case of an individual who is not married and who is not a surviving spouse or head of a household, and

"(iv) $75,000 in the case of a married individual filing a separate return.

For purposes of this paragraph, marital status shall be determined under section 7703.

"(D) COORDINATION WITH OTHER PROVISIONS.—The provisions of this paragraph shall not apply for purposes of determining whether a deduction under this section with respect to any individual is allowable to another taxpayer for any taxable year.

"(E) TERMINATION.—This paragraph shall not apply to any taxable year beginning after December 31, 1995.

"(4) INFLATION ADJUSTMENTS.—

"(A) ADJUSTMENT TO BASIC AMOUNT OF EXEMPTION.—In the case of any taxable year beginning in a calendar year after 1989, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1988' for 'calendar year 1989' in subparagraph (B) thereof.

"(B) ADJUSTMENT TO THRESHOLD AMOUNTS FOR YEARS AFTER 1991.—In the case of any taxable year beginning in a calendar year after 1991, each dollar amount contained in paragraph (3)(C) shall be increased by an amount equal to—

"(i) such dollar amount, multiplied by

"(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1990' for 'calendar year 1989' in subparagraph (B) thereof."

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 1(f) is amended—

(1) by striking "section 151(d)(3)" in subparagraph (A) and inserting "section 151(d)(4)", and

(2) by striking "section 151(d)(3)" in subparagraph (B) and inserting "section 151(d)(4)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

PART II—MODIFICATIONS OF EARNED INCOME CREDIT

SEC. 11111. MODIFICATIONS OF EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—So much of section 32 (relating to earned income credit) as precedes subsection (d) thereof is amended to read as follows:

"SEC. 32. EARNED INCOME.

"(a) ALLOWANCE OF CREDIT.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) the basic earned income credit, and

"(2) the health insurance credit.

"(b) COMPUTATION OF CREDIT.—For purposes of this section—

"(1) BASIC EARNED INCOME CREDIT.—

"(A) IN GENERAL.—The term 'basic earned income credit' means an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed $5,714.

"(B) LIMITATION.—The amount of the basic earned income credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of—

"(i) the credit percentage of $5,714, over

"(ii) the phaseout percentage of so much of the adjusted gross income (or, if greater the earned income) of the taxpayer for the taxable year as exceeds $9,000.

"(C) PERCENTAGES.—For purposes of this paragraph—

"(i) IN GENERAL.—Except as provided in clause (ii), the percentages shall be determined as follows:

"In the case of an eligible individual with:	*The credit percentage is:*	*The phaseout percentage is:*
1 qualifying child	*23*	*16.43*
2 or more qualifying children	*25*	*17.86*

"(ii) TRANSITION PERCENTAGES.—

"(I) For taxable years beginning in 1991, the percentages are:

"In the case of an eligible individual with:	*The credit percentage is:*	*The phaseout percentage is:*
1 qualifying child	*16.7*	*11.93*
2 or more qualifying children	*17.3*	*12.36*

"(II) For taxable years beginning in 1992, the percentages are:

"In the case of an eligible individual with:	*The credit percentage is:*	*The phaseout percentage is:*
1 qualifying child	*17.6*	*12.57*
2 or more qualifying children	*18.4*	*13.14*

"(III) For taxable years beginning in 1993, the percentages are:

"In the case of an eligible individual with:	*The credit percentage is:*	*The phaseout percentage is:*
1 qualifying child	*18.5*	*13.21*
2 or more qualifying children	*19.5*	*13.93*

"(D) SUPPLEMENTAL YOUNG CHILD CREDIT.—In the case of a taxpayer with a qualifying child who has not attained age 1 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends—

"(i) the credit percentage shall be increased by 5 percentage points, and

"(ii) the phaseout percentage shall be increased by 3.57 percentage points.

If the taxpayer elects to take a child into account under this subparagraph, such child shall not be treated as a qualifying individual under section 21.

"(2) HEALTH INSURANCE CREDIT.—

"(A) IN GENERAL.—The term 'health insurance credit' means an amount determined in the same manner as the basic earned income credit except that—

"(i) the credit percentage shall be equal to 6 percent, and

"(ii) the phaseout percentage shall be equal to 4.285 percent.

"(B) LIMITATION BASED ON HEALTH INSURANCE COSTS.—The amount of the health insurance credit determined

under subparagraph (A) for any taxable year shall not exceed the amounts paid by the taxpayer during the taxable year for insurance coverage—

"(i) which constitutes medical care (within the meaning of section 213(d)(1)(C)), and

"(ii) which includes at least 1 qualifying child.

For purposes of this subparagraph, the rules of section 213(d)(6) shall apply.

"(C) SUBSIDIZED EXPENSES.—A taxpayer may not take into account under subparagraph (B) any amount to the extent that—

"(i) such amount is paid, reimbursed, or subsidized by the Federal Government, a State or local government, or any agency or instrumentality thereof; and

"(ii) the payment, reimbursement, or subsidy of such amount is not includible in the gross income of the recipient.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ELIGIBLE INDIVIDUAL.—

"(A) IN GENERAL.—The term 'eligible individual' means any individual who has a qualifying child for the taxable year.

"(B) QUALIFYING CHILD INELIGIBLE.—If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

"(C) 2 OR MORE ELIGIBLE INDIVIDUALS.—If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child.

"(D) EXCEPTION FOR INDIVIDUAL CLAIMING BENEFITS UNDER SECTION 911.—The term 'eligible individual' does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

"(2) EARNED INCOME.—

"(A) The term 'earned income' means—

"(i) wages, salaries, tips, and other employee compensation, plus

"(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

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

"(i) the earned income of an individual shall be computed without regard to any community property laws,

"(ii) no amount received as a pension or annuity shall be taken into account, and

"(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

"(3) QUALIFYING CHILD.—

"(A) IN GENERAL.—The term 'qualifying child' means, with respect to any taxpayer for any taxable year, an individual—

"(i) who bears a relationship to the taxpayer described in subparagraph (B),

"(ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

"(iii) who meets the age requirements of subparagraph (C), and

"(iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).

"(B) RELATIONSHIP TEST.—

"(i) IN GENERAL.—An individual bears a relationship to the taxpayer described in this subparagraph if such individual is—

"(I) a son or daughter of the taxpayer, or a descendant of either,

"(II) a stepson or stepdaughter of the taxpayer, or

"(III) an eligible foster child of the taxpayer.

"(ii) MARRIED CHILDREN.—Clause (i) shall not apply to any individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for paragraph (2) or (4) of section 152(e)).

"(iii) ELIGIBLE FOSTER CHILD.—For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i) (I) or (II) who—

"(I) the taxpayer cares for as the taxpayer's own child, and

"(II) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

"(iv) ADOPTION.—For purposes of this subparagraph, a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child by blood.

"(C) AGE REQUIREMENTS.—An individual meets the requirements of this subparagraph if such individual—

"(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins,

"(ii) is a student (as defined in section 151(c)(4)) who has not attained the age of 24 as of the close of such calendar year, or

"(iii) is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year.

"(D) IDENTIFICATION REQUIREMENTS.—

"(i) IN GENERAL.—The requirements of this subparagraph are met if—

"(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

"(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.

"(ii) INSURANCE POLICY NUMBER.—In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i).

"(iii) OTHER METHODS.—The Secretary may prescribe other methods for providing the information described in clause (i) or (ii).

"(E) ABODE MUST BE IN THE UNITED STATES.—The requirements of subparagraphs (A)(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States."

(b) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—Section 32 is amended by adding at the end thereof the following new subsection:

"(j) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

"(1) the United States Housing Act of 1937,

"(2) title V of the Housing Act of 1949,

"(3) section 101 of the Housing and Urban Development Act of 1965,

"(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

"(5) the Food Stamp Act of 1977,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month)."

(c) ADVANCE PAYMENT OF CREDIT.—Subparagraphs (B) and (C) of section 3507(c)(2) are amended to read as follows:

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than the credit percentage under section 32(b)(1) (without regard to subparagraph (D) thereof) for an eligible individual with 1 qualifying child and with earned income not in excess of the amount of earned income taken into account under section 32(a)(1), which

"(ii) phases out between the amount of earned income at which the phaseout begins under section 32(b)(1)(B)(ii) and the amount of income at which the credit under section 32(a)(1) phases out for an eligible individual with 1 qualifying child, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit as if it were a credit determined under subparagraph (B) by substituting ½ of the amounts of earned income described in such subparagraph for such amounts."

(d) COORDINATION WITH DEDUCTIONS.—

(1) MEDICAL DEDUCTION.—Section 213 is amended by adding at the end thereof the following new subsection:

"(f) COORDINATION WITH HEALTH INSURANCE CREDIT UNDER SECTION 32.—The amount otherwise taken into account under subsection (a) as expenses paid for medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(2) SELF-EMPLOYED INDIVIDUALS.—Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION, ETC.—

"(A) MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

"(B) HEALTH INSURANCE CREDIT.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32."

(e) CONFORMING AMENDMENTS.—Paragraph (2) of section 32(i) is amended—

(1) by striking "or (ii)" in subparagraph (A)(i) thereof,

(2) by striking "clause (iii)" in subparagraph (A)(ii) and inserting "clause (ii)", and

(3) by amending subparagraph (B) to read as follows:

"(B) DOLLAR AMOUNTS.—The dollar amounts referred to in this subparagraph are—

"(i) the $5,714 dollar amounts contained in subsection (b)(1), and

"(ii) the $9,000 amount contained in subsection (b)(1)(B)(ii)."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11112. REQUIREMENT OF IDENTIFYING NUMBER FOR CERTAIN DEPENDENTS.

(a) GENERAL RULE.—Paragraph (2) of section 6109(e) (relating to furnishing number for certain dependents) is amended by striking "2 years" and inserting "1 year".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns for taxable years beginning after December 31, 1990.

SEC. 11113. STUDY OF ADVANCE PAYMENTS.

(a) IN GENERAL.—The Comptroller General of the United States shall, in consultation with the Secretary of the Treasury, conduct a study of advance payments required by section 3507 of the Internal Revenue Code of 1986 to determine—

(1) the effectiveness of the advance payment system (including an analysis of why so few employees take advantage of such system), and

(2) the manner in which such system can be implemented to alleviate administrative complexity, if any, for small business, and

(3) if there are any other problems in the administration of such system.

(b) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller shall report the results of the study conducted under subsection (a), together with any recommendations, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 11114. PROGRAM TO INCREASE PUBLIC AWARENESS.

Not later than the first calendar year following the date of the enactment of this subtitle, the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section.

SEC. 11115. EXCLUSION FROM INCOME AND RESOURCES OF EARNED INCOME TAX CREDIT UNDER TITLES IV, XVI, AND XIX OF THE SOCIAL SECURITY ACT.

(a) EXCLUSIONS UNDER TITLE IV.—

(1) EXCLUSIONS FROM RESOURCES.—Section 402(a)(7)(B) of the Social Security Act (42 U.S.C. 602(a)(7)(B)) is amended—

(A) by striking "or" before "(iii)"; and

(B) by inserting ", or (iv) for the month of receipt and the following month, any refund of Federal income taxes made to such family by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit), and any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit)" before the semicolon.

(2) EXCLUSIONS FROM INCOME.—Section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)) is amended by inserting "or 8(A)(viii)" after "other than paragraph 8(A)(v)".

(b) EXCLUSIONS UNDER TITLE XVI.—

(1) EXCLUSIONS FROM INCOME.—Section 1612(b) of the Social Security Act (42 U.S.C. 1382a(b)), as amended by sections 5031(a) and 5035(a) of this Act, is amended—

(A) by striking "and" at the end of paragraph (17);

(B) by striking the period at the end of paragraph (18) and inserting ";and"; and

(C) by adding at the end the following:

"(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).".

(2) EXCLUSIONS FROM RESOURCES.—Section 1613(a) of the Social Security Act (42 U.S.C. 1382b(a)), as amended by sections 5031(b) and 5035(b) of this Act, is amended—

(A) by striking "and" at the end of paragraph (8);

(B) by striking the period at the end of paragraph (9) and inserting ";and"; and

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

"(10) for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).".

(c) EXCLUSIONS UNDER TITLE XIX.—Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code (relating to advance payment of earned income credit).

(d) AFDC WAIVER OF OVERPAYMENT.—For the purposes of section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)), a State agency designated under a State plan under section 402(a)(3) of such Act may waive any overpayment of aid that resulted from the receipt by a family of a refund of Federal income taxes by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) or any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit) during the period beginning on January 1, 1990, and ending on December 31, 1990.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) though (c) shall apply to determinations of income or resources made for any period after December 31, 1990.

SEC. 11116. COORDINATION WITH REFUND PROVISION.

For purposes of section 1324(b)(2) of title 31 of the United States Code, section 32 of the Internal Revenue Code of 1986 (as amended by this Act) shall be considered to be a credit provision of the Internal Revenue Code of 1954 enacted before January 1, 1978.

Subtitle B—Excise Taxes

PART I—TAXES RELATED TO HEALTH AND THE ENVIRONMENT

SEC. 11201. INCREASE IN EXCISE TAXES ON DISTILLED SPIRITS, WINE, AND BEER.

(a) DISTILLED SPIRITS.—

(1) IN GENERAL.—Paragraphs (1) and (3) of section 5001(a) (relating to rate of tax on distilled spirits) are each amended by striking "$12.50" and inserting "$13.50".

(2) TECHNICAL AMENDMENT.—Paragraphs (1) and (2) of section 5010(a) (relating to credit for wine content and for flavors content) are each amended by striking "$12.50" and inserting "$13.50".

(b) WINE.—

(1) TAX INCREASES.—

(A) WINES CONTAINING NOT MORE THAN 14 PERCENT ALCOHOL.—Paragraph (1) of section 5041(b) (relating to rates of tax on wines) is amended by striking "17 cents" and inserting "$1.07".

(B) WINES CONTAINING MORE THAN 14 (BUT NOT MORE THAN 21) PERCENT ALCOHOL.—Paragraph (2) of section 5041(b) is amended by striking "67 cents" and inserting "$1.57".

(C) WINES CONTAINING MORE THAN 21 (BUT NOT MORE THAN 24) PERCENT ALCOHOL.—Paragraph (3) of section 5041(b) is amended by striking "$2.25" and inserting "$3.15".

(D) ARTIFICIALLY CARBONATED WINES.—Paragraph (5) of section 5041(b) is amended by striking "$2.40" and inserting "$3.30".

(2) CREDIT FOR SMALL DOMESTIC PRODUCERS.—Section 5041 is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) CREDIT FOR SMALL DOMESTIC PRODUCERS.—

"(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States.

"(2) REDUCTION IN CREDIT.—The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

"(3) TIME FOR DETERMINING AND ALLOWING CREDIT.—The credit allowable by paragraph (1)—

"(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

"(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

"(4) CONTROLLED GROUPS.—Rules similar to rules of section 5051(a)(2)(B) shall apply for purposes of this subsection.

"(5) DENIAL OF DEDUCTION.—Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

"(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year and to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year."

(3) CONFORMING AMENDMENT.—Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(c) BEER.—

(1) IN GENERAL.—Paragraph (1) of section 5051(a) (relating to imposition and rate of tax on beer) is amended by striking "$9" and inserting "$18".

(2) REGULATIONS.—Paragraph (2) of section 5051(a) is amended by adding at the end thereof the following new subparagraph:

"(C) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991.

(e) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—

(A) IN GENERAL.—In the case of any tax-increased article—

(i) on which tax was determined under part I of subchapter A of chapter 51 of the Internal Revenue Code of 1986 or section 7652 of such Code before January 1, 1991, and

(ii) which is held on such date for sale by any person, there shall be imposed a tax at the applicable rate on each such article.

(B) APPLICABLE RATE.—For purposes of subparagraph (A), the applicable rate is—

(i) $1 per proof gallon in the case of distilled spirits,

(ii) $0.90 per wine gallon in the case of wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and

(iii) $9 per barrel in the case of beer.

In the case of a fraction of a gallon or barrel, the tax imposed by subparagraph (A) shall be the same fraction as the amount of such tax imposed on a whole gallon or barrel.

(C) TAX-INCREASED ARTICLE.—For purposes of this subsection, the term "tax-increased article" means distilled spirits, wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and beer.

(2) EXCEPTION FOR SMALL DOMESTIC PRODUCERS.—

(A) In the case of wine held by the producer thereof on January 1, 1991, if a credit would have been allowable under section 5041(c) of such Code (as added by this section) on such wine had the amendments made by subsection (b) applied to all wine removed during 1990 and had the wine so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such wine shall be reduced by the credit which would have been so allowable.

(B) In the case of beer held by the producer thereof on January 1, 1991, if the rate of the tax imposed by section 5051 of such Code would have been determined under subsection (a)(2) thereof had the beer so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such beer shall not apply.

(C) For purposes of this paragraph, an article shall not be treated as held by the producer if title thereto had at any time been transferred to any other person.

(3) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on tax- increased articles held on January 1, 1991, by any dealer if—

(A) the aggregate liquid volume of tax-increased articles held by such dealer on such date does not exceed 500 wine gallons, and

(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(4) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to—

(A) $240 to the extent such taxes are attributable to distilled spirits,

(B) $270 to the extent such taxes are attributable to wine, and

(C) $87 to the extent such taxes are attributable to beer.

Such credit shall not exceed the amount of taxes imposed by paragraph (1) with respect to distilled spirits, wine, or beer, as the case may be, for which the dealer is liable.

(5) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding any tax-increased article on January 1, 1991, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before June 30, 1991.

(6) CONTROLLED GROUPS.—

(A) CORPORATIONS.—In the case of a controlled group—

(i) the 500 wine gallon amount specified in paragraph (3), and

(ii) the $240, $270, and $87 amounts specified in paragraph (4),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

(7) OTHER LAWS APPLICABLE.—

(A) IN GENERAL.—All provisions of law, including penalties, applicable to the comparable excise tax with respect to any tax-increased article shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by the comparable excise tax.

(B) COMPARABLE EXCISE TAX.—For purposes of subparagraph (A), the term "comparable excise tax" means—

(i) the tax imposed by section 5001 of such Code in the case of distilled spirits,

(ii) the tax imposed by section 5041 of such Code in the case of wine, and

(iii) the tax imposed by section 5051 of such Code in the case of beer.

(8) DEFINITIONS.—For purposes of this subsection—

(A) IN GENERAL.—Terms used in this subsection which are also used in subchapter A of chapter 51 of such Code shall have the respective meanings such terms have in such part.

(B) PERSON.—The term "person" includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(9) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—For purposes of this subsection, any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided by regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on January 1, 1991, on the premises of a retail establishment.

SEC. 11202. INCREASE IN EXCISE TAXES ON TOBACCO PRODUCTS.

(a) CIGARS.—Subsection (a) of section 5701 is amended—

(1) by striking "75 cents per thousand" in paragraph (1) and inserting "$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)", and

(2) by striking "equal to" and all that follows in paragraph (2) and inserting "equal to—

"(A) 10.625 percent of the price for which sold but not more than $25 per thousand on cigars removed during 1991 or 1992, and

"(B) 12.75 percent of the price for which sold but not more than $30 per thousand on cigars removed after 1992."

(b) CIGARETTES.—Subsection (b) of section 5701 is amended—

(1) by striking "$8 per thousand" in paragraph (1) and inserting "$12 per thousand ($10 per thousand on cigarettes removed during 1991 or 1992)", and

(2) by striking "$16.80 per thousand" in paragraph (2) and inserting "$25.20 per thousand ($21 per thousand on cigarettes removed during 1991 or 1992)".

(c) CIGARETTE PAPERS.—Subsection (c) of section 5701 is amended by striking "1/2 cent" and inserting "0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)".

(d) CIGARETTE TUBES.—Subsection (d) of section 5701 is amended by striking "1 cent" and inserting "1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)".

(e) SMOKELESS TOBACCO.—Subsection (e) of section 5701 is amended—

(1) by striking "24 cents" in paragraph (1) and inserting "36 cents (30 cents on snuff removed during 1991 or 1992)", and

(2) by striking "8 cents" in paragraph (2) and inserting "12 cents (10 cents on chewing tobacco removed during 1991 or 1992)".

(f) PIPE TOBACCO.—Subsection (f) of section 5701 is amended by striking "45 cents" and inserting "67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)".

(g) DETERMINATION OF PRICE.—Subsection (m) of section 5702 is amended to read as follows:

"(m) DETERMINATION OF PRICE ON CIGARS.—In determining price for purposes of section 5701(a)(2)—

"(1) there shall be included any charge incident to placing the article in condition ready for use,

"(2) there shall be excluded—

"(A) the amount of the tax imposed by this chapter or section 7652, and

"(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(3) rules similar to the rules of section 4216(b) shall apply."

(h) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to articles removed after December 31, 1990.

(i) FLOOR STOCKS TAXES ON CIGARETTES.—

(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax-increase date and held on such date for sale by any person, there shall be imposed the following taxes:

(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, $2 per thousand.

(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, $4.20 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

(2) EXCEPTION FOR CERTAIN AMOUNTS OF CIGARETTES.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on cigarettes held on any tax-increase date by any person if—

(i) the aggregate number of cigarettes held by such person on such date does not exceed 30,000, and

(ii) such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

For purposes of this subparagraph, in the case of cigarettes measuring more than 6½ inches in length, each 2¾ inches (or fraction thereof) of the length of each shall be counted as one cigarette.

(B) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax-increase date by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the 30,000 amount in subparagraph (A) and the $60 amount in paragraph (3) with respect to such person.

(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $60. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

(4) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax-increase date to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the 1st June 30 following the tax-increase date.

(5) DEFINITIONS.—For purposes of this subsection—

(A) TAX-INCREASE DATE.—The term "tax-increase date" means January 1, 1991, and January 1, 1993.

(B) OTHER DEFINITIONS.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

(C) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(6) CONTROLLED GROUPS.—Rules similar to the rules of section 11201(e)(6) shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701.

SEC. 11203. ADDITIONAL CHEMICALS SUBJECT TO TAX ON OZONE-DEPLETING CHEMICALS.

(a) GENERAL RULE.—

(1) The table set forth in section 4682(a)(2) (defining ozone-depleting chemical) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride	*Tetrachloromethane*
Methyl chloroform	*1,1,1-trichloroethane*
CFC-13	*CF_3Cl*
CFC-111	*C_2FCl_5*
CFC-112	*$C_2F_2Cl_4$*
CFC-211	*C_3FCl_7*
CFC-212	*$C_3F_2Cl_6$*
CFC-213	*$C_3F_3Cl_5$*
CFC-214	*$C_3F_4Cl_4$*
CFC-215	*$C_3F_5Cl_3$*
CFC-216	*$C_3F_6Cl_2$*
CFC-217	*C_3F_7Cl."*

(2) The table set forth in section 4682(b) is amended by striking the period after the last item and by adding at the end thereof the following new items:

"Carbon tetrachloride	*1.1*
Methyl chloroform	*0.1*
CFC-13	*1.0*
CFC-111	*1.0*
CFC-112	*1.0*
CFC-211	*1.0*
CFC-212	*1.0*
CFC-213	*1.0*
CFC-214	*1.0*
CFC-215	*1.0*
CFC-216	*1.0*
CFC-217	*1.0."*

(b) SEPARATE APPLICATION OF EXPORT CREDIT LIMIT FOR NEWLY LISTED CHEMICALS.—Paragraph (3) of section 4682(d) is amended by adding at the end thereof the following new subparagraph:

"(C) SEPARATE APPLICATION OF LIMIT FOR NEWLY LISTED CHEMICALS.—

"(i) IN GENERAL.—Subparagraph (B) shall be applied separately with respect to newly listed chemicals and other chemicals.

"(ii) APPLICATION TO NEWLY LISTED CHEMICALS.—In applying subparagraph (B) to newly listed chemicals—

"(I) subparagraph (B) shall be applied by substituting '1989' for '1986' each place it appears, and

"(II) clause (i)(II) thereof shall be applied by substituting for the regulations referred to therein any regulations (whether or not prescribed by the Secretary) which the Secretary determines are comparable to the regulations referred to in such clause with respect to newly listed chemicals.

"(iii) NEWLY LISTED CHEMICAL.—For purposes of this subparagraph, the term 'newly listed chemical' means any substance which appears in the table contained in subsection (a)(2) below Halon-2402."

(c) SEPARATE BASE TAX AMOUNT FOR NEWLY LISTED CHEMICALS.—Subparagraphs (B) and (C) of section 4681(b)(1) are amended to read as follows:

"(B) BASE TAX AMOUNT.—

"(i) INITIALLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1995 with respect to any ozone-depleting chemical other than a newly listed chemical (as defined in section 4682(d)(3)(C)) is the amount determined under the following table for such calendar year:

"Calendar Year	*Base Tax Amount*
1990 or 1991	*$1.37*
1992	*1.67*
1993 or 1994	*2.65.*

"(ii) NEWLY LISTED CHEMICALS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use during a calendar year before 1996 with respect to any ozone-depleting chemical which is a newly listed chemical (as so defined) is the amount determined under the following table for such calendar year:

"Calendar Year	*Base Tax Amount*
1991 or 1992	*$1.37*
1993	*1.67*
1994	*3.00*
1995	*3.10.*

"(C) BASE TAX AMOUNT FOR LATER YEARS.—The base tax amount for purposes of subparagraph (A) with respect to any sale or use of an ozone-depleting chemical during a calendar year after the last year specified in the table under subparagraph (B) applicable to such chemical shall be the

base tax amount for such last year increased by 45 cents for each year after such last year."

(d) OTHER AMENDMENTS.—

(1) The last sentence of section 4682(c)(2) is amended by inserting "(other than methyl chloroform)" after "ozone-depleting chemical".

(2) Paragraph (3) of section 4682(h) is amended by striking "April 1" and inserting "June 30".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1991.

(f) DEPOSITS FOR 1ST QUARTER OF 1991.—No deposit of any tax imposed by subchapter D of chapter 38 of the Internal Revenue Code of 1986 on any substance treated as an ozone-depleting chemical by reason of the amendment made by subsection (a)(1) shall be required to be made before April 1, 1991.

PART II—USER-RELATED TAXES

SEC. 11211. INCREASE AND EXTENSION OF HIGHWAY-RELATED TAXES AND TRUST FUND.

(a) INCREASE IN TAX ON GASOLINE.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) (relating to rate of tax) is amended—

(A) by striking "and" at the end of clause (i),

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause: "(iii) the deficit reduction rate."

(2) RATES OF TAX.—Subparagraph (B) of section 4081(a)(2) is amended—

(A) by striking "9 cents a gallon, and" and inserting "11.5 cents a gallon,",

(B) by striking the period at the end of clause (ii) and inserting ", and", and

(C) by adding at the end thereof the following new clause: "(iii) the deficit reduction rate is 2.5 cents a gallon."

(3) TERMINATION OF DEFICIT REDUCTION RATE.—Subsection (d) of section 4081 is amended by adding at the end thereof the following new paragraph:

"(3) DEFICIT REDUCTION RATE—On and after October 1, 1995, the deficit reduction rate under subsection (a)(2) shall not apply."

(4) 15-CENT TAX ON GASOLINE USED IN NONCOMMERCIAL AVIATION.—Paragraph (3) of section 4041(c) is amended—

(A) by striking "12 cents" and inserting "15 cents", and

(B) by striking "the Highway Trust Fund financing rate" and inserting "the sum of the Highway Trust Fund financing rate plus the deficit reduction rate".

(5) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4081(c) is amended—

(i) by striking "applied by" and all that follows through "in the case" and inserting "applied by substi-

tuting rates which are 10/9th of the otherwise applicable rates in the case", and

(ii) by adding at the end thereof the following: "For purposes of this subsection, in the case of the Highway Trust Fund financing rate, the otherwise applicable rate is 6.1 cents a gallon."

(B) Paragraph (2) of section 4081(c) is amended by striking "at a rate equivalent to 3 cents" and inserting "at a Highway Trust Fund financing rate equivalent to 6.1 cents".

(C) Subsection (c) of section 4081 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) LOWER RATE ON GASOHOL MADE OTHER THAN FROM ETHANOL.—In the case of gasohol none of the alcohol in which consists of ethanol, paragraphs (1) and (2) shall be applied by substituting '5.5 cents' for '6.1 cents'.

(D) Subparagraph (B) of section 9503(b)(4) is amended by striking "4081" and inserting "4041, 4081,".

(E) Subparagraph (A) of section 9503(c)(2) is amended by adding at the end thereof the following new sentence:

"The amounts payable from the Highway Trust Fund under this subparagraph or paragraph (3) shall be determined by taking into account only the Highway Trust Fund financing rate applicable to any fuel."

(F) Subsection (b) of section 9503 is amended by adding at the end thereof the following new paragraph:

"(5) GENERAL REVENUE DEPOSITS OF CERTAIN TAXES ON ALCOHOL MIXTURES.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under subparagraphs (A), (E), and (F) of paragraph (1) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of gasoline or diesel fuel used in producing a mixture described in subparagraph (A)."

(6) EFFECTIVE DATE.—Except as otherwise provided in this subsection, the amendments made by this subsection shall apply to gasoline removed (as defined in section 4082 of the Internal Revenue Code of 1986) after November 30, 1990.

(b) INCREASE IN OTHER TAXES.—

(1) DEFICIT REDUCTION RATE.—

(A) Clause (i) of section 4091(b)(1)(A) is amended by inserting "and the diesel fuel deficit reduction rate" after "financing rate".

(B) Subsection (b) of section 4091 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) DIESEL FUEL DEFICIT REDUCTION RATE.—For purposes of paragraph (1), except as provided in subsection (c), the diesel fuel deficit reduction rate is 2.5 cents per gallon."

(C) Paragraph (6) of section 4091(b), as redesignated by subparagraph (A), is amended by adding at the end thereof the following new subparagraph:

"(D) The diesel fuel deficit reduction rate shall not apply on and after October 1, 1995."

(2) INCREASE IN HIGHWAY TRUST FUND FINANCING RATE.—Paragraph (2) of section 4091(b) is amended by striking "15 cents" and inserting "17.5 cents".

(3) INCREASE IN TAX ON SPECIAL MOTOR FUELS.—Paragraph (2) of section 4041(a) is amended by striking "of 9 cents a gallon" and by inserting at the end thereof the following new sentence: "The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the deficit reduction rate in effect under section 4081 at the time of such sale or use."

(4) DEFICIT REDUCTION TAX TO APPLY TO FUEL USED IN TRAINS.—

(A) Paragraph (2) of section 4093(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel sold for use in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(B)(i) Subsection (l) of section 6427 is amended by adding at the end thereof the following new paragraph:

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the diesel fuel deficit reduction rate imposed by such section."

(ii) Paragraph (1) of section 6427(l) is amended by striking "paragraph (3)" and inserting "paragraphs (3) and (4)".

(5) INCREASES IN TAXES NOT TO APPLY TO CERTAIN BUSES.—Subparagraph (A) of section 6427(b)(2) is amended by striking "shall not exceed 12 cents" and inserting "shall be 3.1 cents per gallon less than the aggregate rate at which tax was imposed on such fuel by section 4041(a) or 4091, as the case may be".

(6) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4091(c) is amended—

(i) by striking "9 cents" and inserting "12.1 cents" and by striking "10 cents" and inserting "13.44 cents", and

(ii) by striking "shall be 1/9 cent per gallon" and inserting "and the diesel fuel deficit reduction rate shall be 10/9th of the otherwise applicable such rates".

(B) Paragraph (2) of section 4091(c) is amended by striking "9 cents" and inserting "12.1 cents".

(C)(i) Paragraph (1) of section 4041(a) is amended by striking "of 15 cents a gallon" and by inserting before the last sentence the following new sentence:

"The rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate and the diesel fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

(ii) Subsection (a) of section 4041 is amended by striking paragraph (3).

(D) Clause (i) of section 4041(b)(2)(A) is amended to read as follows:

"(i) the Highway Trust Fund financing rate applicable under subsection (a)(2) shall be 5.4 cents per gallon less than the otherwise applicable rate (6 cents per gallon in the case of a mixture none of the alcohol in which consists of ethanol), and".

(E)(i) Paragraph (1) of section 4041(k) is amended by striking subparagraphs (A), (B), and (C) and inserting the following new subparagraphs:

"(A) the Highway Trust Fund financing rates under paragraphs (1) and (2) of subsection (a) shall be the comparable rates under sections 4081(c) and 4091(c), as the case may be,

"(B) no tax shall be imposed by subsection (c)(1), and

"(C) no tax shall be imposed by subsection (c)(2)."

(ii) Subsection (q) of section 6427 is amended to read as follows:

"(q) GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

"(1) any tax is imposed by section 4081 at a rate determined under subsection (c) thereof on gasohol (as defined in such subsection), and

"(2) such gasohol is used as a fuel in any aircraft in noncommercial aviation (as defined in section 4041(c)(4)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasohol an amount equal to 1.4 cents (2 cents in the case of a mixture none of the alcohol in which consists of ethanol) multiplied by the number of gallons of gasohol so used."

(F) Subparagraph (A) of section 4041(m)(1) is amended to read as follows:

"(A) under subsection (a)(2) the Highway Trust Fund financing rate shall be 5.75 cents per gallon and the deficit reduction rate shall be 1.25 cents per gallon, and".

(G) Subsection (d) of section 9502 is amended by adding at the end thereof the following new paragraph:

"(4) TRANSFERS FOR REFUNDS AND CREDITS NOT TO EXCEED TRUST FUND REVENUES ATTRIBUTABLE TO FUEL USED.—The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used."

(H) Subparagraph (D) of section 9503(c)(4) is amended by striking "(to the extent attributable to the Highway Trust Fund financing rate)" and by inserting before the period ",

but only to the extent such taxes are attributable to the Highway Trust Fund financing rates under such sections".

(7) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(c) EXTENSION OF TAXES.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(2) Section 4071(d) (relating to tax on tires and tread rubber).

(3) Section 4081(d)(1) (relating to gasoline tax).

(4) Section 4091(b)(6)(A) (relating to diesel fuel tax), as redesignated by subsection (b).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(d) EXTENSION OF EXEMPTIONS.—The following provisions are each amended by striking "1993" each place it appears and inserting "1995":

(1) Section 4041(f)(3) (relating to exemptions for farm use).

(2) Section 4041(g) (relating to other exemptions).

(3) Section 4221(a) (relating to certain tax-free sales).

(4) Section 4483(g) (relating to termination of exemptions for highway use tax).

(5) Section 6420(h) (relating to gasoline used on farms).

(6) Section 6421(i) (relating to gasoline used for certain nonhighway purposes, etc.).

(7) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(8) Section 6427(o) (relating to fuels not used for taxable purposes).

(e) EXTENSION OF REDUCED RATES OF TAX ON FUELS CONTAINING ALCOHOL.—The following provisions are each amended by striking "1993" each place it appears and inserting "2000":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(k)(3) (relating to fuels containing alcohol).

(3) Section 4081(c)(5) (relating to gasoline mixed with alcohol), as redesignated by subsection (a).

(4) Subsections (c)(3) and (d)(3) of section 4091 (relating to diesel fuel and aviation fuel mixed with alcohol and aviation fuel used to produce certain alcohol fuels).

(f) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Section 6412(a)(1) (relating to floor stocks refunds) is amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Section 6156(e)(2) (relating to installment payments of tax on use of highway motor vehicles) is amended by striking "1993" and inserting "1995".

(g) EXTENSION OF DEPOSITS INTO TRUST FUND.—

(1) IN GENERAL.—Subsection (b), and paragraphs (2), (3), and (4) of subsection (c), of section 9503 (relating to the Highway Trust Fund) are each amended—

(A) by striking "1993" each place it appears and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(2) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Section 201(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–11) is amended—

(A) by striking "1993" and inserting "1995", and

(B) by striking "1994" each place it appears and inserting "1996".

(h) INCREASE IN TRANSFERS TO MASS TRANSIT ACCOUNT.—

(1) IN GENERAL.—Paragraph (2) of section 9503(e) is amended by striking "1 cent" and inserting "1.5 cents".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to amounts attributable to taxes imposed on or after December 1, 1990.

(i) TRANSFERS OF SMALL-ENGINE FUEL TAXES INTO SPORT FISH RESTORATION ACCOUNT.—

(1) IN GENERAL.—Section 9503(c) (relating to expenditures from highway trust fund) is amended by adding at the end thereof the following new paragraph:

"(5) TRANSFERS FROM THE TRUST FUND FOR SMALL-ENGINE FUEL TAXES.—

"(A) IN GENERAL.—The Secretary shall pay from time to time from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the small-engine fuel taxes received on or after December 1, 1990, and before October 1, 1995.

"(B) SMALL-ENGINE FUEL TAXES.—For purposes of this paragraph, the term 'small-engine fuel taxes' means the taxes under section 4081 with respect to gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment, but only to the extent such taxes are attributable to the Highway Trust Fund financing rate under such section."

(2) CONFORMING AMENDMENT.—Section 9504(a)(2) (relating to accounts in aquatic resources trust fund) is amended by inserting "section 9503(c)(5)," after "section 9503(c)(4),".

(3) EXPENDITURES FOR COASTAL WETLANDS RESTORATION.—Section 9504(b)(2) (relating to expenditures from sport fish restoration account) is amended to read as follows:

"(2) EXPENDITURES FROM ACCOUNT.—Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, for making expenditures—

"(A) to carry out the purposes of the Act entitled 'An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes', approved August 9, 1950 (as in effect on October 1, 1988), and

"(B) to carry out the purposes of any law which is substantially identical to S. 3252 of the 101st Congress, as introduced.

Amounts transferred to such account under section 9503(c)(5) may be used only for making expenditures described in subparagraph (B) of this paragraph."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(j) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—In the case of—

(A) gasoline and diesel fuel on which tax was imposed under section 4081 or 4091 of such Code before December 1, 1990, and which is held on such date by any person, or

(B) diesel fuel on which no tax was imposed under section 4091 of such Code at the Highway Trust Fund financing rate before December 1, 1990, and which is held on such date by any person for use as a fuel in a train,

there is hereby imposed a floor stocks tax on such gasoline and diesel fuel.

(2) RATE OF TAX.—The rate of the tax imposed by paragraph (1) shall be—

(A) 5 cents per gallon in the case of fuel described in paragraph (1)(A), and

(B) 2.5 cents per gallon in the case of fuel described in paragraph (1)(B).

In the case of any fuel held for use in producing a mixture described in section 4081(c)(1) or section 4091(c)(1)(A) of such Code, subparagraph (A) shall be applied by substituting "6.22 cents" for "5 cents". If no alcohol in such mixture is ethanol, the preceding sentence shall be applied by substituting "5.56 cents" for "6.22 cents".

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding gasoline or diesel fuel on December 1, 1990, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before May 31, 1991.

(4) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Gasoline and diesel fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) GASOLINE.—The term "gasoline" has the meaning given such term by section 4082 of such Code.

(C) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4092 of such Code.

(D) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(5) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline or diesel fuel held by any person exclusively for any use to the extent a credit or refund of

the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

(6) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

(7) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

(i) on gasoline held on December 1, 1990, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

(ii) on diesel fuel held on December 1, 1990, by any person if the aggregate amount of diesel fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (5) or (6).

(C) CONTROLLED GROUPS.—For purposes of this paragraph, rules similar to the rules of paragraph (6) of section 11201(e) of this Act shall apply.

(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.

(9) TRANSFER OF PORTION OF FLOOR STOCKS REVENUE TO HIGHWAY TRUST FUND.—For purposes of determining the amount transferred to the Highway Trust Fund, the tax imposed by paragraph (1) on fuel described in subparagraph (A) thereof shall be treated as imposed at a Highway Trust Fund financing rate to the extent of 2.5 cents per gallon.

SEC. 11212. IMPROVEMENTS IN ADMINISTRATION OF GASOLINE EXCISE TAX.

(a) IN GENERAL.—Paragraph (1) of section 4081(a) is amended to read as follows:

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of gasoline from any refinery,

"(ii) the removal of gasoline from any terminal,

"(iii) the entry into the United States of gasoline for consumption, use, or warehousing, and

"(iv) the sale of gasoline to any person who is not registered under section 4101 unless there was a prior

taxable removal or entry of such gasoline under clause (i), (ii), or (iii).

"(B) EXCEPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS.—The tax imposed by this paragraph shall not apply to any removal or entry of gasoline transferred in bulk to a terminal if the person removing or entering the gasoline and the operator of such terminal are registered under section 4101."

(b) CHANGES IN REGISTRATION RULES.—

(1) IN GENERAL.—Section 4101 is amended to read as follows:

"SEC. 4101. REGISTRATION AND BOND.

"(a) REGISTRATION.—Every person required by the Secretary to register under this section with respect to the tax imposed by section 4081 or 4091 shall register with the Secretary at such time, in such form and manner, and subject to such terms and conditions, as the Secretary may by regulations prescribe. A registration under this section may be used only in accordance with regulations prescribed under this section.

"(b) BONDS AND LIENS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the Secretary may require, as a condition of permitting any person to be registered under subsection (a), that such person—

"(A) give a bond in such sum as the Secretary determines appropriate, and

"(B) agree to the imposition of a lien—

"(i) on such property (or rights to property) of such person used in the trade or business for which the registration is sought, or

"(ii) with the consent of such person, on any other property (or rights to property) of such person as the Secretary determines appropriate.

Rules similar to the rules of section 6323 shall apply to the lien imposed pursuant to this paragraph.

"(2) RELEASE OR DISCHARGE OF LIEN.—If a lien is imposed pursuant to paragraph (1), the Secretary shall issue a certificate of discharge or a release of such lien in connection with a transfer of the property if there is furnished to the Secretary (and accepted by him) a bond in such sum as the Secretary determines appropriate or the transferor agrees to the imposition of a substitute lien under paragraph (1)(B) in such sum as the Secretary determines appropriate. The Secretary shall respond to any request to discharge or release a lien imposed pursuant to paragraph (1) in connection with a transfer of property not later than 90 days after the date the request for such a discharge or release is made.

"(c) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Rules similar to the rules of section 4222(c) shall apply to registration under this section.

"(d) INFORMATION REPORTING.—The Secretary may require—

"(1) information reporting by any person registered under this section, and

"(2) information reporting by such other persons as the Secretary deems necessary to carry out this part."

(2) CLARIFICATION OF GENERAL REGISTRATION RULES.—Subsection (c) of section 4222 is amended—

(A) by striking "revoked or suspended" in the material preceding paragraph (1) and inserting "denied, revoked, or suspended",

(B) by striking "revocation or suspension" each place it appears and inserting "denial, revocation, or suspension", and

(C) by striking in the heading "REVOCATION OR SUSPENSION" and inserting "DENIAL, REVOCATION, OR SUSPENSION".

(3) DISCLOSURE PERMITTED OF REGISTRATION INFORMATION.—Subsection (k) of section 6103 is amended by adding at the end thereof the following new paragraph:

"(7) DISCLOSURE OF EXCISE TAX REGISTRATION INFORMATION.—To the extent the Secretary determines that disclosure is necessary to permit the effective administration of subtitle D, the Secretary may disclose—

"(A) the name, address, and registration number of each person who is registered under any provision of subtitle D (and, in the case of a registered terminal operator, the address of each terminal operated by such operator), and

"(B) the registration status of any person."

(4) CONFORMING AMENDMENT.—Section 4093 is amended by striking subsection (e) (relating to special administrative rules) and by redesignating subsection (f) as subsection (e).

(c) CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new section:

"SEC. 4103. CERTAIN ADDITIONAL PERSONS LIABLE FOR TAX WHERE WILLFUL FAILURE TO PAY.

"In any case in which there is a willful failure to pay the tax imposed by section 4081 or 4091, each person—

"(1) who is an officer, employee, or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty, or

"(2) who willfully causes the taxpayer to fail to pay such tax, shall be jointly and severally liable with the taxpayer for the tax to which such failure relates."

(d) REFUNDS IN CERTAIN CASES.—

(1) IN GENERAL.—Section 4081 is amended by adding at the end thereof the following new subsection:

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any gasoline establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such gasoline, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section."

(2) DENIAL OF CREDITS.—Subsection (d) of section 6416 is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in section 4081(e)."

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6724(d) is amended by striking "or" at the end of clause (x), by striking ", or subsection (e)," in clause (xi), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) section 4101(d) (relating to information reporting with respect to fuels taxes)."

(2) Subsection (a) of section 4081 is amended by striking paragraph (3).

(3) The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4103. Certain additional persons liable for tax where willful failure to pay."

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on July 1, 1991.

(2) REGISTRATION, ETC.—The amendments made by subsections (b), (c), and (e) (other than paragraph (2) thereof) shall take effect on December 1, 1990.

SEC. 11213. INCREASE AND EXTENSION OF AVIATION-RELATED TAXES AND TRUST FUND; REPEAL OF REDUCTION IN RATES.

(a) INCREASE IN RATES ON TRANSPORTATION.—

(1) TRANSPORTATION OF PERSONS.—Subsections (a) and (b) of section 4261 are each amended by striking "8 percent" and inserting "10 percent".

(2) TRANSPORTATION OF PROPERTY.—Subsection (a) of section 4271 is amended by striking "5 percent" and inserting "6.25 percent".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transportation beginning after November 30, 1990, but shall not apply to amounts paid on or before such date.

(b) INCREASE IN RATES ON FUEL.—

(1) IN GENERAL.—Paragraph (3) of section 4091(b) is amended—

(A) by striking "14 cents" and inserting "17.5 cents", and

(B) by inserting "except as provided in subsection (d)," after "paragraph (1),".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 4041(c) is amended by striking "14 cents" and inserting "17.5 cents".

(B)(i) Subparagraph (B) of section 4041(k)(1), as amended by section 11211, is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d), and".

(ii) Subparagraph (B) of section 4041(m)(1) is amended to read as follows:

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(d)(1)."

(C)(i) Paragraphs (1) and (2) of section 4091(d) are amended to read as follows:

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall be—

"(A) 4.1 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the aviation fuel in such mixture was not taxed under subparagraph (B), and

"(B) 4.56 cents per gallon in the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be 1/9 cent per gallon.

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at the Airport and Airway Trust Fund financing rate equivalent to 4.1 cents per gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel."

(ii) The heading for subsection (d) of section 4091 is amended by striking "EXEMPTION FROM" and inserting "REDUCED RATE OF".

(D) Section 4091 is amended by adding at the end thereof the following new subsection:

"(e) LOWER RATES OF TAX ON ALCOHOL MIXTURES NOT MADE FROM ETHANOL.—In the case of a mixture described in subsection (c)(1)(A)(i) or (d)(1)(A)(i) none of the alcohol in which is ethanol—

"(1) subsections (c)(1)(A) and (c)(2), and subsections (d)(1)(A) and (d)(2), shall each be applied by substituting rates which are 0.6 cents less than the rates contained therein, and

"(2) subsections (c)(1)(B) and (d)(1)(B) shall be applied by substituting rates which are 10/9 of the rates determined under paragraph (1)."

(3) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO PRODUCE CERTAIN ALCOHOL FUELS.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any gasoline, diesel fuel, or aviation fuel on which tax was imposed by section 4081 or 4091 at the regular tax rate is used by any person in producing a mixture described in section 4081(c),

4091(c)(1)(A), or 4091(d)(1)(A) (as the case may be) which is sold or used in such person's trade or business the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (c) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 on such fuel determined without regard to subsection (d) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof,

"(ii) in the case of diesel fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof, and

"(iii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (d)(1)(B) thereof.

"(3) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any gasoline, diesel fuel, or aviation fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(4) TERMINATION.—This subsection shall not apply with respect to any mixture sold or used after September 30, 1995."

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on December 1, 1990.

(5) FLOOR STOCKS TAXES.—

(A) IMPOSITION OF TAX.—In the case of aviation fuel on which tax was imposed under section 4041(c)(1) or 4091 of the Internal Revenue Code of 1986 before December 1, 1990, and which is held on such date by any person, there is hereby imposed a floor stocks tax on such fuel.

(B) RATE OF TAX.—The rate of the tax imposed by subparagraph (A) shall be 3.5 cents per gallon.

(C) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(i) LIABILITY FOR TAX.—A person holding fuel on December 1, 1990, to which the tax imposed by this paragraph applies shall be liable for such tax.

(ii) METHOD OF PAYMENT.—The tax imposed by this paragraph shall be paid in such manner as the Secretary shall prescribe.

(iii) TIME FOR PAYMENT.—The tax imposed by this paragraph shall be paid on or before May 31, 1991.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) HELD BY A PERSON.—Fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(ii) AVIATION FUEL.—The term "aviation fuel" has the meaning given such term by section 4092(a) of such Code.

(iii) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(E) EXCEPTION FOR EXEMPT USES.—The tax imposed by this paragraph shall not apply to fuel held by any person exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code).

(F) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this paragraph, apply with respect to the floor stock taxes imposed by this paragraph to the same extent as if such taxes were imposed by such section 4091.

(c) SPECIAL RULES FOR DEPOSITS OF TAX REVENUES.—

(1) Section 9502 is amended by adding at the end thereof the following new subsection:

"(e) SPECIAL RULES FOR TRANSFERS INTO TRUST FUND.—

"(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be 3 cents per gallon less (3.5 cents per gallon less in the case of taxes imposed by section 4041(c)(1) and 4091) than the amounts which would (but for this sentence) be appropriated under such paragraphs.

"(2) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be reduced by—

"(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

"(B) 0.67 cent per gallon in the case of fuel used in producing a mixture described in subparagraph (A)."

(2) Paragraph (2) of section 9502(b) is amended by inserting "and the deficit reduction rate" after "financing rate".

(d) EXTENSION OF TAXES AND TRUST FUND.—

(1) TRANSPORTATION TAXES.—Sections 4261(g) and 4271(d) are each amended by striking "January 1, 1991" and inserting "January 1, 1996".

(2) FUEL TAXES.—

(A) Subparagraph (B) of section 4091(b)(6), as redesignated by section 11211, is amended by striking "January 1, 1991" and inserting "January 1, 1996".

(B) Paragraph (5) of section 4041(c) is amended by striking "December 31, 1990" and inserting "December 31, 1995".

(3) DEPOSITS INTO TRUST FUND.—Subsection (b) of section 9502 (relating to transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes) is amended by striking "January 1, 1991" each place it appears and inserting "January 1, 1996".

(4) EXPENDITURE PURPOSES TO INCLUDE THE FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING, AND DEVELOPMENT AUTHORIZATION ACT OF 1990 AND THE AVIATION SAFETY AND CAPACITY EXPANSION ACT OF 1990.—Subparagraph (A) of section 9502(d)(1) is amended by striking "(as such Acts were in effect on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987)" and inserting "or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 (as such Acts were in effect on the date of the enactment of the Aviation Safety and Capacity Expansion Act of 1990)".

(e) REPEAL OF REDUCTION IN RATES.—

(1) Section 4283 (relating to reduction in aviation related taxes in certain cases) is hereby repealed.

(2) The table of sections for part III of subchapter C of chapter 33 is amended by striking the item relating to section 4283.

(3) Subsection (c) of section 4041 is amended by striking paragraph (6).

SEC. 11214. INCREASE IN HARBOR MAINTENANCE TAX.

(a) IN GENERAL.—Subsection (b) of section 4461 is amended by striking "0.04 percent" and inserting "0.125 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1991.

SEC. 11215. EXTENSION OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES.

(a) IN GENERAL.—Paragraph (2) of section 4081(d) is amended to read as follows:

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on December 1, 1990.

SEC. 11216. AMENDMENTS TO GAS GUZZLER TAX.

(a) INCREASE IN RATE OF TAX.—Subsection (a) of section 4064 (relating to gas guzzler tax) is amended to read as follows:

"(a) IMPOSITION OF TAX.—There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following table:

If the fuel economy of the model type in which the automobile falls is:	*The tax is:*
At least 22.5	*$0*
At least 21.5 but less than 22.5	*1,000*
At least 20.5 but less than 21.5	*1,300*

If the fuel economy of the model type in which the automobile falls is:	*The tax is:*
At least 19.5 but less than 20.5	*1,700*
At least 18.5 but less than 19.5	*2,100*
At least 17.5 but less than 18.5	*2,600*
At least 16.5 but less than 17.5	*3,00*
At least 15.5 but less than 16.5	*3,700*
At least 14.5 but less than 15.5	*4,500*
At least 13.5 but less than 14.5	*5,400*
At least 12.5 but less than 13.5	*6,400*
Less than 12.5	*7,700."*

(b) LIMOUSINES INCLUDED WITHOUT REGARD TO WEIGHT.—Subparagraph (A) of section 4064(b)(1) is amended by adding at the end thereof the following new sentence:

"In the case of a limousine, the preceding sentence shall be applied without regard to clause (ii)."

(c) REPEAL OF EXCEPTION FOR LENGTHENING EXISTING AUTOMOBILES.—Subparagraph (B) of section 4064(b)(5) (defining manufacturer) is amended to read as follows:

"(B) LENGTHENING TREATED AS MANUFACTURE.—For purposes of this section, subchapter G of this chapter, and section 6416(b)(3), the lengthening of an automobile by any person shall be treated as the manufacture of an automobile by such person."

(d) REPEAL OF SPECIAL RULES FOR SMALL MANUFACTURERS.—Section 4064 is amended by striking subsection (d).

(e) EFFECTIVE DATES.—

(1) SUBSECTIONS (a) AND (b).—The amendments made by subsections (a) and (b) shall apply to sales after December 31, 1990.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on January 1, 1991.

(3) SUBSECTION (d).—The amendment made by subsection (d) shall take effect on the date of the enactment of this section.

SEC. 11217. TELEPHONE EXCISE TAX MODIFIED AND MADE PERMANENT.

(a) TAX MADE PERMANENT.—Paragraph (2) of section 4251(b) is amended by striking "percent;" and all that follows and inserting "percent."

(b) ACCELERATION OF DEPOSIT REQUIREMENTS.—

(1) IN GENERAL.—Subsection (e) of section 6302 (relating to time for deposit of taxes of airline tickets) is amended—

(A) by inserting "COMMUNICATIONS SERVICES AND" before "AIRLINE", and

(B) by inserting "section 4251 or" before "subsection (a) or (b)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments of taxes considered collected during semimonthly periods beginning after December 31, 1990.

(c) ONE-TIME FILING OF TELEPHONE EXCISE TAX EXEMPTION CERTIFICATES.—

(1) IN GENERAL.—Section 4253 is amended by adding at the end thereof the following new subsection:

"(k) FILING OF EXEMPTION CERTIFICATES.—

"(1) IN GENERAL.—In order to claim an exemption under subsection (c), (h), (i), or (j), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to such exemption.

"(2) DURATION OF CERTIFICATE.—Any statement provided under paragraph (1) shall remain in effect until—

"(A) the provider of communications services has actual knowledge that the information provided in such statement is false, or

"(B) such provider is notified by the Secretary that the provider of the statement is no longer entitled to an exemption described in paragraph (1).

If any information provided in such statement is no longer accurate, the person providing such statement shall inform the provider of communications services within 30 days of any change of information."

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to any claim for exemption made after the date of the enactment of this Act.

(B) DURATION OF EXISTING CERTIFICATES.—Any annual certificate of exemption effective on the date of the enactment of this Act shall remain effective until the end of the annual period.

SEC. 11218. FLOOR STOCKS TAX TREATMENT OF ARTICLES IN FOREIGN TRADE ZONES.

Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any article which is located in a foreign trade zone on the effective date of any increase in tax under the amendments made by this part or part I shall be subject to floor stocks taxes imposed by such parts if—

(1) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(2) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

PART III—TAXES ON LUXURY ITEMS

SEC. 11221. TAXES ON LUXURY ITEMS.

(a) IN GENERAL.—Chapter 31 (relating to retail excise taxes) is amended by redesignating subchapters A and B as subchapters B and C, respectively, and by inserting before subchapter B (as so redesignated) the following new subchapter:

"SUBCHAPTER A—CERTAIN LUXURY ITEMS

"PART I. IMPOSITION OF TAXES

"Subpart A—Passenger Vehicles, Boats, and Aircraft

"SEC. 4001. PASSENGER VEHICLES.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"SEC. 4002. BOATS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any boat a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $100,000.

"(b) EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any boat for use by the purchaser exclusively in the active conduct of—

"(1) a trade or business of commercial fishing or transporting persons or property for compensation or hire, or

"(2) any other trade or business unless the boat is to be used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation.

"SEC. 4003. AIRCRAFT.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any aircraft a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $250,000.

"(b) AIRCRAFT.—For purposes of this section, the term 'aircraft' means any aircraft—

"(1) which is propelled by a motor, and

"(2) which is capable of carrying 1 or more individuals.

"(c) 80 PERCENT GENERAL BUSINESS USE.—

"(1) IN GENERAL.—The tax imposed by this section shall not apply to the sale of any aircraft if 80 percent of the use by the purchaser is in any trade or business.

"(2) PROOF OF BUSINESS USE.—On the income tax return for each of the 1st 2 taxable years ending after the date an aircraft on which no tax was imposed by this section by reason of paragraph (1) was placed in service, the taxpayer filing such return shall demonstrate to the satisfaction of the Secretary that the use of such aircraft during each such year met the requirement of paragraph (1).

"(3) IMPOSITION OF LUXURY TAX WHERE FAILURE OF PROOF.—If the requirement of paragraph (2) is not met for either of the taxable years referred to therein, the taxpayer filing such returns shall pay the tax which would (but for paragraph (1)) have been imposed on such aircraft plus interest determined under subchapter C of chapter 67 during the period beginning on the date such tax would otherwise have been imposed. If such taxpayer fails to pay the tax imposed pursuant to the preceding sentence, no deduction shall be allowed under section 168 for any taxable year with respect to the aircraft involved.

"(d) OTHER EXCEPTIONS.—The tax imposed by this section shall not apply to the sale of any aircraft for use by the purchaser exclusively—

"(1) in the aerial application of fertilizers or other substances,

"(2) in the case of a helicopter, in a use described in paragraph (1) or (2) of section 4261(e),

"(3) in a trade or business of providing flight training, or

"(4) in a trade or business of transporting persons or property for compensation or hire.

"SEC. 4004. RULES APPLICABLE TO SUBPART A.

"(a) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed under this subpart on the sale of any article—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(b) SEPARATE PURCHASE OF ARTICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any article taxable under this subpart (determined without regard to price) in-

stalls (or causes to be installed) any part or accessory on such article, and

"(B) such installation is not later than the date 6 months after the date the article was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle, boat, or aircraft was sold, over

"(B) $30,000 in the case of a passenger vehicle, $100,000 in the case of a boat, and $250,000 in the case of an aircraft.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory, or

"(B) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the taxable article does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(c) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF ARTICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any article by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such article is resold by the purchaser or such purchaser makes a substantial non-exempt use of such article,

then such sale or use of such article by such purchaser shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of an article if the 1st retail sale of such article is not taxable under this subchapter by reason of such use.

"Subpart B—Jewelry and Furs

"SEC. 4006. JEWELRY.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any jewelry a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000.

"(b) JEWELRY.—For purposes of subsection (a), the term 'jewelry' means all articles commonly or commercially known as jewelry, whether real or imitation, including watches.

"(c) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces jewelry from material furnished directly or indirectly by a customer, and

"(2) the jewelry is for the use of, and not for resale by, such customer,

the delivery of such jewelry to such customer shall be treated as the 1st retail sale of such jewelry for a price equal to its fair market value at the time of such delivery.

"SEC. 4007. FURS.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of the following articles a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $10,000:

"(1) Articles made of fur on the hide or pelt.

"(2) Articles of which such fur is a major component.

"(b) MANUFACTURE FROM CUSTOMER'S MATERIAL.—If—

"(1) a person, in the course of a trade or business, produces an article of the kind described in subsection (a) from fur on the hide or pelt furnished, directly or indirectly, by a customer, and

"(2) the article is for the use of, and not for resale by, such customer,

the delivery of such article to such customer shall be treated as the 1st retail sale of such article for a price equal to its fair market value at the time of such delivery.

"PART II—RULES OF GENERAL APPLICABILITY

"SEC. 4011. DEFINITIONS AND SPECIAL RULES.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses an article taxable under this subchapter (including any use after importation) before the 1st retail sale of such article, then such person shall be liable for tax under this subchapter in the same manner as if such article were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of an article as material in the manufacture or production of, or as a component part of, another article taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE OF PASSENGER VEHICLES.—Paragraph (1) shall not apply to any use of a passenger

vehicle as a demonstrator for a potential customer while the potential customer is in the vehicle.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN ARTICLES.—Paragraph (1) shall not apply to the use of an article after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the article occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of an article (including any renewal or any extension of a lease or any subsequent lease of such article) by any person shall be considered a sale of such article at retail.

"(2) SPECIAL RULES FOR CERTAIN LEASES OF PASSENGER VEHICLES, BOATS, AND AIRCRAFT.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle, boat, or aircraft to a person engaged in a leasing or rental trade or business of the article involved for leasing by such person in a qualified lease shall not be treated as the 1st retail sale of such article.

"(B) QUALIFIED LEASE.—For purposes of subparagraph (A), the term 'qualified lease' means—

"(i) any lease in the case of a boat or an aircraft, and

"(ii) any long-term lease (as defined in section 4052) in the case of any passenger vehicle.

"(C) SPECIAL RULES.—In the case of a qualified lease of an article which is treated as the 1st retail sale of such article—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the article is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a qualified lease if the lessee's use of the article under such lease is an exempt use (as defined in section 4004(c)) of such article.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the article in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdi-

vision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such article if—

"(I) such component is furnished by the 1st user of such article, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

Subparagraph (B)(iii) shall not apply for purposes of the taxes imposed by sections 4006 and 4007.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"(e) PARTS AND ACCESSORIES SOLD WITH TAXABLE ARTICLE.—Parts and accessories sold on, in connection with, or with the sale of any article taxable under this subchapter shall be treated as part of the article.

"(f) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter.

"SEC. 4012. TERMINATION.

"The taxes imposed by this subchapter shall not apply to any sale or use after December 31, 1999."

(b) EXEMPTION FOR EXPORTS.—

(1) The material preceding paragraph (1) of section 4221(a) is amended by striking "section 4051" and inserting "subchapter A or C of chapter 31".

(2) Subsection (a) of section 4221 is amended by adding at the end thereof the following new sentence: "In the case of taxes imposed by subchapter A of chapter 31, paragraphs (1), (3), (4), and (5) shall not apply."

(c) EXEMPTION FOR SALES TO THE UNITED STATES.—Section 4293 is amended by inserting "subchapter A of chapter 31," before "section 4041".

(d) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "section 4053(a)(6)" and inserting "section 4001(c), 4002(b), 4003(c), 4004(a), or 4053(a)(6)".

(2) Paragraph (1) of section 4221(d) is amended by striking "the tax imposed by section 4051" and inserting "taxes imposed by subchapter A or C of chapter 31".

(3) Subsection (d) of section 4222 is amended by striking "sections 4053(a)(6)" and inserting "sections 4001(c), 4002(b), 4003(c), 4004(a), 4053(a)(6)".

(e) CLERICAL AMENDMENT.—The table of subchapters for chapter 31 is amended to read as follows:

"Subchapter A. Certain luxury items.
"Subchapter B. Special fuels.
"Subchapter C. Heavy trucks and trailers."

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1991.

(2) EXCEPTION FOR BINDING CONTRACTS.—In determining whether any tax imposed by subchapter A of chapter 31 of the Internal Revenue Code of 1986, as added by this section, applies to any sale after December 31, 1990, there shall not be taken into account the amount paid for any article (or any part or accessory therefor) if the purchaser held on September 30, 1990, a contract (which was binding on such date and at all times thereafter before the purchase) for the purchase of such article (or such part or accessory).

PART IV—4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND

SEC. 11231. 4-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking "January 1, 1992" and inserting "January 1, 1996":

(A) Section 59A(e)(1) (relating to application of environmental tax).

(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).

(2) Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking "1989" and inserting "1993",

(B) by striking "1990" each place it appears and inserting "1994", and

(C) by striking "1991" each place it appears and inserting "1995".

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking "$6,650,000,000" each place it appears and inserting "$11,970,000,000" and by striking "December 31, 1991" and inserting "December 31, 1995".

(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) is amended by striking "December 31, 1991" and inserting "December 31, 1995".

(d) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", and", and by adding at the end thereof the following new paragraphs:

"(6) 1992, $250,000,000,

"(7) 1993, $250,000,000,

"(8) 1994, $250,000,000, and

"(9) 1995, $250,000,000."

Subtitle C—Other Revenue Increases

Part I—Insurance Provisions

Subpart A—Provisions Related to Policy Acquisition Costs

SEC. 11301. CAPITALIZATION OF POLICY ACQUISITION EXPENSES.

(a) GENERAL RULE.—Part III of subchapter L of chapter 1 (relating to provisions of general application) is amended by adding at the end thereof the following new section:

"SEC. 848. CAPITALIZATION OF CERTAIN POLICY ACQUISITION EXPENSES.

"(a) GENERAL RULE.—In the case of an insurance company—

"(1) specified policy acquisition expenses for any taxable year shall be capitalized, and

"(2) such expenses shall be allowed as a deduction ratably over the 120-month period beginning with the first month in the second half of such taxable year.

"(b) 5-YEAR AMORTIZATION FOR FIRST $5,000,000 OF SPECIFIED POLICY ACQUISITION EXPENSES.—

"(1) IN GENERAL.—Paragraph (2) of subsection (a) shall be applied with respect to so much of the specified policy acquisition expenses of an insurance company for any taxable year as does not exceed $5,000,000 by substituting '60-month' for '120-month'.

"(2) PHASE-OUT.—If the specified policy acquisition expenses of an insurance company exceed $10,000,000 for any taxable year, the $5,000,000 amount under paragraph (1) shall be reduced (but not below zero) by the amount of such excess.

"(3) SPECIAL RULE FOR MEMBERS OF CONTROLLED GROUP.—In the case of any controlled group—

"(A) all insurance companies which are members of such group shall be treated as 1 company for purposes of this subsection, and

"(B) the amount to which paragraph (1) applies shall be allocated among such companies in such manner as the Secretary may prescribe.

For purposes of the preceding sentence, the term 'controlled group' means any controlled group of corporations as defined in section 1563(a); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply, and subsection (b)(2)(C) of section 1563 shall not apply to the extent it excludes a foreign corporation to which section 842 applies.

"(4) EXCEPTION FOR ACQUISITION EXPENSES ATTRIBUTABLE TO CERTAIN REINSURANCE CONTRACTS.—Paragraph (1) shall not apply to any specified policy acquisition expenses for any taxable year which are attributable to premiums or other consideration under any reinsurance contract.

"(c) SPECIFIED POLICY ACQUISITION EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified policy acquisition expenses' means, with respect to any taxable year, so much of the

general deductions for such taxable year as does not exceed the sum of—

"(A) 1.75 percent of the net premiums for such taxable year on specified insurance contracts which are annuity contracts,

"(B) 2.05 percent of the net premiums for such taxable year on specified insurance contracts which are group life insurance contracts, and

"(C) 7.7 percent of the net premiums for such taxable year on specified insurance contracts not described in subparagraph (A) or (B).

"(2) GENERAL DEDUCTIONS.—The term 'general deductions' means the deductions provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions) and in part I of subchapter D (sec. 401 and following, relating to pension, profit sharing, stock bonus plans, etc.).

"(d) NET PREMIUMS.—For purposes of this section—

"(1) IN GENERAL.—The term 'net premiums' means, with respect to any category of specified insurance contracts set forth in subsection (c)(1), the excess (if any) of—

"(A) the gross amount of premiums and other consideration on such contracts, over

"(B) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

The rules of section 803(b) shall apply for purposes of the preceding sentence.

"(2) AMOUNTS DETERMINED ON ACCRUAL BASIS.—In the case of an insurance company subject to tax under part II of this subchapter, all computations entering into determinations of net premiums for any taxable year shall be made in the manner required under section 811(a) for life insurance companies.

"(3) TREATMENT OF CERTAIN POLICYHOLDER DIVIDENDS AND SIMILAR AMOUNTS.—Net premiums shall be determined without regard to section 808(e) and without regard to other similar amounts treated as paid to, and returned by, the policyholder.

"(4) SPECIAL RULES FOR REINSURANCE.—

"(A) Premiums and other consideration incurred for reinsurance shall be taken into account under paragraph (1)(B) only to the extent such premiums and other consideration are includible in the gross income of an insurance company taxable under this subchapter or are subject to tax under this chapter by reason of subpart F of part III of subchapter N.

"(B) The Secretary shall prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the ceding company and the reinsurer.

"(e) CLASSIFICATION OF CONTRACTS.—For purposes of this section—

"(1) SPECIFIED INSURANCE CONTRACT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'specified insurance contract' means

any life insurance, annuity, or noncancellable accident and health insurance contract (or any combination thereof).

"(B) EXCEPTIONS.—The term 'specified insurance contract' shall not include—

"(i) any pension plan contract (as defined in section 818(a)),

"(ii) any flight insurance or similar contract, and

"(iii) any qualified foreign contract (as defined in section 807(e)(4) without regard to paragraph (5) of this subsection).

"(2) GROUP LIFE INSURANCE CONTRACT.—The term 'group life insurance contract' means any life insurance contract—

"(A) which covers a group of individuals defined by reference to employment relationship, membership in an organization, or similar factor,

"(B) the premiums for which are determined on a group basis, and

"(C) the proceeds of which are payable to (or for the benefit of) persons other than the employer of the insured, an organization to which the insured belongs, or other similar person.

"(3) TREATMENT OF ANNUITY CONTRACTS COMBINED WITH NONCANCELLABLE ACCIDENT AND HEALTH INSURANCE.—Any annuity contract combined with noncancellable accident and health insurance shall be treated as a noncancellable accident and health insurance contract and not as an annuity contract.

"(4) TREATMENT OF GUARANTEED RENEWABLE CONTRACTS.—The rules of section 816(e) shall apply for purposes of this section.

"(5) TREATMENT OF REINSURANCE CONTRACT.—A contract which reinsures another contract shall be treated in the same manner as the reinsured contract.

"(f) SPECIAL RULE WHERE NEGATIVE NET PREMIUMS.—

"(1) IN GENERAL.—If for any taxable year there is a negative capitalization amount with respect to any category of specified insurance contracts set forth in subsection (c)(1)—

"(A) the amount otherwise required to be capitalized under this section for such taxable year with respect to any other category of specified insurance contracts shall be reduced (but not below zero) by such negative capitalization amount, and

"(B) such negative capitalization amount (to the extent not taken into account under subparagraph (A))—

"(i) shall reduce (but not below zero) the unamortized balance (as of the beginning of such taxable year) of the amounts previously capitalized under subsection (a) (beginning with the amount capitalized for the most recent taxable year), and

"(ii) to the extent taken into account as such a reduction, shall be allowed as a deduction for such taxable year.

"(2) NEGATIVE CAPITALIZATION AMOUNT.—For purposes of paragraph (1), the term 'negative capitalization amount' means, with respect to any category of specified insurance contracts, the

percentage (applicable under subsection (c)(1) to such category) of the amount (if any) by which—

"(A) the amount determined under subparagraph (B) of subsection (d)(1) with respect to such category, exceeds

"(B) the amount determined under subparagraph (A) of subsection (d)(1) with respect to such category.

"(g) TREATMENT OF CERTAIN CEDING COMMISSIONS.—Nothing in any provision of law (other than this section) shall require the capitalization of any ceding commission incurred on or after September 30, 1990, under any contract which reinsures a specified insurance contract.

"(h) SECRETARIAL AUTHORITY TO ADJUST CAPITALIZATION AMOUNTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary may provide that a type of insurance contract will be treated as a separate category for purposes of this section (and prescribe a percentage applicable to such category) if the Secretary determines that the deferral of acquisition expenses for such type of contract which would otherwise result under this section is substantially greater than the deferral of acquisition expenses which would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for such type of contract had been used.

"(2) ADJUSTMENT TO OTHER CONTRACTS.—If the Secretary exercises his authority with respect to any type of contract under paragraph (1), the Secretary shall adjust the percentage which would otherwise have applied under subsection (c)(1) to the category which includes such type of contract so that the exercise of such authority does not result in a decrease in the amount of revenue received under this chapter by reason of this section for any fiscal year.

"(i) TREATMENT OF QUALIFIED FOREIGN CONTRACTS UNDER ADJUSTED CURRENT EARNINGS PREFERENCE.—For purposes of determining adjusted current earnings under section 56(g), acquisition expenses with respect to contracts described in clause (iii) of subsection (e)(1)(B) shall be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles as if this subsection applied to such contracts for all taxable years.

"(j) TRANSITIONAL RULE.—In the case of any taxable year which includes September 30, 1990, the amount taken into account as the net premiums (or negative capitalization amount) with respect to any category of specified insurance contracts shall be the amount which bears the same ratio to the amount which (but for this subsection) would be so taken into account as the number of days in such taxable year on or after September 30, 1990, bears to the total number of days in such taxable year."

(b) REPEAL OF SPECIAL TREATMENT OF ACQUISITION EXPENSES UNDER MINIMUM TAX.—Paragraph (4) of section 56(g) is amended by striking subparagraph (F) and redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter L of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 848. Capitalization of certain policy acquisition expenses."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall apply to taxable years ending on or after September 30, 1990. Any capitalization required by reason of such amendments shall not be treated as a change in method of accounting for purposes of the Internal Revenue Code of 1986.

(2) SUBSECTION (b).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years beginning on or after September 30, 1990, except that, in the case of a small insurance company, such amendment shall apply to taxable years beginning after December 31, 1989. For purposes of this paragraph, the term "small insurance company" means any insurance company which meets the requirements of section 806(a)(3) of the Internal Revenue Code of 1986; except that paragraph (2) of section 806(c) of such Code shall not apply.

(B) SPECIAL RULES FOR YEAR WHICH INCLUDES SEPTEMBER 30, 1990.—In the case of any taxable year which includes September 30, 1990, the amount of acquisition expenses which is required to be capitalized under section 56(g)(4)(F) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subsection (b)) by a company which is not a small insurance company shall be the amount which bears the same ratio to the amount which (but for this subparagraph) would be so required to be capitalized as the number of days in such taxable year before September 30, 1990, bears to the total number of days in such taxable year. A similar reduction shall be made in the amount amortized for such taxable year under such section 56(g)(4)(F).

SEC. 11302. TREATMENT OF CERTAIN NONLIFE RESERVES OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Subsection (e) of section 807 (relating to special rules for computing reserves) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TREATMENT OF CERTAIN NONLIFE RESERVES.—

"(A) IN GENERAL.—The amount taken into account for purposes of subsections (a) and (b) as—

"(i) the opening balance of the items referred to in subparagraph (C), and

"(ii) the closing balance of such items,

shall be 80 percent of the amount which (without regard to this subparagraph) would have been taken into account as such opening or closing balance, as the case may be.

"(B) TRANSITIONAL RULE.—

"(i) IN GENERAL.—In the case of any taxable year beginning on or after September 30, 1990, and before September 30, 1996, there shall be included in the gross income of any life insurance company an amount equal to 3⅓ percent of such company's closing balance of the items referred to in subparagraph (C) for its most

recent taxable year beginning before September 30, 1990.

"(ii) TERMINATION AS LIFE INSURANCE COMPANY.—Except as provided in section 381(c)(22), if, for any taxable year beginning on or before September 30, 1996, the taxpayer ceases to be a life insurance company, the aggregate inclusions which would have been made under clause (i) for such taxable year and subsequent taxable years but for such cessation shall be taken into account for the taxable year preceding such cessation year.

"(C) DESCRIPTION OF ITEMS.—For purposes of this paragraph, the items referred to in this subparagraph are the items described in subsection (c) which consist of unearned premiums and premiums received in advance under insurance contracts not described in section 816(b)(1)(B)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning on or after September 30, 1990.

SEC. 11303. TREATMENT OF LIFE INSURANCE RESERVES OF INSURANCE COMPANIES WHICH ARE NOT LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—Paragraph (4) of section 832(b) (defining premiums earned) is amended by striking "section 807, pertaining" and all that follows down through the period at the end of the first sentence which follows subparagraph (C) and inserting "section 807.".

(b) TECHNICAL AMENDMENT.—Subparagraph (A) of section 832(b)(7) is amended—

(1) by striking "amounts included in unearned premiums under the 2nd sentence of such subparagraph" and inserting "insurance contracts described in section 816(b)(1)(B)", and

(2) by striking "such amounts into account" and inserting "such contracts into account".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after September 30, 1990.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing reserves—

(A) such change shall be treated as a change in a method of accounting,

(B) such change shall be treated as initiated by the taxpayer,

(C) such change shall be treated as having been made with the consent of the Secretary, and

(D) the net adjustments which are required by section 481 of the Internal Revenue Code of 1986 to be taken into account by the taxpayer shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's first taxable year beginning on or after September 30, 1990.

(3) COORDINATION WITH SECTION 832(b)(4)(C).—The amendments made by this section shall not affect the application of section 832(b)(4)(C) of the Internal Revenue Code of 1986.

Subpart B—Treatment of Salvage Recoverable

SEC. 11305. TREATMENT OF SALVAGE RECOVERABLE.

(a) GENERAL RULE.—Subparagraph (A) of section 832(b)(5) (defining losses incurred) is amended to read as follows:

"(A) IN GENERAL.—The term 'losses incurred' means losses incurred during the taxable year on insurance contracts computed as follows:

"(i) To losses paid during the taxable year, deduct salvage and reinsurance recovered during the taxable year.

"(ii) To the result so obtained, add all unpaid losses on life insurance contracts plus all discounted unpaid losses (as defined in section 846) outstanding at the end of the taxable year and deduct all unpaid losses on life insurance contracts plus all discounted unpaid losses outstanding at the end of the preceding taxable year.

"(iii) To the results so obtained, add estimated salvage and reinsurance recoverable as of the end of the preceding taxable year and deduct estimated salvage and reinsurance recoverable as of the end of the taxable year.

The amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Secretary."

(b) CONFORMING AMENDMENT.—Subsection (g) of section 846 is amended by adding "and" at the end of paragraph (1), by striking paragraph (2), and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) AMENDMENTS TREATED AS CHANGE IN METHOD OF ACCOUNTING.—

(A) IN GENERAL.—In the case of any taxpayer who is required by reason of the amendments made by this section to change his method of computing losses incurred—

(i) such change shall be treated as a change in a method of accounting,

(ii) such change shall be treated as initiated by the taxpayer, and

(iii) such change shall be treated as having been made with the consent of the Secretary.

(B) ADJUSTMENTS.—In applying section 481 of the Internal Revenue Code of 1986 with respect to the change referred to in subparagraph (A)—

(i) only 13 percent of the net amount of adjustments (otherwise required by such section 481 to be taken into account by the taxpayer) shall be taken into account, and

(ii) the portion of such net adjustments which is required to be taken into account by the taxpayer (after the application of clause (i)) shall be taken into account over a period not to exceed 4 taxable years beginning with the taxpayer's 1st taxable year beginning after December 31, 1989.

(3) TREATMENT OF COMPANIES WHICH TOOK INTO ACCOUNT SALVAGE RECOVERABLE.—In the case of any insurance company which took into account salvage recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of such last taxable year shall be allowed as a deduction ratably over its 1st 4 taxable years beginning after December 31, 1989.

(4) SPECIAL RULE FOR OVERESTIMATES.—If for any taxable year beginning after December 31, 1989—

(A) the amount of the section 481 adjustment which would have been required without regard to paragraph (2) and any discounting, exceeds

(B) the sum of the amount of salvage recovered taken into account under section 832(b)(5)(A)(i) for the taxable year and any preceding taxable year beginning after December 31, 1989, attributable to losses incurred with respect to any accident year beginning before 1990 and the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such losses,

87 percent of such excess (adjusted for discounting used in determining the amount of salvage recoverable as of the close of the last taxable year of the taxpayer beginning before January 1, 1990) shall be included in gross income for such taxable year.

(5) EFFECT ON EARNINGS AND PROFITS.—The earnings and profits of any insurance company for its 1st taxable year beginning after December 31, 1989, shall be increased by the amount of the section 481 adjustment which would have been required but for paragraph (2). For purposes of applying sections 56, 902, 952(c)(1), and 960 of the Internal Revenue Code of 1986, earnings and profits of a corporation shall be determined by applying the principles of paragraph (2)(B).

Subpart C—Waiver of Estimated Tax Penalties

SEC. 11307. WAIVER OF ESTIMATED TAX PENALTIES.

No addition to tax shall be made under section 6655 of the Internal Revenue Code of 1986 for any period before March 16, 1991, with respect to any underpayment to the extent such underpayment was created or increased by any provision of this part.

PART II—COMPLIANCE PROVISIONS

SEC. 11311. SUSPENSION OF STATUTE OF LIMITATIONS DURING PROCEEDINGS TO ENFORCE CERTAIN SUMMONSES.

(a) GENERAL RULE.—Section 6503 (relating to suspension of running of period of limitation) is amended by redesignating subsection

(k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) EXTENSION IN CASE OF CERTAIN SUMMONSES.—

"(1) IN GENERAL.—If any designated summons is issued by the Secretary with respect to any return of tax by a corporation, the running of any period of limitations provided in section 6501 on the assessment of such tax shall be suspended—

"(A) during any judicial enforcement period—

"(i) with respect to such summons, or

"(ii) with respect to any other summons which is issued during the 30-day period which begins on the date on which such designated summons is issued and which relates to the same return as such designated summons, and

"(B) if the court in any proceeding referred to in paragraph (3) requires any compliance with a summons referred to in subparagraph (A), during the 120-day period beginning with the 1st day after the close of the suspension under subparagraph (A).

If subparagraph (B) does not apply, such period shall in no event expire before the 60th day after the close of the suspension under subparagraph (A).

"(2) DESIGNATED SUMMONS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'designated summons' means any summons issued for purposes of determining the amount of any tax imposed by this title if—

"(i) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions), and

"(ii) such summons clearly states that it is a designated summons for purposes of this subsection.

"(B) LIMITATION.—A summons which relates to any return shall not be treated as a designated summons if a prior summons which relates to such return was treated as a designated summons for purposes of this subsection.

"(3) JUDICIAL ENFORCEMENT PERIOD.—For purposes of this subsection, the term 'judicial enforcement period' means, with respect to any summons, the period—

"(A) which begins on the day on which a court proceeding with respect to such summons is brought, and

"(B) which ends on the day on which there is a final resolution as to the summoned person's response to such summons."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any tax (whether imposed before, on, or after the date of the enactment of this Act) if the period prescribed by section 6501 of the Internal Revenue Code of 1986 for the assessment of such tax (determined with regard to extensions) has not expired on such date of the enactment.

SEC. 11312. ACCURACY-RELATED PENALTY TO APPLY TO SECTION 482 ADJUSTMENTS.

(a) GENERAL RULE.—Subsection (e) of section 6662 (defining substantial valuation overstatement under chapter 1) is amended to read as follows:

"(e) SUBSTANTIAL VALUATION MISSTATEMENT UNDER CHAPTER 1.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial valuation misstatement under chapter 1 if—

"(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

"(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

"(ii) the net section 482 transfer price adjustment for the taxable year exceeds $10,000,000.

"(2) LIMITATION.—No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

"(3) NET SECTION 482 TRANSFER PRICE ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'net section 482 transfer price adjustment' means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

"(B) CERTAIN ADJUSTMENTS EXCLUDED IN DETERMINING THRESHOLD.—For purposes of determining whether the $10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded—

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

"(C) SPECIAL RULE.—If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 6662(b) is amended to read as follows:

"(3) Any substantial valuation misstatement under chapter 1."

(2) Subparagraph (A) of section 6662(h)(2) is amended to read as follows:

"(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting—

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and

"(iii) '$20,000,000' for '$10,000,000',".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 11313. TREATMENT OF PERSONS PROVIDING SERVICES.

(a) GENERAL RULE.—Subsection (n) of section 6103 (relating to certain other persons) is amended—

(1) by striking "and the programming" and inserting "the programming", and

(2) by inserting after "of equipment," the following "and the providing of other services,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 11314. APPLICATION OF AMENDMENTS MADE BY SECTION 7403 OF REVENUE RECONCILIATION ACT OF 1989 TO TAXABLE YEARS BEGINNING ON OR BEFORE JULY 10, 1989.

(a) GENERAL RULE.—The amendments made by section 7403 of the Revenue Reconciliation Act of 1989 shall apply to—

(1) any requirement to furnish information under section 6038A(a) of the Internal Revenue Code of 1986 (as amended by such section 7403) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038A(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038A(e)(1) of such Code (as so amended) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began. Such amendments shall also apply in any case to which they would apply without regard to this section.

(b) CONTINUATION OF OLD FAILURES.—In the case of any failure with respect to a taxable year beginning on or before July 10, 1989,

which first occurs on or before the date of the enactment of this Act but which continues after such date of enactment, section 6038A(d)(2) of the Internal Revenue Code of 1986 (as amended by subsection (c) of such section 7403) shall apply for purposes of determining the amount of the penalty imposed for 30-day periods referred to in such section 6038A(d)(2) which begin after the date of the enactment of this Act.

SEC. 11315. OTHER REPORTING REQUIREMENTS.

(a) GENERAL RULE.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6038B the following new section:

"SEC. 6038C. INFORMATION WITH RESPECT TO FOREIGN CORPORATIONS ENGAGED IN U.S. BUSINESS.

"(a) REQUIREMENT.—If a foreign corporation (hereinafter in this section referred to as the 'reporting corporation') is engaged in a trade or business within the United States at any time during a taxable year—

"(1) such corporation shall furnish (at such time and in such manner as the Secretary shall by regulations prescribe) the information described in subsection (b), and

"(2) such corporation shall maintain (at the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the liability of such corporation for tax under this title as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

"(b) REQUIRED INFORMATION.—For purposes of subsection (a), the information described in this subsection is—

"(1) the information described in section 6038A(b), and

"(2) such other information as the Secretary may prescribe by regulations relating to any item not directly connected with a transaction for which information is required under paragraph (1).

"(c) PENALTY FOR FAILURE TO FURNISH INFORMATION OR MAINTAIN RECORDS.—The provisions of subsection (d) of section 6038A shall apply to—

"(1) any failure to furnish (within the time prescribed by regulations) any information described in subsection (b), and

"(2) any failure to maintain (or cause another to maintain) records as required by subsection (a),

in the same manner as if such failure were a failure to comply with the provisions of section 6038A.

"(d) ENFORCEMENT OF REQUESTS FOR CERTAIN RECORDS.—

"(1) AGREEMENT TO TREAT CORPORATION AS AGENT.—The rules of paragraph (3) shall apply to any transaction between the reporting corporation and any related party who is a foreign person unless such related party agrees (in such manner and at such time as the Secretary shall prescribe) to authorize the reporting corporation to act as such related party's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to any such transaction or with re-

spect to any summons by the Secretary for such records or testimony. The appearance of persons or production of records by reason of the reporting corporation being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of any transaction between the reporting corporation and such related party.

"(2) RULES WHERE INFORMATION NOT FURNISHED.—If—

"(A) for purposes of determining the amount of the reporting corporation's liability for tax under this title, the Secretary issues a summons to such corporation to produce (either directly or as an agent for a related party who is a foreign person) any records or testimony,

"(B) such summons is not quashed in a proceeding begun under paragraph (4) of section 6038A(e) (as made applicable by paragraph (4) of this subsection) and is not determined to be invalid in a proceeding begun under section 7604(b) to enforce such summons, and

"(C) the reporting corporation does not substantially comply in a timely manner with such summons and the Secretary has sent by certified or registered mail a notice to such reporting corporation that such reporting corporation has not so substantially complied,

the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which such summons relates (whether or not the Secretary begins a proceeding to enforce such summons). If the reporting corporation fails to maintain (or cause another to maintain) records as required by subsection (a), and by reason of that failure, the summons is quashed in a proceeding described in subparagraph (B) or the reporting corporation is not able to provide the records requested in the summons, the Secretary may apply the rules of paragraph (3) with respect to any transaction or item to which the records relate.

"(3) APPLICABLE RULES.—If the rules of this paragraph apply to any transaction or item, the treatment of such transaction (or the amount and treatment of any such item) shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise.

"(4) JUDICIAL PROCEEDINGS.—The provisions of section 6038A(e)(4) shall apply with respect to any summons referred to in paragraph (2)(A); except that subparagraph (D) of such section shall be applied by substituting 'transaction or item' for 'transaction'.

"(e) DEFINITIONS.—For purposes of this section, the terms 'related party', 'foreign person', and 'records' have the respective meanings given to such terms by section 6038A(c)."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 6038A(a) is amended by striking "or is a foreign corporation engaged in trade or business within the United States".

(2) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038B the following new item:

"Sec. 6038C. Information with respect to foreign corporations engaged in U.S. business."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any requirement to furnish information under section 6038C(a) of the Internal Revenue Code of 1986 (as added by this section) if the time for furnishing such information under such section is after the date of the enactment of this Act,

(2) any requirement under such section 6038C(a) to maintain records which were in existence on or after March 20, 1990,

(3) any requirement to authorize a corporation to act as a limited agent under section 6038C(d)(1) of such Code (as so added) if the time for authorizing such action is after the date of the enactment of this Act, and

(4) any summons issued after such date of enactment,

without regard to when the taxable year (to which the information, records, authorization, or summons relates) began.

SEC. 11316. STUDY OF SECTION 482.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate shall conduct a study of the application and administration of section 482 of the Internal Revenue Code of 1986. Such study shall include examination of—

(1) the effectiveness of the amendments made by this part in increasing levels of compliance with such section 482,

(2) use of advanced determination agreements with respect to issues under such section 482,

(3) possible legislative or administrative changes to assist the Internal Revenue Service in increasing compliance with such section 482, and

(4) coordination of the administration of such section 482 with similar provisions of foreign tax laws and with domestic nontax laws.

(b) REPORT.—Not later than March 1, 1992, the Secretary of the Treasury or his delegate shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable.

SEC. 11317. 10-YEAR PERIOD OF LIMITATION ON COLLECTION AFTER ASSESSMENT.

(a) IN GENERAL.—Subsection (a) of section 6502 (relating to collection after assessment) is amended—

(1) by striking "6 years" in paragraph (1) and inserting "10 years", and

(2) by striking "6-year period" each place it appears in paragraph (2) and inserting "10-year period".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 6323(g) is amended by striking "6 years" each place it appears and inserting "10 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) taxes assessed after the date of the enactment of this Act, and

(2) taxes assessed on or before such date if the period specified in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by subsection (a)) for collection of such taxes has not expired as of such date.

SEC. 11318. RETURN REQUIREMENT WHERE CASH RECEIVED IN TRADE OR BUSINESS.

(a) CERTAIN MONETARY INSTRUMENTS TREATED AS CASH.—Subsection (d) of section 6050I (relating to returns relating to cash received in trade or business) is amended to read as follows:

"(d) CASH INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—For purposes of this section, the term 'cash' includes—

"(1) foreign currency, and

"(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B)."

(b) INCREASE IN PENALTY FOR INTENTIONAL DISREGARD OF REPORTING REQUIREMENT.—Paragraph (2) of section 6721(e) (relating to penalty for intentional disregard) is amended—

(1) by inserting "6050I," after "6050H," in subparagraph (A),

(2) by striking "or" at the end of subparagraph (A),

(3) by striking "and" at the end of subparagraph (B) and inserting "or", and

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) in the case of a return required to be filed under section 6050I(a) with respect to any transaction (or related transactions), the greater of—

"(i) $25,000, or

"(ii) the amount of cash (within the meaning of section 6050I(d)) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000, and".

(c) CLARIFICATION OF APPLICATION OF PROVISION PROHIBITING EVASION TECHNIQUES.—The heading of subsection (f) of section 6050I is amended to read as follows:

"(f) STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.—".

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the operation of section 6050I of the Internal Revenue Code of 1986. Such study shall include an examination of—

(1) the extent of compliance with the provisions of such section,

(2) the effectiveness of the penalties in ensuring compliance with the provisions of such section,

(3) methods to increase compliance with the provisions of such section and ways Form 8300 could be simplified, and

(4) appropriate methods to increase the usefulness and availability of information submitted under the provisions of such section.

Not later than March 31, 1991, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this subsection, together with such recommendations as he may deem advisable.

(e) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (b) shall apply to amounts received after the date of the enactment of this Act.

(2) The amendment made by subsection (c) shall take effect on the date of the enactment of this Act.

(3) Not later than June 1, 1991, the Secretary of the Treasury or his delegate shall prescribe regulations under section 6050I(d)(2) of the Internal Revenue Code of 1986 (as amended by this section).

SEC. 11319. 5-YEAR EXTENSION OF INTERNAL REVENUE SERVICE USER FEES.

(a) GENERAL RULE.—Subsection (c) of section 10511 of the Revenue Act of 1987 (relating to fees for requests for ruling, determination, and similar letters) is amended by adding at the end thereof the following new sentence: "Subsection (a) shall also apply with respect to requests made after September 30, 1990, and before October 1, 1995."

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on September 29, 1990, except that no advance payment shall be required for any fee for any requests filed after September 29, 1990, and before the 30th day after the date of the enactment of this Act.

PART III—CORPORATE PROVISIONS

SEC. 11321. RECOGNITION OF GAIN BY DISTRIBUTING CORPORATION IN CERTAIN SECTION 355 TRANSACTIONS.

(a) GENERAL RULE.—Section 355 (relating to distribution of stock and securities of a controlled corporation) is amended by striking subsection (c) and inserting the following new subsections:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than qualified property, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) QUALIFIED PROPERTY.—For purposes of subparagraph (A), the term 'qualified property' means any stock or securities in the controlled corporation.

"(C) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1).

"(d) RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONTROLLED CORPORATION.—

"(1) IN GENERAL.—In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of subsection (c)(2) of this section or section 361(c)(2).

"(2) DISQUALIFIED DISTRIBUTION.—For purposes of this subsection, the term 'disqualified distribution' means any distribution to which this section (or so much of section 356 as relates to this section) applies if, immediately after the distribution—

"(A) any person holds disqualified stock in the distributing corporation which constitutes a 50-percent or greater interest in such corporation, or

"(B) any person holds disqualified stock in the controlled corporation (or, if stock of more than 1 controlled corporation is distributed, in any controlled corporation) which constitutes a 50-percent or greater interest in such corporation.

"(3) DISQUALIFIED STOCK.—For purposes of this subsection, the term 'disqualified stock' means—

"(A) any stock in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, and

"(B) any stock in any controlled corporation—

"(i) acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution, or

"(ii) received in the distribution to the extent attributable to distributions on—

"(I) stock described in subparagraph (A), or

"(II) any securities in the distributing corporation acquired by purchase after October 9, 1990, and during the 5-year period ending on the date of the distribution.

"(4) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection, the term '50-percent or greater interest' means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

"(5) PURCHASE.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'purchase' means any acquisition but only if—

"(i) the basis of the property acquired in the hands of the acquirer is not determined (I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or (II) under section 1014(a), and

"(ii) the property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

"(B) CERTAIN SECTION 351 EXCHANGES TREATED AS PURCHASES.—The term 'purchase' includes any acquisition of property in an exchange to which section 351 applies to the extent such property is acquired in exchange for—

"(i) any cash or cash item,

"(ii) any marketable stock or security, or

"(iii) any debt of the transferor.

"(C) CARRYOVER BASIS TRANSACTIONS.—If—

"(i) any person acquires property from another person who acquired such property by purchase (as determined under this paragraph with regard to this subparagraph), and

"(ii) the adjusted basis of such property in the hands of such acquirer is determined in whole or in part by reference to the adjusted basis of such property in the hands of such other person,

such acquirer shall be treated as having acquired such property by purchase on the date it was so acquired by such other person.

"(6) SPECIAL RULE WHERE SUBSTANTIAL DIMINUTION OF RISK.—

"(A) IN GENERAL.—If this paragraph applies to any stock or securities for any period, the running of any 5-year period set forth in subparagraph (A) or (B) of paragraph (3) (whichever applies) shall be suspended during such period.

"(B) PROPERTY TO WHICH SUSPENSION APPLIES.—This paragraph applies to any stock or securities for any period during which the holder's risk of loss with respect to such stock or securities, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by—

"(i) an option,

"(ii) a short sale,

"(iii) any special class of stock, or

"(iv) any other device or transaction.

"(7) AGGREGATION RULES.—

"(A) IN GENERAL.—For purposes of this subsection, a person and all persons related to such person (within the

meaning of 267(b) or 707(b)(1)) shall be treated as one person.

"(B) PERSONS ACTING PURSUANT TO PLANS OR ARRANGEMENTS.—If two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing corporation or controlled corporation, such persons shall be treated as one person for purposes of this subsection.

"(8) ATTRIBUTION FROM ENTITIES.—

"(A) IN GENERAL.—Paragraph (2) of section 318(a) shall apply in determining whether a person holds stock or securities in any corporation (determined by substituting '10 percent' for '50 percent' in subparagraph (C) of such paragraph (2) and by treating any reference to stock as including a reference to securities).

"(B) DEEMED PURCHASE RULE.—If—

"(i) any person acquires by purchase an interest in any entity, and

"(ii) such person is treated under subparagraph (A) as holding any stock or securities by reason of holding such interest,

such stock or securities shall be treated as acquired by purchase by such person on the later of the date of the purchase of the interest in such entity or the date such stock or securities are acquired by purchase by such entity.

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

"(A) regulations to prevent the avoidance of the purposes of this subsection through the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

"(B) regulations modifying the definition of the term 'purchase'."

(b) TECHNICAL AMENDMENT.—Subsection (c) of section 361 is amended by adding at the end thereof the following new paragraph:

"(5) CROSS REFERENCE.

"For provision providing for recognition of gain in certain distributions, see section 355(d)."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to distributions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any distribution pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such distribution.

(3) TRANSITIONAL RULES.—For purposes of subparagraphs (A) and (B) of section 355(d)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), an acquisition shall be treated as occurring on or before October 9, 1990, if—

(A) such acquisition is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition,

(B) such acquisition is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(C) such acquisition is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

SEC. 11322. MODIFICATIONS TO REGULATIONS ISSUED UNDER SECTION 305(c).

(a) GENERAL RULE.—Subsection (c) of section 305 (relating to certain transactions treated as distributions) is amended by adding at the end thereof the following new sentence: "Regulations prescribed under the preceding sentence shall provide that—

"(1) where the issuer of stock is required to redeem the stock at a specified time or the holder of stock has the option to require the issuer to redeem the stock, a redemption premium resulting from such requirement or option shall be treated as reasonable only if the amount of such premium does not exceed the amount determined under the principles of section 1273(a)(3),

"(2) a redemption premium shall not fail to be treated as a distribution (or series of distributions) merely because the stock is callable, and

"(3) in any case in which a redemption premium is treated as a distribution (or series of distributions), such premium shall be taken into account under principles similar to the principles of section 1272(a)."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to stock issued after October 9, 1990.

(2) EXCEPTION.—The amendment made by subsection (a) shall not apply to any stock issued after October 9, 1990, if—

(A) such stock is issued pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance,

(B) such stock is issued pursuant to a registration or offering statement filed on or before October 9, 1990, with a Federal or State agency regulating the offering or sale of securities and such stock is issued before the date 90 days after the date of such filing, or

(C) such stock is issued pursuant to a plan filed on or before October 9, 1990, in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986).

SEC. 11323. MODIFICATIONS TO SECTION 1060.

(a) EFFECT OF ALLOCATION AGREEMENTS.—Subsection (a) of section 1060 (relating to special allocation rules for certain asset allocations) is amended by adding at the end thereof the following new sentence: "If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate."

(b) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTEREST IN ENTITIES.—

(1) IN GENERAL.—Section 1060 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) INFORMATION REQUIRED IN CASE OF CERTAIN TRANSFERS OF INTERESTS IN ENTITIES.—

"(1) IN GENERAL.—If—

"(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

"(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

"(2) 10-PERCENT OWNER.—For purposes of this subsection—

"(A) IN GENERAL.—The term '10-percent owner' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

"(B) CONSTRUCTIVE OWNERSHIP.—Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

"(3) RELATED PERSON.—For purposes of this subsection, the term 'related person' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner."

(2) TECHNICAL AMENDMENT.—Clause (x) of section 6724(d)(1)(B) is amended by striking "section 1060(b)", and inserting "subsection (b) or (e) of section 1060".

(c) INFORMATION REQUIRED IN SECTION 338(h)(10) TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (10) of section 338(h) is amended by adding at the end thereof the following new subparagraph:

"(C) INFORMATION REQUIRED TO BE FURNISHED TO THE SECRETARY.—Under regulations, where an election is made under subparagraph (A), the purchasing corporation and the common parent of the selling consolidated group shall, at such times and in such manner as may be provided in regulations, furnish to the Secretary the following information:

"(i) The amount allocated under subsection (b)(5) to goodwill or going concern value.

"(ii) Any modification of the amount described in clause (i).

"(iii) Any other information as the Secretary deems necessary to carry out the provisions of this paragraph."

(2) CONFORMING AMENDMENT.—Subparagraph (B) of section 6724(d)(1) is amended by striking "or" at the end of clause (x), by striking the period at the end of clause (xi) and inserting ", or", and by inserting after clause (xi) the following new clause:

"(xii) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss)."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11324. MODIFICATION TO CORPORATION EQUITY REDUCTION LIMITATIONS ON NET OPERATING LOSS CARRYBACKS.

(a) REPEAL OF EXCEPTION FOR ACQUISITIONS OF SUBSIDIARIES.—Clause (ii) of section 172(m)(3)(B) (relating to exceptions) is amended to read as follows:

"(ii) EXCEPTION.—The term 'major stock acquisition' does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to acquisitions after October 9, 1990.

(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition.

SEC. 11325. ISSUANCE OF DEBT OR STOCK IN SATISFACTION OF INDEBTEDNESS.

(a) ISSUANCE OF DEBT INSTRUMENT.—

(1) Subsection (e) of section 108 (relating to general rules for discharge of indebtedness) is amended by adding at the end thereof the following new paragraph:

"(11) INDEBTEDNESS SATISFIED BY ISSUANCE OF DEBT INSTRUMENT.—

(A) IN GENERAL.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor issues a debt instrument in satisfaction of indebtedness, such debtor shall be treated as having satisfied the indebtedness with an amount of money equal to the issue price of such debt instrument.

(B) ISSUE PRICE.—For purposes of subparagraph (A), the issue price of any debt instrument shall be determined under sections 1273 and 1274. For purposes of the preceding sentence, section 1273(b)(4) shall be applied by reducing the stated redemption price of any instrument by the portion of such stated redemption price which is treated as interest for purposes of this chapter."

(2) Subsection (a) of section 1275 is amended by striking paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) LIMITATION ON STOCK FOR DEBT EXCEPTION.—

(1) IN GENERAL.—Subparagraph (B) of section 108(e)(10) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN STOCK IN TITLE 11 CASES AND INSOLVENT DEBTORS.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any transfer of stock of the debtor (other than disqualified stock)—

"(I) by a debtor in a title 11 case, or

"(II) by any other debtor but only to the extent such debtor is insolvent.

"(ii) DISQUALIFIED STOCK.—For purposes of clause (i), the term 'disqualified stock' means any stock with a stated redemption price if—

"(I) such stock has a fixed redemption date,

"(II) the issuer of such stock has the right to redeem such stock at one or more times, or

"(III) the holder of such stock has the right to require its redemption at one or more times."

(2) CONFORMING AMENDMENT.—Paragraph (8) of section 108(e) is amended by adding at the end thereof the following new sentence:

"Any stock which is disqualified stock (as defined in paragraph (10)(B)(ii)) shall not be treated as stock for purposes of this paragraph."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to debt instruments issued, and stock transferred, after October 9, 1990, in satisfaction of any indebtedness.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to any debt instrument issued, or stock transferred, in satisfaction of any indebtedness if such issuance or transfer (as the case may be)—

(A) is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before October 9, 1990,

(B) is pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such issuance or transfer,

(C) is pursuant to a transaction which was described in documents filed with the Securities and Exchange Commission on or before October 9, 1990, or

(D) is pursuant to a transaction—

(i) the material terms of which were described in a written public announcement on or before October 9, 1990,

(ii) which was the subject of a prior filing with the Securities and Exchange Commission, and

(iii) which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

PART IV—EMPLOYMENT TAX PROVISIONS

SEC. 11331. INCREASE IN DOLLAR LIMITATION ON AMOUNT OF WAGES SUBJECT TO HOSPITAL INSURANCE TAX.

(a) HOSPITAL INSURANCE TAX.—

(1) IN GENERAL.—Paragraph (1) of section 3121(a) is amended—

(A) by striking "contribution and benefit base (as determined under section 230 of the Social Security Act)" each place it appears and inserting "applicable contribution base (as determined under subsection (x))", and

(B) by striking "such contribution and benefit base" and inserting "such applicable contribution base".

(2) APPLICABLE CONTRIBUTION BASE.—Section 3121 is amended by adding at the end thereof the following new subsection:

"(x) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the taxes imposed by sections 3101(a) and 3111(a), the applicable contribution base for any calendar year is the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the taxes imposed by section 3101(b) and 3111(b), the applicable contribution base is—

"(A) $125,000 for calendar year 1991, and

"(B) for any calendar year after 1991, the applicable contribution base for the preceding year adjusted in the same manner as is used in adjusting the contribution and benefit base under section 230(b) of the Social Security Act."

(b) SELF-EMPLOYMENT TAX.—

(1) IN GENERAL.—Subsection (b) of section 1402 is amended by striking "the contribution and benefit base (as determined under section 230 of the Social Security Act)" and inserting "the applicable contribution base (as determined under subsection (k))".

(2) APPLICABLE CONTRIBUTION BASE.—Section 1402 is amended by adding at the end thereof the following new subsection:

"(k) APPLICABLE CONTRIBUTION BASE.—For purposes of this chapter—

"(1) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—For purposes of the tax imposed by section 1401(a), the applicable contribution base for any calendar year is the contribution and

benefit base determined under section 230 of the Social Security Act for such calendar year.

"(2) HOSPITAL INSURANCE.—For purposes of the tax imposed by section 1401(b), the applicable contribution base for any calendar year is the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(c) RAILROAD RETIREMENT TAX.—Clause (i) of section 3231(e)(2)(B) is amended to read as follows:

"(i) TIER 1 TAXES.—

"(I) IN GENERAL.—Except as provided in subclause (II) of this clause and in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

"(II) HOSPITAL INSURANCE TAXES.—For purposes of applying so much of the rate applicable under section 3201(a) or 3221(a) (as the case may be) as does not exceed the rate of tax in effect under section 3101(b), and for purposes of applying so much of the rate of tax applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b), the term 'applicable base' means for any calendar year the applicable contribution base determined under section 3121(x)(2) for such calendar year."

(d) TECHNICAL AMENDMENT.—

(1) Paragraph (3) of section 6413(c) is amended to read as follows:

"(3) SEPARATE APPLICATION FOR HOSPITAL INSURANCE TAXES.—In applying this subsection with respect to—

"(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

"(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b),

the applicable contribution base determined under section 3121(x)(2) for any calendar year shall be substituted for 'contribution and benefit base (as determined under section 230 of the Social Security Act)' each place it appears."

(2) Sections 3122 and 3125 are each amended by striking "contribution and benefit base limitation" each place it appears and inserting "applicable contribution base limitation".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to 1991 and later calendar years.

SEC. 11332. COVERAGE OF CERTAIN STATE AND LOCAL EMPLOYEES UNDER SOCIAL SECURITY.

(a) EMPLOYMENT UNDER OASDI.—Paragraph (7) of section 210(a) of the Social Security Act (42 U.S.C. 410(a)(7)) is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

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

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 211(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term 'retirement system' has the meaning given such term by section 218(b)(4);".

(b) EMPLOYMENT UNDER FICA.—Paragraph (7) of section 3121(b) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by striking the semicolon at the end of subparagraph (E) and inserting ", or"; and

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

"(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

"(i) by an individual who is employed to relieve such individual from unemployment;

"(ii) in a hospital, home, or other institution by a patient or inmate thereof;

"(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

"(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100; or

"(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 1402(c)(2)(E) as a trade or business for purposes of in-

clusion of such fees in net earnings from self-employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary, the term 'retirement system' has the meaning given such term by section 218(b)(4) of the Social Security Act;".

(c) MANDATORY EXCLUSION OF CERTAIN EMPLOYEES FROM STATE AGREEMENTS.—Section 218(c)(6) of the Social Security Act (42 U.S.C. 418(c)(6)) is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting in lieu thereof ", and"; and

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

"(F) service described in section 210(a)(7)(F) which is included as 'employment' under section 210(a).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after July 1, 1991.

SEC. 11333. EXTENSION OF FUTA SURTAX.

(a) IN GENERAL.—Section 3301 (relating to rate of FUTA tax) is amended—

(1) by striking "1988, 1989, and 1990" in paragraph (1) and inserting "1988 through 1995", and

(2) by striking "1991" in paragraph (2) and inserting "1996".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid after December 31, 1990.

SEC. 11334. DEPOSITS OF PAYROLL TAXES.

(a) IN GENERAL—Subsection (g) of section 6302 is amended to read as follows:

"(g) DEPOSITS OF SOCIAL SECURITY TAXES AND WITHHELD INCOME TAXES.—If, under regulations prescribed by the Secretary, a person is required to make deposits of taxes imposed by chapters 21 and 24 on the basis of eighth-month periods, such person shall make deposits of such taxes on the 1st banking day after any day on which such person has $100,000 or more of such taxes for deposit."

(b) TECHNICAL AMENDMENT.—Paragraph (2) of section 7632(b) of the Revenue Reconciliation Act of 1989 is hereby repealed.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts required to be deposited after December 31, 1990.

PART V—MISCELLANEOUS PROVISIONS

SEC. 11341. INCREASE IN RATE OF INTEREST PAYABLE ON LARGE CORPORATE UNDERPAYMENTS.

(a) GENERAL RULE.—Section 6621 (relating to determination of rate of interest) is amended by adding at the end thereof the following new subsection:

"(c) INCREASE IN UNDERPAYMENT RATE FOR LARGE CORPORATE UNDERPAYMENTS.—

"(1) IN GENERAL.—For purposes of determining the amount of interest payable under section 6601 on any large corporate underpayment for periods after the applicable date, paragraph (2) of subsection (a) shall be applied by substituting '5 percentage points' for '3 percentage points'.

"(2) APPLICABLE DATE.—For purposes of this subsection—

"(A) IN GENERAL.—The applicable date is the 30th day after the earlier of—

"(i) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent, or

"(ii) the date on which the deficiency notice under section 6212 is sent.

"(B) SPECIAL RULES.—

"(i) NONDEFICIENCY PROCEDURES.—In the case of any underpayment of any tax imposed by this subtitle to which the deficiency procedures do not apply, subparagraph (A) shall be applied by taking into account any letter or notice provided by the Secretary which notifies the taxpayer of the assessment or proposed assessment of the tax.

"(ii) EXCEPTION WHERE AMOUNTS PAID IN FULL.—For purposes of subparagraph (A), a letter or notice shall be disregarded if, during the 30-day period beginning on the day on which it was sent, the taxpayer makes a payment equal to the amount shown as due in such letter or notice, as the case may be.

"(3) LARGE CORPORATE UNDERPAYMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'large corporate underpayment' means any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000.

"(B) TAXABLE PERIOD.—For purposes of subparagraph (A), the term 'taxable period' means—

"(i) in the case of any tax imposed by subtitle A, the taxable year, or

"(ii) in the case of any other tax, the period to which the underpayment relates."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply for purposes of determining interest for periods after December 31, 1990.

SEC. 11342. DENIAL OF DEDUCTION FOR UNNECESSARY COSMETIC SURGERY.

(a) IN GENERAL.—Section 213(d) (defining medical care) is amended by adding at the end thereof the following new paragraph:

"(9) COSMETIC SURGERY.—

"(A) IN GENERAL.—The term 'medical care' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

"(B) COSMETIC SURGERY DEFINED.—For purposes of this paragraph, the term 'cosmetic surgery' means any procedure which is directed at improving the patient's appearance

and does not meaningfully promote the proper function of the body or prevent or treat illness or disease."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11343. SPECIAL RULES WHERE GRANTOR OF TRUST IS A FOREIGN PERSON.

(a) IN GENERAL.—Section 672 (relating to definitions and rules) is amended by adding at the end thereof the following new subsection:

"(f) SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

"(1) IN GENERAL.—If—

"(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

"(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any trust created after the date of the enactment of this Act, and

(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.

SEC. 11344. TREATMENT OF CONTRIBUTIONS OF APPRECIATED PROPERTY UNDER MINIMUM TAX.

Subparagraph (B) of section 57(a)(6) (relating to appreciated property charitable deduction) is amended by adding at the end thereof the following new sentence: "In the case of any taxable year beginning in 1991, such term shall not include any tangible personal property."

Subtitle D—1-Year Extension of Certain Expiring Tax Provisions

SEC. 11401. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) EXTENSION.—Paragraph (5) of section 864(f) (relating to allocation of research and experimental expenditures) is amended to read as follows:

"(5) YEARS TO WHICH RULE APPLIES.—This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after August 1, 1989.

SEC. 11402. RESEARCH CREDIT.

(a) EXTENSION.—Subsection (h) of section 41 (relating to credit for increasing research activities) is amended—

(1) by striking "December 31, 1990" each place it appears and inserting "December 31, 1991", and

(2) by striking "January 1, 1991" each place it appears and inserting "January 1, 1992".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 7110 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(2) Subparagraph (D) of section 28(b)(1) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11403. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) REPEAL OF LIMITATION ON GRADUATE LEVEL ASSISTANCE.—Section 127(c)(1) is amended by striking the last sentence.

(c) CONFORMING AMENDMENT.—Subsection (a) of section 7101 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 1989.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1990.

SEC. 11404. GROUP LEGAL SERVICES PLANS.

(a) IN GENERAL.—Subsection (e) of section 120 (relating to amounts received under qualified group legal services plans) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7102 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11405. TARGETED JOBS CREDIT.

(a) IN GENERAL.—Paragraph (4) of section 51(c) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) AUTHORIZATION.—Paragraph (2) of section 261(f) of the Economic Recovery Act of 1981 is amended by striking "fiscal year 1982" and all that follows through "necessary" and inserting "each fiscal year such sums as may be necessary".

(c) EFFECTIVE DATES.—

(1) CREDIT.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after September 30, 1990.

(2) AUTHORIZATION.—The amendment made by subsection (b) shall apply to fiscal years beginning after 1990.

SEC. 11406. ENERGY INVESTMENT CREDIT FOR SOLAR AND GEOTHERMAL PROPERTY.

The table contained in section 46(b)(2)(A) (relating to energy percentage) is amended by striking "Sept. 30, 1990" in clauses (viii) and (ix) and inserting "Dec. 31, 1991".

SEC. 11407. LOW-INCOME HOUSING CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Subsection (o) of section 42 (relating to low-income housing credit) is amended—

(A) by striking "1990" each place it appears in paragraph (1) and inserting "1991", and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) EXCEPTION FOR BOND-FINANCED BUILDINGS IN PROGRESS.—For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1992 if—

"(A) the bonds with respect to such building are issued before 1992,

"(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1991, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1993, and

"(C) such building is placed in service before January 1, 1994."

(2) CONFORMING AMENDMENT.—Subsection (a) of section 7108 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to calendar years after 1989.

(b) ADDITIONAL AMENDMENTS.—

(1) CLARIFICATION OF TENANT RIGHTS OF 1ST REFUSAL.—Paragraph (7) of section 42(i), as redesignated by subtitle G of this title, is amended by striking "the tenants of such building" and inserting "the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency".

(2) MONITORING NONCOMPLIANCE.—Clause (iv) of section 42(m)(1)(B) is amended to read as follows:

"(iv) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of."

(3) TREATMENT OF SECTION 515 RENTS.—Subparagraph (B) of section 42(g)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by inserting after clause (iii) the following new clause:

"(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an

equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949."

(4) QUALIFIED CENSUS TRACT DETERMINATIONS WHERE DATA NOT AVAILABLE.—Subclause (I) of section 42(d)(5)(C)(ii) is amended by adding at the end thereof the following new sentence: "If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts."

(5) EXCEPTION TO CREDIT DENIAL FOR MODERATE REHABILITATION ASSISTANCE.—

(A) IN GENERAL.—The last sentence of paragraph (2) of section 42(c), as added by subtitle G of this title, is amended by inserting before the period "(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))".

(6) AFDC RECIPIENT STUDENTS NOT TO DISQUALIFY UNIT.—Subparagraph (D) of section 42(i)(3) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is—

"(i) a student and receiving assistance under title IV of the Social Security Act, or

"(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws."

(7) INTERMEDIARY COSTS CONSIDERED AT EVALUATION STAGE.—

(A) IN GENERAL.—Subparagraph (B) of section 42(m)(2) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following:

"(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.

Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas."

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 42(m)(1) is amended by striking clause (ii) and by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(8) 10-YEAR RULE NOT TO APPLY TO ACQUISITION OF CERTAIN SINGLE-FAMILY RESIDENCES.—Clause (ii) of section 42(d)(2)(D) is amended by striking "or" at the end of subclause (III), by striking the period at the end of subclause (IV) and inserting ", or", and by adding at the end thereof the following:

"(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence."

(9) APPLICATION OF NONPROFIT SET-ASIDE.—Section 42(h)(5) is amended—

(A) by inserting "own an interest in the project (directly or through a partnership) and" after "nonprofit organization is to" in subparagraph (B),

(B) by striking "and" at the end of clause (i) of subparagraph (C), by redesignating clause (ii) of such subparagraph as clause (iii), and by inserting after clause (i) of such subparagraph the following new clause:

"(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; and", and

(C) by inserting "ownership and" before "material participation" in subparagraph (D).

(10) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

(ii) buildings placed in service after December 31, 1990, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) TENANT RIGHTS, ETC.—The amendments made by paragraphs (1), (6), (8), and (9) shall take effect on the date of the enactment of this Act.

(C) MONITORING.—The amendment made by paragraph (2) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

(D) STUDY.—The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(c) ELECTION TO ACCELERATE CREDIT INTO 1990.—

(1) IN GENERAL.—At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

(2) REDUCTION IN AGGREGATE CREDIT TO REFLECT INCREASED 1990 CREDIT.—The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year.

(3) ELECTION.—The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.

SEC. 11408. QUALIFIED MORTGAGE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 143(a)(1) (defining qualified mortgage bond) is amended by striking "September 30, 1990" each place it appears and inserting "December 31, 1991".

(b) MORTGAGE CREDIT CERTIFICATES.—Subsection (h) of section 25 (relating to interest on certain home mortgages) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(c) MODIFICATION AND SIMPLIFICATION OF RECAPTURE RULES.—

(1) MODIFICATION OF HOLDING PERIOD PERCENTAGE.—

(A) Clause (i) of section 143(m)(4)(C) is amended to read as follows:

"(i) IN GENERAL.—The term 'holding period percentage' means the percentage determined in accordance with the following table:

"If the disposition occurs during a year after the testing date which is:	*The holding period percentage is:*
The 1st such year	*20*
The 2d such year	*40*
The 3d such year	*60*
The 4th such year	*80*
The 5th such year	*100*
The 6th such year	*80*
The 7th such year	*60*
The 8th such year	*40*
The 9th such year	*20."*

(B) Subparagraph (C) of section 143(m)(4) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(C) Subparagraph (B) of section 143(m)(2) is amended by striking "10 years" and inserting "9 years".

(2) MODIFICATION OF RECAPTURE AMOUNT BASED ON TAXPAYER'S INCOME.—

(A) Subparagraph (A) of section 143(m)(4) is amended by striking "and" at the end of clause (i), by striking the period at the end of clause (ii) and inserting ", and", and by adding at the end thereof the following new clause:

"(iii) the income percentage."

(B) Paragraph (4) of section 143(m) is amended by adding at the end thereof the following new subparagraph:

"(E) INCOME PERCENTAGE.—The term 'income percentage' means the percentage (but not greater than 100 percent) which—

"(i) the excess of—

"(I) the modified adjusted gross income of the taxpayer for the taxable year in which the disposition occurs, over

"(II) the adjusted qualifying income for such taxable year, bears to

"(ii) $5,000.

The percentage determined under the preceding sentence shall be rounded to the nearest whole percentage point (or, if it includes a half of a percentage point, shall be increased to the nearest whole percentage point).''

(C)(i) Paragraph (5) of section 143(m) is amended by striking all that precedes subparagraph (C) and inserting the following:

''(5) ADJUSTED QUALIFYING INCOME; MODIFIED ADJUSTED GROSS INCOME.—

''(A) ADJUSTED QUALIFYING INCOME.—For purposes of paragraph (4), the term 'adjusted qualifying income' means the product of—

''(i) the highest family income which (as of the date the financing was provided) would have met the requirements of subsection (f) with respect to the residents, and

''(ii) 1.05 to the nth power where 'n' equals the number of full years during the period beginning on the date the financing was provided and ending on the date of the disposition.

For purposes of clause (i), highest family income shall be determined without regard to subsection (f)(3)(A) and on the basis of the number of members of the taxpayer's family as of the date of the disposition.''

(ii) Subparagraph (C) of section 143(m)(5) is redesignated as subparagraph (B) and is amended by striking ''this paragraph'' and inserting ''paragraph (4)''.

(3) OTHER CHANGES.—

(A) Paragraph (1) of section 143(m) is amended by striking ''increased by'' and all that follows and inserting ''increased by the lesser of—

''(A) the recapture amount with respect to such indebtedness, or

''(B) 50 percent of the gain (if any) on the disposition of such interest.''

(B) Paragraph (6) of section 143(m) is amended—

(i) by striking ''LIMITATION'' in the heading and inserting ''SPECIAL RULES RELATING TO LIMITATION'',

(ii) by striking the first sentence of subparagraph (A), and

(iii) by striking ''the preceding sentence'' in subparagraph (A) and inserting ''paragraph (1)''.

(C) Clause (ii) of section 143(m)(7)(B) is amended to read as follows:

''(ii) the adjusted qualifying income (as defined in paragraph (5)) for each category of family size for each year of the 9-year period beginning on the date the financing was provided.''

(d) EFFECTIVE DATES.—

(1) BONDS.—The amendment made by subsection (a) shall apply to bonds issued after September 30, 1990.

(2) CERTIFICATES.—The amendment made by subsection (b) shall apply to elections for periods after September 30, 1990.

(3) SIMPLIFICATION.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 4005 of the Technical and Miscellaneous Revenue Act of 1988.

SEC. 11409. QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) (relating to termination dates) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after September 30, 1990.

SEC. 11410. HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "September 30, 1990" and inserting "December 31, 1991".

(b) CONFORMING AMENDMENT.—Subsection (a) of section 7107 of the Revenue Reconciliation Act of 1989 is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

SEC. 11411. EXPENSES FOR DRUGS FOR RARE CONDITIONS.

Subsection (e) of section 28 (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking "December 31, 1990" and inserting "December 31, 1991".

Subtitle E—Energy Incentives

PART I—MODIFICATIONS OF EXISTING CREDITS

SEC. 11501. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE.

(a) EXTENSION.—Section 29(f)(1) of the Internal Revenue Code of 1986 (relating to application of section) is amended—

(1) by striking "1991" in clauses (i) and (ii) of subparagraph (A) and inserting "1993", and

(2) by striking "2001" in subparagraph (B) and inserting "2003".

(b) MODIFICATION WITH RESPECT TO GAS FROM TIGHT FORMATIONS.—

(1) IN GENERAL.—Subparagraph (B) of section 29(c)(2) of such Code is amended to read as follows:

"(B) SPECIAL RULES FOR GAS FROM TIGHT FORMATIONS.—The term 'gas produced from a tight formation' shall only include gas from a tight formation—

"(i) which, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the Natural Gas Policy Act of 1978, as in effect on the date of the enactment of this clause), or

"(ii) which is produced from a well drilled after such date of enactment."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to gas produced after December 31, 1990.

(c) COORDINATION WITH ENHANCED OIL RECOVERY CREDIT.—

(1) IN GENERAL.—Section 29(b) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) CREDIT REDUCED FOR ENHANCED OIL RECOVERY CREDIT.—The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after application of paragraphs (1), (2), (3), and (4)) shall be reduced by the excess (if any) of—

"(A) the aggregate amount allowed under section 38 for the taxable year and any prior taxable year by reason of any enhanced oil recovery credit determined under section 43 with respect to such project, over

"(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A) under this paragraph for any prior taxable year."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1990.

SEC. 11502. CREDIT FOR SMALL PRODUCERS OF ETHANOL; MODIFICATION OF ALCOHOL FUELS CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 40(a) (relating to alcohol used as fuel) is amended—

(1) by striking the period at the end of paragraph (2) and inserting ", plus", and

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

"(3) in the case of an eligible small ethanol producer, the small ethanol producer credit."

(b) SMALL ETHANOL PRODUCER CREDIT.—Subsection (b) of section 40 is amended—

(1) by redesignating paragraph (4) as paragraph (5),

(2) by inserting after paragraph (3) the following new paragraph:

"(4) SMALL ETHANOL PRODUCER CREDIT.—

"(A) IN GENERAL.—The small ethanol producer credit of any eligible small ethanol producer for any taxable year is 10 cents for each gallon of qualified ethanol fuel production of such producer.

"(B) QUALIFIED ETHANOL FUEL PRODUCTION.—For purposes of this paragraph, the term 'qualified ethanol fuel production' means any alcohol which is ethanol which is produced by an eligible small ethanol producer, and which during the taxable year—

"(i) is sold by such producer to another person—

"(I) for use by such other person in the production of a qualified mixture in such other person's trade or business (other than casual off-farm production),

"(II) for use by such other person as a fuel in a trade or business, or

"(III) who sells such ethanol at retail to another person and places such ethanol in the fuel tank of such other person, or

"(ii) is used or sold by such producer for any purpose described in clause (i).

"(C) LIMITATION.—The qualified ethanol fuel production of any producer for any taxable year shall not exceed 15,000,000 gallons.

"(D) ADDITIONAL DISTILLATION EXCLUDED.—The qualified ethanol fuel production of any producer for any taxable year shall not include any alcohol which is purchased by the producer and with respect to which such producer increases the proof of the alcohol by additional distillation."; and

(3) by striking "AND ALCOHOL CREDIT" in the heading for such subsection and inserting ", ALCOHOL CREDIT, AND SMALL ETHANOL PRODUCER CREDIT".

(c) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—Section 40 is amended by adding at the end thereof the following new subsection:

"(g) DEFINITIONS AND SPECIAL RULES FOR ELIGIBLE SMALL ETHANOL PRODUCER CREDIT.—For purposes of this section—

"(1) ELIGIBLE SMALL ETHANOL PRODUCER.—The term 'eligible small ethanol producer' means a person who, at all times during the taxable year, has a productive capacity for alcohol (as defined in subsection (d)(1)(A) without regard to clauses (i) and (ii)) not in excess of 30,000,000 gallons.

"(2) AGGREGRATION RULE.—For purposes of the 15,000,000 gallon limitation under subsection (b)(4)(C) and the 30,000,000 gallon limitation under paragraph (1), all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(3) PARTNERSHIP, S CORPORATIONS, AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, the limitations contained in subsection (b)(4)(C) and paragraph (1) shall be applied at the entity level and at the partner or similar level.

"(4) ALLOCATION.—For purposes of this subsection, in the case of a facility in which more than 1 person has an interest, productive capacity shall be allocated among such persons in such manner as the Secretary may prescribe.

"(5) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary—

"(A) to prevent the credit provided for in subsection (a)(3) from directly or indirectly benefiting any person with a direct or indirect productive capacity of more than 30,000,000 gallons of alcohol during the taxable year, or

"(B) to prevent any person from directly or indirectly benefiting with respect to more than 15,000,000 gallons during the taxable year."

(d) ALCOHOL NOT USED AS FUEL.—

(1) IN GENERAL.—Section 40(d)(3) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following new subparagraph:

"(C) PRODUCER CREDIT.—If—

"(i) any credit was determined under subsection (a)(3), and

"(ii) any person does not use such fuel for a purpose described in subsection (b)(4)(B),

then there is hereby imposed on such person a tax equal to 10 cents a gallon for each gallon of such alcohol."

(2) CONFORMING AMENDMENT.—Section 40(d)(3)(D), as redesignated by paragraph (1), is amended by striking "subparagraph (A) or (B)" and inserting "subparagraph (A), (B), or (C)".

(e) REDUCED CREDIT FOR ETHANOL BLENDERS.—

(1) IN GENERAL.—Section 40, as amended by subsection (c), is amended by adding at the end thereof the following new subsection:

"(h) REDUCED CREDIT FOR ETHANOL BLENDERS.—In the case of any alcohol mixture credit or alcohol credit with respect to any alcohol which is ethanol—

"(1) subsections (b)(1)(A) and (b)(2)(A) shall be applied by substituting '54 cents' for '60 cents';

"(2) subsection (b)(3) shall be applied by substituting '40 cents' for '45 cents' and '54 cents' for '60 cents'; and

"(3) subparagraphs (A) and (B) of subsection (d)(3) shall be applied by substituting '54 cents' for '60 cents' and '40 cents' for '45 cents'."

(2) CONFORMING AMENDMENT.—Section 40(b) is amended by inserting ", and except as provided in subsection (h)" in the matter preceding paragraph (1) thereof.

(f) TERMINATION.—Subsection (e) of section 40 is amended to read as follows:

"(e) TERMINATION.—

"(1) IN GENERAL.—This section shall not apply to any sale or use—

"(A) for any period after December 31, 2000, or

"(B) for any period before January 1, 2001, during which the Highway Trust Fund financing rate under section 4081(a)(2) is not in effect.

"(2) NO CARRYOVERS TO CERTAIN YEARS AFTER EXPIRATION.—If this section ceases to apply for any period by reason of paragraph (1), no amount attributable to any sale or use before the first day of such period may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after the 3-taxable-year period beginning with the taxable year in which such first day occurs."

(g) CONFORMING AMENDMENTS TO TARIFF SCHEDULE.—

(1) Heading 9901.00.50 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) is amended—

(A) by striking "15.85¢" each place it appears and inserting "14.27¢",

(B) by striking "12.6¢" and inserting "11.34¢", and

(C) by striking the date in the effective period column and inserting "Before 10/1/2000, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust

Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

(2) Heading 9901.00.52 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "6.66¢" each place it appears and inserting "5.99¢",

(B) by striking "5.29¢" and inserting "4.76¢", and

(C) by striking "The earlier of 12/31/92, or the date on which Treasury regulation § 1.40–1 is withdrawn or declared invalid." in the effective period column and inserting: "Before the earlier of 10/1/2000, or the date on which Treas. Reg. § 1.40–1 is withdrawn or declared invalid, except that the rate for articles described in this heading shall not apply during any period before 10/1/2000 during which the Highway Trust Fund financing rate under section 4081(a)(2) of the Internal Revenue Code of 1986 is not in effect."

(h) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to alcohol produced, and sold or used, in taxable years beginning after December 31, 1990.

(2) The amendments made by subsection (g) shall apply to articles entered or withdrawn from warehouse on or after January 1, 1991.

PART II—ENHANCED OIL RECOVERY CREDIT

SEC. 11511. TAX CREDIT FOR ENHANCED OIL RECOVERY.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end thereof the following new section:

"SEC. 43. ENHANCED OIL RECOVERY CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

"(b) PHASE-OUT OF CREDIT AS CRUDE OIL PRICES INCREASE.—

"(1) IN GENERAL.—The amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit (determined without regard to this paragraph) as—

"(A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds $28, bears to

"(B) $6.

"(2) REFERENCE PRICE.—For purposes of this subsection, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(3) INFLATION ADJUSTMENT.—

"(A) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1991, there shall be substitut-

ed for the $28 amount under paragraph (1)(A) an amount equal to the product of—

"(i) $28, multiplied by

"(ii) the inflation adjustment factor for such calendar year.

"(B) INFLATION ADJUSTMENT FACTOR.—The term 'inflation adjustment factor' means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990. For purposes of the preceding sentence, the term 'GNP implicit price deflator' means the first revision of the implicit price deflator for the gross national product as computed and published by the Secretary of Commerce. Not later than April 1 of any calendar year, the Secretary shall publish the inflation adjustment factor for the preceding calendar year.

"(c) QUALIFIED ENHANCED OIL RECOVERY COSTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified enhanced oil recovery costs' means any of the following:

"(A) Any amount paid or incurred during the taxable year for tangible property—

"(i) which is an integral part of a qualified enhanced oil recovery project, and

"(ii) with respect to which depreciation (or amortization in lieu of depreciation) is allowable under this chapter.

"(B) Any intangible drilling and development costs—

"(i) which are paid or incurred in connection with a qualified enhanced oil recovery project, and

"(ii) with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(C) Any qualified tertiary injectant expenses which are paid or incurred in connection with a qualified enhanced oil recovery project and for which a deduction is allowable under section 193 for the taxable year.

"(2) QUALIFIED ENHANCED OIL RECOVERY PROJECT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified enhanced oil recovery project' means any project—

"(i) which involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods (as defined in section 193(b)(3)) which can reasonably be expected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

"(ii) which is located within the United States (within the meaning of section 638(1)), and

"(iii) with respect to which the first injection of liquids, gases, or other matter commences after December 31, 1990.

"(B) CERTIFICATION.—A project shall not be treated as a qualified enhanced oil recovery project unless the operator

submits to the Secretary (at such times and in such manner as the Secretary provides) a certification from a petroleum engineer that the project meets (and continues to meet) the requirements of subparagraph (A).

"(3) AT-RISK LIMITATION.—For purposes of determining qualified enhanced oil recovery costs, rules similar to the rules of section 49(a)(1), section 49(a)(2), and section 49(b) shall apply.

"(4) SPECIAL RULE FOR CERTAIN GAS DISPLACEMENT PROJECTS.—For purposes of this section, immiscible non-hydrocarbon gas displacement shall be treated as a tertiary recovery method under section 193(b)(3).

"(d) OTHER RULES.—

"(1) DISALLOWANCE OF DEDUCTION.—Any deduction allowable under this chapter for any costs taken into account in computing the amount of the credit determined under subsection (a) shall be reduced by the amount of such credit attributable to such costs.

"(2) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(e) ELECTION TO HAVE CREDIT NOT APPLY.—

"(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

"(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

"(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe."

(b) ADDITION TO GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Section 38(b) (defining current year business credit) is amended by striking "plus" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(6) the enhanced oil recovery credit under section 43(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF ENHANCED OIL RECOVERY CREDIT BEFORE 1991.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 43(a) (relating to enhanced oil recovery credit) may be carried to a taxable year beginning before January 1, 1991."

(3) DEDUCTION FOR UNUSED CREDIT.—Section 196(c) is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(5) the enhanced oil recovery credit determined under section 43(a)."

(c) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 43. Enhanced oil recovery credit."

(2) Subsection (m) of section 6501 is amended by striking "44B" each place it appears and inserting "43 or 44B".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 1990.

(2) SPECIAL RULE FOR SIGNIFICANT EXPANSION OF PROJECTS.—For purposes of section 43(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), any significant expansion after December 31, 1990, of a project begun before January 1, 1991, shall be treated as a project with respect to which the first injection commences after December 31, 1990.

PART III—MODIFICATIONS OF PERCENTAGE DEPLETION

SEC. 11521. PERCENTAGE DEPLETION PERMITTED AFTER TRANSFER OF PROVEN PROPERTY.

(a) IN GENERAL.—Subsection (c) of section 613A (relating to limitations on percentage depletion in the case of oil and gas wells) is amended by striking paragraphs (9) and (10) and by redesignating paragraphs (11), (12), and (13) as paragraphs (9), (10), and (11), respectively.

(b) TECHNICAL AMENDMENT.—Paragraph (11) of section 613A(c), as redesignated by subsection (a), is amended by striking subparagraphs (C) and (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers after October 11, 1990.

SEC. 11522. NET INCOME LIMITATION ON PERCENTAGE DEPLETION INCREASED FROM 50 PERCENT TO 100 PERCENT OF PROPERTY NET INCOME FOR OIL AND GAS PROPERTIES.

(a) IN GENERAL.—The second sentence of subsection (a) of section 613 (relating to percentage depletion) is amended by inserting "(100 percent in the case of oil and gas properties)" after "50 percent".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 613A(c)(7) is amended by striking "50-percent" and inserting "taxable income".

(2) Section 614(d) is amended by striking "50 percent" and inserting "taxable income".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 11523. INCREASE IN PERCENTAGE DEPLETION ALLOWANCE FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Paragraph (6) of section 613A(c) is amended to read as follows:

"(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

"(A) IN GENERAL.—Except as provided in subsection (d) and subparagraph (B), the allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

"(i) so much of the taxpayer's average daily marginal production of domestic crude oil as does not exceed the taxpayer's depletable oil quantity (determined without regard to paragraph (3)(A)(ii)), and

"(ii) so much of the taxpayer's average daily marginal production of domestic natural gas as does not exceed the taxpayer's depletable natural gas quantity (determined without regard to paragraph (3)(A)(ii)),

and the applicable percentage shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

"(B) ELECTION TO HAVE PARAGRAPH APPLY TO PRO RATA PORTION OF MARGINAL PRODUCTION.—If the taxpayer elects to have this subparagraph apply for any taxable year, the rules of subparagraph (A) shall apply to the average daily marginal production of domestic crude oil or domestic natural gas of the taxpayer to which paragraph (1) would have applied without regard to this paragraph.

"(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the percentage (not greater than 25 percent) equal to the sum of—

"(i) 15 percent, plus

"(ii) 1 percentage point for each whole dollar by which $20 exceeds the reference price for crude oil for the calendar year preceding the calendar year in which the taxable year begins.

For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year, the reference price determined for such calendar year under section 29(d)(2)(C).

"(D) MARGINAL PRODUCTION.—The term 'marginal production' means domestic crude oil or domestic natural gas which is produced during any taxable year from a property which—

"(i) is a stripper well property for the calendar year in which the taxable year begins, or

"(ii) is a property substantially all of the production of which during such calendar year is heavy oil.

"(E) STRIPPER WELL PROPERTY.—For purposes of this paragraph, the term 'stripper well property' means, with respect to any calendar year, any property with respect to which the amount determined by dividing—

"(i) the average daily production of domestic crude oil and domestic natural gas from producing wells on such property for such calendar year, by

"(ii) the number of such wells,

is 15 barrel equivalents or less.

"(F) HEAVY OIL.—For purposes of this paragraph, the term 'heavy oil' means domestic crude oil produced from any property if such crude oil had a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

"(G) AVERAGE DAILY MARGINAL PRODUCTION.—For purposes of this subsection—

"(i) the taxpayer's average daily marginal production of domestic crude oil or natural gas for any taxable year shall be determined by dividing the taxpayer's aggregate marginal production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

"(ii) in the case of a taxpayer holding a partial interest in the production from any property (including any interest held in any partnership), such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property."

(b) CONFORMING AMENDMENTS.—Section 613A(c)(3)(A) is amended—

(1) by striking clause (ii) and inserting:

"(ii) except in the case of a taxpayer making an election under paragraph (6)(B), the taxpayer's average daily marginal production for the taxable year.", and

(2) by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

PART IV—MINIMUM TAX TREATMENT

SEC. 11531. SPECIAL ENERGY DEDUCTION FOR MINIMUM TAX.

(a) IN GENERAL.—Section 56 (relating to adjustments in computing alternative minimum taxable income) is amended by adding at the end thereof the following new subsection:

"(h) ADJUSTMENT BASED ON ENERGY PREFERENCES.—

"(1) IN GENERAL.—In computing the alternative minimum taxable income of any taxpayer other than an integrated oil company for any taxable year beginning after 1990, there shall be allowed as a deduction an amount equal to the lesser of—

"(A) the alternative tax energy preference deduction, or

"(B) 40 percent of alternative minimum taxable income.

"(2) PHASE-OUT OF DEDUCTION AS OIL PRICES INCREASE.—The amount of the deduction under paragraph (1) (determined without regard to this paragraph) shall be reduced (but not below zero) by the amount which bears the same ratio to such amount as—

"(A) the excess of the reference price of crude oil for the calendar year preceding the calendar year in which the taxable year begins over $28, bears to

"(B) $6.

For purposes of this paragraph, the reference price for any calendar year shall be determined under section 29(d)(2)(C) and the $28 amount under subparagraph (A) shall be adjusted at the same time and in the same manner as under section 43(b)(3).

"(3) ALTERNATIVE TAX ENERGY PREFERENCE DEDUCTION.—For purposes of paragraph (1), the term 'alternative tax energy preference deduction' means an amount equal to the sum of—

"(A) in the case of the intangible drilling cost preference, an amount equal to the sum of—

"(i) 75 percent of the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(ii) 15 percent of the excess (if any) of—

"(I) the intangible drilling cost preference, over

"(II) the portion of the intangible drilling cost preference attributable to qualified exploratory costs, plus

"(B) 50 percent of the marginal production depletion preference.

"(4) INTANGIBLE DRILLING COST PREFERENCE.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'intangible drilling cost preference' means the amount by which alternative minimum taxable income would be reduced if it were computed without regard to section 57(a)(2) and subsection (g)(4)(D)(i).

"(B) PORTION ATTRIBUTABLE TO QUALIFIED EXPLORATORY COSTS.—For purposes of subparagraph (A), the portion of the intangible drilling cost preference attributable to qualified exploratory costs is an amount which bears the same ratio to the intangible drilling cost preference as—

"(i) the qualified exploratory costs of the taxpayer for the taxable year, bear to

"(ii) the total intangible drilling and development costs with respect to which the taxpayer may make an election under section 263(c) for the taxable year.

"(5) MARGINAL PRODUCTION DEPLETION PREFERENCE.—For purposes of this subsection, the term 'marginal production depletion preference' means the amount by which alternative minimum taxable income would be reduced if it were computed as if section 57(a)(1) and subsection (g)(4)(G) did not apply to any allowance for depletion determined under section 613A(c)(6).

"(6) QUALIFIED EXPLORATORY COSTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified exploratory costs' means intangible drilling and development costs of a taxpayer other than an integrated oil company which—

"(i) the taxpayer may elect to deduct as expenses under section 263(c), and

"(ii) are paid or incurred in connection with the drilling of an exploratory well located in the United States (within the meaning of section 638(1)).

"(B) EXPLORATORY WELL.—The term 'exploratory well' means any of the following oil or gas wells:

"(i) An oil or gas well which is completed (or if not completed, with respect to which drilling operations cease) before the completion of any other well which—

"(I) is located within 1.25 miles from the well, and

"(II) is capable of production in commercial quantities.

"(ii) An oil or gas well which is not described in clause (i) but which has a total depth which is at least 800 feet below the deepest completion depth of any well within 1.25 miles which is capable of production in commercial quantities.

"(iii) An oil or gas well capable of production in commercial quantities which is not described in clause (i) or (ii) but which is completed into a new reservoir, except that this clause shall not apply to a gas well if the gas is produced (or to be produced) from Devonian shale, coal seams, or a tight formation (determined in a manner similar to the manner under section 29(c)(2)).

A well shall not be treated as an exploratory well unless the operator submits to the Secretary (at such time and in such manner as the Secretary may provide) a certification from a petroleum engineer that the well is described in one of the preceding clauses.

"(C) CERTAIN COSTS NOT INCLUDED.—The term 'qualified exploratory costs' shall not include any cost paid or incurred—

"(i) in constructing, acquiring, transporting, erecting, or installing an offshore platform, or

"(ii) with respect to the drilling of a well from an offshore platform unless it is the first well which penetrates a reservoir.

"(D) INTEGRATED OIL COMPANY.—For purposes of this paragraph, the term 'integrated oil company' means, with respect to any taxable year, any producer of crude oil to whom subsection (c) of section 613A does not apply by reason of paragraph (2) or (4) of section 613A(d).

"(7) SPECIAL RULES.—

"(A) ALTERNATIVE MINIMUM TAXABLE INCOME.—For purposes of paragraphs (1)(B), (4)(A), and (5), alternative minimum taxable income shall be determined without regard to the deduction allowable under this subsection and the alternative tax net operating loss deduction under subsection (a)(4).

"(B) GEOTHERMAL DEPOSITS.—For purposes of this subsection, intangible drilling and development costs shall not include costs with respect to wells drilled for any geothermal deposits (as defined in section 613(e)(3)).

"(8) REGULATIONS.—The Secretary may by regulation provide for appropriate adjustments in computing alternative minimum taxable income or adjusted current earnings for any taxable year following a taxable year for which a deduction was allowed under this subsection to ensure that no double benefit is allowed by reason of such deduction."

(b) CONFORMING AMENDMENTS.—

(1) Section 56(d)(1)(A) is amended to read as follows:

"(A) the amount of such deduction shall not exceed the excess (if any) of—

"(i) 90 percent of alternative minimum taxable income determined without regard to such deduction and the deduction under subsection (h), over

"(ii) the deduction under subsection (h), and".

(2) Section 59(a)(2)(A)(ii) is amended by inserting "and the alternative tax energy preference deduction under section 56(h)" after "deduction".

(3) Section 59A(b)(1) is amended by inserting "or the alternative tax energy preference deduction under section 56(h)" before ", and".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

Subtitle F—Small Business Incentives

PART I—TREATMENT OF ESTATE TAX FREEZES

SEC. 11601. REPEAL OF SECTION 2036(c).

(a) IN GENERAL.—Section 2036 (relating to transfers with retained life estate) is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(b) CONFORMING AMENDMENTS.—

(1) Section 2207B is amended—

(A) by striking subsection (b) and redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively,

(B) by striking "subsections (a) and (b)" in subsection (c) (as so redesignated) and inserting "subsection (a)", and

(C) by striking "subsections (a), (b), and (c)" in subsection (c) (as so redesignated) and inserting "subsections (a) and (b)".

(2) Section 2501(d) is amended by striking paragraph (3).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of property transferred after December 17, 1987.

SEC. 11602. SPECIAL VALUATION RULES.

(a) IN GENERAL.—Subtitle B is amended by adding at the end thereof the following new chapter:

"CHAPTER 14—SPECIAL VALUATION RULES

"SEC. 2701. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF CERTAIN INTERESTS IN CORPORATIONS OR PARTNERSHIPS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

"(A) which is described in subparagraph (A) or (B) of subsection (b)(1), and

"(B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

"(2) EXCEPTIONS FOR MARKETABLE RETAINED INTERESTS, ETC.—Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

"(A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,

"(B) such interest is of the same class as the transferred interest, or

"(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

"(3) VALUATION OF RIGHTS TO WHICH PARAGRAPH (1) APPLIES.—

"(A) IN GENERAL.—The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

"(B) VALUATION OF QUALIFIED PAYMENTS.—If—

"(i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and

"(ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

"(4) MINIMUM VALUATION OF JUNIOR EQUITY.—

"(A) IN GENERAL.—In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if

the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

"(i) the total value of all of the equity interests in such entity, plus

"(ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) JUNIOR EQUITY INTEREST.—The term 'junior equity interest' means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital are junior to the rights of all other classes of equity interests.

"(ii) EQUITY INTEREST.—The term 'equity interest' means stock or any interest as a partner, as the case may be.

"(b) APPLICABLE RETAINED INTERESTS.—For purposes of this section—

"(1) IN GENERAL.—The term 'applicable retained interest' means any interest in an entity with respect to which there is—

"(A) a distribution right, but only if, immediately before the transfer described in subsection (a)(1), the transferor and applicable family members hold (after application of subsection (e)(3)) control of the entity, or

"(B) a liquidation, put, call, or conversion right.

"(2) CONTROL.—For purposes of paragraph (1)—

"(A) CORPORATIONS.—In the case of a corporation, the term 'control' means the holding of at least 50 percent (by vote or value) of the stock of the corporation.

"(B) PARTNERSHIPS.—In the case of a partnership, the term 'control' means—

"(i) the holding of at least 50 percent of the capital or profits interests in the partnership, or

"(ii) in the case of a limited partnership, the holding of any interest as a general partner.

"(c) DISTRIBUTION AND OTHER RIGHTS; QUALIFIED PAYMENTS.—For purposes of this section—

"(1) DISTRIBUTION RIGHT.—

"(A) IN GENERAL.—The term 'distribution right' means—

"(i) a right to distributions from a corporation with respect to its stock, and

"(ii) a right to distributions from a partnership with respect to a partner's interest in the partnership.

"(B) EXCEPTIONS.—The term 'distribution right' does not include—

"(i) a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)),

"(ii) any liquidation, put, call, or conversion right, or

"(iii) any right to receive any guaranteed payment described in section 707(c) of a fixed amount.

"(2) LIQUIDATION, ETC. RIGHTS.—

"(A) IN GENERAL.—The term 'liquidation, put, call, or conversion right' means any liquidation, put, call, or conversion right, or any similar right, the exercise or nonexercise of which affects the value of the transferred interest.

"(B) EXCEPTION FOR FIXED RIGHTS.—

"(i) IN GENERAL.—The term 'liquidation, put, call, or conversion right' does not include any right which must be exercised at a specific time and at a specific amount.

"(ii) TREATMENT OF CERTAIN RIGHTS.—If a right is assumed to be exercised in a particular manner under subsection (a)(3)(B), such right shall be treated as so exercised for purposes of clause (i).

"(C) EXCEPTION FOR CERTAIN RIGHTS TO CONVERT.—The term 'liquidation, put, call, or conversion right' does not include any right which—

"(i) is a right to convert into a fixed number (or a fixed percentage) of shares of the same class of stock in a corporation as the transferred stock in such corporation under subsection (a)(1) (or stock which would be of the same class but for nonlapsing differences in voting power),

"(ii) is nonlapsing,

"(iii) is subject to proportionate adjustments for splits, combinations, reclassifications, and similar changes in the capital stock, and

"(iv) is subject to adjustments similar to the adjustments under subsection (d) for accumulated but unpaid distributions.

A rule similar to the rule of the preceding sentence shall apply for partnerships.

"(3) QUALIFIED PAYMENT.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'qualified payment' means any dividend payable on a periodic basis under any cumulative preferred stock (or a comparable payment under any partnership interest) to the extent that such dividend (or comparable payment) is determined at a fixed rate.

"(B) TREATMENT OF VARIABLE RATE PAYMENTS.—For purposes of subparagraph (A), a payment shall be treated as fixed as to rate if such payment is determined at a rate which bears a fixed relationship to a specified market interest rate.

"(C) ELECTIONS.—

"(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments.

"(ii) ELECTION TO HAVE INTEREST TREATED AS QUALIFIED PAYMENT.—A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election. The preceding sentence shall apply only to the extent that the amounts and times so specified are not inconsistent with the underlying legal instrument giving rise to such right.

"(iii) ELECTIONS IRREVOCABLE.—Any election under this subparagraph with respect to an interest shall, once made, be irrevocable.

"(d) TRANSFER TAX TREATMENT OF CUMULATIVE BUT UNPAID DISTRIBUTIONS.—

"(1) IN GENERAL.—If a taxable event occurs with respect to any distribution right to which subsection (a)(3)(B) applied, the following shall be increased by the amount determined under paragraph (2):

"(A) The taxable estate of the transferor in the case of a taxable event described in paragraph (3)(A)(i).

"(B) The taxable gifts of the transferor for the calendar year in which the taxable event occurs in the case of a taxable event described in paragraph (3)(A) (ii) or (iii).

"(2) AMOUNT OF INCREASE.—

"(A) IN GENERAL.—The amount of the increase determined under this paragraph shall be the excess (if any) of—

"(i) the value of the qualified payments payable during the period beginning on the date of the transfer under subsection (a)(1) and ending on the date of the taxable event determined as if—

"(I) all such payments were paid on the date payment was due, and

"(II) all such payments were reinvested by the transferor as of the date of payment at a yield equal to the discount rate used in determining the value of the applicable retained interest described in subsection (a)(1), over

"(ii) the value of such payments paid during such period computed under clause (i) on the basis of the time when such payments were actually paid.

"(B) LIMITATION ON AMOUNT OF INCREASE.—

"(i) IN GENERAL.—The amount of the increase under subparagraph (A) shall not exceed the applicable percentage of the excess (if any) of—

"(I) the value (determined as of the date of the taxable event) of all equity interests in the entity which are junior to the applicable retained interest, over

"(II) the value of such interests (determined as of the date of the transfer to which subsection (a)(1) applied).

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the percentage determined by dividing—

"(I) the number of shares in the corporation held (as of the date of the taxable event) by the transferor which are applicable retained interests of the same class, by

"(II) the total number of shares in such corporation (as of such date) which are of the same class as the class described in subclause (I).

A similar percentage shall be determined in the case of interests in a partnership.

"(iii) DEFINITION.—For purposes of this subparagraph, the term 'equity interest' has the meaning given such term by subsection (a)(4)(B).

"(C) GRACE PERIOD.—For purposes of subparagraph (A), any payment of any distribution during the 4-year period beginning on its due date shall be treated as having been made on such due date.

"(3) TAXABLE EVENTS.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'taxable event' means any of the following:

"(i) The death of the transferor if the applicable retained interest conferring the distribution right is includible in the estate of the transferor.

"(ii) The transfer of such applicable retained interest.

"(iii) At the election of the taxpayer, the payment of any qualified payment after the period described in paragraph (2)(C), but only with respect to the period ending on the date of such payment.

"(B) EXCEPTION WHERE SPOUSE IS TRANSFEREE.—

"(i) DEATHTIME TRANSFERS.—Subparagraph (A)(i) shall not apply to any interest includible in the gross estate of the transferor if a deduction with respect to such interest is allowable under section 2056 or 2106(a)(3).

"(ii) LIFETIME TRANSFERS.—A transfer to the spouse of the transferor shall not be treated as a taxable event under subparagraph (A)(ii) if such transfer does not result in a taxable gift by reason of—

"(I) any deduction allowed under section 2523, or

"(II) consideration for the transfer provided by the spouse.

"(iii) SPOUSE SUCCEEDS TO TREATMENT OF TRANSFEROR.—If an event is not treated as a taxable event by reason of this subparagraph, the transferee spouse or surviving spouse (as the case may be) shall be treated in the same manner as the transferor in applying this subsection with respect to the interest involved.

"(4) SPECIAL RULES FOR APPLICABLE FAMILY MEMBERS.—

"(A) FAMILY MEMBER TREATED IN SAME MANNER AS TRANSFEROR.—For purposes of this subsection, an applicable family member shall be treated in the same manner as the transferor with respect to any distribution right retained by such family member to which subsection (a)(3)(B) applied.

"(B) TRANSFER TO APPLICABLE FAMILY MEMBER.—In the case of a taxable event described in paragraph (3)(A)(ii) involving the transfer of an applicable retained interest to an applicable family member (other than the spouse of the transferor), the applicable family member shall be treated in the same manner as the transferor in applying this subsection to distributions accumulating with respect to such interest after such taxable event.

"(5) TRANSFER TO INCLUDE TERMINATION.—For purposes of this subsection, any termination of an interest shall be treated as a transfer.

"(e) OTHER DEFINITIONS AND RULES.—For purposes of this section—

"(1) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) a lineal descendant of the transferor or the transferor's spouse, and

"(C) the spouse of any such descendant.

"(2) APPLICABLE FAMILY MEMBER.—The term 'applicable family member' means, with respect to any transferor—

"(A) the transferor's spouse,

"(B) an ancestor of the transferor or the transferor's spouse, and

"(C) the spouse of any such ancestor.

"(3) ATTRIBUTION RULES.—

"(A) INDIRECT HOLDINGS AND TRANSFERS.—An individual shall be treated as holding any interest to the extent such interest is held indirectly by such individual through a corporation, partnership, trust, or other entity. If any individual is treated as holding any interest by reason of the preceding sentence, any transfer which results in such interest being treated as no longer held by such individual shall be treated as a transfer of such interest.

"(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual's brothers, sisters, or lineal descendants.

"(4) EFFECT OF ADOPTION.—A relationship by legal adoption shall be treated as a relationship by blood.

"(5) CERTAIN CHANGES TREATED AS TRANSFERS.—Except as provided in regulations, a contribution to capital or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership shall be treated as a transfer of an interest in such entity to which this section applies if the taxpayer or an applicable family member—

"(A) receives an applicable retained interest in such entity pursuant to such contribution to capital or such redemption, recapitalization, or other change, or

"(B) under regulations, otherwise holds, immediately after the transfer, an applicable retained interest in such entity.

This paragraph shall not apply to any transaction (other than a contribution to capital) if the interests in the entity held by the transferor, applicable family members, and members of the transferor's family before and after the transaction are substantially identical.

"(6) ADJUSTMENTS.—Under regulations prescribed by the Secretary, if there is any subsequent transfer, or inclusion in the gross estate, of any applicable retained interest which was valued under the rules of subsection (a), appropriate adjustments shall be made for purposes of chapter 11, 12, or 13 to re-

flect the increase in the amount of any prior taxable gift made by the transferor or decedent by reason of such valuation.

"(7) TREATMENT AS SEPARATE INTERESTS.—The Secretary may by regulation provide that any applicable retained interest shall be treated as 2 or more separate interests for purposes of this section.

"SEC. 2702. SPECIAL VALUATION RULES IN CASE OF TRANSFERS OF INTERESTS IN TRUSTS.

"(a) VALUATION RULES.—

"(1) IN GENERAL.—Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

"(2) VALUATION OF RETAINED INTERESTS.—

"(A) IN GENERAL.—The value of any retained interest which is not a qualified interest shall be treated as being zero.

"(B) VALUATION OF QUALIFIED INTEREST.—The value of any retained interest which is a qualified interest shall be determined under section 7520.

"(3) EXCEPTIONS.—

"(A) IN GENERAL.—This subsection shall not apply to any transfer—

"(i) to the extent such transfer is an incomplete transfer, or

"(ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

"(B) INCOMPLETE TRANSFER.—For purposes of subparagraph (A), the term 'incomplete transfer' means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

"(b) QUALIFIED INTEREST.—For purposes of this section, the term 'qualified interest' means—

"(1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,

"(2) any interest which consists of the right to receive amounts which are payable not less frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

"(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

"(c) CERTAIN PROPERTY TREATED AS HELD IN TRUST.—For purposes of this section—

"(1) IN GENERAL.—The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

"(2) JOINT PURCHASES.—If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

"(3) TERM INTEREST.—The term 'term interest' means—

"(A) a life interest in property, or

"(B) an interest in property for a term of years.

"(4) VALUATION RULE FOR CERTAIN TERM INTERESTS.—If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

"(A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and

"(B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

"(d) TREATMENT OF TRANSFERS OF INTERESTS IN PORTION OF TRUST.—In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

"(e) MEMBER OF THE FAMILY.—For purposes of this section, the term 'member of the family' shall have the meaning given such term by section 2704(c)(2).

"SEC. 2703. CERTAIN RIGHTS AND RESTRICTIONS DISREGARDED.

"(a) GENERAL RULE.—For purposes of this subtitle, the value of any property shall be determined without regard to—

"(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

"(2) any restriction on the right to sell or use such property.

"(b) EXCEPTIONS.—Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

"(1) It is a bona fide business arrangement.

"(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

"(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

"SEC. 2704. TREATMENT OF CERTAIN LAPSING RIGHTS AND RESTRICTIONS.

"(a) TREATMENT OF LAPSED VOTING OR LIQUIDATION RIGHTS.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

"(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity, such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

"(2) AMOUNT OF TRANSFER.—For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

"(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

"(B) the value of such interests immediately after the lapse.

"(3) SIMILAR RIGHTS.—The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

"(b) CERTAIN RESTRICTIONS ON LIQUIDATION DISREGARDED.—

"(1) IN GENERAL.—For purposes of this subtitle, if—

"(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

"(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

"(2) APPLICABLE RESTRICTION.—For purposes of this subsection, the term 'applicable restriction' means any restriction—

"(A) which effectively limits the ability of the corporation or partnership to liquidate, and

"(B) with respect to which either of the following applies:

"(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

"(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

"(3) EXCEPTIONS.—The term 'applicable restriction' shall not include—

"(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

"(B) any restriction imposed, or required to be imposed, by any Federal or State law.

"(4) OTHER RESTRICTIONS.—The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred

interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONTROL.—The term 'control' has the meaning given such term by section 2701(b)(2).

"(2) MEMBER OF THE FAMILY.—The term 'member of the family' means, with respect to any individual—

"(A) such individual's spouse,

"(B) any ancestor or lineal descendant of such individual or such individual's spouse,

"(C) any brother or sister of the individual, and

"(D) any spouse of any individual described in subparagraph (B) or (C).

"(3) ATTRIBUTION.—The rule of section 2701(e)(3)(A) shall apply for purposes of determining the interests held by any individual."

(b) EXTENSION OF STATUTE OF LIMITATIONS.—Subsection (c) of section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new paragraph:

"(9) GIFT TAX ON CERTAIN GIFTS NOT SHOWN ON RETURN.—If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item not shown as a gift on such return if such item is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item."

(c) CONFORMING AMENDMENT.—The table of chapters for subtitle B is amended by adding at the end thereof the following item:

"CHAPTER 14. Special Valuation Rules."

(d) STUDY.—The Secretary of the Treasury shall conduct a study of—

(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(e) EFFECTIVE DATES.—

(1) SUBSECTION (a).—

(A) IN GENERAL.—The amendments made by subsection (a)—

(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of 1986 (as

added by such amendments), shall apply to transfers after October 8, 1990,

(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

(i) any failure to exercise a right of conversion,

(ii) any failure to pay dividends, and

(iii) any failure to exercise other rights specified in regulations,

shall not be treated as a subsequent transfer.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to gifts after October 8, 1990.

PART II—DISABLED ACCESS CREDIT

SEC. 11611. CREDIT FOR COST OF PROVIDING ACCESS FOR DISABLED INDIVIDUALS.

(a) GENERAL RULE.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by subtitle E, is amended by adding at the end thereof the following new section:

"SEC. 44. EXPENDITURES TO PROVIDE ACCESS TO DISABLED INDIVIDUALS.

"(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible small business, the amount of the disabled access credit determined under this section for any taxable year shall be an amount equal to 50 percent of so much of the eligible access expenditures for the taxable year as exceed $250 but do not exceed $10,250.

"(b) ELIGIBLE SMALL BUSINESS.—For purposes of this section, the term 'eligible small business' means any person if—

"(1) either—

"(A) the gross receipts of such person for the preceding taxable year did not exceed $1,000,000, or

"(B) in the case of a person to which subparagraph (A) does not apply, such person employed not more than 30 full-time employees during the preceding taxable year, and

"(2) such person elects the application of this section for the taxable year.

For purposes of paragraph (1)(B), an employee shall be considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year.

"(c) ELIGIBLE ACCESS EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible access expenditures' means amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements under the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CERTAIN EXPENDITURES INCLUDED.—The term 'eligible access expenditures' includes amounts paid or incurred—

"(A) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities,

"(B) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,

"(C) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments,

"(D) to acquire or modify equipment or devices for individuals with disabilities, or

"(E) to provide other similar services, modifications, materials, or equipment.

"(3) EXPENDITURES MUST BE REASONABLE.—Amounts paid or incurred for the purposes described in paragraph (2) shall include only expenditures which are reasonable and shall not include expenditures which are unnecessary to accomplish such purposes.

"(4) EXPENSES IN CONNECTION WITH NEW CONSTRUCTION ARE NOT ELIGIBLE.—The term 'eligible access expenditures' shall not include amounts described in paragraph (2)(A) which are paid or incurred in connection with any facility first placed in service after the date of the enactment of this section.

"(5) EXPENDITURES MUST MEET STANDARDS.—The term 'eligible access expenditures' shall not include any amount unless the taxpayer establishes, to the satisfaction of the Secretary, that the resulting removal of any barrier (or the provision of any services, modifications, materials, or equipment) meets the standards promulgated by the Secretary with the concurrence of the Architectural and Transportation Barriers Compliance Board and set forth in regulations prescribed by the Secretary.

"(d) DEFINITION OF DISABILITY; SPECIAL RULES.—For purposes of this section—

"(1) DISABILITY.—The term 'disability' has the same meaning as when used in the Americans With Disabilities Act of 1990 (as in effect on the date of the enactment of this section).

"(2) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All members of the same controlled group of corporations (within the meaning of section 52(a)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 person for purposes of this section.

"(B) DOLLAR LIMITATION.—The Secretary shall apportion the dollar limitation under subsection (a) among the mem-

bers of any group described in subparagraph (A) in such manner as the Secretary shall by regulations prescribe.

"(3) PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership, the limitation under subsection (a) shall apply with respect to the partnership and each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

"(4) SHORT YEARS.—The Secretary shall prescribe such adjustments as may be appropriate for purposes of paragraph (1) of subsection (b) if the preceding taxable year is a taxable year of less than 12 months.

"(5) GROSS RECEIPTS.—Gross receipts for any taxable year shall be reduced by returns and allowances made during such year.

"(6) TREATMENT OF PREDECESSORS.—The reference to any person in paragraph (1) of subsection (b) shall be treated as including a reference to any predecessor.

"(7) DENIAL OF DOUBLE BENEFIT.—In the case of the amount of the credit determined under this section—

"(A) no deduction or credit shall be allowed for such amount under any other provision of this chapter, and

"(B) no increase in the adjusted basis of any property shall result from such amount.

"(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out the purposes of this section."

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38, as amended by subtitle E, is amended by striking "plus" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", plus" and by adding at the end thereof the following new paragraph:

"(7) in the case of an eligible small business (as defined in section 44(b)), the disabled access credit determined under section 44(a)."

(2) CARRYBACKS.—Section 39(d) is amended by adding at the end thereof the following new paragraph:

"(5) NO CARRYBACK OF SECTION 44 CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the disabled access credit determined under section 44 may be carried to a taxable year ending before the date of the enactment of section 44."

(c) DEDUCTION REDUCED FOR ARCHITECTURAL AND TRANSPORTATION BARRIER REMOVAL EXPENSES.—Section 190(c) (relating to expenditures to remove architectural and transportation barriers to the handicapped and elderly) is amended by striking "$35,000" and inserting "$15,000".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by subtitle E, is amended by adding at the end thereof the following new item:

"Sec. 44. Expenditures to provide access to disabled individuals."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act.

(2) SUBSECTION (c).—The amendment made by subsection (c) shall apply to taxable years beginning after the date of the enactment of this Act.

PART III—OTHER PROVISIONS

SEC. 11621. REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.

(a) GENERAL RULE.—Subsection (f) of section 7805 (relating to review of impact of regulations on small business) is amended to read as follows:

"(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

"(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

"(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

"(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

"(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

"(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

"(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act.

SEC. 11622. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

(a) GENERAL RULE.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7523. GRAPHIC PRESENTATION OF MAJOR CATEGORIES OF FEDERAL OUTLAYS AND INCOME.

"(a) GENERAL RULE.—In the case of any booklet of instructions for Form 1040, 1040A, or 1040EZ prepared by the Secretary for filing individual income tax returns for taxable years beginning in any calendar year, the Secretary shall include in a prominent place—

"(1) a pie-shaped graph showing the relative sizes of the major outlay categories, and

"(2) a pie-shaped graph showing the relative sizes of the major income categories.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of subsection (a)—

"(1) MAJOR OUTLAY CATEGORIES.—The term 'major outlay categories' means the following:

"(A) Defense, veterans, and foreign affairs.

"(B) Social security, medicare, and other retirement.

"(C) Physical, human, and community development.

"(D) Social programs.

"(E) Law enforcement and general government.

"(F) Interest on the debt.

"(2) MAJOR INCOME CATEGORIES.—The term 'major income categories' means the following:

"(A) Social security, medicare, and unemployment and other retirement taxes.

"(B) Personal income taxes.

"(C) Corporate income taxes.

"(D) Borrowing to cover the deficit.

"(E) Excise, customs, estate, gift, and miscellaneous taxes.

"(3) REQUIRED FOOTNOTES.—The pie-shaped graph showing the major outlay categories shall include the following footnotes:

"(A) A footnote to the category referred to in paragraph (1)(A) showing the percentage of the total outlays which is for defense, the percentage of total outlays which is for veterans, and the percentage of total outlays which is for foreign affairs.

"(B) A footnote to the category referred to in paragraph (1)(C) showing that such category consists of agriculture, natural resources, environment, transportation, education, job training, economic development, space, energy, and general science.

"(C) A footnote to the category referred to in paragraph (1)(D) showing the percentage of the total outlays which is for medicaid, food stamps, and aid to families with dependent children and the percentage of total outlays which is for public health, unemployment, assisted housing, and social services.

"(4) DATA ON WHICH GRAPHS ARE BASED.—The graphs required under subsection (a) shall be based on data for the most recent fiscal year for which complete data is available as of the completion of the preparation of the instructions by the Secretary."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end thereof the following new item:

"Sec. 7523. Graphic presentation of major categories of Federal outlays and income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to instructions prepared for taxable years beginning after 1990.

Subtitle G—Tax Technical Corrections

SEC. 11700. COORDINATION WITH OTHER SUBTITLES.

For purposes of applying the amendments made by any subtitle of this title other than this subtitle, the provisions of this subtitle shall be treated as having been enacted immediately before the provisions of such other subtitles.

SEC. 11701. AMENDMENTS RELATED TO REVENUE RECONCILIATION ACT OF 1989.

(a) AMENDMENTS RELATED TO SECTION 7108.—

(1)(A) Paragraph (2) of section 42(c) is amended by adding at the end thereof the following new sentence: "Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937."

(B) Paragraph (1) of section 42(b) is amended by striking the last sentence.

(2) Subclause (I) of section 42(d)(5)(C)(ii) is amended—

(A) by inserting "which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract," after "census tract", and

(B) by inserting before the period "for such year".

(3)(A) Clause (i) of section 42(g)(2)(D) is amended by inserting before the period "and such unit continues to be rent-restricted".

(B) In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) does not apply, such amendment shall apply to—

(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act, and

(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.

(4) Clause (ii) of section 42(g)(2)(D) is amended by adding at the end thereof the following new sentence: "In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'."

(5)(A) Subparagraph (A) of section 42(g)(3) is amended by striking "the 12-month period beginning on the date the building is placed in service" and inserting "the 1st year of the credit period for such building".

(B) In the case of a building to which the amendment made by subparagraph (A) does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in

effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.

(6)(A) The second sentence of section 42(h)(3)(C) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(B) Subclause (II) of section 42(h)(3)(D)(ii) is amended by striking "the amount described in clause (i)" and inserting "the sum of the amounts described in clauses (i) and (iii)".

(7)(A) Clause (i) of section 42(h)(6)(B) is amended by inserting before the comma "and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)".

(B) Clause (ii) of section 42(h)(6)(B) is amended by striking "requirement" and inserting "requirement and prohibitions".

(8)(A) Subparagraph (B) of section 42(h)(6) is amended by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively, and by inserting after clause (ii) the following new clause:

> *"(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,".*

(B) Paragraph (6) of section 42(h) is amended by striking subparagraph (J) and by redesignating subparagraphs (K) and (L) as subparagraphs (J) and (K), respectively.

(C) Subclause (II) of section 42(h)(6)(E)(ii) is amended by inserting before the period "not otherwise permitted under this section".

(D) Subparagraph (F) of section 42(h)(6) is amended by inserting "the nonlow-income portion of the building for fair market value and" before "the low-income portion".

(9) Subclause (I) of section 42(h)(6)(E)(i) is amended by inserting before the comma "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period".

(10) Paragraph (8) of section 42(i) is redesignated as paragraph (7).

(11) Paragraph (2) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting before the period "but only with respect to bonds issued after such date".

(12) Paragraph (6) of section 7108(r) of the Revenue Reconciliation Act of 1989 is amended by inserting "after" after "issued".

(b) AMENDMENTS RELATED TO SECTION 7202.—

(1) Subparagraph (A) of section 163(e)(5) is amended by striking the last sentence and inserting the following: "For purposes of this paragraph, rules similar to the rules of subsection (i)(3)(B) shall apply in determining the amount of the original issue discount and when the original issue discount is paid."

(2) Paragraph (3) of section 163(i) is amended—

> *(A) by striking "(or stock)" each place it appears in subparagraph (B), and*
>
> *(B) by adding at the end thereof the following new sentence: "Except for purposes of paragraph (1)(B), any refer-*

ence to an obligation in subparagraph (B) of this paragraph shall be treated as including a reference to stock."

(c) AMENDMENTS RELATED TO SECTION 7210.—

(1) Subparagraph (C) of section 163(j)(2) is amended by striking "less such" and inserting "reduced (but not below zero) by such".

(2) Clause (ii) of section 163(j)(2)(A) is amended by striking "and on such other days" and inserting "or on any other day".

(d) AMENDMENTS RELATED TO SECTION 7211.—Clause (iii) of section 172(b)(1)(M) is amended—

(1) by striking "a C corporation" in the material preceding subclause (I),

(2) by striking "which acquires" in subclause (I) and inserting "a C corporation which acquires",

(3) by striking "a corporation" in subclause (II) and inserting "a C corporation", and

(4) by striking "any successor corporation" in subclause (III) and inserting "any C corporation which is a successor".

(e) AMENDMENTS RELATED TO SECTION 7301.—

(1) Paragraph (2) of section 4978B(e) is amended to read as follows:

"(2) SECTION 133 SECURITIES.—The term 'section 133 securities' means employer securities acquired by an employee stock ownership plan in a transaction to which section 133 applied."

(2) Subsection (d) of section 4978B is amended by adding at the end thereof the following new paragraph:

"(4) COORDINATION WITH OTHER TAXES.—This section shall not apply to any disposition which is subject to tax under section 4978 or section 4978A (as in effect on the day before the date of enactment of this section)."

(f) AMENDMENT RELATED TO SECTION 7401.—Paragraph (2) of section 6038(e) is amended by adding at the end thereof the following new sentence: "In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period."

(g) AMENDMENTS RELATED TO SECTION 7506.—

(1) The material preceding subclause (I) in section 4682(d)(3)(B)(i) is amended by striking "or produced" and inserting ", produced, or imported".

(2) Subclause (I) of section 4682(d)(3)(B)(i) is amended to read as follows:

> *"(I) the amount equal to the 1986 export percentage of the aggregate tax which would (but for this subsection and subsection (g)) be imposed by this subchapter with respect to the maximum quantity of ozone-depleting chemicals permitted to be manufactured or produced by such person during such calendar year under regulations prescribed by the Environmental Protection Agency (other than chemicals with respect to which subclause (II) applies),".*

(3) Subclause (II) of section 4682(d)(3)(B)(i) is amended by striking "tax imposed" and inserting "tax which would (but for this subsection and subsection (g)) be imposed".

(4) Clause (i) of section 4682(d)(3)(B) is amended by striking the period at the end of subclause (II) and inserting ", and" and by adding at the end thereof the following new subclause:

"(III) the aggregate tax which was imposed by this subchapter with respect to ozone-depleting chemicals imported by such person during the calendar year.".

(5) The last sentence of clause (ii) of section 4682(d)(3)(B) is amended to read as follows: "The percentage determined under the preceding sentence shall be computed by taking into account the sum of such person's direct 1986 exports (as determined by the Environmental Protection Agency) and such person's indirect 1986 exports (as allocated to such person by such Agency in determining such person's consumption and production rights for ozone-depleting chemicals).".

(h) AMENDMENT RELATED TO SECTION 7601.—Effective with respect to transfers after August 3, 1990, paragraph (3) of section 1031(f) is amended by striking "section 267(b)" and inserting "section 267(b) or 707(b)(1)".

(i) AMENDMENT RELATED TO SECTION 7622.—Paragraph (4) of section 1253(d) is amended by striking "or any period of amortization under this section" and inserting "under this section or any period of amortization under this subtitle for any payment described in this section".

(j) AMENDMENTS RELATED TO SECTION 7652.—

(1) Subclause (II) of section 148(f)(4)(B)(i) is amended to read as follows:

"(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund)."

(2) The last sentence of clause (i) of section 148(f)(4)(B) is amended by striking "replacement fund" and all that follows and inserting "replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only."

(3) Paragraph (4) of section 148(f) is amended—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) EXCEPTION FROM REBATE FOR CERTAIN PROCEEDS TO BE USED TO FINANCE CONSTRUCTION EXPENDITURES.—

"(i) IN GENERAL.—In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

"(ii) SPENDING REQUIREMENTS.—The spending requirements of this clause are met if at least—

"(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

"(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

"(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

"(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

"(iii) EXCEPTION FOR REASONABLE RETAINAGE.—The spending requirement of clause (ii)(IV) shall be treated as met if—

"(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

"(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

"(iv) CONSTRUCTION ISSUE.—For purposes of this subparagraph, the term 'construction issue' means any issue if—

"(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

"(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term 'construction' includes reconstruction and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

"(v) PORTIONS OF ISSUES USED FOR CONSTRUCTION.—If—

"(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

"(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

"(vi) AVAILABLE CONSTRUCTION PROCEEDS.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'available construction proceeds' means the amount equal to the issue price (within the meaning of sections 1273 and

1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

"(II) EARNINGS ON RESERVE INCLUDED ONLY FOR CERTAIN PERIODS.—The term 'available construction proceeds' shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

"(III) PAYMENTS ON ACQUIRED PURPOSE OBLIGATIONS EXCLUDED.—The term 'available construction proceeds' shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

"(IV) ELECTION TO REBATE ON EARNINGS ON RESERVE.—At the election of the issuer, the term 'available construction proceeds' shall not include earnings on any reasonably required reserve or replacement fund.

"(vii) ELECTION TO PAY PENALTY IN LIEU OF REBATE.—

"(I) IN GENERAL.—At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

"(II) TERMINATION.—The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

"(viii) ELECTION TO TERMINATE 1½ PERCENT PENALTY.—At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

"(I) 3 PERCENT PENALTY.—The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent

for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

"(II) YIELD RESTRICTION AT CLOSE OF TEMPORARY PERIOD.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

"(III) REDEMPTION OF BONDS AT EARLIEST CALL DATE.—The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

"(ix) ELECTION TO TERMINATE 1½ PERCENT PENALTY BEFORE END OF TEMPORARY PERIOD.—If—

"(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

"(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

"(III) the issuer has made the election under clause (viii), and

"(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so identified as if the initial temporary period ended as of the date the election is made.

"(x) FAILURE TO PAY PENALTIES.—In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

"(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

"(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an

issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

"(xi) ELECTION FOR POOLED FINANCING BONDS.—At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

"(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

"(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

"(xii) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

"(xiii) REFUNDING BONDS.—

"(I) IN GENERAL.—Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

"(II) DETERMINATION OF CONSTRUCTION PORTION OF ISSUE.—For purposes of clause (v), any portion of an issue which is used to refund any issue (or portion thereof) shall be treated as a separate issue.

"(III) COORDINATION WITH REBATE REQUIREMENT ON REFUNDING BONDS.—The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

"(xiv) DETERMINATION OF INITIAL TEMPORARY PERIOD.—For purposes of this subpargraph, the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).

"(xv) ELECTIONS.—Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

"(xvi) TIME FOR PAYMENT OF PENALTIES.—Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates."

(4) Clause (iv) of section 148(f)(4)(B) is amended to read as follows:

"(iv) PAYMENTS OF PRINCIPAL NOT TO AFFECT REQUIREMENTS.—For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue."

(5) Subparagraph (D) of section 148(c)(2) is amended—

(A) by striking "subsection (f)(4)(B)(iv)(IV)" and inserting "subsection (f)(4)(C)(iv)", and

(B) by striking "subsection (f)(4)(B)(iv)(VIII)" and inserting "subsection (f)(4)(C)(v)".

(6) Subsection (c) of section 7652 of the 1989 Act is amended by striking "Subparagraph (A) of section 148(c)(2)" and inserting "Section 148(c)(2)".

(7) In the case of a bond issued before the date of the enactment of this Act, the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment.

(8) Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990.

(k) AMENDMENT RELATED TO SECTION 7811.—The second sentence of section 403(b)(12)(A) is amended by inserting "involving a one-time irrevocable election" after "similar arrangement".

(l) AMENDMENTS RELATED TO SECTION 7815.—

(1) Subsection (d) of section 2056 is amended by redesignating the paragraph relating to reformations permitted as paragraph (5).

(2) The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act.

(3) Paragraph (16) of section 7815(d) of the Revenue Reconciliation Act of 1989 is amended by inserting "(or would have been so treated if the donor were a citizen of the United States)" after "of such Code".

(m) AMENDMENT RELATED TO SECTION 7881.—Paragraph (13) of section 4975(d) is amended by inserting before the semicolon at the end thereof the following: "or which is exempt from section 406 of such Act by reason of section 408(b) of such Act".

(n) EFFECTIVE DATE.—Except as otherwise provided in this section, any amendment made by this section shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 to which such amendment relates.

SEC. 11702. AMENDMENTS RELATED TO TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988.

(a) AMENDMENTS RELATED TO SECTION 1006.—

(1) Paragraph (5) of section 367(a) is amended by striking "section 361" and inserting "subsection (a) or (b) of section 361".

(2) Subsection (d) of section 453B is amended to read as follows:

"(d) EXCEPTION FOR DISTRIBUTIONS TO WHICH SECTION 337(a) APPLIES.—Subsection (a) shall not apply to any distribution to which section 337(a) applies."

(b) AMENDMENTS RELATED TO SECTION 1008.—

(1) Subparagraph (B) of section 447(g)(4) is amended to read as follows:

"(B) QUALIFIED FARMING TRADE OR BUSINESS.—

"(i) IN GENERAL.—The term 'qualified farming trade or business' means the trade or business of farming—

"(I) sugar cane,

"(II) any plant with a preproductive period (as defined in section 263A(e)(3)) of 2 years or less, and

"(III) any other plant (other than any citrus or almond tree) if an election by the corporation under this subparagraph is in effect.

In the case of a partnership and for purposes of paragraph (3)(A), subclauses (II) and (III) shall not apply.

"(ii) EFFECT OF ELECTION.—For purposes of paragraphs (1) and (2) of section 263A(e), any election under this subparagraph shall be treated as if it were an election under subsection (d)(3) of section 263A.

"(iii) ELECTION.—Unless the Secretary otherwise consents, an election under this subparagraph may be made only for the corporation's 1st taxable year which begins after December 31, 1986, and during which the corporation engages in a farming business. Any such election, once made, may be revoked only with the consent of the Secretary."

(2) Subparagraph (A) of section 447(g)(1) is amended by striking "qualified farming trade or business" and inserting "trade or business of farming".

(c) AMENDMENT RELATED TO SECTION 1012.—Subsection (b) of section 6114 is amended by striking "by regulations".

(d) AMENDMENTS RELATED TO SECTION 1014.—

(1) Subparagraph (B) of section 59(j)(1) is amended by inserting "(or, if greater, the child's share of the unused parental minimum tax exemption)" before the period at the end thereof.

(2) Subsection (j) of section 59 is amended by adding at the end thereof the following new paragraph:

"(3) UNUSED PARENTAL MINIMUM TAX EXEMPTION.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'unused parental minimum tax exemption' means the excess (if any) of—

"(i) the exemption amount applicable to the parent under section 55(d), over

"(ii) the parent's alternative minimum taxable income.

"(B) CERTAIN RULES MADE APPLICABLE.—A child's share of any unused parental minimum tax exemption shall be determined under rules similar to the rules of section 1(i)(3)(B), and rules similar to the rules of paragraphs (3)(D) and (5) of section 1(i) shall apply for purposes of this paragraph."

(3) Subparagraph (D) of section 59(j)(2), is amended by striking "paragraphs (5) and (6)" and inserting "paragraphs (3)(D), (5), and (6)".

(e) AMENDMENTS RELATED TO SECTION 1018.—

(1) Subsection (e) of section 468B is amended by striking "This section" and inserting "This section (other than subsection (g))".

(2) Subsection (c) of section 355 is amended to read as follows:

"(c) TAXABILITY OF CORPORATION ON DISTRIBUTION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no gain or loss shall be recognized to a corporation on any distribution to which this section (or so much of section 356 as relates to this section) applies and which is not in pursuance of a plan of reorganization.

"(2) DISTRIBUTION OF APPRECIATED PROPERTY.—

"(A) IN GENERAL.—If—

"(i) in a distribution referred to in paragraph (1), the corporation distributes property other than stock or securities in the controlled corporation, and

"(ii) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

"(B) TREATMENT OF LIABILITIES.—If any property distributed in the distribution referred to in paragraph (1) is subject to a liability or the shareholder assumes a liability of the distributing corporation in connection with the distribution, then, for purposes of subparagraph (A), the fair market value of such property shall be treated as not less than the amount of such liability.

"(3) COORDINATION WITH SECTIONS 311 AND 336(a).—Sections 311 and 336(a) shall not apply to any distribution referred to in paragraph (1)."

(f) AMENDMENT RELATED TO SECTION 3011.—Paragraph (1) of section 4980B(d) is amended to read as follows:

"(1) any failure of a group health plan to meet the requirements of subsection (f) with respect to any qualified beneficiary if the qualifying event with respect to such beneficiary occurred during the calendar year immediately following a calendar year during which all employers maintaining such plan normally employed fewer than 20 employees on a typical business day,".

(g) AMENDMENTS RELATED TO SECTION 5033.—

(1) Subsection (i) of section 2523 is amended by adding at the end thereof the following new sentence: "This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6)."

(2)(A) Paragraph (1) of section 2056A(a) is amended to read as follows:

"(1) the trust instrument—

"(A) requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

"(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,".

(B) Subsection (b) of section 2056A is amended by adding at the end thereof the following new paragraphs:

"(14) COORDINATION WITH TERMINABLE INTEREST RULES.—Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to pay the tax imposed by paragraph (1) on such distribution.

"(15) NO TAX ON CERTAIN DISTRIBUTIONS.—No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust."

(3)(A) Subsection (d) of section 2056A is amended by adding at the end thereof the following new sentence: "No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return."

(B) The amendment made by subparagraph (A) shall not apply to any election made before the date 6 months after the date of the enactment of this Act.

(4) Subparagraph (A) of section 2056A(b)(10) is amended by striking "section 2032" and inserting "section 2011, 2014, 2032".

(5) Paragraph (3) of section 2056(d) is amended by striking "section 2056A(b)(6)" and inserting "section 2056A(b)(7)".

(h) AMENDMENTS RELATED TO SECTION 6009.—

(1) Subparagraph (B) of section 135(b)(2) is amended by striking "each dollar amount" and inserting "the $40,000 and $60,000 amounts".

(2) Subparagraph (C) of section 135(b)(2) is amended by striking "(A) or".

(i) AMENDMENTS RELATED TO SECTION 6282.—Subsection (e) of section 216 is amended—

(1) by striking "ASSOCIATIONS" in the subsection heading and inserting "CORPORATIONS", and

(2) by striking "association" and inserting "corporation".

(j) EFFECTIVE DATE.—Any amendment made by this section shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 to which such amendment relates.

SEC. 11703. MISCELLANEOUS AMENDMENTS.

(a) SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—

(1) IN GENERAL.—Subsection (a) of section 1043 is amended by striking "reduced by any basis adjustment under subsection (c) attributable to a prior sale" and inserting "to the extent not previously taken into account under this subsection".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales after November 30, 1989.

(b) CONFORMING AMENDMENT TO REPEAL OF SECTION 89.—

(1) IN GENERAL.—Subparagraph (B) of section 414(n)(2) is amended by striking "(6 months in the case of core health benefits)".

(2) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986.

(c) AMENDMENTS TO GENERATION-SKIPPING TRANSFER TAX.—

(1) Subparagraph (B) of section 2642(c)(2) is amended by striking "such individual dies before the trust is terminated" and inserting "the trust does not terminate before the individual dies".

(2) Paragraph (2) of section 2642(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

(3) Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990.

(4) The amendments made by paragraphs (1) and (2) shall apply to transfers after March 31, 1988.

(d) TREATMENT OF CERTAIN PARTNERSHIP INTEREST UNDER SECTION 1031.—

(1) IN GENERAL.—Paragraph (2) of section 1031(a) is amended by adding at the end thereof the following new sentence: "For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to transfers after July 18, 1984.

(e) TREATMENT OF CERTAIN SEPARATED EMPLOYEES.—

(1) IN GENERAL.—Paragraph (6) of section 79(d) is amended by striking "any retired employee" and inserting "any former employee".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to employees separating from service after the date of the enactment of this Act.

(f) TREATMENT OF CERTAIN MEDICAL CARE REIMBURSEMENTS UNDER WAGE WITHHOLDING.—

(1) IN GENERAL.—Subsection (a) of section 3401 is amended by striking "or" at the end of paragraph (18), by striking the

period at the end of paragraph (19) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(20) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6)).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 but shall not apply to any amount paid before the date of the enactment of this Act which the employer treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1986 when paid.

(g) TREATMENT OF CERTAIN INTERESTS UNDER WINDFALL PROFIT TAX.—

(1) IN GENERAL.—Paragraph (1) of section 1879(o) of the Tax Reform Act of 1986 is amended by striking "held by" and inserting "held by the Protestant Episcopal Church Foundation of the Diocese of Oklahoma or held by".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in section 1879(o) of the Tax Reform Act of 1986.

SEC. 11704. MISCELLANEOUS CLERICAL CHANGES.

(a) GENERAL RULE.—

(1) Clause (ii) of section 56(g)(4)(D) is amended by striking "year" and inserting "years".

(2) The heading of subparagraph (B) of section 172(m)(4) is amended by striking "SUBSECTION (B)(2)" and inserting "SUBSECTION (b)(2)".

(3) Paragraph (2) of section 351(e) is amended by striking "are used" and inserting "is used".

(4) The heading of subparagraph (B) of section 413(c)(7) is amended by striking "ASSET" and inserting "ASSETS".

(5) Subparagraph (C) of section 461(i)(3) is amended to read as follows:

"(C) any tax shelter (as defined in section 6662(d)(2)(C)(ii)).".

(6) Subparagraph (A) of section 469(m)(3) is amended by striking "preenactment" and inserting "pre-enactment".

(7) Subsection (c) of section 597 is amended by striking "The purposes of" and inserting "For purposes of".

(8) The last sentence of subsection (a) of section 860D is amended by inserting a closing parenthesis before the period at the end thereof.

(9) Subparagraph (A) of section 860G(a)(3) is amended by striking the comma after "secured".

(10) Subparagraph (B) of section 927(g)(2) is amended by striking "prescribed" and inserting "prescribe".

(11) Paragraph (1) of section 936(e) is amended by striking "subsection (a)(1)" each place it appears and inserting "subsection (a)(2)".

(12) Subparagraph (C) of section 1017(b)(4) is amended by striking "subparagraph" and inserting "subparagraphs".

(13) The material preceding subparagraph (A) of section 1245(a)(3) is amended by striking "or (3)" and inserting "or (3))".

(14) Paragraph (2) of section 1441(b) is amended by inserting "section" before "170(b)(1)(A)(ii)".

(15) Clause (ii) of section 2056A(b)(2)(B) is amended by striking "therefore" and inserting "therefor".

(16) The item relating to section 2056A in the table of sections for part IV of subchapter A of chapter 11 is amended by striking "trusts" and inserting "trust".

(17) Subclause (I) of section 2642(d)(2)(B)(i) is amended by striking "state" and inserting "State".

*(18) The heading of chapter 23A is amended by striking "**CHAPTER 23A. RAILROAD**" and inserting "**CHAPTER 23A—RAILROAD**".*

(19) Paragraphs (9) and (10) of section 3231(e) are redesignated as paragraphs (8) and (9), respectively.

(20) Subparagraph (D) of section 4093(c)(4) is amended by striking "reduced tax sale" and inserting "reduced-tax sale".

(21) Paragraph (3) of section 5061(b) is amended to read as follows:

"(3) section 5041(e),".

(22) Paragraph (3) of section 6013(e) is amended by striking "section 6661(b)(2)(A)" and inserting "section 6662(d)(2)(A)".

(23) Subsection (c) of section 6038A is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(24) Paragraph (3) of section 6039D(d) is amended by striking all that follows "plan (and not" and inserting "the employer).".

(25) Paragraph (4) of section 6045(e) is amended by striking "broker" and inserting "reporting person".

(26) The heading for subsection (a) of section 6323 is amended by striking "PURCHASES" and inserting "PURCHASERS".

(27) Subsection (a) of section 6332 is amended by striking "subsections (b) and (c)" and inserting "this section".

(28) The last sentence of section 6655(g)(3) is amended by striking all that follows: "11 months" and inserting "in clause (i)(IV).".

(29) Paragraph (3) of section 7519(c) is amended by striking "payable on later of " and inserting "payable on the later of".

(30) The section 7521 added by section 6233 of the Technical and Miscellaneous Revenue Act of 1988 is redesignated as section 7522.

(31) The table of sections for chapter 77 is amended by striking the item added by such section 6233 and inserting the following:

"Sec. 7522. Content of tax due, deficiency, and other notices."

(32) Subparagraph (B) of section 7608(c)(1) is amended by striking the comma after "operations".

(33) Subparagraph (C) of section 7608(c)(5) is amended—

(A) by striking "interested" in clause (i)(I) and inserting "interest", and

(B) by striking "title 3" in clause (ii) and inserting "title 31".

(34) Subparagraph (C) of section 7701(j)(1) is amended by striking so much of such subparagraph as precedes "contributions to the Thrift" and inserting the following:

"(C) subject to section 401(k)(4)(B) and any dollar limitation on the application of section 402(a)(8),".

(35) Paragraph (1) of section 1012(t) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "(as amended by paragraph (2))" after "clause (ii)".

(36) Subparagraph (F) of section 1014(g)(4) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "subparagraph" in clause (ii) and inserting "paragraph".

(37) Paragraph (28) of section 1018(u) of the Technical and Miscellaneous Revenue Act of 1988 is amended by inserting "net" before "capital loss" each place it appears.

(38) Subparagraph (C) of section 2001(d)(6) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "a gallon" and inserting "per gallon".

(39) Paragraph (3) of section 5033(a) of the Technical and Miscellaneous Revenue Act of 1988 is amended by striking "chapter 1" and inserting "chapter 11".

(40) Paragraph (2) of section 232(a) of the Railroad Retirement Revenue Act of 1983 is amended by striking "section 516(b)" each place it appears and inserting "section 7106(b)".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle H—Repeal of Expired or Obsolete Provisions

PART I—REPEAL OF EXPIRED OR OBSOLETE PROVISIONS

Subpart A—General Provisions

SEC. 11801. REPEAL OF EXPIRED OR OBSOLETE PROVISIONS.

(a) REPEALS.—The following provisions are hereby repealed:

(1) Section 23 (relating to residential energy credit).

(2) Paragraph (1), (2), (3), and (4) of section 39(d) (relating to transitional rules).

(3) Subsection (f) of section 56 (relating to adjustments for book income of corporations).

(4) Subsection (h) of section 63 (relating to transitional rule for taxable years beginning in 1987).

(5) Subsection (i) of section 83 (relating to transitional rules).

(6) Section 110 (relating to income tax paid by lessee corporation).

(7) Section 113 (relating to mustering-out payments for members of the Armed Forces).

(8) Section 114 (relating to sports programs conducted for the American National Red Cross).

(9) Section 124 (relating to qualified transportation provided by employers).

(10) Section 128 (relating to interest on certain savings certificates).

(11) Subsection (i) of section 170 (relating to rule for nonitemization of deductions).

(12) Section 184 (relating to amortization of certain railroad rolling stock).

(13) Section 188 (relating to amortization of certain expenditures for child care facilities).

(14) Subsection (d) of section 190 (relating to application of section).

(15) Section 250 (relating to certain payments to the National Railroad Passenger Corporation).

(16) Subsection (b) of section 263 (relating to expenditures for advertising and good will).

(17) Subsection (e) of section 305 (relating to dividend reinvestment in stock of public utilities).

(18) Subsection (h) of section 306 (relating to stock received in transactions to which 1939 Code applies).

(19) Part IV of subchapter C of chapter 1 (relating to insolvency reorganizations).

(20) Section 422 (relating to qualified stock options).

(21) Section 424 (relating to restricted stock options).

(22) Subsection (d) of section 503 (relating to special rule for loans).

(23) Paragraph (14) of section 512(b) (relating to modifications applicable in computing unrelated business taxable income).

(24) Subsection (c) of section 545 (relating to special adjustment to taxable income).

(25) Paragraphs (2), (3), and (4) of section 582(c) (relating to bond, etc., losses and gains of financial institutions).

(26) Paragraph (2) of section 585(b) (relating to percentage method).

(27) Subsection (i) of section 617 (relating to certain pre-1970 exploration expenditures).

(28) Part II of subchapter I of chapter 1 (relating to payments to encourage exploration, etc., for defense purposes).

(29) Subparagraphs (C) and (D) of section 861(a)(1) (relating to source rule for interest).

(30) Subsection (k) of section 897 (relating to foreign corporations acquired before enactment).

(31) Subsection (e) of section 904 (relating to transitional rules for carrybacks and carryovers on the per-country limitation).

(32) Subsections (e) and (f)(3)(C) of section 907 (relating to transitional rules).

(33) Section 1039 (relating to certain sales of low-income housing projects).

(34) Part VIII of subchapter O of chapter 1 (relating to distributions pursuant to Bank Holding Company Act).

(35) Section 1238 (relating to amortization in excess of depreciation).

(36) Subsection (c) of section 1401 (relating to credit against self-employment taxes).

(37) Chapter 4 (relating to rules applicable to recovery of excessive profits on Government contracts).

(38) Section 1564 (relating to transitional rules in the case of certain controlled corporations).

(39) Subsection (b) of section 2010 (relating to phase-in of credit).

(40) Subsection (b) of section 2505 (relating to phase-in of credit).

(41) Paragraph (3) of section 3402(a) (relating to changes made by section 101 of the Economic Recovery Tax Act of 1981).

(42) Section 3510 (relating to credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984).

(43) Paragraph (3) of section 6018(a) (relating to phase-in of filing requirement amount).

(44) Section 6158 (relating to installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act Amendments of 1970).

(45) Subchapter E of chapter 64 (relating to collection of State individual income taxes).

(46) Subsection (e) of section 6427 (relating to use in certain taxicabs).

(47) Section 6428 (relating to 1981 rate reduction tax credit).

(48) Chapter 37 (relating to excise tax on sugar).

(b) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 23.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the items relating to sections 110, 113, 114, 124, and 128.

(3) The table of sections for part VI of subchapter B of chapter 1 is amended by striking the items relating to sections 184 and 188.

(4) The table of sections for part VIII of subchapter B of chapter 1 is amended by striking the item relating to section 250.

(5) The table of parts for subchapter C of chapter 1 is amended by striking the item relating to part IV.

(6) The table of sections for part II of subchapter D of chapter 1 is amended by striking the items relating to sections 422 and 424.

(7) The table of parts for subchapter I of chapter 1 is amended by striking the item relating to part II.

(8) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1039.

(9) The table of parts for subchapter O of chapter 1 is amended by striking the item relating to part VIII.

(10) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the item relating to section 1238.

(11) The table of chapters for subtitle A is amended by striking the item relating to chapter 4.

(12) The table of sections for part II of subchapter B of chapter 6 is amended by striking the item relating to section 1564.

(13) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6158.

(14) The table of subchapters for chapter 64 is amended by striking the item relating to subchapter E.

(15) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6428.

(16) The table of sections for chapter 25 is amended by striking the item relating to section 3510.

(17) The table of chapters for subtitle D is amended by striking the item relating to chapter 37.

(c) CONFORMING AMENDMENTS.—

(1) AMENDMENT RELATING TO REPEAL OF SECTION 23.—Subsection (a) of section 1016 is amended by striking paragraph (20) and by redesignating the following paragraphs accordingly.

(2) AMENDMENTS RELATING TO REPEAL OF SECTION 56(f).—

(A) Paragraph (1) of section 56(c) is amended to read as follows:

"(1) ADJUSTMENT FOR ADJUSTED CURRENT EARNINGS.—Alternative minimum taxable income shall be adjusted as provided in subsection (g)."

(B) Paragraphs (1) and (2) of section 59(g) are each amended by striking "beginning after 1989".

(C) Clause (iii) of section 56(g)(4)(C) is amended to read as follows:

"(iii) TREATMENT OF TAXES ON DIVIDENDS FROM 936 CORPORATIONS.—

"(I) IN GENERAL.—For purposes of determining the alternative minimum foreign tax credit, 75 percent of any withholding or income tax paid to a possession of the United States with respect to dividends received from a corporation eligible for the credit provided by section 936 shall be treated as a tax paid to a foreign country by the corporation receiving the dividend.

"(II) LIMITATION.—If the aggregate amount of the dividends referred to in subclause (I) for any taxable year exceeds the excess referred to in paragraph (1), the amount treated as tax paid to a foreign country under subclause (I) shall not exceed the amount which would be so treated without regard to this subclause multiplied by a fraction the numerator of which is the excess referred to in paragraph (1) and the denominator of which is the aggregate amount of such dividends.

"(III) TREATMENT OF TAXES IMPOSED ON 936 CORPORATION.—For purposes of this clause, taxes paid by any corporation eligible for the credit provided by section 936 to a possession of the United States shall be treated as a withholding tax paid with respect to any dividend paid by such corporation to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902 (and the amount

of any such dividend shall be increased by the amount so treated).''

(D) Paragraph (1) of section 59(a) is amended by inserting ''and'' at the end of subparagraph (B), by striking subparagraph (C), and by redesignating subparagraph (D) as subparagraph (C).

(E) Paragraph (2) of section 59A(b) is amended by striking ''(and the last sentence of section 56(f)(2)(B))''.

(3) AMENDMENT RELATING TO REPEAL OF SECTION 124.—Subsection (f) of section 125 is amended by striking ''section 117, 124,'' and inserting ''section 117,''.

(4) AMENDMENT RELATING TO REPEAL OF SECTION 128.—Paragraph (2) of section 265(a) is amended by striking ''subtitle'' and all that follows down through the period at the end thereof and inserting ''subtitle.''

(5) AMENDMENT RELATING TO REPEAL OF SECTION 170(i).—Section 170 is amended by redesignating subsections (j), (k), (l), (m), and (n) as subsections (i), (j), (k), (l), and (m), respectively.

(6) AMENDMENTS RELATING TO REPEAL OF AMORTIZATION PROVISIONS.—

(A) Subsection (a) of section 48 is amended by striking paragraph (8).

(B) Subsection (f) of section 642 is amended by striking ''sections 169, 184, 187, and 188'' and inserting ''section 169''.

(C) Paragraph (2) of section 861(e) is amended by striking ''referred to in subparagraph (B) of section 184(d)(1)'' and inserting ''all of whose stock is owned by one or more domestic common carriers by railroad''.

(D) Subparagraph (B) of section 1082(a)(2) is amended by striking ''169, 184, or 188'' and inserting ''169''.

(E) Subparagraph (C) of section 1245(a)(3) is amended by striking ''188,'' and inserting ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),''.

(F) Paragraph (3) of section 1250(b) is amended by striking ''188,'' and inserting ''188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),''.

(7) AMENDMENTS RELATING TO REPEAL OF SECTION 305(e).—

(A) Paragraph (1) of section 305(d) is amended by striking ''(other than subsection (e))''.

(B) Subsection (f) of section 305 is redesignated as subsection (e).

(8) AMENDMENTS RELATED TO REPEAL OF SPECIAL TREATMENT OF INSOLVENCY REORGANIZATIONS.—

(A) Subsection (b) of section 47 is amended by inserting ''or'' at the end of paragraph (1), by striking out '', or'' at the end of paragraph (2), and inserting a period, and by striking paragraph (3).

(B) Subparagraph (B) of section 168(i)(7) is amended by striking ''371(a), 374(a),''.

(C) Subparagraph (D) of section 247(b)(2) is amended by striking '', a transaction to which section 371 (relating to insolvency reorganization) applies,''.

(D) Subsection (d) of section 354 is hereby repealed.

(E) Clause (i) of section 356(d)(2)(B) is amended by striking "or (d)".

(F)(i) Section 357 is amended by striking "351, 361, 371, or 374" each place it appears and inserting "351 or 361".

(ii) Paragraph (2) of section 357(c) is amended by inserting "or" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(G) Section 358 is amended—

(i) in subsection (a), by striking "361, 371(b), or 374" and inserting "or 361", and

(ii) by striking subsection (b)(3).

(H) Paragraph (3) of section 1245(b) is amended by striking "371(a), 374(a),".

(I) Paragraph (3) of section 1250(d) is amended by striking "371(a), 374(a),".

(9) AMENDMENTS RELATING TO REPEAL OF SECTIONS 422 AND 424.—

(A)(i) Section 422A is redesignated as section 422 and section 425 is redesignated as section 424.

(ii) The table of sections for part II of subchapter D of chapter 1 is amended by redesignating the items relating to sections 422A and 425 as items relating to sections 422 and 424, respectively.

(B) Section 421 is amended—

(i) in subsection (a)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)",

(II) by striking "except as provided in section 422(c)(1)," in paragraph (1), and

(III) by striking "425(a)" in paragraph (2) and inserting "424(a)";

(ii) in subsection (b)—

(I) by striking "422(a), 422A(a), 423(a), or 424(a)" and inserting "422(a) or 423(a)", and

(II) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)," and inserting "422(a)(1) or 423(a)(1),";

(iii) in subsection (c)—

(I) by striking "422(a), 422A(a), 423(a), and 424(a)" in paragraph (1)(A) and inserting "422(a) and 423(a)",

(II) by striking "sections 423(c) and 424(c)(1)" in paragraph (1)(B) and inserting "section 423(c)",

(III) by striking "422(c)(1), 423(c), or 424(c)(1)" each place it appears in paragraphs (2) and (3)(A) and inserting "423(c)",

(IV) by striking "sections 422(c)(1), 423(c), and 424(c)(1)" in paragraph (3)(B) and inserting "section 423(c)", and

(V) by striking "such sections" in paragraph (3)(B) and inserting "such section".

(C) Section 422 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a)(2) and inserting "424(a)", and

(ii) by striking paragraph (5) of subsection (c) and by redesignating paragraphs (6), (7), and (8), of subsection (c) as paragraphs (5), (6), and (7), respectively.

(D) Subsection (a) of section 423 is amended—

(i) by striking "(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))", and

(ii) by striking "425(a)" and inserting "424(a)".

(E) Subsection (b) of section 423 is amended by striking "425(d)" in paragraph (3) and inserting "424(d)".

(F) Section 424 (as redesignated by subparagraph (A)) is amended—

(i) by striking "425(a)" in subsection (a) and inserting "424(a)",

(ii) by striking "422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)" in subsection (c)(3)(A)(ii) and inserting "422(a)(1) or 423(a)(1)",

(iii) by striking "422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)" in subsection (d) and inserting "422(b)(6) and 423(b)(3)",

(iv) in subsection (g)—

(I) by striking "422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)" and inserting "422(a)(2) and 423(a)(2)", and

(II) by striking "425(a)" and inserting "424(a)", and

(v) in subsection (h)—

(I) by striking paragraph (2) and inserting the following:

"(2) SPECIAL RULE FOR SECTION 423 OPTIONS.—In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

"(A) the fair market value of such stock on the date of the original granting of the option,

"(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

"(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal."

(II) by striking "sections 422(b)(6), 423(b)(9), and 424(b)(2)" in paragraph (3)(B) and inserting "section 423(b)(9)", and

(III) by striking the sentence following paragraph (3)(C).

(G) Paragraph (3) of section 56(b) is amended—

(i) by striking "section 422A" and inserting "section 422", and

(ii) by striking "section 422A(c)(2)" and inserting "section 422(c)(2)".

(H) Clause (ii) of section 1042(c)(2)(B) is amended by striking "section 83, 422, 422A, 423, or 424 applies" and inserting "section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)".

(I)(i) Subparagraph (B) of section 402(a)(3) is amended by striking "section 425" and inserting "section 424".

(ii) Clause (i) of section 402(a)(6)(B) is amended by striking "section 425(f)" and inserting "section 424(f)".

(J) Section 6039 is amended—

(i) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

"(1) which in any calendar year transfers a share of stock pursuant to such person's exercise of an incentive stock option, or

"(2) which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock),",

(ii) by striking "a qualified stock option, incentive stock option, a restricted stock option, or an" in subsection (b)(1) and inserting "an incentive stock option or an", and

(iii) by amending subsection (c) to read as follows:

"(c) CROSS REFERENCES.—

"For definition of—
"(1) the term 'incentive stock option', see section 422(b), and
"(2) the term 'employee stock purchase plan' see section 423(b)."

(10) AMENDMENTS RELATING TO REPEAL OF SECTION 545(c).—

(A) Paragraph (15) of section 381(c) is hereby repealed.

(B) Section 545 is amended by redesignating subsection (d) as subsection (c).

(11) AMENDMENTS RELATING TO REPEAL OF PARAGRAPHS (2), (3), AND (4) OF SECTION 582(c).—Subsection (c) of section 582 is amended—

(A) by striking "paragraph (5)" in paragraph (1) and inserting "paragraph (2)", and

(B) by redesignating paragraph (5) as paragraph (2).

(12) AMENDMENTS RELATING TO REPEAL OF SECTION 585(b)(2).—

(A) Paragraph (4) of section 57(a) is amended by striking "585 or".

(B) Subparagraph (A) of section 291(e)(1) is hereby repealed.

(C) Paragraph (1) of section 585(b) is amended by striking "shall not exceed" and all that follows down through the period at the end thereof and inserting "shall not exceed the addition to the reserve for losses on loans determined under the experience method as provided in paragraph (2)."

(D) Subsection (b) of section 585 is amended by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(E) Paragraph (3) of section 585(b) (as redesignated by subparagraph (A)) is amended to read as follows:

"(3) REGULATIONS; DEFINITION OF LOAN.—The Secretary shall define the term loan and prescribe such regulations as may be necessary to carry out the purposes of this section."

(F) Paragraphs (1) (A) and (E) of section 593(b) are each amended by striking "section 585(b)(3)" and inserting "section 585(b)(2)".

(13) AMENDMENT RELATING TO REPEAL OF SECTION 617(i).—Section 617 is amended by redesignating subsection (j) as subsection (i).

(14) AMENDMENTS RELATING TO REPEAL OF SECTION 861 (a)(1) (C) AND (D).—Paragraph (1) of section 861(a) is amended by inserting "and" at the end of subparagraph (A) and by striking the comma at the end of subparagraph (B) and inserting a period.

(15) AMENDMENTS RELATING TO REPEAL OF SECTION 1039.—

(A) Paragraphs (1)(A)(i) and (2)(B)(ii) of section 1250(a) are each amended by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "section 1039(b)(1)(B)".

(B) Subsection (d) of section 1250 is amended by striking paragraph (8).

(C) Section 1250 is amended by striking subsection (g) and by redesignating subsections (h) and (i) as subsections (g) and (h), respectively.

(16) AMENDMENT RELATING TO REPEAL OF SECTION 1401(c).—Section 1401 is amended by redesignating subsection (d) as subsection (c).

(17) AMENDMENTS RELATING TO RENEGOTIATION PROVISIONS.—

(A) Section 6422 is amended by striking paragraph (6) and redesignating the succeeding paragraphs accordingly.

(B) Subparagraph (A) of section 6511(d)(2) is amended by striking "; except that" and all that follows down through the period at the end of the first sentence and inserting a period.

(C) Section 6515 is amended by striking paragraph (2) and redesignating the succeeding paragraphs accordingly.

*(18) AMENDMENT RELATING TO REPEAL OF SECTION 1564.—Paragraph (5) of section 535(c) is amended by striking "**sections 1561 and 1564**" and inserting "**section 1561**".*

(19) AMENDMENTS RELATED TO REPEAL OF UNIFIED CREDIT PHASE-IN PROVISIONS.—

(A) Section 2010 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(B) Section 2505 is amended by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(C) Subsection (a) of section 6018 is amended by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(20) AMENDMENTS RELATED TO REPEAL OF SECTION 6158.—

(A) Section 6503 is amended by striking subsection (h) and redesignating subsections (i), (j), and (k) as subsections (h), (i), and (j), respectively.

(B) Paragraph (2) of section 6601(b) is amended—

(i) by striking "or 6158(a)" in the material preceding subparagraph (A),

(ii) by striking "or 6158(a), as the case may be" in subparagraph (A), and

(iii) by striking the last sentence.

(21) AMENDMENTS RELATING TO REPEAL OF SUBCHAPTER E OF CHAPTER 64.—

(A) Section 6405 is amended by striking subsection (d).

(B) Section 7463 is amended by striking subsection (f).

(22) AMENDMENTS RELATING TO REPEAL OF CHAPTER 37.—

(A) Subsection (b) of section 6302 is amended by striking "chapter 21" and all that follows down through "chapter 37," and inserting "chapter 21, 31, 32, or 33, or by section 4481".

(B)(i) Section 6418 is hereby repealed.

(ii) The table of sections for subchapter B of chapter 65 is amended by striking the item relating to section 6418.

(C) Subsection (e) of section 6511 is hereby repealed.

(D)(i) Section 7240 is hereby repealed.

(ii) The table of sections for part II of subchapter A of chapter 75 is amended by striking the item relating to section 7240.

(E)(i) Subsection (a) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(ii) Subsection (b) of section 7655 is amended by striking the semicolon at the end of paragraph (2) and inserting a period and by striking paragraph (3).

(23) AMENDMENTS RELATED TO REPEAL OF SECTION 6427(e).—

(A) Paragraph (1) of section 6427(i) is amended by striking "(e),".

(B) Subparagraph (A) of section 6427(i)(2) is amended to read as follows:

"(A) IN GENERAL.—If $1,000 or more is payable under subsections (a), (b), (d), (g), (h), and (q) to any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any of the first 3 quarters of his taxable year, a claim may be filed under this section with respect to fuel used (or a qualified diesel powered highway vehicle purchased), during such quarter."

(C) Paragraph (2) of section 6427(i) is amended by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B).

SEC. 11802. MISCELLANEOUS PROVISIONS.

(a) REPEAL OF SECTION 72(t)(2)(C).—Subsection (t) of section 72 is amended—

(1) by striking subparagraph (C) of paragraph (2),

(2) by redesignating subparagraph (D) of paragraph (2) as subparagraph (C), and

(3) by striking "(C), and (D)" in paragraph (3)(A) and inserting "and (C)".

(b) REPEAL OF OBSOLETE PROVISIONS IN SECTION 274.—

(1) Paragraph (2) of section 274(l) is amended to read as follows:

"(2) SKYBOXES, ETC.—In the case of a skybox or other private luxury box leased for more than 1 event, the amount allowable as a deduction under this chapter with respect to such events shall not exceed the sum of the face value of non-luxury box seat tickets for the seats in such box covered by the lease. For purposes of the preceding sentence, 2 or more related leases shall be treated as 1 lease."

(2) Subsection (n) of section 274 is amended—

(A) in paragraph (2)—

(i) by striking subparagraph (D) and redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively,

(ii) by striking "described in subparagraph (E)" and inserting "described in subparagraph (D)", and

(iii) by striking "of subparagraph (F)" and inserting "of subparagraph (E)", and

(B) by striking paragraph (3).

(c) REPEAL OF SECTION 468(a)(2)(B)(ii).—Subparagraph (B) of section 468(a)(2) is amended to read as follows:

"(B) INCREASE FOR INTEREST.—A reserve shall be increased each taxable year by an amount equal to the amount of interest which would have been earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

"(i) at the Federal short-term rate or rates (determined under section 1274) in effect, and

"(ii) by compounding semiannually."

(d) REPEAL OF OBSOLETE PROVISIONS IN SECTION 556(b)(1).—

(1) Paragraph (1) of section 556(b) is amended by striking the last 2 sentences.

(2) The amendment made by paragraph (1) shall not apply to any corporation with respect to which an election under the second sentence of section 556(b)(1) of the Internal Revenue Code of 1986 (as in effect before the amendment made by paragraph (1)) is in effect unless such corporation elects to have such amendment apply and agrees to such adjustments as the Secretary of the Treasury or his delegate may require.

(e) ELIMINATION OF UNNECESSARY SECTION RELATING TO JURY DUTY PAY REMITTED TO EMPLOYER.—

(1) Paragraph (13) of section 62(a) is amended to read as follows:

"(13) JURY DUTY PAY REMITTED TO EMPLOYER.—Any deduction allowable under this chapter by reason of an individual remitting any portion of any jury pay to such individual's employer in exchange for payment by the employer of compensation for the period such individual was performing jury duty. For purposes of the preceding sentence, the term 'jury pay' means any payment received by the individual for the discharge of jury duty."

(2) Part VII of subchapter B of chapter 1 is amended by striking out section 220 and redesignating section 221 as section 220.

(3) The table of sections for part VII of subchapter B of chapter 1 is amended by striking the items relating to sections 220 and 221 and inserting in lieu thereof the following:

"Sec. 220. Cross reference."

(f) OTHER PROVISIONS.—

(1) Section 541 is amended by striking "(38.5 percent in the case of taxable years beginning in 1987)".

(2) Subsection (e) of section 665 is amended to read as follows:

"(e) PRECEDING TAXABLE YEAR.—For purposes of this subpart—

"(1) In the case of a foreign trust created by a United States person, the term 'preceding taxable year' does not include any taxable year of the trust to which this part does not apply.

"(2) In the case of a preceding taxable year with respect to which a trust qualified, without regard to this subpart, under the provisions of subpart B, for purposes of the application of this subpart to such trust for such taxable year, such trust shall, in accordance with regulations prescribed by the Secretary, be treated as a trust to which subpart C applies."

(3) Subsection (c) of section 668 is amended to read as follows:

"(c) INTEREST CHARGE NOT DEDUCTIBLE.—The interest charge determined under this section shall not be allowed as a deduction for purposes of any tax imposed by this title."

(4) Paragraph (1) of section 1503(c) is amended by striking the last 2 sentences thereof.

(5) Paragraph (2) of section 2032A(a) is amended to read as follows:

"(2) LIMITATION ON AGGREGATE REDUCTION IN FAIR MARKET VALUE.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $750,000."

Subpart B—Modifications to Specific Provisions

SEC. 11811. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 172.

(a) GENERAL RULE.—Subsection (b) of section 172 is amended to read as follows:

"(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

"(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

"(i) shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

"(ii) shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss.

"(B) SPECIAL RULES FOR REIT'S.—

"(i) IN GENERAL.—A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

"(ii) SPECIAL RULE.—In the case of any net operating loss for a taxable year which is not a REIT year, such

loss shall not be carried back to any taxable year which is a REIT year.

"(iii) REIT YEAR.—For purposes of this subparagraph, the term 'REIT year' means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

"(C) SPECIFIED LIABILITY LOSSES.—In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

"(D) BAD DEBT LOSSES OF COMMERCIAL BANKS.—In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

"(E) EXCESS INTEREST LOSS.—

"(i) IN GENERAL.—If—

"(I) there is a corporate equity reduction transaction, and

"(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

"(ii) LOSS LIMITATION YEAR.—For purposes of clause (i) and subsection (m), the term 'loss limitation year' means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

"(iii) APPLICABLE CORPORATION.—For purposes of clause (i), the term 'applicable corporation' means—

"(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

"(II) a C corporation making distributions with respect to, or redeeming, its stock in connection with an excess distribution, or

"(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

"(iv) OTHER DEFINITIONS.—

"For definitions of terms used in this subparagraph, see subsection (h).

"(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—The entire amount of the net operating loss for any taxable year (herein-

after in this section referred to as the 'loss year') shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

"(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

"(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

"(3) ELECTION TO WAIVE CARRYBACK.—Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year."

(b) CONFORMING AMENDMENTS.—

(1) Section 172 is amended by striking subsections (g), (h), (i), and (k), and by redesignating subsections (j), (l), (m), and (n) as subsections (f), (g), (h), and (i), respectively.

(2)(A) Subsection (f) of section 172 (as redesignated by paragraph (1)) is amended to read as follows:

"(f) RULES RELATING TO SPECIFIED LIABILITY LOSS.—For purposes of this section—

"(1) IN GENERAL.—The term 'specified liability loss' means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

"(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

"(i) product liability, or

"(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

"(B) Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

"(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

"(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substan-

tial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

"(2) LIMITATION.—The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

"(3) SPECIAL RULE FOR NUCLEAR POWERPLANTS.—Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

"(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

"(B) ending with the taxable year preceding the loss year.

"(4) PRODUCT LIABILITY.—The term 'product liability' means—

"(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

"(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

"(5) COORDINATION WITH SUBSECTION (b)(2).—For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

"(6) ELECTION.—Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year."

(B) The portion of any loss which is attributable to a deferred statutory or tort liability loss (as defined in section 172(k) of the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act) may not be carried back to any taxable year beginning before January 1, 1984, by reason of the amendment made by subparagraph (A).

(3) Paragraph (2) of section 172(g) (as redesignated by paragraph (1)) is amended to read as follows:

"(2) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under

section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated."

(4) Subparagraph (B) of section 172(h)(4) (as redesignated by paragraph (1)) is amended to read as follows:

"(B) COORDINATION WITH SUBSECTION (b)(2).—For purposes of subsection (b)(2)—

"(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

"(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to net operating losses for taxable years beginning after December 31, 1990.

SEC. 11812. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 167.

(a) GENERAL RULE.—Section 167 is amended—

(1) by striking subsections (b), (c), (d), (e), (f), (j), (k), (l), (m), (p), and (q) and by redesignating subsections (g), (h), (r), and (s) as subsections (c), (d), (e), and (f), respectively, and

(2) by inserting after subsection (a) the following new subsection:

"(b) CROSS REFERENCE.—

"For determination of depreciation deduction in case of property to which section 168 applies, see section 168."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 167 (as redesignated by subsection (a)) is amended by striking "(h)" each place it appears in paragraphs (3)(B) and (4)(B) and inserting "(d)".

(2)(A) Subparagraph (A) of section 168(e)(2) is amended to read as follows:

"(A) RESIDENTIAL RENTAL PROPERTY.—

"(i) RESIDENTIAL RENTAL PROPERTY.—The term 'residential rental property' means any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) the term 'dwelling unit' means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis, and

"(II) if any portion of the building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied."

(B) Paragraph (10) of section 168(i) is amended to read as follows:

"(10) PUBLIC UTILITY PROPERTY.—The term 'public utility property' means property used predominantly in the trade or business of the furnishing or sale of—

"(A) electrical energy, water, or sewage disposal services,

"(B) gas or steam through a local distribution system,

"(C) telephone services, or other communication services if furnished or sold by the Communications Satellite Corporation for purposes authorized by the Communications Satellite Act of 1962 (47 U.S.C. 701), or

"(D) transportation of gas or steam by pipeline,

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof."

(C) Paragraph (2) of section 168(f) is amended by striking "section 167(l)(3)(A)" and inserting "subsection (i)(10)".

(D) Paragraph (1) of section 168(i) is amended by adding at the end thereof the following new sentence: "The reference in this paragraph to subsection (m) of section 167 shall be treated as a reference to such subsection as in effect on the day before the date of the enactment of the Reconciliation Revenue Act of 1990."

(E) Clause (ii) of section 168(i)(9)(A) is amended by striking "(determined without regard to section 167(l))".

(3) Sections 42(d)(2)(D)(i)(I) and 42(d)(5)(B) are each amended by striking "section 167(k)" and inserting "section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(4) Subparagraph (D) of section 56(a)(1) is amended by striking "section 167(l)(3)(A)" and inserting "section 168(i)(10)".

(5) Paragraph (2) of section 312(k) is amended to read as follows:

"(2) EXCEPTION.—If for any taxable year a method of depreciation was used by the taxpayer which the Secretary has determined results in a reasonable allowance under section 167(a) and which is the unit-of-production method or other method not expressed in a term of years, then the adjustment to earnings and profits for depreciation for such year shall be determined under the method so used (in lieu of the straight line method)."

(6)(A) Paragraph (6) of section 381(c) is amended by striking "subsections (b), (j), and (k) of section 167" and inserting "sections 167 and 168".

(B) Subsection (c) of section 381 is amended by striking paragraph (24) and redesignating paragraphs (25) and (26) as paragraphs (24) and (25), respectively.

(7) Subparagraph (C) of section 404(a)(1) is amended by striking "section 167(l)(3)(A)(iii)" and inserting "section 168(i)(10)(C)".

(8) Clause (i) of section 460(e)(6)(A) is amended by striking "section 167(k)" and inserting "section 168(e)(2)(A)(ii)".

(9) Subsection (e) of section 642 is amended by striking "167(h)" and inserting "167(d)".

(10) Paragraph (2) of section 1016(a) is amended by striking "under section 167(b)(1)" and inserting "under the straight line method".

(11) Subsection (a) of section 1250 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULE.—For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990."

(12) Paragraph (4) of section 1250(b) is amended by striking "167(k)" each place it appears and inserting "167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(13) Subparagraph (B) of section 7701(e)(5) is amended by inserting before the period at the end thereof the following: "(as in effect on the day before the date of the enactment of the Revenue Reconcilation Act of 1990)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

(3) EXCEPTION FOR PREVIOUSLY GRANDFATHER EXPENDITURES.—The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988).

SEC. 11813. ELIMINATION OF EXPIRED OR OBSOLETE INVESTMENT TAX CREDIT PROVISIONS.

(a) GENERAL RULE.—Subpart E of part IV of subchapter A of chapter 1 is amended to read as follows:

"Subpart E—Rules for Computing Investment Credit

"SEC. 46. AMOUNT OF CREDIT.

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be the sum of—

"(1) the rehabilitation credit,
"(2) the energy credit, and
"(3) the reforestation credit.

"SEC. 47. REHABILITATION CREDIT.

"(a) GENERAL RULE.—For purposes of section 46, the rehabilitation credit for any taxable year is the sum of—

"(1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and

"(2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

"(b) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—

"(1) IN GENERAL.—Qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which such qualified rehabilitated building is placed in service.

"(2) COORDINATION WITH SUBSECTION (d).—The amount which would (but for this paragraph) be taken into account under paragraph (1) with respect to any qualified rehabilitated building shall be reduced (but not below zero) by any amount of qualified rehabilitation expenditures taken into account under subsection (d) by the taxpayer or a predecessor of the taxpayer (or, in the case of a sale and leaseback described in section 50(a)(2)(C), by the lessee), to the extent any amount so taken into account has not been required to be recaptured under section 50(a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED REHABILITATED BUILDING.—

"(A) IN GENERAL.—The term 'qualified rehabilitated building' means any building (and its structural components) if—

"(i) such building has been substantially rehabilitated,

"(ii) such building was placed in service before the beginning of the rehabilitation,

"(iii) in the case of any building other than a certified historic structure, in the rehabilitation process—

"(I) 50 percent or more of the existing external walls of such building are retained in place as external walls,

"(II) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

"(III) 75 percent or more of the existing internal structural framework of such building is retained in place, and

"(iv) depreciation (or amortization in lieu of depreciation) is allowable with respect to such building.

"(B) BUILDING MUST BE FIRST PLACED IN SERVICE BEFORE 1936.—In the case of a building other than a certified historic structure, a building shall not be a qualified rehabilitated building unless the building was first placed in service before 1936.

"(C) SUBSTANTIALLY REHABILITATED DEFINED.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(i), a building shall be treated as having been substantially rehabilitated only if the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer (at the time and in the manner pre-

scribed by regulation) and ending with or within the taxable year exceed the greater of—

"(I) the adjusted basis of such building (and its structural components), or

"(II) $5,000.

The adjusted basis of the building (and its structural components) shall be determined as of the beginning of the 1st day of such 24-month period, or of the holding period of the building, whichever is later. For purposes of the preceding sentence, the determination of the beginning of the holding period shall be made without regard to any reconstruction by the taxpayer in connection with the rehabilitation.

"(ii) SPECIAL RULE FOR PHASED REHABILITATION.—In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, clause (i) shall be applied by substituting '60-month period' for '24-month period'.

"(iii) LESSEES.—The Secretary shall prescribe by regulation rules for applying this subparagraph to lessees.

"(D) RECONSTRUCTION.—Rehabilitation includes reconstruction.

"(2) QUALIFIED REHABILITATION EXPENDITURE DEFINED.—

"(A) IN GENERAL.—The term 'qualified rehabilitation expenditure' means any amount properly chargeable to capital account—

"(i) for property for which depreciation is allowable under section 168 and which is—

"(I) nonresidential real property,

"(II) residential rental property,

"(III) real property which has a class life of more than 12.5 years, or

"(IV) an addition or improvement to property described in subclause (I), (II), or (III), and

"(ii) in connection with the rehabilitation of a qualified rehabilitated building.

"(B) CERTAIN EXPENDITURES NOT INCLUDED.—The term 'qualified rehabilitation expenditure' does not include—

"(i) STRAIGHT LINE DEPRECIATION MUST BE USED.—Any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under subsection (c) or (g) of section 168. The preceding sentence shall not apply to any expenditure to the extent the alternative depreciation system of section 168(g) applies to such expenditure by reason of subparagraph (B) or (C) of section 168(g)(1).

"(ii) COST OF ACQUISITION.—The cost of acquiring any building or interest therein.

"(iii) ENLARGEMENTS.—Any expenditure attributable to the enlargement of an existing building.

"(iv) CERTIFIED HISTORIC STRUCTURE, ETC.—Any expenditure attributable to the rehabilitation of a certified historic structure or a building in a registered his-

toric district, unless the rehabilitation is a certified rehabilitation (within the meaning of subparagraph (C)). The preceding sentence shall not apply to a building in a registered historic district if—

"(I) such building was not a certified historic structure,

"(II) the Secretary of the Interior certified to the Secretary that such building is not of historic significance to the district, and

"(III) if the certification referred to in subclause (II) occurs after the beginning of the rehabilitation of such building, the taxpayer certifies to the Secretary that, at the beginning of such rehabilitation, he in good faith was not aware of the requirements of subclause (II).

"(v) TAX-EXEMPT USE PROPERTY.—

"(I) IN GENERAL.—Any expenditure in connection with the rehabilitation of a building which is allocable to the portion of such property which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(h)).

"(II) CLAUSE NOT TO APPLY FOR PURPOSES OF PARAGRAPH (1)(C).—This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

"(vi) EXPENDITURES OF LESSEE.—Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than the recovery period determined under section 168(c).

"(C) CERTIFIED REHABILITATION.—For purposes of subparagraph (B), the term 'certified rehabilitation' means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

"(D) NONRESIDENTIAL REAL PROPERTY; RESIDENTIAL RENTAL PROPERTY; CLASS LIFE.—For purposes of subparagraph (A), the terms 'nonresidential real property,' 'residential rental property,' and 'class life' have the respective meanings given such terms by section 168.

"(3) CERTIFIED HISTORIC STRUCTURE DEFINED.—

"(A) IN GENERAL.—The term 'certified historic structure' means any building (and its structural components) which—

"(i) is listed in the National Register, or

"(ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

"(B) REGISTERED HISTORIC DISTRICT.—The term 'registered historic district' means—

"(i) any district listed in the National Register, and

"(ii) any district—

"(I) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

"(II) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

"(d) PROGRESS EXPENDITURES.—

"(1) IN GENERAL.—In the case of any building to which this subsection applies, except as provided in paragraph (3)—

"(A) if such building is self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year for which such expenditure is properly chargeable to capital account with respect to such building, and

"(B) if such building is not self-rehabilitated property, any qualified rehabilitation expenditure with respect to such building shall be taken into account for the taxable year in which paid.

"(2) PROPERTY TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any building which is being rehabilitated by or for the taxpayer if—

"(i) the normal rehabilitation period for such building is 2 years or more, and

"(ii) it is reasonable to expect that such building will be a qualified rehabilitated building in the hands of the taxpayer when it is placed in service.

Clauses (i) and (ii) shall be applied on the basis of facts known as of the close of the taxable year of the taxpayer in which the rehabilitation begins (or, if later, at the close of the first taxable year to which an election under this subsection applies).

"(B) NORMAL REHABILITATION PERIOD.—For purposes of subparagraph (A), the term 'normal rehabilitation period' means the period reasonably expected to be required for the rehabilitation of the building—

"(i) beginning with the date on which physical work on the rehabilitation begins (or, if later, the first day of the first taxable year to which an election under this subsection applies), and

"(ii) ending on the date on which it is expected that the property will be available for placing in service.

"(3) SPECIAL RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

"(A) COMPONENT PARTS, ETC.—Property which is to be a component part of, or is otherwise to be included in, any building to which this subsection applies shall be taken into account—

"(i) at a time not earlier than the time at which it becomes irrevocably devoted to use in the building, and

"(ii) as if (at the time referred to in clause (i)) the taxpayer had expended an amount equal to that portion of the cost to the taxpayer of such component or other property which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such building.

"(B) CERTAIN BORROWING DISREGARDED.—Any amount borrowed directly or indirectly by the taxpayer from the person rehabilitating the property for him shall not be treated as an amount expended for such rehabilitation.

"(C) LIMITATION FOR BUILDINGS WHICH ARE NOT SELF-REHABILITATED.—

"(i) IN GENERAL.—In the case of a building which is not self-rehabilitated, the amount taken into account under paragraph (1)(B) for any taxable year shall not exceed the amount which represents the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to the portion of the rehabilitation which is completed during such taxable year.

"(ii) CARRYOVER OF CERTAIN AMOUNTS.—In the case of a building which is not a self-rehabilitated building, if for the taxable year—

"(I) the amount which (but for clause (i)) would have been taken into account under paragraph (1)(B) exceeds the limitation of clause (i), then the amount of such excess shall be taken into account under paragraph (1)(B) for the succeeding taxable year, or

"(II) the limitation of clause (i) exceeds the amount taken into account under paragraph (1)(B), then the amount of such excess shall increase the limitation of clause (i) for the succeeding taxable year.

"(D) DETERMINATION OF PERCENTAGE OF COMPLETION.—The determination under subparagraph (C)(i) of the portion of the overall cost to the taxpayer of the rehabilitation which is properly attributable to rehabilitation completed during any taxable year shall be made, under regulations prescribed by the Secretary, on the basis of engineering or architectural estimates or on the basis of cost accounting records. Unless the taxpayer establishes otherwise by clear and convincing evidence, the rehabilitation shall be deemed to be completed not more rapidly than ratably over the normal rehabilitation period.

"(E) NO PROGRESS EXPENDITURES FOR CERTAIN PRIOR PERIODS.—No qualified rehabilitation expenditures shall be taken into account under this subsection for any period before the first day of the first taxable year to which an election under this subsection applies.

"(F) NO PROGRESS EXPENDITURES FOR PROPERTY FOR YEAR IT IS PLACED IN SERVICE, ETC.—In the case of any

building, no qualified rehabilitation expenditures shall be taken into account under this subsection for the earlier of—

"(i) the taxable year in which the building is placed in service, or

"(ii) the first taxable year for which recapture is required under section 50(a)(2) with respect to such property,

or for any taxable year thereafter.

"(4) SELF-REHABILITATED BUILDING.—For purposes of this subsection, the term 'self-rehabilitated building' means any building if it is reasonable to believe that more than half of the qualified rehabilitation expenditures for such building will be made directly by the taxpayer.

"(5) ELECTION.—This subsection shall apply to any taxpayer only if such taxpayer has made an election under this paragraph. Such an election shall apply to the taxable year for which made and all subsequent taxable years. Such an election, once made, may be revoked only with the consent of the Secretary.

"SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT.

"(a) ENERGY CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year.

"(2) ENERGY PERCENTAGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the energy percentage is 10 percent.

"(B) TERMINATION.—Effective with respect to periods after December 31, 1991, the energy percentage is zero. For purposes of the preceding sentence, rules similar to the rules of section 48(m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply.

"(C) COORDINATION WITH REHABILITATION CREDIT.—The energy percentage shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

"(3) ENERGY PROPERTY.—For purposes of this subpart, the term 'energy property' means any property—

"(A) which is—

"(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, or

"(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

"(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer, or

"(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

"(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

"(ii) are in effect at the time of the acquisition of the property.

The term 'energy property' shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

"(4) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—

"(A) REDUCTION OF BASIS.—For purposes of applying the energy percentage to any property, if such property is financed in whole or in part by—

"(i) subsidized energy financing, or

"(ii) the proceeds of a private activity bond (within the meaning of section 141) the interest on which is exempt from tax under section 103,

the amount taken into account as the basis of such property shall not exceed the amount which (but for this subparagraph) would be so taken into account multiplied by the fraction determined under subparagraph (B).

"(B) DETERMINATION OF FRACTION.—For purposes of subparagraph (A), the fraction determined under this subparagraph is 1 reduced by a fraction—

"(i) the numerator of which is that portion of the basis of the property which is allocable to such financing or proceeds, and

"(ii) the denominator of which is the basis of the property.

"(C) SUBSIDIZED ENERGY FINANCING.—For purposes of subparagraph (A), the term 'subsidized energy financing' means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

"(5) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(b) REFORESTATION CREDIT.—

"(1) IN GENERAL.—For purposes of section 46, the reforestation credit for any taxable year is 10 percent of the portion of the amortizable basis of any qualified timber property which was acquired during such taxable year and which is taken into account under section 194 (after the application of section 194(b)(1)).

"(2) DEFINITIONS.—For purposes of this subpart, the terms 'amortizable basis' and 'qualified timber property' have the respective meanings given to such terms by section 194.

"SEC. 49. AT-RISK RULES.

"(a) GENERAL RULE.—

"(1) CERTAIN NONRECOURSE FINANCING EXCLUDED FROM CREDIT BASE.—

"(A) LIMITATION.—The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such credit base (as of the close of the taxable year in which placed in service).

"(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any property which—

"(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

"(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

"(C) CREDIT BASE DEFINED.—For purposes of this paragraph, the term 'credit base' means—

"(i) the portion of the basis of any qualified rehabilitated building attributable to qualified rehabilitation expenditures,

"(ii) the basis of any energy property, and

"(iii) the amortizable basis of any qualified timber property.

"(D) NONQUALIFIED NONRECOURSE FINANCING.—

"(i) IN GENERAL.—For purposes of this paragraph and paragraph (2), the term 'nonqualified nonrecourse financing' means any nonrecourse financing which is not qualified commercial financing.

"(ii) QUALIFIED COMMERCIAL FINANCING.—For purposes of this paragraph, the term 'qualified commercial financing' means any financing with respect to any property if—

"(I) such property is acquired by the taxpayer from a person who is not a related person,

"(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

"(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

"(iii) NONRECOURSE FINANCING.—For purposes of this subparagraph, the term 'nonrecourse financing' includes—

"(I) any amount with respect to which the taxpayer is protected against loss through guarantees,

stop-loss agreements, or other similar arrangements, and

"(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a share- holder.

"(iv) QUALIFIED PERSON.—For purposes of this paragraph, the term 'qualified person' means any person which is actively and regularly engaged in the business of lending money and which is not—

"(I) a related person with respect to the taxpayer,

"(II) a person from which the taxpayer acquired the property (or a related person to such person), or

"(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

"(v) RELATED PERSON.—For purposes of this subparagraph, the term 'related person' has the meaning given such term by section 465(b)(3)(C). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

"(E) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—For purposes of this paragraph and paragraph (2)—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

"(ii) SPECIAL RULE FOR CERTAIN RECOURSE FINANCING OF S CORPORATION.—A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

"(I) such financing is recourse financing (determined at the corporate level), and

"(II) such financing is provided with respect to qualified business property of such corporation.

"(iii) QUALIFIED BUSINESS PROPERTY.—For purposes of clause (ii), the term 'qualified business property' means any property if—

"(I) such property is used by the corporation in the active conduct of a trade or business,

"(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were

not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

"(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

"(iv) DETERMINATION OF ALLOCABLE SHARE.—The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

"(F) SPECIAL RULES FOR ENERGY PROPERTY.—Rules similar to the rules of subparagraph (F) of section 46(c)(8) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this paragraph.

"(2) SUBSEQUENT DECREASES IN NONQUALIFIED NONRECOURSE FINANCING WITH RESPECT TO THE PROPERTY.—

"(A) IN GENERAL.—If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as an increase in the credit base for such property in accordance with subparagraph (C).

"(B) CERTAIN TRANSACTIONS NOT TAKEN INTO ACCOUNT.—For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

"(C) MANNER IN WHICH TAKEN INTO ACCOUNT.—

"(i) CREDIT DETERMINED BY REFERENCE TO TAXABLE YEAR PROPERTY PLACED IN SERVICE.—For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 50(a), any increase in a taxpayer's credit base for any property by reason of this paragraph shall be taken into account as if it were property placed in service by the taxpayer in the taxable year in which the property referred to in subparagraph (A) was first placed in service.

"(ii) CREDIT ALLOWED FOR YEAR OF DECREASE IN NONQUALIFIED NONRECOURSE FINANCING.—Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

"(b) INCREASES IN NONQUALIFIED NONRECOURSE FINANCING.—

"(1) IN GENERAL.—If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of

nonqualified nonrecourse financing (within the meaning of subsection (a)(1)) with respect to any property to which subsection (a)(1) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the credit base (as defined in subsection (a)(1)(C)) taken into account with respect to such property by the amount of such net increase. For purposes of determining the amount of credit subject to the early disposition or cessation rules of section 50(a), the net increase in the amount of the nonqualified nonrecourse financing with respect to the property shall be treated as reducing the property's credit base in the year in which the property was first placed in service.

"(2) TRANSFERS OF DEBT MORE THAN 1 YEAR AFTER INITIAL BORROWING NOT TREATED AS INCREASING NONQUALIFIED NONRECOURSE FINANCING.—For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of subsection (a)(1)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of any indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

"(3) SPECIAL RULES FOR CERTAIN ENERGY PROPERTY.—Rules similar to the rules of section 47(d)(3) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

"(4) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"SEC. 50. OTHER SPECIAL RULES.

"(a) RECAPTURE IN CASE OF DISPOSITIONS, ETC.—Under regulations prescribed by the Secretary—

"(1) EARLY DISPOSITION, ETC.—

"(A) GENERAL RULE.—If, during any taxable year, investment credit property is disposed of, or otherwise ceases to be investment credit property with respect to the taxpayer, before the close of the recapture period, then the tax under this chapter for such taxable year shall be increased by the recapture percentage of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this subpart with respect to such property.

"(B) RECAPTURE PERCENTAGE.—For purposes of subparagraph (A), the recapture percentage shall be determined in accordance with the following table:

"If the property ceases to be investment credit property within—	*The recapture percentage is:*
(i) One full year after placed in service	*100*
(ii) One full year after the close of the period described in clause (i).	*80*
(iii) One full year after the close of the period described in clause (ii).	*60*

"If the property ceases to be investment credit property within—	*The recapture percentage is:*
(iv) One full year after the close of the period described in clause (iii).	*40*
(v) One full year after the close of the period described in clause (iv).	*20*

"(2) PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.—

"(A) IN GENERAL.—If during any taxable year any building to which section 47(d) applied ceases (by reason of sale or other disposition, cancellation or abandonment of contract, or otherwise) to be, with respect to the taxpayer, property which, when placed in service, will be a qualified rehabilitated building, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero the credit determined under this subpart with respect to such building.

"(B) CERTAIN EXCESS CREDIT RECAPTURED.—Any amount which would have been applied as a reduction under paragraph (2) of section 47(b) but for the fact that a reduction under such paragraph cannot reduce the amount taken into account under section 47(b)(1) below zero shall be treated as an amount required to be recaptured under subparagraph (A) for the taxable year during which the building is placed in service.

"(C) CERTAIN SALES AND LEASEBACKS.—Under regulations prescribed by the Secretary, a sale by, and leaseback to, a taxpayer who, when the property is placed in service, will be a lessee to whom the rules referred to in subsection (c)(4) apply shall not be treated as a cessation described in subparagraph (A) to the extent that the amount which will be passed through to the lessee under such rules with respect to such property is not less than the qualified rehabilitation expenditures properly taken into account by the lessee under section 47(d) with respect to such property.

"(D) COORDINATION WITH PARAGRAPH (1).—If, after property is placed in service, there is a disposition or other cessation described in paragraph (1), then paragraph (1) shall be applied as if any credit which was allowable by reason of section 47(d) and which has not been required to be recaptured before such disposition, cessation, or change in use were allowable for the taxable year the property was placed in service.

"(E) SPECIAL RULES.—Rules similar to the rules of this paragraph shall apply in cases where qualified progress expenditures were taken into account under the rules referred to in section 48(a)(5)(A).

"(3) CARRYBACKS AND CARRYOVERS ADJUSTED.—In the case of any cessation described in paragraph (1) or (2), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation.

"(4) SUBSECTION NOT TO APPLY IN CERTAIN CASES.—Paragraphs (1) and (2) shall not apply to—

"(A) a transfer by reason of death, or

"(B) a transaction to which section 381(a) applies.

For purposes of this subsection, property shall not be treated as ceasing to be investment credit property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as investment credit property and the taxpayer retains a substantial interest in such trade or business.

"(5) DEFINITIONS AND SPECIAL RULES.—

"(A) INVESTMENT CREDIT PROPERTY.—For purposes of this subsection, the term 'investment credit property' means any property eligible for a credit determined under this subpart.

"(B) TRANSFER BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in subsection (a) of section 1041—

"(i) the foregoing provisions of this subsection shall not apply, and

"(ii) the same tax treatment under this subsection with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

"(C) SPECIAL RULE.—Any increase in tax under paragraph (1) or (2) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, D, or G.

"(b) CERTAIN PROPERTY NOT ELIGIBLE.—No credit shall be determined under this subpart with respect to—

"(1) PROPERTY USED OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no credit shall be determined under this subpart with respect to any property which is used predominantly outside the United States.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any property described in section 168(g)(4).

"(2) PROPERTY USED FOR LODGING.—No credit shall be determined under this subpart with respect to any property which is used predominantly to furnish lodging or in connection with the furnishing of lodging. The preceding sentence shall not apply to—

"(A) nonlodging commercial facilities which are available to persons not using the lodging facilities on the same basis as they are available to persons using the lodging facilities.

"(B) property used by a hotel or motel in connection with the trade or business of furnishing lodging where the predominant portion of the accommodations is used by transients;

"(C) a certified historic structure to the extent of that portion of the basis which is attributable to qualified rehabilitation expenditures; and

"(D) any energy property.

"(3) PROPERTY USED BY CERTAIN TAX-EXEMPT ORGANIZATION.—No credit shall be determined under this subpart with respect to any property used by an organization (other than a

cooperative described in section 521) which is exempt from the tax imposed by this chapter unless such property is used predominantly in an unrelated trade or business the income of which is subject to tax under section 511. If the property is debt-financed property (as defined in section 514(b)), the amount taken into account for purposes of determining the amount of the credit under this subpart with respect to such property shall be that percentage of the amount (which but for this paragraph would be so taken into account) which is the same percentage as is used under section 514(a), for the year the property is placed in service, in computing the amount of gross income to be taken into account during such taxable year with respect to such property. If any qualified rehabilitated building is used by the tax-exempt organization pursuant to a lease, this paragraph shall not apply for purposes of determining the amount of the rehabilitation credit.

"(4) PROPERTY USED BY GOVERNMENTAL UNITS OR FOREIGN PERSONS OR ENTITIES.—

"(A) IN GENERAL.—No credit shall be determined under this subpart with respect to any property used—

"(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

"(ii) by any foreign person or entity (as defined in section 168(h)(2)(C)), but only with respect to property to which section 168(h)(2)(A)(iii) applies (determined after the application of section 168(h)(2)(B)).

"(B) EXCEPTION FOR SHORT-TERM LEASES.—This paragraph and paragraph (3) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(i)(3)).

"(C) EXCEPTION FOR QUALIFIED REHABILITATED BUILDINGS LEASED TO GOVERNMENTS, ETC.—If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity) this paragraph shall not apply for purposes of determining the rehabilitation credit with respect to such building.

"(D) SPECIAL RULES FOR PARTNERSHIPS, ETC.—For purposes of this paragraph and paragraph (3), rules similar to the rules of paragraphs (5) and (6) of section 168(h) shall apply.

"(E) CROSS REFERENCE.—

"For special rules for the application of this paragraph and paragraph (3), see section 168(h)."

"(c) BASIS ADJUSTMENT TO INVESTMENT CREDIT PROPERTY.—

"(1) IN GENERAL.—For purposes of this subtitle, if a credit is determined under this subpart with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

"(2) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis

of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (a).

"(3) SPECIAL RULE.—In the case of any energy credit or reforestation credit—

"(A) only 50 percent of such credit shall be taken into account under paragraph (1), and

"(B) only 50 percent of any recapture amount attributable to such credit shall be taken into account under paragraph (2).

"(4) RECAPTURE OF REDUCTIONS.—

"(A) IN GENERAL.—For purposes of sections 1245 and 1250, any reduction under this subsection shall be treated as a deduction allowed for depreciation.

"(B) SPECIAL RULE FOR SECTION 1250.—For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

"(5) ADJUSTMENT IN BASIS OF INTEREST IN PARTNERSHIP OR S CORPORATION.—The adjusted basis of—

"(A) a partner's interest in a partnership, and

"(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

"(d) CERTAIN RULES MADE APPLICABLE.—For purposes of this subpart, rules similar to the rules of the following provisions (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply:

"(1) Section 46(e) (relating to limitations with respect to certain persons).

"(2) Section 46(f) (relating to limitation in case of certain regulated companies).

"(3) Section 46(h) (relating to special rules for cooperatives).

"(4) Paragraphs (2) and (3) of section 48(b) (relating to special rule for sale-leasebacks).

"(5) Section 48(d) (relating to certain leased property).

"(6) Section 48(f) (relating to estates and trusts).

"(7) Section 48(r) (relating to certain 501(d) organizations)."

(b) CONFORMING AMENDMENTS.—

(1)(A) Subclause (III) of section 29(b)(3)(A)(i) is amended by striking "section 48(l)(11)(C)" and inserting "section 48(a)(4)(C)".

(B) Paragraph (4) of section 29(b) is amended by striking "section 47" each place it appears and inserting "section 49(b) or 50(a)".

(C) Paragraph (3) of section 29(c) is amended to read as follows:

"(3) BIOMASS.—The term 'biomass' means any organic material other than—

"(A) oil and natural gas (or any product thereof), and

"(B) coal (including lignite) or any product thereof."

(2)(A) Paragraph (1) of section 38(b) is amended by striking "section 46(a)" and inserting "section 46".

(B) Subsection (c) of section 38 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(C) Subparagraph (C) of section 38(c)(2) (as redesignated by subparagraph (B)) is amended—

(i) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "46(e)(1)", and

(ii) by inserting "(as so in effect)" after "46(e)(2)".

(D) Subsection (d) of section 38 is amended—

(i) by striking "sections 46(f), 47(a), 196(a), and any other provision" and inserting "any provision",

(ii) by amending paragraph (2) to read as follows:

"(2) COMPONENTS OF INVESTMENT CREDIT.—The order in which the credits listed in section 46 are used shall be determined on the basis of the order in which such credits are listed in section 46 as of the close of the taxable year in which the credit is used.", and

(iii) by amending subparagraph (B) of paragraph (3) to read as follows:

"(B) the credit determined under section 46—

"(i) to the extent attributable to the employee plan percentage (as defined in section 46(a)(2)(E) as in effect on the day before the date of the enactment of the Tax Reform Act of 1984) shall be treated as a credit listed after paragraph (1) of section 46, and

"(ii) to the extent attributable to the regular percentage (as defined in section 46(b)(1) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall be treated as the first credit listed in section 46."

(3) Subsection (k) of section 42 is amended—

(A) in paragraph (1)—

(i) by striking "46(c)(8)" and inserting "49(a)(1)",

(ii) by striking "46(c)(9)" and inserting "49(a)(2)", and

(iii) by striking "47(d)(1)" and inserting "49(b)(1)", and

(B) by striking "46(c)(8)(D)(iv)(II)" in paragraphs (2)(A)(ii) and (2)(D) and inserting "49(a)(1)(D)(iv)(II)".

(4) Subsection (e) of section 52 is amended by striking "section 46" and inserting "section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)".

(5) Paragraph (1) of section 55(c) is amended by striking "section 47" and inserting "section 49(b) or 50(a)".

(6) Subparagraph (B) of section 108(g)(1) is amended by striking "section 46(c)(8)(D)(iv)" and inserting "section 49(a)(1)(D)(iv)".

(7) Paragraph (4) of section 145(d) is amended—

(A) by striking "section 48(g)(1)(C)" each place it appears and inserting "section 47(c)(1)(C)", and

(B) by striking "section 48(g)(1)(C)(i)" and inserting "section 47(c)(1)(C)(i)".

(8) Subparagraph (B) of section 147(d)(3) is amended by striking "section 48(g)(2)(B)" and inserting "section 47(c)(2)(B)".

(9)(A) Clause (vi) of section 168(e)(3)(B) is amended—

(i) by striking "paragraph (3)(A)(viii), (3)(A)(ix) or (4) of section 48(l)" in subclause (I) and inserting "subparagraph (A) of section 48(a)(3) (or would be so described if 'solar and wind' were substituted for 'solar' in clause (i) thereof)", and

(ii) by inserting "(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)" after "48(l)" in subclause (II).

(B)(i) Subparagraph (D)(i) of section 168(e)(3) is amended by striking "section 48(p)" and inserting "subsection (i)(13)".

(ii) Subsection (i) of section 168 is amended by adding at the end thereof the following new paragraph:

"(13) SINGLE PURPOSE AGRICULTURAL OR HORTICULTURAL STRUCTURE.—

"(A) IN GENERAL.—The term 'single purpose agricultural or horticultural structure' means—

"(i) a single purpose livestock structure, and

"(ii) a single purpose horticultural structure.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) SINGLE PURPOSE LIVESTOCK STRUCTURE.—The term 'single purpose livestock structure' means any enclosure or structure specifically designed, constructed, and used—

"(I) for housing, raising, and feeding a particular type of livestock and their produce, and

"(II) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subclause (I).

"(ii) SINGLE PURPOSE HORTICULTURAL STRUCTURE.—The term 'single purpose horticultural structure' means—

"(I) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

"(II) a structure specifically designed, constructed, and used for the commercial production of mushrooms.

"(iii) STRUCTURES WHICH INCLUDE WORK SPACE.—An enclosure or structure which provides work space shall be treated as a single purpose agricultural or horticultural structure only if such work space is solely for—

"(I) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

"(II) the maintenance of the enclosure or structure, and

"(III) the maintenance or replacement of the equipment or stock enclosed or housed therein.

"(iv) LIVESTOCK.—The term 'livestock' includes poultry."

(C) Paragraph (4) of section 168(g) is amended to read as follows:

"(4) EXCEPTION FOR CERTAIN PROPERTY USED OUTSIDE UNITED STATES.—Subparagraph (A) of paragraph (1) shall not apply to—

"(A) any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States or is operated under contract with the United States;

"(B) rolling stock which is used within and without the United States and which is—

"(i) of a domestic railroad corporation providing transportation subject to subchapter I of chapter 105 of title 49, or

"(ii) of a United States person (other than a corporation described in clause (i)) but only if the rolling stock is not leased to one or more foreign persons for periods aggregating more than 12 months in any 24-month period;

"(C) any vessel documented under the laws of the United States which is operated in the foreign or domestic commerce of the United States;

"(D) any motor vehicle of a United States person (as defined in section 7701(a)(30)) which is operated to and from the United States;

"(E) any container of a United States person which is used in the transportation of property to and from the United States;

"(F) any property (other than a vessel or an aircraft) of a United States person which is used for the purpose of exploring for, developing, removing, or transporting resources from the outer Continental Shelf (within the meaning of section 2 of the Outer Continental Shelf Lands Act, as amended and supplemented; (43 U.S.C. 1331));

"(G) any property which is owned by a domestic corporation (other than a corporation which has an election in effect under section 936) or by a United States citizen (other than a citizen entitled to the benefits of section 931 or 933) and which is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States;

"(H) any communications satellite (as defined in section 103(3) of the Communications Satellite Act of 1962, 47 U.S.C. 702(3)), or any interest therein, of a United States person;

"(I) any cable, or any interest therein, of a domestic corporation engaged in furnishing telephone service to which section 168(i)(10)(C) applies (or of a wholly owned domestic subsidiary of such a corporation), if such cable is part of a submarine cable system which constitutes part of a communication link exclusively between the United States and one or more foreign countries;

"(J) any property (other than a vessel or an aircraft) of a United States person which is used in international or territorial waters within the northern portion of the Western

Hemisphere for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or deposits under such waters;

"(K) any property described in section 48(a)(3)(A)(iii) which is owned by a United States person and which is used in international or territorial waters to generate energy for use in the United States; and

"(L) any satellite (not described in subparagraph (H)) or other spacecraft (or any interest therein) held by a United States person if such satellite or other spacecraft was launched from within the United States.

For purposes of subparagraph (J), the term 'northern portion of the Western Hemisphere' means the area lying west of the 30th meridian west of Greenwich, east of the international dateline, and north of the Equator, but not including any foreign country which is a country of South America."

(10) Subparagraph (B) of section 170(h)(4) is amended by striking "section 48(g)(3)(B)" and inserting "section 47(c)(3)(B)".

(11)(A) Paragraph (1) of section 179(d) is amended by striking "section 38 property" and inserting "section 1245 property (as defined in section 1245(a)(3))".

(B) Paragraph (5) of section 179(d) is amended to read as follows:

"(5) SECTION NOT TO APPLY TO CERTAIN NONCORPORATE LESSORS.—This section shall not apply to any section 179 property which is purchased by a person who is not a corporation and with respect to which such person is the lessor unless—

"(A) the property subject to the lease has been manufactured or produced by the lessor, or

"(B) the term of the lease (taking into account options to renew) is less than 50 percent of the class life of the property (as defined in section 168(i)(1)), and for the period consisting of the first 12 months after the date on which the property is transferred to the lessee the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) exceeds 15 percent of the rental income produced by such property."

(12)(A) Paragraph (1) of section 196(c) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "section 48(q)" and inserting "section 50(c)".

(B) Paragraph (1) of section 196(d) is amended—

(i) by striking "section 46(a)" and inserting "section 46", and

(ii) by striking "other than a credit to which section 48(q)(3) applies" and inserting "other than the rehabilitation credit".

(13)(A) Subsection (a) of section 280F is amended—

(i) by striking paragraphs (1) and (4) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and

(ii) by striking "the credit determined under section 46(a) or" in paragraph (2)(B) (as redesignated by clause (i)).

(B) Subsection (b) of section 280F is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(C) The paragraph heading for paragraph (1) of section 280F(c) is amended by striking "credits and".

(D) Subparagraph (A) of section 280F(d)(3) is amended by striking "the amount of any credit allowable under section 38 to the employee or".

(E) The section heading of section 280F is amended by striking "INVESTMENT TAX CREDIT AND".

(F) The table of sections for part IX of subchapter B of chapter 1 is amended by striking "investment credit and" in the item relating to section 280F.

(14) Paragraph (5) of section 312(k) is amended by striking "section 48(q)" and inserting "section 50(c)".

(15) Subparagraph (D) of section 465(b)(6) is amended by striking "46(c)(8)(D)(iv)" each place it appears and inserting "49(a)(1)(D)(iv)".

(16)(A) Paragraphs (3)(B) and (6)(B)(ii) of section 469(i) are each amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(B) Paragraph (1) of section 469(k) is amended by striking "rehabilitation investment credit (within the meaning of section 48(o))" and inserting "rehabilitation credit determined under section 47".

(17) Subparagraph (A) of section 861(e)(1) is amended by striking "which is section 38 property (or would be section 38 property but for section 48(a)(5)" and inserting "which is section 1245 property (as defined in section 1245(a)(3))".

(18) Subparagraph (B) of section 865(c)(3) is amended by striking "section 48(a)(2)(B)" and inserting "section 168(g)(4)".

(19) Paragraph (21) of section 1016(a) is amended by striking "section 48(q) and inserting "section 50(c)".

(20) Subparagraph (A) of section 1033(g)(3) is amended by striking "with respect to which the investment credit determined under section 46(a) is or has been claimed or".

(21) Subparagraph (D) of section 1245(a)(3) is amended by striking "section 48(p)" and inserting "section 168(i)(13)".

(22) Subsection (b) of section 1274A is amended by inserting ", as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990" after "section 48(b)".

(23) Subsection (d) of section 1371 is amended—

(A) by striking "section 47(b)" in paragraph (1) and inserting "section 50(a)(4)", and

(B) by striking "section 47" in paragraphs (2) and (3) and inserting "section 49(b) or 50(a)".

(24) Section 1388 is amended by striking subsection (k).

(25) Subparagraph (B) of section 1503(e)(3) is amended by striking "section 48(q)" and inserting "section 50(c)".

(26) The table of subparts for part IV of subchapter A of chapter 1 is amended by striking the item relating to subpart E and inserting the following:

"Subpart E. Rules for computing investment credit."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1990.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to—

(A) any transition property (as defined in section 49(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act),

(B) any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of such Code (as so in effect), and

(C) any property described in section 46(b)(2)(C) of such Code (as so in effect).

SEC. 11814. ELIMINATION OF OBSOLETE PROVISIONS IN SECTION 243(b).

(a) IN GENERAL.—Subsection (b) of section 243 is amended to read as follows:

"(b) QUALIFYING DIVIDENDS.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualifying dividend' means any dividend received by a corporation—

"(A) if at the close of the day on which such dividend is received, such corporation is a member of the same affiliated group as the corporation distributing such dividend, and

"(B) if—

"(i) such dividend is distributed out of the earnings and profits of a taxable year of the distributing corporation which ends after December 31, 1963, for which an election under section 1562 was not in effect, and on each day of which the distributing corporation and the corporation receiving the dividend were members of such affiliated group, or

"(ii) such dividend is paid by a corporation with respect to which an election under section 936 is in effect for the taxable year in which such dividend is paid.

"(2) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a), except that for such purposes sections 1504(b)(2), 1504(b)(4), and 1504(c) shall not apply.

"(3) SPECIAL RULE FOR GROUPS WHICH INCLUDE LIFE INSURANCE COMPANIES.—

"(A) IN GENERAL.—In the case an affiliated group which includes 1 or more insurance companies under section 801, no dividend by any member of such group shall be treated as a qualifying dividend unless an election under this paragraph is in effect for the taxable year in which the dividend is received. The preceding sentence shall not apply in the case of a dividend described in paragraph (1)(B)(ii).

"(B) EFFECT OF ELECTION.—If an election under this paragraph is in effect with respect to any affiliated group—

"(i) part II of subchapter B of chapter 6 (relating to certain controlled corporations) shall be applied with respect to the members of such group without regard to sections 1563(a)(4) and 1563(b)(2)(D), and

"(ii) for purposes of this subsection, a distribution by any member of such group which is subject to tax under section 801 shall not be treated as a qualifying dividend if such distribution is out of earnings and profits for a taxable year for which an election under this paragraph is not effective and for which such distributing corporation was not a component member of a controlled group of corporations within the meaning of section 1563 solely by reason of section 1563(b)(2)(D).

"(C) ELECTION.—An election under this paragraph shall be made by the common parent of the affiliated group and at such time and in such manner as the Secretary shall by regulations prescribe. Any such election shall be binding on all members of such group and may be revoked only with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Clause (i) of section 1504(c)(2)(B) is amended—

(1) by striking "section 243(b)(6)" and inserting "section 243(b)(3)", and

(2) by striking "section 243(b)(5)" and inserting "243(b)(2)".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

(2) TREATMENT OF OLD ELECTIONS.—For purposes of section 243(b)(3) of the Internal Revenue Code of 1986 (as amended by subsection (a)), any reference to an election under such section shall be treated as including a reference to an election under section 243(b) of such Code (as in effect on the day before the date of the enactment of this Act).

SEC. 11815. ELIMINATION OF EXPIRED PROVISIONS IN PERCENTAGE DEPLETION.

(a) SECTION 613A.—

(1) GENERAL RULE.—Subsection (c) of section 613A is amended—

(A) by striking "the applicable percentage (determined in accordance with the table contained in paragraph (5))" in paragraph (1) and inserting "15 percent",

(B) by amending subparagraph (B) of paragraph (3) to read as follows:

"(3) DEPLETABLE OIL QUANTITY.—

"(B) TENTATIVE QUANTITY.—For purposes of subparagraph (A), the tentative quantity is 1,000 barrels.", and

(C) by striking paragraphs (5), and (7)(E).

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (A) and (B) of section 613A(c)(7) are each amended by striking "specified in paragraph (5)" and inserting "specified in paragraph (1)".

(B) Paragraphs (8)(B), (8)(C), and (9) are each amended by striking "determined under the table contained in paragraph (3)(B)" each place it appears and inserting "determined under paragraph (3)(B)".

(b) SECTION 613(e).—

(1) Subsection (e) of section 613 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Subparagraph (B) of section 613(e)(1) is amended to read as follows:

"(B) 15 percent shall be deemed to be the percentage specified in subsection (b),".

(3) Sections 57(a)(2)(D)(ii), 263(c), and 465(c)(1)(E) are each amended by striking "section 613(e)(3)" and inserting "section 613(e)(2)".

SEC. 11816. ELIMINATION OF EXPIRED PROVISIONS IN SECTION 29.

(a) GENERAL RULE.—Paragraph (1) of section 29(c) is amended by inserting "and" at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraphs (D) and (E).

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 29 is amended by striking paragraphs (4) and (5).

(2) Paragraph (4) of section 29(d) is amended to read as follows:

"(4) GAS FROM GEOPRESSURED BRINE, DEVONIAN SHALE, COAL SEAMS, OR A TIGHT FORMATION.—The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980."

(3) Subsection (d) of section 29 is amended by striking paragraph (5) and redesignating the following paragraphs accordingly.

(4) Paragraph (5) of section 29(d) (as redesignated by paragraph (3)) is amended by striking "subparagraph (C), (D), or (E)" and inserting "subparagraph (C)".

(5) Subsection (f) of section 29 is amended to read as follows:

"(f) APPLICATION OF SECTION.—This section shall apply with respect to qualified fuels—

"(1) which are—

"(A) produced from a well drilled after December 31, 1979, and before January 1, 1993, or

"(B) produced in a facility placed in service after December 31, 1979, and before January 1, 1993, and

"(2) which are sold before January 1, 2003."

Subpart C—Effective Date

SEC. 11821. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided in this part, the amendments made by this part shall take effect on the date of the enactment of this Act.

(b) SAVINGS PROVISION.—If—

(1) any provision amended or repealed by this part applied to—

(A) any transaction occurring before the date of the enactment of this Act,

(B) any property acquired before such date of enactment, or

(C) any item of income, loss, deduction, or credit taken into account before such date of enactment, and

(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by this part) affect liability for tax for periods ending after such date of enactment,

nothing in the amendments made by this part shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

PART II—PROVISIONS RELATING TO STUDIES

SEC. 11831. EXTENSION OF DATE FOR FILING REPORTS ON CERTAIN STUDIES.

(a) GENERAL RULE.—The date for the submission of the report on any study listed in subsection (b) is hereby extended to the due date for such study determined under subsection (b).

(b) LIST OF STUDIES AND DUE DATES.—

In the case of the study required under:	*The due date is:*
Section 1211(d) of the Tax Reform Act of 1986 (relating to source rule on sales of personal property)	*January 1, 1992*
Section 407 of the Compact of Free Association Act of 1985 (relating to tax provisions on Micronesia Compact of Free Association)	*January 1, 1991*
Section 634 of the Tax Reform Act of 1986 (relating to reform of subchapter C)	*January 1, 1992*
Section 9301(c)(3) of the Omnibus Budget Reconciliation Act of 1987 (relating to full funding limitation)	*April 15, 1991*
Section 6056 of the Technical and Miscellaneous Revenue Act of 1988 (relating to minimum participation rules)	*February 15, 1991*
Section 6072 of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain technical personnel)	*February 15, 1991*
Section 6305(e) of the Technical and Miscellaneous Revenue Act of 1988 (relating to treatment of certain family services providers)	*January 1, 1992*
Section 6064(d)(4) of the Technical and Miscellaneous Revenue Act of 1988 (relating to deferred compensation plans of State and local governments and tax-exempt organizations)	*January 1, 1992*
Section 6067(b) of the Technical and Miscellaneous Revenue Act of 1988 (relating to spin-off of defined benefit plan assets to bridge banks)	*January 1, 1992*

Section 7612(f) of the Revenue Reconciliation Act of 1989 (relating to depreciation treatment of certain vehicles)	*April 15, 1991*
Section 1012(c)(2) of the Tax Reform Act of 1986 (relating to fraternal beneficiary associations)	*July 1, 1992*
Section 1025 of the Tax Reform Act of 1986 (relating to property and casualty insurance companies)	*January 1, 1992*

SEC. 11832. REPEAL OF CERTAIN STUDIES.

The following provisions are hereby repealed:

(1) Section 5041(f) of the Technical and Miscellaneous Revenue Act of 1988 (relating to long-term contracts).

(2) Section 560 of the Deficit Reduction Act of 1984 (relating to employee welfare benefit plans).

(3) Section 621(d) of the Tax Reform Act of 1986 (relating to depreciation, built-in deductions, and informal bankruptcy workouts).

(4) Section 702 of the Tax Reform Act of 1986 (relating to book earnings and profits adjustments).

(5) Section 675(d) of the Tax Reform Act of 1986, as amended by section 1006(w) of the Technical and Miscellaneous Revenue Act of 1988 (relating to impact of REMIC provisions on thrift industry).

SEC. 11833. MODIFICATIONS TO STUDY OF AMERICANS WORKING ABROAD.

(a) DUE DATE FOR REPORTS.—Subsection (a) of section 208 of the Foreign Earned Income Act of 1978 (as amended by section 114 of the Economic Recovery Tax Act of 1981) is amended by striking so much of such subsection as precedes "the Secretary of the Treasury" and inserting the following:

"(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter,".

(b) INFORMATION FROM FEDERAL AGENCIES.—Subsection (b) of such section 208 (as so amended) is amended by striking "shall furnish" and inserting "shall keep such records and furnish".

SEC. 11834. INCREASE IN THRESHOLD FOR JOINT COMMITTEE REPORTS ON REFUNDS AND CREDITS.

(a) GENERAL RULE.—Subsections (a) and (b) of section 6405 are each amended by striking "$200,000" and inserting "$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, except that such amendment shall not apply with respect to any refund or credit with respect to a report has been made before such date of enactment under section 6405 of the Internal Revenue Code of 1986.

Subtitle I—Public Debt Limit

SEC. 11901. INCREASE IN PUBLIC DEBT LIMIT.

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar limitation contained in such subsection and inserting "$4,145,000,000,000".

(b) RESTORATION OF TRUST FUNDS FOR 1990.—

(1) IN GENERAL.—

(A) OBLIGATIONS ISSUED.—Except as provided in paragraph (2), within 30 days after the expiration of any debt

issuance suspension period to which this subsection applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(i) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(ii) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(B) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this subsection applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to subparagraph (A), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(2) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this subsection applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(3) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to debt issuance suspension periods beginning on or after October 15, 1990, and ending before January 1, 1991.

(4) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this subsection shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(5) DEFINITIONS.—For purposes of this subsection—

(A) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not

be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(B) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

TITLE XII—PENSIONS

Subtitle A—Treatment of Reversions of Qualified Plan Assets to Employers

SEC. 12001. INCREASE IN REVERSION TAX.

Section 4980(a) (relating to tax on reversion of qualified plan assets to employer) is amended by striking "15 percent" and inserting "20 percent".

SEC. 12002. ADDITIONAL TAX IF NO REPLACEMENT PLAN.

(a) IN GENERAL.—Section 4980 is amended by adding at the end thereof the following new subsection:

"(d) INCREASE IN TAX FOR FAILURE TO ESTABLISH REPLACEMENT PLAN OR INCREASE BENEFITS.—

"(1) IN GENERAL.—Subsection (a) shall be applied by substituting '50 percent' for '20 percent' with respect to any employer reversion from a qualified plan unless—

"(A) the employer establishes or maintains a qualified replacement plan, or

"(B) the plan provides benefit increases meeting the requirements of paragraph (3).

"(2) QUALIFIED REPLACEMENT PLAN.—For purposes of this subsection, the term 'qualified replacement plan' means a qualified plan established or maintained by the employer in connection with a qualified plan termination (hereinafter referred to as the 'replacement plan') with respect to which the following requirements are met:

"(A) PARTICIPATION REQUIREMENT.—At least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

"(B) ASSET TRANSFER REQUIREMENT.—

"(i) 25 PERCENT CUSHION.—A direct transfer from the terminated plan to the replacement plan is made before any employer reversion, and the transfer is in an amount equal to the excess (if any) of—

"(I) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, over

"(II) the amount determined under clause (ii).

"(ii) REDUCTION FOR INCREASE IN BENEFITS.—The amount determined under this clause is an amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment which—

"(I) is adopted during the 60-day period ending on the date of termination of the qualified plan, and

"(II) takes effect immediately on the termination date.

"(iii) TREATMENT OF AMOUNT TRANSFERRED.—In the case of the transfer of any amount under clause (i)—

"(I) such amount shall not be includible in the gross income of the employer,

"(II) no deduction shall be allowable with respect to such transfer, and

"(III) such transfer shall not be treated as an employer reversion for purposes of this section.

"(C) ALLOCATION REQUIREMENTS.—

"(i) IN GENERAL.—In the case of any defined contribution plan, the portion of the amount transferred to the replacement plan under subparagraph (B)(i) is—

"(I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or

"(II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer.

"(ii) COORDINATION WITH SECTION 415 LIMITATION.—If, by reason of any limitation under section 415, any amount credited to a suspense account under clause (i)(II) may not be allocated to a participant before the close of the 7-year period under such clause—

"(I) such amount shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants by reason of any such limitation, shall be allocated to the participant as provided in section 415.

"(iii) TREATMENT OF INCOME.—Any income on any amount credited to a suspense account under clause (i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii)).

"(iv) UNALLOCATED AMOUNTS AT TERMINATION.—If any amount credited to a suspense account under clause (i)(II) is not allocated as of the termination date of the replacement plan—

"(I) such amount shall be allocated to the accounts of participants as of such date, except that

any amount which may not be allocated by reason of any limitation under section 415 shall be allocated to the accounts of other participants, and

"(II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which this section applies.

"(3) PRO RATA BENEFIT INCREASES.—

"(A) IN GENERAL.—The requirements of this paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which—

"(i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to this subsection, and

"(ii) take effect immediately on the termination date.

"(B) PRO RATA INCREASE.—For purposes of subparagraph (A), a pro rata increase is an increase in the present value of the accrued benefit of each qualified participant in an amount which bears the same ratio to the aggregate amount determined under subparagraph (A)(i) as—

"(i) the present value of such participant's accrued benefit (determined without regard to this subsection), bears to

"(ii) the aggregate present value of accrued benefits of the terminated plan (as so determined).

Notwithstanding the preceding sentence, the aggregate increases in the present value of the accrued benefits of qualified participants who are not active participants shall not exceed 40 percent of the aggregate amount determined under subparagraph (A)(i) by substituting 'equal to' for 'not less than'.

"(4) COORDINATION WITH OTHER PROVISIONS.—

"(A) LIMITATIONS.—A benefit may not be increased under paragraph (2)(B)(ii) or (3)(A), and an amount may not be allocated to a participant under paragraph (2)(C), if such increase or allocation would result in a failure to meet any requirement under section 401(a)(4) or 415.

"(B) TREATMENT AS EMPLOYER CONTRIBUTIONS.—Any increase in benefits under paragraph (2)(B)(ii) or (3)(A), or any allocation of any amount (or income allocable thereto) to any account under paragraph (2)(C), shall be treated as an annual benefit or annual addition for purposes of section 415.

"(C) 10-YEAR PARTICIPATION REQUIREMENT.—Except as provided by the Secretary, section 415(b)(5)(D) shall not apply to any increase in benefits by reason of this subsection to the extent that the application of this subparagraph does not discriminate in favor of highly compensated employees (as defined in section 414(q)).

"(5) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) QUALIFIED PARTICIPANT.—The term 'qualified participant' means an individual who—

"(i) is an active participant,

"(ii) is a participant or beneficiary in pay status as of the termination date,

"(iii) is a participant not described in clause (i) or (ii)—

"(I) who has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date, and

"(II) whose service, which was creditable under the terminated plan, terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs, or

"(iv) is a beneficiary of a participant described in clause (iii)(II) and has a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date.

"(B) PRESENT VALUE.—Present value shall be determined as of the termination date and on the same basis as liabilities of the plan are determined on termination.

"(C) REALLOCATION OF INCREASE.—Except as provided in paragraph (2)(C), if any benefit increase is reduced by reason of the last sentence of paragraph (3)(A)(ii) or paragraph (4), the amount of such reduction shall be allocated to the remaining participants on the same basis as other increases (and shall be treated as meeting any allocation requirement of this subsection).

"(D) PLANS TAKEN INTO ACCOUNT.—For purposes of determining whether there is a qualified replacement plan under paragraph (2), the Secretary may provide that—

"(i) 2 or more plans may be treated as 1 plan, or

"(ii) a plan of a successor employer may be taken into account.

"(E) SPECIAL RULE FOR PARTICIPATION REQUIREMENT.—For purposes of paragraph (2)(A), all employers treated as 1 employer under section 414 (b), (c), (m), or (o) shall be treated as 1 employer.

"(6) SUBSECTION NOT TO APPLY TO EMPLOYER IN BANKRUPTCY.—This subsection shall not apply to an employer who, as of the termination date of the qualified plan, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in similar proceedings under State law."

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT.—

(1) FIDUCIARY RESPONSIBILITY.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end thereof the following new subsection:

"(d)(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or

maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of the Internal Revenue Code of 1986, a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

"(A) In the case of a fiduciary of the terminated plan, any requirement—

"(i) under section 4980(d)(2)(B) of such Code with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

"(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code with respect to any increase in benefits under the terminated plan.

"(B) In the case of a fiduciary of a qualified replacement plan, any requirement—

"(i) under section 4980(d)(2)(A) of such Code with respect to participation in the qualified replacement plan of active participants in the terminated plan,

"(ii) under section 4980(d)(2)(B) of such Code with respect to the receipt of assets from the terminated plan, and

"(iii) under section 4980(d)(2)(C) of such Code with respect to the allocation of assets to participants of the qualified replacement plan.

"(2) For purposes of this subsection—

"(A) any term used in this subsection which is also used in section 4980(d) of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section, and

"(B) any reference in this subsection to the Internal Revenue Code of 1986 shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990."

(2) CONFORMING AMENDMENTS.—

(A) Section 404(a)(1)(D) of such Act (29 U.S.C. 1104(a)(1)(D)) is amended by striking "or title IV" and inserting "and title IV".

(B) Section 4044(d) of such Act (29 U.S.C. 1344(d)) is amended by adding at the end thereof the following new paragraph:

"(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of the Internal Revenue Code of 1986 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 404(d) of this Act with respect to any distribution of residual assets of a single-employer plan to the employer."

(C) Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end thereof the following new paragraph:

"(41) The term 'single-employer plan' means a plan which is not a multiemployer plan."

SEC. 12003. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle shall apply to reversions occurring after September 30, 1990.

(b) EXCEPTION.—The amendments made by this subtitle shall not apply to any reversion after September 30, 1990, if—

(1) in the case of plans subject to title IV of the Employee Retirement Income Security Act of 1974, a notice of intent to terminate under such title was provided to participants (or if no participants, to the Pension Benefit Guaranty Corporation) before October 1, 1990,

(2) in the case of plans subject to title I (and not to title IV) of such Act, a notice of intent to reduce future accruals under section 204(h) of such Act was provided to participants in connection with the termination before October 1, 1990,

(3) in the case of plans not subject to title I or IV of such Act, a request for a determination letter with respect to the termination was filed with the Secretary of the Treasury or the Secretary's delegate before October 1, 1990, or

(4) in the case of plans not subject to title I or IV of such Act and having only 1 participant, a resolution terminating the plan was adopted by the employer before October 1, 1990.

Subtitle B—Transfers to Retiree Health Accounts

SEC. 12011. TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, and stock bonus plans) is amended by adding at the end thereof the following new subpart:

"Subpart E—Treatment of Transfers to Retiree Health Accounts

"Sec. 420. Transfers of excess pension assets to retiree health accounts.

"SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

"(a) GENERAL RULE.—If there is a qualified transfer of any excess pension assets of a defined benefit plan (other than a multiemployer plan) to a health benefits account which is part of such plan—

"(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

"(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

"(3) such transfer shall not be treated—

"(A) as an employer reversion for purposes of section 4980, or

"(B) as a prohibited transaction for purposes of section 4975, and

"(4) the limitations of subsection (d) shall apply to such employer.

"(b) QUALIFIED TRANSFER.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified transfer' means a transfer—

"(A) of excess pension assets of a defined benefit plan to a health benefits account which is part of such plan in a taxable year beginning after December 31, 1990,

"(B) which does not contravene any other provision of law, and

"(C) with respect to which the following requirements are met in connection with the plan—

"(i) the use requirements of subsection (c)(1),

"(ii) the vesting requirements of subsection (c)(2), and

"(iii) the minimum cost requirements of subsection (c)(3).

"(2) ONLY 1 TRANSFER PER YEAR.—

"(A) IN GENERAL.—No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

"(B) EXCEPTION.—A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).

"(3) LIMITATION ON AMOUNT TRANSFERRED.—The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

"(4) SPECIAL RULE FOR 1990.—

"(A) IN GENERAL.—Subject to the provisions of subsection (c), a transfer shall be treated as a qualified transfer if such transfer—

"(i) is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of—

"(I) the due date (including extensions) for the filing of the return of tax for such preceding taxable year, or

"(II) the date such return is filed, and

"(ii) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

"(B) DEDUCTION REDUCED.—The amount of the deductions otherwise allowable under this chapter to an employer for the taxable year preceding the employer's first taxable year beginning after December 31, 1990, shall be reduced by the amount of any qualified transfer to which this paragraph applies.

"(C) COORDINATION WITH REDUCTION RULE.—Subsection (e)(1)(B) shall not apply to a transfer described in subparagraph (A).

"(5) EXPIRATION.—No transfer in any taxable year beginning after December 31, 1995, shall be treated as a qualified transfer.

"(c) REQUIREMENTS OF PLANS TRANSFERRING ASSETS.—

"(1) USE OF TRANSFERRED ASSETS.—

"(A) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income al-

locable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement).

"(B) AMOUNTS NOT USED TO PAY FOR HEALTH BENEFITS.—

"(i) IN GENERAL.—Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

"(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

"(I) shall not be includible in the gross income of the employer for such taxable year, but

"(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

"(C) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A).

"(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

"(B) SPECIAL RULE FOR 1990.—In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.

"(3) MINIMUM COST REQUIREMENTS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer.

"(B) APPLICABLE EMPLOYER COST.—For purposes of this paragraph, the term 'applicable employer cost' means, with respect to any taxable year, the amount determined by dividing—

"(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

"(I) without regard to any reduction under subsection (e)(1)(B), and

"(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

"(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

"(C) ELECTION TO COMPUTE COST SEPARATELY.—An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

"(D) COST MAINTENANCE PERIOD.—For purposes of this paragraph, the term 'cost maintenance period' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

"(d) LIMITATIONS ON EMPLOYER.—For purposes of this title—

"(1) DEDUCTION LIMITATIONS.—No deduction shall be allowed—

"(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

"(B) for qualified current retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

"(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

"(i) the amount determined under subparagraph (A) (and income allocable thereto), over

"(ii) the amount determined under subparagraph (B).

"(2) NO CONTRIBUTIONS ALLOWED.—An employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1).

"(e) DEFINITION AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED CURRENT RETIREE HEALTH LIABILITIES.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified current retiree health liabilities' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits provided during such taxable year if—

"(i) such benefits were provided directly by the employer, and

"(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

"(B) REDUCTIONS FOR AMOUNTS PREVIOUSLY SET ASIDE.—The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.

"(C) APPLICABLE HEALTH BENEFITS.—The term 'applicable health benefits' mean health benefits or coverage which are provided to—

"(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and

"(ii) their spouses and dependents.

"(D) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 415(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree health liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

"(2) EXCESS PENSION ASSETS.—The term 'excess pension assets' means the excess (if any) of—

"(A) the amount determined under section 412(c)(7)(A)(ii), over

"(B) the greater of—

"(i) the amount determined under section 412(c)(7)(A)(i), or

"(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.

"(3) HEALTH BENEFITS ACCOUNT.—The term "health benefits account" means an account established and maintained under section 401(h).

"(4) COORDINATION WITH SECTION 412.—In the case of a qualified transfer to a health benefits account—

"(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

"(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the

amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(b) CONFORMING AMENDMENT.—Section 401(h) is amended by inserting ", and subject to the provisions of section 420" after "Secretary".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after December 31, 1990.

(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of section 420(b)(4)(B) of such Code (as added by subsection (a)).

SEC. 12012. APPLICATION OF ERISA TO TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) EXCLUSIVE BENEFIT REQUIREMENT.—Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(c)(1)) is amended by inserting ", or under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)" after "insured plans)".

(b) EXEMPTIONS FROM PROHIBITED TRANSACTIONS.—Section 408(b) of such Act (29 U.S.C. 1108(b)) is amended by adding at the end thereof the following new paragraph:

"(13) Any transfer in a taxable year beginning before January 1, 1996, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991)."

(c) FUNDING LIMITATIONS.—Section 302 of such Act (29 U.S.C. 1082) is amended by redesignating subsection (g) as subsection (h) and by adding at the end thereof the following new subsection:

"(g) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—For purposes of this section, in the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986)—

"(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7), be treated as assets in the plan as of the valuation date for such year, and

"(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of such Code) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting '10 plan years' for '5 plan years'."

(d) NOTICE REQUIREMENTS.—

(1) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.—

"(1) NOTICE TO PARTICIPANTS.—Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

"(2) NOTICE TO SECRETARIES, ADMINISTRATOR, AND EMPLOYEE ORGANIZATIONS.—

"(A) IN GENERAL.—Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

"(B) INFORMATION RELATING TO TRANSFER.—Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

"(C) AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS.—The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

"(3) DEFINITIONS.—For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991) shall have the same meaning as when used in such section."

(2) PENALTIES.—

(A) Section 502(c)(1) of such Act (29 U.S.C. 1132(c)(1)) is amended by inserting "or section 101(e)(1)" after "section 606".

(B) Section 502(c)(3) of such Act (29 U.S.C. 1132(c)(3)) is amended—

(i) by inserting "or who fails to meet the requirements of section 101(e)(2) with respect to any person" after "beneficiary" the first place it appears, and

(ii) by inserting "or to such person" after "beneficiary" the second place it appears.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 made after the date of the enactment of this Act.

Subtitle C—Premium Rates

SEC. 12021. INCREASE IN PREMIUM RATES.

(a) INCREASE IN BASIC PREMIUM.—

(1) IN GENERAL.—Clause (i) of section 4006(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended by striking "for plan years beginning after December 31, 1987, an amount equal to the sum of $16" and inserting "for plan years beginning after December 31, 1990, an amount equal to the sum of $19".

(2) CONFORMING AMENDMENT.—Section 4006(c)(1)(A) of such Act (29 U.S.C. 1306(c)(1)(A)) is amended by adding at the end the following new clause:

"(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and".

(b) INCREASE IN ADDITIONAL PREMIUM.—Section 4006(a)(3)(E) of such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

(1) by striking "$6.00" in clause (ii) and inserting "$9.00", and

(2) by striking "$34" in clause (iv)(I) and inserting "$53".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1990.

TITLE XIII—BUDGET ENFORCEMENT

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.— This title may be cited as the "Budget Enforcement Act of 1990".

(b) TABLE OF CONTENTS.—

Subtitle A—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

PART I—AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 13101. SEQUESTRATION.

(a) SECTIONS 250 THROUGH 254.—Sections 251 (except for subsection (a)(6)(I)) through 254 of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) are amended to read as follows:

"SEC. 250. TABLE OF CONTENTS; STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION; DEFINITIONS.

"(a) TABLE OF CONTENTS.—

"(b) GENERAL STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION.—This part provides for the enforcement of the deficit reduction assumed in House Concurrent Resolution 310 (101st

Congress, second session) and the applicable deficit targets for fiscal years 1991 through 1995. Enforcement, as necessary, is to be implemented through sequestration—

"(1) to enforce discretionary spending levels assumed in that resolution (with adjustments as provided hereinafter);

"(2) to enforce the requirement that any legislation increasing direct spending or decreasing revenues be on a pay-as-you-go basis; and

"(3) to enforce the deficit targets specifically set forth in the Congressional Budget and Impoundment Control Act of 1974 (with adjustments as provided hereinafter);

applied in the order set forth above.

"(c) DEFINITIONS.—

"As used in this part:

"(1) The terms 'budget authority', 'new budget authority', 'outlays', and 'deficit' have the meanings given to such terms in section 3 of the Congressional Budget and Impoundment Control Act of 1974 (but including the treatment specified in section 257(b)(3) of the Hospital Insurance Trust Fund) and the terms 'maximum deficit amount' and 'discretionary spending limit' shall mean the amounts specified in section 601 of that Act as adjusted under sections 251 and 253 of this Act.

"(2) The terms 'sequester' and 'sequestration' refer to or mean the cancellation of budgetary resources provided by discretionary appropriations or direct spending law.

"(3) The term 'breach' means, for any fiscal year, the amount (if any) by which new budget authority or outlays for that year (within a category of discretionary appropriations) is above that category's discretionary spending limit for new budget authority or outlays for that year, as the case may be.

"(4) The term 'category' means:

"(A) For fiscal years 1991, 1992, and 1993, any of the following subsets of discretionary appropriations: defense, international, or domestic. Discretionary appropriations in each of the three categories shall be those so designated in the joint statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990. New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

"(B) For fiscal years 1994 and 1995, all discretionary appropriations.

Contributions to the United States to offset the cost of Operation Desert Shield shall not be counted within any category.

"(5) The term 'baseline' means the projection (described in section 257) of current-year levels of new budget authority, outlays, receipts, and the surplus or deficit into the budget year and the outyears.

"(6) The term 'budgetary resources' means—

"(A) with respect to budget year 1991, new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; direct spending authority; and obligation limitations; or

"(B) with respect to budget year 1992, 1993, 1994, or 1995, new budget authority; unobligated balances; direct spending authority; and obligation limitations.

"(7) The term 'discretionary appropriations' means budgetary resources (except to fund direct-spending programs) provided in appropriation Acts.

"(8) The term 'direct spending' means—

"(A) budget authority provided by law other than appropriation Acts;

"(B) entitlement authority; and

"(C) the food stamp program.

"(9) The term 'current' means, with respect to OMB estimates included with a budget submission under section 1105(a) of title 31, United States Code, the estimates consistent with the economic and technical assumptions underlying that budget and with respect to estimates made after submission of the fiscal year 1992 budget that are not included with a budget submission, estimates consistent with the economic and technical assumptions underlying the most recently submitted President's budget.

"(10) The term 'real economic growth', with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

"(11) The term 'account' means an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President's budget.

"(12) The term 'budget year' means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

"(13) The term 'current year' means, with respect to a budget year, the fiscal year that immediately precedes that budget year.

"(14) The term 'outyear' means, with respect to a budget year, any of the fiscal years that follow the budget year through fiscal year 1995.

"(15) The term 'OMB' means the Director of the Office of Management and Budget.

"(16) The term 'CBO' means the Director of the Congressional Budget Office.

"(17) For purposes of sections 252 and 253, legislation enacted during the second session of the One Hundred First Congress shall be deemed to have been enacted before the enactment of this Act.

"(18) As used in this part, all references to entitlement authority shall include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990.

"(19) The term 'deposit insurance' refers to the expenses of the Federal Deposit Insurance Corporation and the funds it incorporates, the Resolution Trust Corporation, the National Credit Union Administration and the funds it incorporates, the Office

of Thrift Supervision, the Comptroller of the Currency Assessment Fund, and the RTC Office of Inspector General.

"(20) The term 'composite outlay rate' means the percent of new budget authority that is converted to outlays in the fiscal year for which the budget authority is provided and subsequent fiscal years, as follows:

"(A) For the international category, 46 percent for the first year, 20 percent for the second year, 16 percent for the third year, and 8 percent for the fourth year.

"(B) For the domestic category, 53 percent for the first year, 31 percent for the second year, 12 percent for the third year, and 2 percent for the fourth year.

"SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.

"(a) FISCAL YEARS 1991-1995 ENFORCEMENT.—

"(1) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session and on the same day as a sequestration (if any) under section 252 and section 253, there shall be a sequestration to eliminate a budget-year breach, if any, within any category.

"(2) ELIMINATING A BREACH.—Each non-exempt account within a category shall be reduced by a dollar amount calculated by multiplying the baseline level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to eliminate a breach within that category; except that the health programs set forth in section 256(e) shall not be reduced by more than 2 percent and the uniform percent applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to eliminate that breach. If, within a category, the discretionary spending limits for both new budget authority and outlays are breached, the uniform percentage shall be calculated by—

"(A) first, calculating the uniform percentage necessary to eliminate the breach in new budget authority, and

"(B) second, if any breach in outlays remains, increasing the uniform percentage to a level sufficient to eliminate that breach.

"(3) MILITARY PERSONNEL.—If the President uses the authority to exempt any military personnel from sequestration under section 255(h), each account within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(h) has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays are not reduced in military personnel accounts by reason of the use of such authority.

"(4) PART-YEAR APPROPRIATIONS.—If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for any budget account, then the dollar sequestration calculated for that account under paragraphs (2) and (3) shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

"(5) LOOK-BACK.—If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach within a category for that year (after taking into account any sequestration of amounts within that category), the discretionary spending limits for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

"(6) WITHIN-SESSION SEQUESTRATION.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of that fiscal year) that causes a breach within a category for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

"(7) OMB ESTIMATES.—As soon as practicable after Congress completes action on any discretionary appropriation, CBO, after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation. Within 5 calendar days after the enactment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation, and an explanation of any difference between the two estimates. For purposes of this paragraph, amounts provided by annual appropriations shall include any new budget authority and outlays for those years in accounts for which funding is provided in that legislation that result from previously enacted legislation. Those OMB estimates shall be made using current economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph for the purposes of this subsection. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.—(1) When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1995 to reflect the following:

"(A) CHANGES IN CONCEPTS AND DEFINITIONS.—The adjustments produced by the amendments made by title XIII of the Omnibus Budget Reconciliation Act of 1990 or by any other changes in concepts and definitions shall equal the baseline levels of new budget authority and outlays using up-to-date concepts and definitions minus those levels using the concepts and definitions in effect before such changes. Such other changes in concepts and definitions may only be made in consultation with the Committees on Appropriations, the Budget, Government Operations, and Governmental Affairs of the House of Representatives and Senate.

"(B) CHANGES IN INFLATION.—(i) For a budget submitted for budget year 1992, 1993, 1994, or 1995, the adjustments produced by changes in inflation shall equal the levels of discretionary new budget authority and outlays in the baseline (calculated using current estimates) subtracted from those levels in that baseline recalculated with the baseline inflators for the budget year only, multiplied by the inflation adjustment factor computed under clause (ii).

"(ii) For a budget year the inflation adjustment factor shall equal the ratio between the level of year-over-year inflation measured for the fiscal year most recently completed and the applicable estimated level for that year set forth below:

"For 1990, 1.041
"For 1991, 1.052
"For 1992, 1.041
"For 1993, 1.033

Inflation shall be measured by the average of the estimated gross national product implicit price deflator index for a fiscal year divided by the average index for the prior fiscal year.

"(C) CREDIT REESTIMATES.—For a budget submitted for fiscal year 1993 or 1994, the adjustments produced by reestimates to costs of Federal credit programs shall be, for any such program, a current estimate of new budget authority and outlays associated with a baseline projection of the prior year's gross loan level for that program minus the baseline projection of the prior year's new budget authority and associated outlays for that program.

(2) When OMB submits a sequestration report under section 254(g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the sequestration report, and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include, adjustments to discretionary spending limits (and those limits as adjusted) for the fiscal year and each succeeding year through 1995, as follows:

"(A) IRS FUNDING.—To the extent that appropriations are enacted that provide additional new budget authority or result in additional outlays (as compared with the CBO baseline constructed in June 1990) for the Internal Revenue Service compliance initiative in any fiscal year, the adjustments for that year shall be those amounts, but shall not exceed the amounts set forth below—

"(i) for fiscal year 1991, $191,000,000 in new budget authority and $183,000,000 in outlays;

"(ii) for fiscal year 1992, $172,000,000 in new budget authority and $169,000,000 in outlays;

"(iii) for fiscal year 1993, $183,000,000 in new budget authority and $179,000,000 in outlays;

"(iv) for fiscal year 1994, $187,000,000 in new budget authority and $183,000,000 in outlays; and

"(v) for fiscal year 1995, $188,000,000 in new budget authority and $184,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority.

"(B) DEBT FORGIVENESS.—If, in calendar year 1990 or 1991, an appropriation is enacted that forgives the Arab Republic of Egypt's foreign military sales indebtedness to the United States and any part of the Government of Poland's indebtedness to the United States, the adjustment shall be the estimated costs (in new budget authority and outlays, in all years) of that forgiveness.

"(C) IMF FUNDING.—If, in fiscal year 1991, 1992, 1993, 1994, or 1995 an appropriation is enacted to provide to the International Monetary Fund the dollar equivalent, in terms of Special Drawing Rights, of the increase in the United States quota as part of the International Monetary Fund Ninth General Review of Quotas, the adjustment shall be the amount provided by that appropriation.

"(D) EMERGENCY APPROPRIATIONS.—(i) If, for fiscal year 1991, 1992, 1993, 1994, or 1995, appropriations for discretionary accounts are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and the outlays flowing in all years from such appropriations.

"(ii) The costs for operation Desert Shield are to be treated as emergency funding requirements not subject to the defense spending limits. Funding for Desert Shield will be provided through the normal legislative process. Desert Shield costs should be accommodated through Allied burden-sharing, subsequent appropriation Acts, and if the President so chooses, through offsets within other defense accounts. Emergency Desert Shield costs mean those incremental costs associated with the increase in operations in the Middle East and do not include costs that would be experienced by the Department of Defense as part of its normal operations absent Operation Desert Shield.

"(E) SPECIAL ALLOWANCE FOR DISCRETIONARY NEW BUDGET AUTHORITY.—(i) For each of fiscal years 1992 and 1993, the adjustment for the domestic category in each year shall be an amount equal to 0.1 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the domestic category);

"(ii) for each of fiscal years 1992 and 1993, the adjustment for the international category in each year shall be an amount equal to 0.079 percent of the sum of the adjusted discretionary spending limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays associated therewith (calculated at the composite outlay rate for the international category); and

"(iii) if, for fiscal years 1992 and 1993, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority for any category due to technical estimates made by the Director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for 1992 and 1993 together) equal to 0.042 percent of the sum of the adjusted discretionary limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively).

"(F) SPECIAL OUTLAY ALLOWANCE.—If in any fiscal year outlays for a category exceed the discretionary spending limit for that category but new budget authority does not exceed its limit for that category (after application of the first step of a sequestration described in subsection (a)(2), if necessary), the adjustment in outlays is the amount of the excess, but not to exceed $2,500,000,000 in the defense category, $1,500,000,000 in the international category, or $2,500,000,000 in the domestic category (as applicable) in fiscal year 1991, 1992, or 1993, and not to exceed $6,500,000,000 in fiscal year 1994 or 1995 less any of the outlay adjustments made under subparagraph (E) for a category for a fiscal year.

"SEC. 252. ENFORCING PAY-AS-YOU-GO.

"(a) FISCAL YEARS 1992–1995 ENFORCEMENT.—The purpose of this section is to assure that any legislation (enacted after the date of enactment of this section) affecting direct spending or receipts that increases the deficit in any fiscal year covered by this Act will trigger an offsetting sequestration.

"(b) SEQUESTRATION; LOOK-BACK.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 253, there shall be a sequestration to offset the amount of any net deficit increase in that fiscal year and the prior fiscal year caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any prior sequestration as provided by paragraph (2)). OMB shall calculate the amount of deficit increase, if any, in those fiscal years by adding—

"(1) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) applicable to those fiscal years, other than any amounts included in such estimates resulting from—

"(A) full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of this section, and

"(B) emergency provisions as designated under subsection (e); and

"(2) the estimated amount of savings in direct spending programs applicable to those fiscal years resulting from the prior year's sequestration under this section or section 253, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year), as published in OMB's end-of-session sequestration report for that prior year.

"(c) ELIMINATING A DEFICIT INCREASE.—(1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:

"(A) FIRST.—All reductions in automatic spending increases specified in section 256(a) shall be made.

"(B) SECOND.—If additional reductions in direct spending accounts are required to be made, the maximum reductions permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

"(C) THIRD.—(i) If additional reductions in direct spending accounts are required to be made, each remaining non-exempt direct spending account shall be reduced by the uniform percentage necessary to make the reductions in direct spending required by paragraph (1); except that the medicare programs specified in section 256(d) shall not be reduced by more than 4 percent and the uniform percentage applicable to all other direct spending programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the required reduction in direct spending.

"(ii) For purposes of determining reductions under clause (i), outlay reductions (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(2) For purposes of this subsection, accounts shall be assumed to be at the level in the baseline.

"(d) OMB ESTIMATES.—As soon as practicable after Congress completes action on any direct spending or receipts legislation enacted after the date of enactment of this section, after consultation with the Committees on the Budget of the House of Representatives and the Senate, CBO shall provide OMB with an estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation. Within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section, OMB shall transmit a report to the House of Representatives and to the Senate containing such CBO estimate of that legislation, an OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation, and an explanation of any difference between the two estimates. Those OMB estimates shall be made using current economic and technical assumptions. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeep-

ing guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.

"(e) EMERGENCY LEGISLATION.—If, for fiscal year 1991, 1992, 1993, 1994, or 1995, a provision of direct spending or receipts legislation is enacted that the President designates as an emergency requirement and that the Congress so designates in statute, the amounts of new budget authority, outlays, and receipts in all fiscal years through 1995 resulting from that provision shall be designated as an emergency requirement in the reports required under subsection (d).

"SEC. 253. ENFORCING DEFICIT TARGETS.

"(a) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits) or section 252 (enforcing pay-as-you-go), there shall be a sequestration to eliminate the excess deficit (if any remains) if it exceeds the margin.

"(b) EXCESS DEFICIT; MARGIN.—The excess deficit is, if greater than zero, the estimated deficit for the budget year, minus—

"(1) the maximum deficit amount for that year;

"(2) the amounts for that year designated as emergency direct spending or receipts legislation under section 252(e); and

"(3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the deposit insurance reestimate for that year, if any, calculated under subsection (h).

The 'margin' for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is $15,000,000,000.

"(c) DIVIDING THE SEQUESTRATION.—To eliminate the excess deficit in a budget year, half of the required outlay reductions shall be obtained from non-exempt defense accounts (accounts designated as function 050 in the President's fiscal year 1991 budget submission) and half from non-exempt, non-defense accounts (all other non-exempt accounts).

"(d) DEFENSE.—Each non-exempt defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (c), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

"(e) NON-DEFENSE.—Actions to reduce non-defense accounts shall be taken in the following order:

"(1) FIRST.—All reductions in automatic spending increases under section 256(a) shall be made.

"(2) SECOND.—If additional reductions in non-defense accounts are required to be made, the maximum reduction permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

"(3) THIRD.—(A) If additional reductions in non-defense accounts are required to be made, each remaining non-exempt, non-defense account shall be reduced by the uniform percentage necessary to make the reductions in non-defense outlays required by subsection (c), except that—

"(i) the medicare program specified in section 256(d) shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under section 252 or, if it has been reduced by 2 percent or more under section 252, it may not be further reduced under this section; and

"(ii) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent in total (including any reduction made under section 251),

and the uniform percent applicable to all other programs under this subsection shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense outlays.

"(B) For purposes of determining reductions under subparagraph (A), outlay reduction (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

"(f) BASELINE ASSUMPTIONS; PART-YEAR APPROPRIATIONS.—

"(1) BUDGET ASSUMPTIONS.—For purposes of subsections (b), (c), (d), and (e), accounts shall be assumed to be at the level in the baseline minus any reductions required to be made under sections 251 and 252.

"(2) PART-YEAR APPROPRIATIONS.—If, on the date specified in subsection (a), there is in effect an Act making or continuing appropriations for part of a fiscal year for any non-exempt budget account, then the dollar sequestration calculated for that account under subsection (d) or (e), as applicable, shall be subtracted from—

"(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

"(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation; except that the amount to be sequestered from that account shall be reduced (but not below zero) by the savings achieved by that appropriation when the enacted amount is less than the baseline for that account.

"(g) ADJUSTMENTS TO MAXIMUM DEFICIT AMOUNTS.—

"(1) ADJUSTMENTS.—

"(A) When the President submits the budget for fiscal year 1992, the maximum deficit amounts for fiscal years 1992, 1993, 1994, and 1995 shall be adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions. When the President submits the budget for fiscal year 1993, the maximum deficit amounts for fiscal years 1993, 1994, and 1995 shall be further adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions.

"(B) When submitting the budget for fiscal year 1994, the President may choose to adjust the maximum deficit amounts for fiscal years 1994 and 1995 to reflect up-to-date

reestimates of economic and technical assumptions. If the President chooses to adjust the maximum deficit amount when submitting the fiscal year 1994 budget, the President may choose to invoke the same adjustment procedure when submitting the budget for fiscal year 1995. In each case, the President must choose between making no adjustment or the full adjustment described in paragraph (2). If the President chooses to make that full adjustment, then those procedures for adjusting discretionary spending limits described in sections 251(b)(1)(C) and 251(b)(2)(E), otherwise applicable through fiscal year 1993 or 1994 (as the case may be), shall be deemed to apply for fiscal year 1994 (and 1995 if applicable).

"(C) When the budget for fiscal year 1994 or 1995 is submitted and the sequestration reports for those years under section 254 are made (as applicable), if the President does not choose to make the adjustments set forth in subparagraph (B), the maximum deficit amount for that fiscal year shall be adjusted by the amount of the adjustment to discretionary spending limits first applicable for that year (if any) under section 251(b).

"(D) For each fiscal year the adjustments required to be made with the submission of the President's budget for that year shall also be made when OMB submits the sequestration update report and the final sequestration report for that year, but OMB shall continue to use the economic and technical assumptions in the President's budget for that year.

Each adjustment shall be made by increasing or decreasing the maximum deficit amounts set forth in section 601 of the Congressional Budget Act of 1974.

"(2) CALCULATIONS OF ADJUSTMENTS.—The required increase or decrease shall be calculated as follows:

"(A) The baseline deficit or surplus shall be calculated using up-to-date economic and technical assumptions, using up-to-date concepts and definitions, and, in lieu of the baseline levels of discretionary appropriations, using the discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251.

"(B) The net deficit increase or decrease caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any sequestration of direct spending accounts) shall be calculated for each fiscal year by adding—

"(i) the estimates of direct spending and receipts legislation transmitted under section 252(d) applicable to each such fiscal year; and

"(ii) the estimated amount of savings in direct spending programs applicable to each such fiscal year resulting from the prior year's sequestration under this section or section 252 of direct spending, if any, as con-

tained in OMB's final sequestration report for that year.

"(C) The amount calculated under subparagraph (B) shall be subtracted from the amount calculated under subparagraph (A).

"(D) The maximum deficit amount set forth in section 601 of the Congressional Budget Act of 1974 shall be subtracted from the amount calculated under subparagraph (C).

"(E) The amount calculated under subparagraph (D) shall be the amount of the adjustment required by paragraph (1).

"(h) TREATMENT OF DEPOSIT INSURANCE.—

"(1) INITIAL ESTIMATES.—The initial estimates of the net costs of federal deposit insurance for fiscal year 1994 and fiscal year 1995 (assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of the submission of the budget for fiscal year 1993) shall be set forth in that budget.

"(2) REESTIMATES.—For fiscal year 1994 and fiscal year 1995, the amount of the reestimate of deposit insurance costs shall be calculated by subtracting the amount set forth under paragraph (1) for that year from the current estimate of deposit insurance costs (but assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of submission of the budget for fiscal year 1993).

"SEC. 254. REPORTS AND ORDERS.

"(a) TIMETABLE.—The timetable with respect to this part for any budget year is as follows:

"Date:	***Action to be completed:***
January 21	*Notification regarding optional adjustment of maximum deficit amount.*
5 days before the President's budget submission.	*CBO sequestration preview report.*
The President's budget submission	*OMB sequestration preview report.*
August 10	*Notification regarding military personnel.*
August 15	*CBO sequestration update report.*
August 20	*OMB sequestration update report.*
10 days after end of session	*CBO final sequestration report.*
15 days after end of session	*OMB final sequestration report; Presidential order.*
30 days later	*GAO compliance report.*

"(b) SUBMISSION AND AVAILABILITY OF REPORTS.—Each report required by this section shall be submitted, in the case of CBO, to the House of Representatives, the Senate and OMB and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the Federal Register.

"(c) OPTIONAL ADJUSTMENT OF MAXIMUM DEFICIT AMOUNTS.—With respect to budget year 1994 or 1995, on the date specified in subsection (a) the President shall notify the House of Representatives and the Senate of his decision regarding the optional adjustment of the maximum deficit amount (as allowed under section 253(g)(1)(B)).

"(d) SEQUESTRATION PREVIEW REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a preview report regarding discretionary, pay-as-you-go, and deficit sequestration based on laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORT.—The preview reports shall set forth estimates for the current year and each subsequent year through 1995 of the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(3) PAY-AS-YOU-GO SEQUESTRATION REPORTS.—The preview reports shall set forth, for the current year and the budget year, estimates for each of the following:

"(A) The amount of net deficit increase or decrease, if any, calculated under subsection 252(b).

"(B) A list identifying each law enacted and sequestration implemented after the date of enactment of this section included in the calculation of the amount of deficit increase or decrease and specifying the budgetary effect of each such law.

"(C) The sequestration percentage or (if the required sequestration percentage is greater than the maximum allowable percentage for medicare) percentages necessary to eliminate a deficit increase under section 252(c).

"(4) DEFICIT SEQUESTRATION REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The maximum deficit amount, the estimated deficit calculated under section 253(b), the excess deficit, and the margin.

"(B) The amount of reductions required under section 252, the excess deficit remaining after those reductions have been made, and the amount of reductions required from defense accounts and the reductions required from non-defense accounts.

"(C) The sequestration percentage necessary to achieve the required reduction in defense accounts under section 253(d).

"(D) The reductions required under sections 253(e)(1) and 253(e)(2).

"(E) The sequestration percentage necessary to achieve the required reduction in non-defense accounts under section 253(e)(3).

The CBO report need not set forth the items other than the maximum deficit amount for fiscal year 1992, 1993, or any fiscal year for which the President notifies the House of Representatives and the Senate that he will adjust the maximum deficit amount under the option under section 253(g)(1)(B).

"(5) EXPLANATION OF DIFFERENCES.—The OMB reports shall explain the differences between OMB and CBO estimates for each item set forth in this subsection.

"(e) NOTIFICATION REGARDING MILITARY PERSONNEL.—On or before the date specified in subsection (a), the President shall notify

the Congress of the manner in which he intends to exercise flexibility with respect to military personnel accounts under section 255(h).

"(f) SEQUESTRATION UPDATE REPORTS.—On the dates specified in subsection (a), OMB and CBO shall issue a sequestration update report, reflecting laws enacted through those dates, containing all of the information required in the sequestration preview reports.

"(g) FINAL SEQUESTRATION REPORTS.—

"(1) REPORTING REQUIREMENT.—On the dates specified in subsection (a), OMB and CBO shall issue a final sequestration report, updated to reflect laws enacted through those dates.

"(2) DISCRETIONARY SEQUESTRATION REPORTS.—The final reports shall set forth estimates for each of the following:

"(A) For the current year and each subsequent year through 1995 the applicable discretionary spending limits for each category and an explanation of any adjustments in such limits under section 251.

"(B) For the current year and the budget year the estimated new budget authority and outlays for each category and the breach, if any, in each category.

"(C) For each category for which a sequestration is required, the sequestration percentages necessary to achieve the required reduction.

"(D) For the budget year, for each account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions.

"(3) PAY-AS-YOU-GO AND DEFICIT SEQUESTRATION REPORTS.—The final reports shall contain all the information required in the pay-as-you-go and deficit sequestration preview reports. In addition, these reports shall contain, for the budget year, for each account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and resulting outlays and the amount of budgetary resources to be sequestered and resulting outlay reductions. The reports shall also contain estimates of the effects on outlays of the sequestration in each outyear through 1995 for direct spending programs.

"(4) EXPLANATION OF DIFFERENCES.—The OMB report shall explain any differences between OMB and CBO estimates of the amount of any net deficit change calculated under subsection 252(b), any excess deficit, any breach, and any required sequestration percentage. The OMB report shall also explain differences in the amount of sequesterable resources for any budget account to be reduced if such difference is greater than $5,000,000.

"(5) PRESIDENTIAL ORDER.—On the date specified in subsection (a), if in its final sequestration report OMB estimates that any sequestration is required, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(h) WITHIN-SESSION SEQUESTRATION REPORTS AND ORDER.—If an appropriation for a fiscal year in progress is enacted (after Congress adjourns to end the session for that budget year and before July 1 of

that fiscal year) that causes a breach, 10 days later CBO shall issue a report containing the information required in paragraph (g)(2). Fifteen days after enactment, OMB shall issue a report containing the information required in paragraphs (g)(2) and (g)(4). On the same day as the OMB report, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

"(i) GAO COMPLIANCE REPORT.—On the date specified in subsection (a), the Comptroller General shall submit to the Congress and the President a report on—

"(1) the extent to which each order issued by the President under this section complies with all of the requirements contained in this part, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not; and

"(2) the extent to which each report issued by OMB or CBO under this section complies with all of the requirements contained in this part, either certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not.

"(j) LOW-GROWTH REPORT.—At any time, CBO shall notify the Congress if—

"(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, CBO or OMB has determined that real economic growth is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

"(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.

"(k) ECONOMIC AND TECHNICAL ASSUMPTIONS.—In all reports required by this section, OMB shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code.".

(b) SECTION 250: DEFINITIONS.—Paragraph (12) of section 257 of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as a new paragraph (21) of section 250(c).

(c) SECTION 255: EXEMPT PROGRAMS AND ACTIVITIES.—

(1) Section 255(a) of such Act is amended to read as follows:

"(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.".

(2) Section 255(e) of such Act is amended to read as follows:

"(e) NON-DEFENSE UNOBLIGATED BALANCES.—Unobligated balances of budget authority carried over from prior fiscal years, except balances in the defense category, shall be exempt from reduction under any order issued under this part.".

(3) Section 255(g)(1)(B) of such Act is amended by inserting after the item relating to Railroad retirement tier II the following:

"Railroad supplemental annuity pension fund (60-8012-0-7-602);".

(4) Section 255 of such Act is amended by inserting at the end the following:

"(h) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—

"(1) The President may, with respect to any military personnel account, exempt that account from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

"(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.".

(d) SECTION 256: EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.—

(1) Section 256(a) of such Act is amended to read as follows:

"(a) AUTOMATIC SPENDING INCREASES.—Automatic spending increases are increases in outlays due to changes in indexes in the following programs:

"(1) National Wool Act;

"(2) Special milk program; and

"(3) Vocational rehabilitation basic State grants.

In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.".

(2) Section 256 of such Act is amended by redesignating subsection (b) as subsection (h), subsection (c) as subsection (b), subsection (e) as subsection (f), subsection (f) as subsection (c), subsection (h) as subsection (i), and subsection (k) as subsection (e), by repealing subsections (i) and (l), and by inserting at the end the following:

"(k) SPECIAL RULES FOR THE JOBS PORTION OF AFDC.—

"(1) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any order issued by the President under section 254 shall accomplish the full amount of any required sequestration of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

"(2) NEW ALLOTMENT FORMULA.—

"(A) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act for the fiscal year to which the sequestration applies shall be equal to—

"(i) the lesser of—

"(I) that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount

paid to such State pursuant to such section 403(l) for the prior fiscal year; or

"(II) the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(B) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act for the fiscal year to which the sequestration applies that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

"(l) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

"(1) Budgetary resources sequestered from any account other than a trust or special fund account shall be permanently cancelled.

"(2) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

"(3) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

"(4) Except as otherwise provided, obligations in sequestered accounts shall be reduced only in the fiscal year in which a sequester occurs.

"(5) If an automatic spending increase is sequestered, the increase (in the applicable index) that was disregarded as a result of that sequestration shall not be taken into account in any subsequent fiscal year.

"(6) Except as otherwise provided, sequestration in trust and special fund accounts for which obligations are indefinite shall be taken in a manner to ensure that obligations in the fiscal year of a sequestration are reduced, from the level that would

actually have occurred, by the applicable sequestration percentage.".

(3) Section 256 of such Act is amended by striking "section 252" each place it appears and by inserting "section 254".

(4) Section 256(c) (as redesignated) of such Act is amended by inserting after the first sentence the following: "No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage.".

(5) Section 256(d)(1) of such Act is amended to read as follows:

"(1) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.".

(6) Section 256(d)(2)(C) of such Act is repealed.

(e) THE BASELINE.—(1) Section 257 of such Act is amended to read as follows:

"SEC. 257. THE BASELINE.

"(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

"(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

"(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

"(2) EXCEPTIONS.—(A) No program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears.

"(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

"(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

"(3) HOSPITAL INSURANCE TRUST FUND.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

"(c) DISCRETIONARY APPROPRIATIONS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

"(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

"(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

"(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

"(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

"(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross national product fixed-weight price index for that fiscal year differs from the average of such estimated index for the current year.

"(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the

current year in, the President's original budget for the budget year.

"(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.".

(2) Section 251(a)(6)(I) of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as section 257(e) of such Act. Section 257(e) is amended by striking "assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the" and inserting "The".

(f) Such Act is amended by inserting after section 257 the following:

"SEC. 258. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH.

"(a) PROCEDURES IN THE EVENT OF A LOW GROWTH REPORT.—

"(1) TRIGGER.—Whenever CBO issues a low-growth report under section 254(j), the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in section 254(j) are met and suspending the relevant provisions of this title, titles III and VI of the Congressional Budget Act of 1974, and section 1103 of title 31, United States Code.

"(2) FORM OF JOINT RESOLUTION.—

"(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: 'That the Congress declares that the conditions specified in section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are modified as described in section 258(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(B) The title of the joint resolution shall be 'Joint resolution suspending certain provisions of law pursuant to section 258(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985.'; and the joint resolution shall not contain any preamble.

"(3) COMMITTEE ACTION.—Each joint resolution introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate, as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

"(4) CONSIDERATION OF JOINT RESOLUTION.—

"(A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then—

"(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

"(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

"(B)(i) In the Senate, a joint resolution under this paragraph shall be privileged. It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

"(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

"(C) No amendment to a joint resolution considered under this paragraph shall be in order in the Senate.

"(b) SUSPENSION OF SEQUESTRATION PROCEDURES.—Upon the enactment of a declaration of war or a joint resolution described in subsection (a)—

"(1) the subsequent issuance of any sequestration report or any sequestration order is precluded;

"(2) sections 302(f), 310(d), 311(a), and title VI of the Congressional Budget Act of 1974 are suspended; and

"(3) section 1103 of title 31, United States Code, is suspended.

"(c) RESTORATION OF SEQUESTRATION PROCEDURES.—

"(1) In the event of a suspension of sequestration procedures due to a declaration of war, then, effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

"(2) In the event of a suspension of sequestration procedures due to the enactment of a joint resolution described in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.

"SEC. 258A. MODIFICATION OF PRESIDENTIAL ORDER.

"(a) INTRODUCTION OF JOINT RESOLUTION.—At any time after the Director of OMB issues a final sequestration report under section 254 for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 254 or provide an alternative to reduce the deficit for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

"(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS.—

"(1) REFERRAL TO COMMITTEE.—A joint resolution introduced in the Senate under subsection (a) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

"(2) CONSIDERATION IN THE SENATE.—On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(3) DEBATE IN THE SENATE.—

"(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all

debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order, and a motion to recommit the joint resolution is not in order.

"(C)(i) No amendment that is not germane to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(4) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

"(5) APPEALS.—Appeals from the decisions of the Chair shall be decided without debate.

"(6) CONFERENCE REPORTS.—In the Senate, points of order under titles III, IV, and VI of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(7) RESOLUTION FROM OTHER HOUSE.—If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

"(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

"(B) With respect to a joint resolution introduced under subsection (a) in the Senate—

"(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

"(8) SENATE ACTION ON HOUSE RESOLUTION.—If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.".

(g) Such Act is amended by inserting after section 258A the following:

"SEC. 258B. FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES.

"(a) Subject to subsections (b), (c), and (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 254.

"(b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

"(c) The President may not exercise the authority provided by this paragraph for a fiscal year unless—

"(1) the President submits a single report to Congress specifying, for each account, the detailed changes proposed to be made for such fiscal year pursuant to this section;

"(2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

"(3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

"(d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

"(e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: 'That the report of the President as submitted on [Insert Date] under section 258B is hereby approved.'.

"(2) The title of the joint resolution shall be 'Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985.'.

"(3) Such joint resolution shall not contain any preamble.

"(f)(1) A joint resolution introduced in the Senate under subsection (d) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane or relevant to the provisions of the joint resolution or to the order issued under section 254. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense).

"(2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

"(g)(1) In the Senate, debate on a joint resolution introduced under subsection (d), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

"(2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

"(h)(1) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

"(2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains mathematical consistency. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

"(3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subsection (d) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

"(4) For purposes of the application of paragraph (3), the level of outlays and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(i) Immediately following the conclusion of the debate on a joint resolution introduced under subsection (d), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under subsection (h), the vote on final passage of the joint resolution shall occur.

"(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (d) shall be decided without debate.

"(k) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

"(l) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:

"(1) The joint resolution of the House of Representatives shall not be referred to a committee.

"(2) With respect to a joint resolution introduced under subsection (d) in the Senate—

"(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

"(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

"(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

"(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

"(m) If the Senate receives from the House of Representatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

"SEC. 258C. SPECIAL RECONCILIATION PROCESS.

"(a) REPORTING OF RESOLUTIONS AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE.—

"(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.—After the submission of an OMB sequestration update report under section 254 that envisions a sequestration under section 252 or 253, each standing committee of the Senate may, not later than October 10, submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

"(2) INITIAL BUDGET COMMITTEE ACTION.—After the submission of such a report, the Committee on the Budget of the Senate may, not later than October 15, report to the Senate a resolution. The resolution may affirm the impact of the order envisioned by such report, in whole or in part. To the extent that any part is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at

least the total level of deficit reduction contained in those sections which are not affirmed.

"(3) RESPONSE OF COMMITTEES.—Committees instructed pursuant to paragraph (2), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in paragraph (2) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

"(4) BUDGET COMMITTEE ACTION.—Upon receipt of the recommendations received in response to a resolution referred to in paragraph (2), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in paragraph (2) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

"(5) POINT OF ORDER.—It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under paragraph (4) with respect to a fiscal year, any amendment thereto, or any conference report thereon if—

"(A) the enactment of such bill or resolution as reported;

"(B) the adoption and enactment of such amendment; or

"(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, unless the low-growth report submitted under section 254 projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

"(6) TREATMENT OF CERTAIN AMENDMENTS.—In the Senate, an amendment which adds to a resolution reported under paragraph (2) an instruction of the type referred to in such paragraph shall be in order during the consideration of such resolution if such amendment would be in order but for the fact that it would be held to be non-germane on the basis that the instruction constitutes new matter.

"(7) DEFINITION.—For purposes of paragraphs (1), (2), and (3), the term "day" shall mean any calendar day on which the Senate is in session.

"(b) PROCEDURES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

"(2) LIMIT ON DEBATE.—Debate in the Senate on any resolution reported pursuant to subsection (a)(2), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

"(3) LIMITATION ON AMENDMENTS.—Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

"(4) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE.—Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

"(5) DEFINITION.—For purposes of this subsection, the term 'resolution' means a simple, joint, or concurrent resolution.".

PART II—RELATED AMENDMENTS

SEC. 13111. TEMPORARY AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

Title VI of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE VI—BUDGET AGREEMENT ENFORCEMENT PROVISIONS

"SEC. 601. DEFINITIONS AND POINT OF ORDER.

"(a) DEFINITIONS.—As used in this title and for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985:

"(1) MAXIMUM DEFICIT AMOUNT.—The term 'maximum deficit amount' means—

"(A) with respect to fiscal year 1991, $327,000,000,000;

"(B) with respect to fiscal year 1992, $317,000,000,000;

"(C) with respect to fiscal year 1993, $236,000,000,000;

"(D) with respect to fiscal year 1994, $102,000,000,000; and

"(E) with respect to fiscal year 1995, $83,000,000,000;

as adjusted in strict conformance with sections 251, 252, and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(2) DISCRETIONARY SPENDING LIMIT.—The term 'discretionary spending limit' means—

"(A) with respect to fiscal year 1991—

"(i) for the defense category: $288,918,000,000 in new budget authority and $297,660,000,000 in outlays;

"(ii) for the international category: $20,100,000,000 in new budget authority and $18,600,000,000 in outlays; and

"(iii) for the domestic category: $182,700,000,000 in new budget authority and $198,100,000,000 in outlays;

"(B) with respect to fiscal year 1992—

"(i) for the defense category: $291,643,000,000 in new budget authority and $295,744,000,000 in outlays;

"(ii) for the international category: $20,500,000,000 in new budget authority and $19,100,000,000 in outlays; and

"(iii) for the domestic category: $191,300,000,000 in new budget authority and $210,100,000,000 in outlays;

"(C) with respect to fiscal year 1993—

"(i) for the defense category: $291,785,000,000 in new budget authority and $292,686,000,000 in outlays;

"(ii) for the international category: $21,400,000,000 in new budget authority and $19,600,000,000 in outlays; and

"(iii) for the domestic category: $198,300,000,000 in new budget authority and $221,700,000,000 in outlays;

"(D) with respect to fiscal year 1994, for the discretionary category: $510,800,000,000 in new budget authority and $534,800,000,000 in outlays; and

"(E) with respect to fiscal year 1995, for the discretionary category: $517,700,000,000 in new budget authority and $540,800,000,000 in outlays;

as adjusted in strict conformance with section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE, INTERNATIONAL, AND DOMESTIC DISCRETIONARY SPENDING.—

"(1) Except as provided in paragraph (3), it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995 (or amendment, motion, or conference report on such a resolution), or any appropriations bill or resolution (or amendment, motion, or conference report on such an appropriations bill or resolution) for fiscal year 1992 or 1993 that would exceed the allocations in this section or the suballocations made under section 602(b) based on these allocations.

"(3) For purposes of this subsection, the levels of new budget authority and outlays for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

"(4) This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

"SEC. 602. COMMITTEE ALLOCATIONS AND ENFORCEMENT.

" (a) COMMITTEE SPENDING ALLOCATIONS.—

"(1) HOUSE OF REPRESENTATIVES.—

"(A) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include allocations, consistent with the resolution recommended in the conference report, of the appropriate levels (for each fiscal year covered by that resolution and a total for all such years) of—

"(i) total new budget authority,

"(ii) total entitlement authority, and

"(iii) total outlays;

among each committee of the House of Representatives that has jurisdiction over legislation providing or creating such amounts.

"(B) NO DOUBLE COUNTING.—Any item allocated to one committee of the House of Representatives may not be allocated to another such committee.

"(C) FURTHER DIVISION OF AMOUNTS.—The amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations for each fiscal year shall be further divided between discretionary and mandatory amounts or programs, as appropriate.

"(2) SENATE ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include an allocation, consistent with the resolution recommended in the conference report, of the appropriate levels of—

"(A) total new budget authority;

"(B) total outlays; and

"(C) social security outlays;

among each committee of the Senate that has jurisdiction over legislation providing or creating such amounts.

"(3) AMOUNTS NOT ALLOCATED.—(A) In the House of Representatives, if a committee receives no allocation of new budget authority, entitlement authority, or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, entitlement authority, or outlays.

"(B) In the Senate, if a committee receives no allocation of new budget authority, outlays, or social security outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, outlays, or social security outlays.

"(b) SUBALLOCATIONS BY COMMITTEES.—

"(1) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES.—As soon as practicable after a budget resolution is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a)(1)(A) or (a)(2) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this paragraph.

"(2) SUBALLOCATIONS BY OTHER COMMITTEES OF THE SENATE.—Each other committee of the Senate to which an allocation under subsection (a)(2) is made in the joint explanatory statement may subdivide each amount allocated to it under subsection (a) among its subcommittees or among programs over which it has jurisdiction and shall promptly report any such suballocations to the Senate. Section 302(c) shall not apply in the Senate to committees other than the Committee on Appropriations.

"(c) APPLICATION OF SECTION 302(f) TO THIS SECTION.—In fiscal years through 1995, reference in section 302(f) to the appropriate allocation made pursuant to section 302(b) for a fiscal year shall, for purposes of this section, be deemed to be a reference to any allocation made under subsection (a) or any sub-allocation made under subsection (b), as applicable, for the fiscal year of the resolution or for the total of all fiscal years made by the joint explanatory statement accompanying the applicable concurrent resolution on the budget. In the House of Representatives, the preceding sentence shall not apply with respect to fiscal year 1991.

"(d) APPLICATION OF SUBSECTIONS (a) AND (b) TO FISCAL YEARS 1992 TO 1995.—In the case of concurrent resolutions on the budget for fiscal years 1992 through 1995, allocations shall be made under subsection (a) instead of section 302(a) and shall be made under subsection (b) instead of section 302(b). For those fiscal years, all references in sections 302(c), (d), (e), (f), and (g) to section 302(a) shall be deemed to be to subsection (a) (including revisions made under section 604) and all such references to section 302(b) shall be deemed to be to subsection (b) (including revisions made under section 604).".

"(e) PAY-AS-YOU-GO EXCEPTION IN THE HOUSE.—Section 302(f)(1) and, after April 15 of any calendar year section 303(a), shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget—

"(1) the enactment of such bill or resolution as reported;

"(2) the adoption and enactment of such amendment; or

"(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not increase the deficit for any such fiscal year, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay-as-you-go procedures under section 301(b)(8) if included in that concurrent resolution.

"(2) REVISED ALLOCATIONS.—

"(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under section 302(f)(1) but for the exception provided in paragraph (1), the chairman of the Committee on the Budget of the House of Representatives may file with the

House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

"(B) such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

"SEC. 603. CONSIDERATION OF LEGISLATION BEFORE ADOPTION OF BUDGET RESOLUTION FOR THAT FISCAL YEAR.

"(a) ADJUSTING SECTION ALLOCATION OF DISCRETIONARY SPENDING.—If a concurrent resolution on the budget is not adopted by April 15, the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, a section 602(a) allocation to the Committee on Appropriations consistent with the discretionary spending limits contained in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code. Such allocation shall include the full allowance specified under section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(b) As soon as practicable after a section 602(a) allocation is submitted under this section, the Committee on Appropriations shall make suballocations and promptly report those suballocations to the House of Representatives.

"SEC. 604. RECONCILIATION DIRECTIVES REGARDING PAY-AS-YOU-GO REQUIREMENTS.

"(a) INSTRUCTIONS TO EFFECTUATE PAY-AS-YOU-GO IN THE HOUSE OF REPRESENTATIVES.—If legislation providing for a net reduction in revenues in any fiscal year (that, within the same measure, is not fully offset in that fiscal year by reductions in direct spending) is enacted, the Committee on the Budget of the House of Representatives may report, within 15 legislative days during a Congress, a pay-as-you-go reconciliation directive in the form of a concurrent resolution—

"(1) specifying the total amount by which revenues sufficient to eliminate the net deficit increase resulting from that legislation in each fiscal year are to be changed; and

"(2) directing that the committees having jurisdiction determine and recommend changes in the revenue law, bills, and resolutions to accomplish a change of such total amount.

"(b) CONSIDERATION OF PAY-AS-YOU-GO RECONCILIATION LEGISLATION IN THE HOUSE OF REPRESENTATIVES.—In the House of Representatives, subsections (b) through (d) of section 310 shall apply in the same manner as if the reconciliation directive described in subsection (a) were a concurrent resolution on the budget.

"SEC. 605. APPLICATION OF SECTION 311; POINT OF ORDER.

"(a) APPLICATION OF SECTION 311(a).—(1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority or total budget outlays or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal

year and to the total of the appropriate level for that year and the 4 succeeding years.

"(2) In the Senate, in the application of section 311(a)(2) to any bill, resolution, motion, or conference report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

"(b) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for the first fiscal year covered by that resolution that exceeds the maximum deficit amount specified for such fiscal year in section 601(a).

"SEC. 606. 5-YEAR BUDGET RESOLUTIONS; BUDGET RESOLUTIONS MUST CONFORM TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.

"(a) 5-YEAR BUDGET RESOLUTIONS.—In the case of any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995, that resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of the calendar year in which it is reported and for each of the 4 succeeding fiscal years for the matters described in section 301(a).

"(b) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—It shall not be in order in the House of Representatives to consider any concurrent resolution on the budget for a fiscal year or conference report thereon under section 301 or 304 that exceeds the maximum deficit amount for each fiscal year covered by the concurrent resolution or conference report as determined under section 601(a), including possible revisions under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

"(c) POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year under section 301, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for the first fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 601(a), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal years as determined under section 601(a).

"(d) ADJUSTMENTS.—(1) Notwithstanding any other provision of law, concurrent resolutions on the budget for fiscal years 1992, 1993, 1994, and 1995 under section 301 or 304 may set forth levels consistent with allocations increased by—

"(A) amounts not to exceed the budget authority amounts in section 251(b)(2)(E)(i) and (ii) of the Balanced Budget and Emer-

gency Deficit Control Act of 1985 and the composite outlays per category consistent with them; and

"(B) the budget authority and outlay amounts in section 251(b)(1) of that Act.

"(2) For purposes of congressional consideration of provisions described in sections 251(b)(2)(A), 251(b)(2)(B), 251(b)(2)(C), 251(b)(2)(D), and 252(e), determinations under sections 302, 303, and 311 shall not take into account any new budget authority, new entitlement authority, outlays, receipts, or deficit effects in any fiscal year of those provisions.

"SEC. 607. EFFECTIVE DATE.

This title shall take effect upon its date of enactment and shall apply to fiscal years 1991 to 1995.".

SEC. 13112. CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974.—

(1) TABLE OF CONTENTS.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended to reflect the new section numbers and headings resulting from amendments made by this title.

(2) SECTION 3.—Section 3 of such Act is amended—

(A) by striking paragraphs (6), (7), and (8) and inserting the following:

"(6) The term 'deficit' means, with respect to a fiscal year, the amount by which outlays exceeds receipts during that year.

"(7) The term 'surplus' means, with respect to a fiscal year, the amount by which receipts exceeds outlays during that year.

"(8) The term 'government-sponsored enterprise' means a corporate entity created by a law of the United States that—

"(A)(i) has a Federal charter authorized by law;

"(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

"(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

"(iv) is a financial institution with power to—

"(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

"(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

"(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

"(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

"(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.".

(3) SECTION 202.—Section 202(a)(1) and the second sentence of 202(f)(1) of such Act are amended by striking "budget authority" and inserting "new budget authority".

(4) SECTION 300.—Section 300 of such Act is amended by striking "First Monday after January 3" and by inserting "First Monday in February".

(5) SECTION 301(d).—Section 301(d) of such Act is amended by striking "On or before February 25 of each year" and inserting "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code".

(6) SECTION 302(a).—Section 302(a)(2) of such Act is amended by striking "the House of Representatives and".

(7) SECTION 302(f).—Section 302(f)(2) of such Act is amended—

(A) by inserting after "in excess of" the following: "(A)";

(B) by striking "under subsection (b)" and inserting "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b)"; and

(C) by inserting at the end the following: "Subparagraph (A) shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.".

(8) SECTION 304.—Section 304 of such Act is amended by striking subsection (b) and by striking "(c)" and inserting "(b)".

(9) SECTION 310(g).—Section 310(g) of such Act is amended by striking "resolution pursuant" and inserting "joint resolution pursuant" and by striking "254(b)" and inserting "258C".

(10) SECTION 311(a).—Section 311(a) of such Act is amended by striking "or, in the Senate" and all that follows thereafter through "paragraph (2) of such subsection" and inserting "except in the case that a declaration of war by the Congress is in effect".

(11) SECTION 904(a).—Section 904(a) of such Act is amended by striking "and" after "III", by inserting ", V, and VI (except section 601(a))" after "IV", and by striking "606,".

(b) CONFORMING AMENDMENT TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.—Subsection (b) of section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

"(b) EXPIRATION.—Part C of this title, section 271(b) of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 1995.".

(c) CONFORMING AMENDMENTS TO SECTION 1105 OF TITLE 31, UNITED STATES CODE.—

(1) SECTION 1105(a).—Section 1105(a) of title 31, United States Code, is amended by striking "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" and by inserting "On or after the first Monday in January but not later than the first Monday in February of each year."

(2) SECTION 1105(f).—Section 1105(f) of title 31, United States Code, is amended to read as follows:

"(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.".

(d) CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES.—

(1) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of the Rules of the House of Representatives is amended by striking "(a)(4)".

(2) CROSS-REFERENCE.—Clause 1(e)(2) of rule X of Rules of the House of Representatives is amended by striking "Act, and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985" and inserting "Act".

(3) JURISDICTION.—Clause 1(j) of rule X of the Rules of the House of Representatives is amended by inserting after paragraph (6) the following new paragraph:

"(7) Measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(4) ALLOCATIONS.—Clause 4(h) of rule X of the Rules of the House of Representatives is amended by inserting "or section 602 (in the case of fiscal years 1991 through 1995)" after "section 302".

(5) MULTIYEAR REVENUE ESTIMATES.—Clause 7(a)(1) of rule XIII of the Rules of the House of Representatives is amended by striking ", except that, in the case of measures affecting the revenues, such reports shall require only an estimate of the gain or loss in revenues for a one-year period".

(e) CONFORMING AMENDMENT TO THE FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978.—Section 103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a) is amended by striking "transmit to the Congress during the first twenty days of each regular session" and inserting "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, United States Code".

(f) FILING REQUIREMENT.—After the convening of the One Hundred Second Congress, the chairman of the Committee on the Budget of the Senate shall file with the Senate revised and outyear budget aggregates and allocations under section 602(a) consistent with this Act.

Subtitle B—Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

SEC. 13201. CREDIT ACCOUNTING.

(a) CREDIT ACCOUNTING.—Title V of the Congressional Budget Act of 1974 is amended to read as follows:

"TITLE V—CREDIT REFORM

"SEC. 500. SHORT TITLE.

"This title may be cited as the 'Federal Credit Reform Act of 1990'.

"SEC. 501. PURPOSES.

"The purposes of this title are to—

"(1) measure more accurately the costs of Federal credit programs;

"(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

"(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

"(4) improve the allocation of resources among credit programs and between credit and other spending programs.

"SEC. 502. DEFINITIONS.

"For purposes of this title—

"(1) The term 'direct loan' means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

"(2) The term 'direct loan obligation' means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

"(3) The term 'loan guarantee' means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

"(4) The term 'loan guarantee commitment' means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

"(5)(A) The term 'cost' means the estimated long-term cost to the Government of a direct loan or loan guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

"(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows:

"(i) loan disbursements;

"(ii) repayments of principal; and

"(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties and other recoveries.

"(C) The cost of a loan guarantee shall be the net present value when a guaranteed loan is disbursed of the cash flow from—

"(i) estimated payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments, and

"(ii) the estimated payments to the Government including origination and other fees, penalties and recoveries.

"(D) Any Government action that alters the estimated net present value of an outstanding direct loan or loan guarantee (except modifications within the terms of existing contracts or through other existing authorities) shall be counted as a change in the cost of that direct loan or loan guarantee. The calculation of such changes shall be based on the estimated present value of the direct loan or loan guarantee at the time of modification.

"(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the direct loan or loan guarantee for which the estimate is being made.

"(6) The term 'credit program account' means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

"(7) The term 'financing account' means the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

"(8) The term 'liquidating account' means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

"(9) The term 'Director' means the Director of the Office of Management and Budget.

"SEC. 503. OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.

"(a) IN GENERAL.—For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan or loan guarantee programs.

"(b) DELEGATION.—The Director may delegate to agencies authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

"(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.—In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

"(d) IMPROVING COST ESTIMATES.—The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan and loan guarantee programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

"(e) HISTORICAL CREDIT PROGRAM COSTS.—The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

"(f) ADMINISTRATIVE COSTS.—The Director and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs under credit reform accounting.

"SEC. 504. BUDGETARY TREATMENT.

"(a) PRESIDENT'S BUDGET.—Beginning with fiscal year 1992, the President's budget shall reflect the costs of direct loan and loan guarantee programs. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request.

"(b) APPROPRIATIONS REQUIRED.—Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 1992 and thereafter only to the extent that—

"(1) appropriations of budget authority to cover their costs are made in advance;

"(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program is enacted; or

"(3) authority is otherwise provided in appropriation Acts.

"(c) EXEMPTION FOR MANDATORY PROGRAMS.—Subsection (b) shall not apply to a direct loan or loan guarantee program that—

"(1) constitutes an entitlement (such as the guaranteed student loan program or the veterans' home loan guaranty program); or

"(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

"(d) BUDGET ACCOUNTING.—

"(1) The authority to incur new direct loan obligations, make new loan guarantee commitments, or directly or indirectly alter the costs of outstanding direct loans and loan guarantees shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account to pay to the financing account.

"(2) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (1) shall be paid from the credit program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

"(3) All collections and payments of the financing accounts shall be a means of financing.

"(e) MODIFICATIONS.—A direct loan obligation or loan guarantee commitment shall not be modified in a manner that increases its cost unless budget authority for the additional cost is appropriated,

or is available out of existing appropriations or from other budgetary resources.

"(f) REESTIMATES.—When the estimated cost for a group of direct loans or loan guarantees for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

"(g) ADMINISTRATIVE EXPENSES.—All funding for an agency's administration of a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

"SEC. 505. AUTHORIZATIONS.

"(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations or loan guarantee commitments, such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

"(b) AUTHORIZATION FOR FINANCING ACCOUNTS.—In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

"(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.—The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supercede or override the authority of the head of a Federal agency to administer and operate a direct loan or loan guarantee program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

"(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—If funds in liquidating accounts are insufficient to satisfy the obligations and commitments of said accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

"(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.—There are authorized to be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

"(f) REINSURANCE.—Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

"(g) ELIGIBILITY AND ASSISTANCE.—Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

"SEC. 506. TREATMENT OF DEPOSIT INSURANCE AND AGENCIES AND OTHER INSURANCE PROGRAMS.

"(a) IN GENERAL.—

"(1) This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

"(2) The Director and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis on the same basis as loan guarantees, or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

"(3) For the purposes of paragraph (2), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

"SEC. 507. EFFECT ON OTHER LAWS.

"(a) EFFECT ON OTHER LAWS.—This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee program.

"(b) CREDITING OF COLLECTIONS.—Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.".

(b) CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 3(2) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by title V".

(2) POINT OF ORDER FOR FISCAL YEAR 1991.—Effective January 1, 1991, for fiscal year 1991 only, section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting after "new budget authority" the following: "or new credit authority".

(3) SUNSET OF POINT OF ORDER IN FISCAL YEAR 1992.—Effective for fiscal years beginning after September 30, 1991, section 302 of the Congressional Budget Act is amended—

(A) in subsection (a)(1)—

(i) by striking "total entitlement authority, and total credit authority" and inserting "and total entitlement authority";

(ii) by striking "such entitlement authority, or such credit authority" and inserting "or such entitlement authority"; and

(iii) by striking "entitlement authority, and credit authority" and inserting "and entitlement authority";

(B) in subsection (a)(2), by striking "total budget outlays, total new budget authority and new credit authority" and inserting "total budget outlays and total new budget authority";

(C) in subsection (b)(1)(A), by striking "budget outlays, new budget authority, and new credit authority" and inserting "budget outlays and new budget authority";

(D) in subsection (c)—

(i) in paragraph (1), by inserting "or" at the end thereof; and

(ii) by striking "or (3) new credit authority for a fiscal year;"; and

(E) in subsection (f)(1)—

(i) by striking "year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year," and inserting "year or new entitlement authority effective during such fiscal year,"; and

(ii) by striking "authority, new entitlement authority, or new credit authority" and inserting "authority or new entitlement authority".

SEC. 13202. CODIFICATION OF PROVISION REGARDING REVENUE ESTIMATES.

(a) REDESIGNATION.—Section 201 of the Congressional Budget Act of 1974 is amended by redesignating subsection (f) as subsection (g).

(b) TRANSFER.—The text of section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 is transferred to section 201 of the Congressional Budget Act of 1974 and is designated as subsection (g).

(c) CONFORMING CHANGES.—Section 201(g) of the Congressional Budget Act of 1974 (as redesignated by subsection (b)) is amended by—

(1) striking "this title and the Congressional Budget and Impoundment Control Act of 1974" and inserting "this Act"; and

(2) inserting "REVENUE ESTIMATES.—" before the first sentence.

SEC. 13203. DEBT INCREASE AS MEASURE OF DEFICIT; DISPLAY OF FEDERAL RETIREMENT TRUST FUND BALANCES.

Section 301(b) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(5) include a heading entitled 'Debt Increase as Measure of Deficit' in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years; and

"(6) include a heading entitled 'Display of Federal Retirement Trust Fund Balances' in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds.".

SEC. 13204. PAY-AS-YOU-GO PROCEDURES.

Section 301(b) of the Congressional Budget Act of 1974 (as amended by section 13203) is further amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(7) set forth pay-as-you-go procedures for the Senate whereby—

"(A) budget authority and outlays may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concurrent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

"(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

"(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

"(D) the appropriate committee shall report appropriately revised allocations pursuant to section 302(b) to carry out this paragraph; and

"(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives.".

SEC. 13205. AMENDMENTS TO SECTION 303.

(a) IN GENERAL.—Section 303(a) of the Congressional Budget Act of 1974 is amended—

(1) by repealing paragraph (5),

(2) by striking "or" at the end of paragraph (4),

(3) by inserting after paragraph (4) the following new paragraphs:

"(5) in the Senate only, new spending authority (as defined in section 401(c)(2)) for a fiscal year; or

"(6) in the Senate only, outlays,"; and

(4) by inserting after "the concurrent resolution on the budget for such fiscal year" the following: "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)".

(b) EXCEPTIONS.—Section 303(b) of such Act is amended—

(1) by striking "Subsection (a)" and inserting "(1) In the House of Representatives, subsection (a)" and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(2) by inserting at the end the following new paragraph:

"(2) In the Senate, subsection (a) does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.".

SEC. 13206. AMENDMENTS TO SECTION 308.

(a) REPORTS AND SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS.—(1) Section 308(a)(1) of that Act is amended—

(1) in the matter preceding subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)";

(2) in subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)"; and

(3) in subparagraph (C) by inserting after "such fiscal year" the following: "(or fiscal years)".

(b) CONFORMING AMENDMENT.—Section 308(a)(2) of that Act is amended by inserting after "fiscal year" the following: "(or fiscal years)".

(c) ADDITIONAL CONFORMING AMENDMENT.—Section 308(b)(1) of that Act is amended—

(1) by striking "for a fiscal year" in the first sentence and inserting "for each fiscal year covered by a concurrent resolution on the budget"; and

(2) by striking "such fiscal year" in the second sentence and inserting "the first fiscal year covered by the appropriate concurrent resolution".

SEC. 13207. STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER.

(a) IN GENERAL.—The Congressional Budget Act of 1974 is amended—

(1)(A) in section 302(c), by striking "bill or resolution, or amendment thereto" and inserting "bill, joint resolution, amendment, motion, or conference report";

(B) in section 302(f)(1), by inserting "joint" before "resolution" the second and third places it appears and in section 302(f)(2), by striking "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report";

(C) in section 303(a), by striking "bill or resolution (or amendment thereto)" and inserting "bill, joint resolution, amendment, motion, or conference report";

(D) in section 306, by striking "bill or resolution, and no amendment to any bill or resolution" and inserting "bill, resolution, amendment, motion, or conference report";

(E) in section 311(a), by—

(i) striking "bill, resolution, or amendment" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any conference report on any such bill or resolution";

(F) in section 401(a), by—

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "(or any amendment which provides such new spending authority)";

(G) in section 401(b)(1), by—

(i) striking "bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report, as reported to its House"; and

(ii) striking "(or any amendment which provides such new spending authority)"; and

(H) in section 402(a), by—

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any amendment"; and

(2) in section 302(f)(2), by striking "outlays or new budget authority" and inserting "outlays, new budget authority, or new spending authority (as defined in section 401(c)(2))".

(b) POINTS OF ORDER IN THE SENATE.—

(1) Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

"EFFECTS OF POINTS OF ORDER

"SEC. 312. POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.

"(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE.—In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.".

(2) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 311 the following new item:

"Sec. 312. Effect of points of order.".

(c) ADJUSTMENT IN THE SENATE OF ALLOCATIONS AND AGGREGATES TO REFLECT CHANGES PURSUANT TO SECTION 310(c).—Section 310(c) of the Congressional Budget Act of 1974 is amended by—

(1) inserting "(1)" before "Any committee";

(2) redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) inserting at the end the following new paragraph:

"(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

"(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.".

(d) RECONCILIATION INSTRUCTIONS.—Section 310(a)(4) of the Congressional Budget Act of 1974 is amended by inserting after "(3)" the following: "(including a direction to achieve deficit reduction)".

SEC. 13208. STANDARDIZATION OF ADDITIONAL DEFICIT CONTROL PROVISIONS.

(a) Section 904 of the Congressional Budget Act of 1974 is amended—

(1) by amending subsection (c) to read as follows:

"(c) WAIVER.—Sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. Sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. "; and

(2) in subsection (d) by inserting at the end the following: "An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f),

311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985".

(b) Section 275(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subparagraph (C), by striking the final word "and";

(2) in subparagraph (D), by striking the final period and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(E) the second sentence of section 904(c) of the Congressional Budget and Impoundment Control Act of 1974 and the final sentence of section 904(d) of that Act."

SEC. 13209. CODIFICATION OF PRECEDENT WITH REGARD TO CONFERENCE REPORTS AND AMENDMENTS BETWEEN HOUSES.

Section 305(c) of the Congressional Budget Act 1974 is amended—

(1) in paragraph (1)—

(A) by striking the first sentence; and

(B) by inserting after "consideration of the conference report" the following: "on any concurrent resolution on the budget (or a reconciliation bill or resolution)"; and

(2) in paragraph (2), by inserting "(or a message between Houses)" after "conference report" each place it appears.

SEC. 13210. SUPERSEDED DEADLINES AND CONFORMING CHANGES.

The Congressional Budget Act of 1974 is amended—

(1) in section 305, by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(2) in section 310(f), by striking paragraph (1) and by striking "(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.—".

SEC. 13211. DEFINITIONS.

(a) BUDGET AUTHORITY.—Section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 is amended to read as follows:

"(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

"(A) IN GENERAL.—The term 'budget authority' means the authority provided by Federal law to incur financial obligations, as follows:

"(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

"(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

"(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

"(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

"(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supple-

mentary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

"(C) NEW BUDGET AUTHORITY.—The term 'new budget authority' means, with respect to a fiscal year—

"(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

"(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective for fiscal year 1992 and subsequent fiscal years.

SEC. 13212. SAVINGS TRANSFERS BETWEEN FISCAL YEARS.

Section 202 of Public Law 100-119 is repealed.

SEC. 13213. CONFORMING CHANGE TO TITLE 31.

(a) LIMITATIONS ON EXPENDING AND OBLIGATING.—Section 1341(a)(1) of title 31, United States Code, is amended—

(1) in subparagraph (A), by striking the final word "or";

(2) in subparagraph (B), by striking the final period and inserting a semicolon; and

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

"(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

"(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) LIMITATION ON VOLUNTARY SERVICES.—Section 1342 of title 31, United States Code, is amended by inserting at the end the following: "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.".

SEC. 13214. THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.

(a) THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.—Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)—

(A) by inserting after "(a)" the following: "IN GENERAL.—";

(B) by inserting after "1974" the following: "(whether that bill or resolution originated in the Senate or the

House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985";

(2) in subsection (d) by inserting after "(d)" the following: "EXTRANEOUS PROVISIONS.—";

(3) in subsection (d)(1)(A) by inserting before the semicolon "(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph)";

(4) in subsection (d)(1)(D) by striking "and" after the semicolon;

(5) in subsection (d)(1)(E), by striking the period at the end and inserting "; and";

(6) in subsection (d)(1) by adding at the end the following new subparagraph:

"(F) a provision shall be considered extraneous if it violates section 310(g).";

(7) in subsection (d)(2), by inserting after "A" the first place it appears the following: "Senate-originated"; and

(8) by adding at the end the following new subsections:

"(e) EXTRANEOUS MATERIALS.—Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

"(f) GENERAL POINT OF ORDER.—Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

"(g) DETERMINATION OF LEVELS.—For purposes of this section, the levels of new budget authority, budget outlays, new entitlement authority, and revenues for a fiscal year shall be determined on the

basis of estimates made by the Committee on the Budget of the Senate.".

(b) TRANSFER OF BYRD RULE.—(1) Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by subsection (a), is transferred to the end of title III of the Congressional Budget Act of 1974, and designated as section 313 of that Act.

(2) Section 313 of the Congressional Budget Act of 1974 is amended by—

(A) adding at the beginning the following center heading:

"EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION";

(B) striking subsection (b), subsection (c), and the last sentence of subsection (a); and

(C) redesignating subsections (d) (e), (f), and (g) as subsections (b), (c), (d) and (e), respectively.

(3) Subsection (a) of the first section of Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) is enacted as subsection (c) of section 313 of the Congressional Budget Act of 1974.

(4) Section 313 of the Congressional Budget Act of 1974 is amended—

(A) in subsections (a), (b)(1)(A), and (c), by striking "of the Congressional Budget Act of 1974";

(B) in subsection (a), by striking "(d)" and inserting "(b)";

(C) in subsection (b)(2)(C), by adding "or" at the end thereof;

(D) in subsection (c), by striking "when" and inserting "When";

(E) in subsection (c)(1), by striking "(d)(1)(A) or (d)(1)(D) of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985" and inserting "(b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F)"; and

(F) in subsection (c)(2), by striking "this resolution" and inserting "this subsection".

(5) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item for section 312 the following new item:

"Sec. 313. Extraneous matter in reconciliation legislation.".

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.".

SEC. 13302. PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL.—It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment—

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration), (B) such net increase, together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes

exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under consideration), (B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION.—In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means—

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to section 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would become effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

SEC. 13303. SOCIAL SECURITY FIREWALL AND POINT OF ORDER IN THE SENATE.

(a) CONCURRENT RESOLUTION ON THE BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting a semicolon; and by adding after paragraph (5) the following new paragraphs:

"(6) For purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

"(7) For purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.".

(b) POINT OF ORDER.—Section 301(i) of the Congressional Budget Act of 1974 is amended to read as follows:

"(i) It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported to the Senate that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.".

(c) COMMITTEE ALLOCATIONS.—

(1) Section 302(a)(2) of the Congressional Budget Act of 1974 is amended by inserting after "appropriate levels of" the following: "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,".

(2) Section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting before the period the following: "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years".

(3) Section 302(f)(2) of such Act is further amended by adding at the end the following: "In applying this paragraph—

"(A) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;

"(B) estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appro-

priate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).".

(d) POINT OF ORDER UNDER SECTION 311.—(1) Subsection (a) of section 311(a) of the Congressional Budget Act of 1974 is redesignated as subsection (a)(1) and paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(2) Section 311(a) of such Act is amended by inserting at the end the following new paragraph:

"(2)(A) After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority or total budget outlays or social security outlays set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

"(B) In applying this paragraph—

"(i)(I) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues specified in the most recently agreed to concurrent resolution on the budget;

"(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

"(ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with

respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

"(II) estimated social security revenues shall be deemed to be reduced by the excess of estimated social security outlays (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

"(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b)."

SEC. 13304. REPORT TO THE CONGRESS BY THE BOARD OF TRUSTEES OF THE OASDI TRUST FUNDS REGARDING THE ACTUARIAL BALANCE OF THE TRUST FUNDS.

Section 201(c) of the Social Security Act (42 U.S.C. 401(c)) is amended by inserting after the first sentence following clause (5) the following new sentence: "Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).".

SEC. 13305. EXERCISE OF RULEMAKING POWER.

This title and the amendments made by it are enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as a part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 13306. EFFECTIVE DATE.

Sections 13301, 13302, and 13303 and any amendments made by such sections shall apply with respect to fiscal years beginning on or after October 1, 1990. Section 13304 shall be effective for annual reports of the Board of Trustees issued in or after calendar year 1991.

Subtitle D—Treatment of Fiscal Year 1991 Sequestration

SEC. 13401. RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—Upon the enactment of this Act, the orders issued by the President on August 25, 1990, and October 15, 1990, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

(b) AMOUNTS RESTORED.—Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequestrable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

(c) FURLOUGHED EMPLOYEES.—(1) Federal employees furloughed as a result of the lapse in appropriations from midnight October 5, 1990, until the enactment of House Joint Resolution 666 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

(2) All obligations incurred in anticipation of the appropriations made and authority granted by House Joint Resolution 666 for the purposes of maintaining the essential level of activity to protect life and property and bringing about orderly termination of government functions are hereby ratified and approved if otherwise in accord with the provisions of that Act.

Subtitle E—Government-sponsored Enterprises

SEC. 13501. FINANCIAL SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES.

(a) DEFINITION.—For purposes of this section, the terms "Government-sponsored enterprise" and "GSE" mean the Farm Credit System (including the Farm Credit Banks, Banks for Cooperatives, and Federal Agricultural Mortgage Corporation), the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.

(b) TREASURY DEPARTMENT STUDY AND PROPOSED LEGISLATION.—

(1) The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

(2) The study shall include an objective assessment of the financial soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing.

(c) CONGRESSIONAL BUDGET OFFICE STUDY.—

(1) The Congressional Budget Office shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs.

(2) The study shall include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk

management, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing. The study shall also include an analysis of alternative models for oversight of GSEs and of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

(d) ACCESS TO RELEVANT INFORMATION.—

(1) For the studies required by this section, each GSE shall provide full and prompt access to the Secretary of the Treasury and the Director of the Congressional Budget Office to its books and records and other information requested by the Secretary of the Treasury or the Director of the Congressional Budget Office.

(2) In preparing the studies required by this section, the Secretary of the Treasury and the Director of the Congressional Budget Office may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

(e) CONFIDENTIALITY OF RELEVANT INFORMATION.—

(1) The Secretary of the Treasury and the Director of the Congressional Budget Office shall determine and maintain the confidentiality of any book, record, or information made available by a GSE under this section in a manner consistent with the level of confidentiality established for the material by the GSE involved.

(2) The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, for any book, record, or information made available under subsection (d) and determined by the Secretary of the Treasury to be confidential under this subsection.

(3) Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(A) by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section; and

(B) he or she discloses the material in any manner other than—

(i) to an officer or employee of the Department of the Treasury; or

(ii) pursuant to the exception set forth in such section 1906.

(4) The Congressional Budget Office shall be exempt from section 203 of the Congressional Budget Act of 1974 with respect to any book, record, or information made available under this subsection and determined by the Director to be confidential under paragraph (1).

(f) REQUIREMENT TO REPORT LEGISLATION.—(1) The committees of jurisdiction in the House shall prepare and report to the House no later than September 15, 1991, legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(2) It is the sense of the Senate that the committees of jurisdiction in the Senate shall prepare and report to the Senate no later than

September 15, 1991, legislation to ensure the financial safety and soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(f) PRESIDENT'S BUDGET.—The President's annual budget submission shall include an analysis of the financial condition of the GSEs and the financial exposure of the Government, if any, posed by GSEs.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD GEPHARDT,
BILL FRENZEL,

As additional conferees from the Committee on the Budget, for consideration of title XIV of the House bill, and all other provisions of the House bill and the Senate amendment on which conferees from more than one of the other standing committees of the House are appointed, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of title I and subtitle B of title V of the House bill, and title I and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
TOM COLEMAN,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

From the Committee on Education and Labor, for consideration of title III and sections 12403 and 13323 of the House bill, and subtitle F of title VI, part 4 of subtitle D of title VII, title X, and section 6401 of the Senate amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,

From the Committee on Energy and Commerce (health) for consideration of subtitles A and B of title IV and subtitles B, C, and D of title XII of the House bill, and part 2 of subtitle B and subtitle C of title VI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (transportation), for consideration of sections 4511, 4521, and 4522 of the House bill, and sections 3002 and 3003 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
THOMAS A. LUKEN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (energy), for consideration of sections 4501, 4502, 5101, and 10002 of the House bill, and subtitle B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
NORMAN F. LENT,

From the Committee on Government Operations, for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
HENRY A. WAXMAN,
BARNEY FRANK,
HOWARD C. NIELSON,

From the Committee on Interior and Insular Affairs, for consideration of title V and sections 4502 and 10002 of the House bill, and subtitles A and B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEORGE MILLER,

From the Committee on the Judiciary, for consideration of title VI of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
BOB KASTENMEIER,
CARLOS J. MOORHEAD,

From the Committee on Merchant Marine and Fisheries (tonnage duties, coast guard fees, and cargo preference), for consideration of sections 7101 and 7102 of the House bill, and section 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries (EPA fees), for consideration of section 7103 of the House bill, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
ROBERT W. DAVIS,

From the Committee on Merchant Marine and Fisheries (coastal zone management), for consideration of subtitle B of title VII of the House bill, and modifications committed to conference:

WALTER B. JONES,
DENNIS M. HERTEL,
ROBERT W. DAVIS,

From the Committee on Post Office and Civil Service, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation (aviation) for consideration of subtitles B and C of title IX of the House bill, and subtitle B of title III of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
JAMES L. OBERSTAR,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (transportation trust funds), for consideration of subtitle A of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (EPA fees), for consideration of subtitle D of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Rules, for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
ANTHONY C. BEILENSON,
MARTIN FROST,
JAMES H. QUILLEN,
CHARLES PASHAYAN, Jr.,

From the Committee on Science, Space, and Technology, for consideration of title X of the House bill, and subtitle B of title IV and sections 3004 and 3024 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
MARILYN LLOYD,

From the Committee on Veterans' Affairs, for consideration of title XI (except section 11051) of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DOUGLAS APPLEGATE,
BOB STUMP,

From the Committee on Ways and Means (revenues and debt ceiling), for consideration of title XIII, subtitles E and F of title XII, and sections 3102, 3121, 7101, and 11051(a) of

the House bill, and title VII (except subtitle C), and subtitles D and E of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means (medicare), for consideration of subtitles A through D of title XII and subtitle A of title IV of the House bill, and subtitle B of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,

From the Committee on Ways and Means (Social Security), for consideration of part 5 of subtitle A of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
ANDREW JACOBS, Jr.,

From the Committee on Ways and Means (child care and human resources), for consideration of parts 1 through 4 of subtitle A and subtitle F of title VI and subtitle C of title VII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,

As an additional conferee for consideration of subtitle B of title V of the House bill, and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

R.J. MRAZEK,

As additional conferees for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

SILVIO O. CONTE,

As additional conferees for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

CARL D. PURSELL,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,
DAVID PRYOR,
RICHARD G. LUGAR,
BOB DOLE,
THAD COCHRAN,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
CHRISTOPHER J. DODD,

From the Committee on the Budget:
JIM SASSER,
PETE V. DOMENICI,
From the Committee on Commerce, Science, and Transportation:
DANIEL K. INOUYE,
WENDELL FORD,
JOHN BREAUX,
JOHN D. ROCKEFELLER IV,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,
From the Committee on Energy and Natural Resources:
J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JAMES A. MCCLURE,
PETE V. DOMENICI,
From the Committee on Environment and Public Works:
QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
BOB GRAHAM,
JOHN H. CHAFEE,
From the Committee on Finance:
LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
D.L. BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
JOHN D. ROCKEFELLER IV,
BOB PACKWOOD,
BOB DOLE,
JOHN C. DANFORTH,
JOHN H. CHAFEE,
From the Committee on Governmental Affairs:
JOHN GLENN,
JIM SASSER,
DAVID PRYOR,
From the Committee on the Judiciary:
DENNIS DECONCINI,
PATRICK LEAHY,
ORRIN HATCH,
From the Committee on Labor and Human Resources for the Child Care and Development Block Grant Act:
EDWARD M. KENNEDY,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,
From the Committee on Labor and Human Resources:
EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,

From the Committee on Labor and Human Resources for pension provisions (reversions and retiree health transfers):

EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,

From the Committee on Veterans' Affairs:

ALAN CRANSTON,
DENNIS DECONCINI,
JOHN D. ROCKEFELLER IV,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5835) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1991, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—AGRICULTURE

SUBTITLE A—COMMODITY PROVISIONS

(1) Triple base. (H. 1101, S. 1101)

The House bill establishes a triple base program for wheat, feed grains, cotton and rice to reduce the acreage on which deficiency payments will be made. The House bill provides that the base reduction percentage be 15 percent in each of crop years 1992 and 1993, 20 percent in crop year 1994 and 25 percent in crop year 1995. The House bill also specifies the crops which may be grown on acreage on which producers receive no deficiency payments and provides that program crops grown on unpaid acres be eligible for loans under the Agricultural Act of 1949.

The Senate amendment has similar provisions, but provides for a base reduction of 15 percent in each of the 1992 through 1995 crop years.

The Conference substitute deletes both provisions and amends sections 301, 401, 501, and 601 of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 to reduce base acreage eligible for deficiency payments from 100 percent to 85 percent for each of crop years 1991 through 1995, effecting a 15 percent triple base program in each year. The Conference substitute does not alter the option of winter wheat producers participating in the 1991 crop wheat program under the FACT Act of 1990 to choose either the 15 percent triple base provisions or to receive payments on 100 per-

cent of eligible acreage but have the deficiency payment calculated on the basis of the 12-month season average price. (Sec. 1101)

(2) Calculation of deficiency payments. (H. 1102, S. 1102)

Section 1102 of the House bill requires that for purposes of calculating deficiency payments for each of the 1991 through 1995 crops of wheat, feed grains, and rice, the payment rate for a crop will be the amount by which the established price for the crop exceeds—

(1) in the case of wheat and feed grains, the higher of—

(A) the announced loan level for each crop; or

(B) the lower of—

(i) the season average price received by producers during the marketing year; or

(ii) the 5-month average market price received by producers, plus 10 cents per bushel.

(2) in the case of rice, the higher of the season average market price received by producers during the marketing year for the crop, as determined by the Secretary, or the announced loan rate.

The House provisions for wheat and feed grains are designed to ensure that the decrease in deficiency payments received by producers as a result of changing the calculation of deficiency payments from a 5-month to a 12-month basis does not result in more than a 10 cent decline in deficiency payments.

The Senate amendment has similar provisions but requires the rice deficiency payment be calculated as the difference between the established price and (1) the higher of—

(A) the announced loan rate; or

(B) the lower of—

(i) the season average price for the marketing year; or

(ii) the 5-month average market price plus 27 cents per hundredweight.

The Senate bill also provides that the Secretary shall exclude the portion of average malting barley prices received by producers that exceeds prices received by producers for feed barley by more than $0.50 per bushel.

The Conference substitute adopts the House provision with an amendment to require the 12-month calculation only for the 1994 and 1995 crop years and placing the season average price determination on a calendar year, rather than a marketing year basis, for rice. For wheat and feed grains, the same form of calculation as was included in the House bill applies, but the calculation for feed grain deficiency payments includes a 7 cent per bushel cap on the difference between deficiency payments calculated on a 12 month and 5 month basis. The substitute would also require the Secretary to provide a similar cap for rice equal to an appropriate amount that is fair and equitable in relation to wheat and feed grains. (Sec. 1102)

(3) Acreage reduction programs for 1991 crops of wheat and feed grains (H. 1103, S. 1103)

The House bill requires the Secretary to announce an acreage limitation program for the 1991 crop for wheat of 15 percent.

The Senate amendment has a similar provision requiring the Secretary to announce acreage limitation programs for the 1991 crops of wheat of not less than 15 percent and of feed grains of not less than 7½ percent.

The Conference substitute specifies the feed grain acreage limitation, and incorporates the wheat acreage limitation by reference to the FACT Act of 1990. (Sec. 1103)

(4) Acreage reduction programs for 1992 through 1995 crops of wheat and feed grains (H. 1104, S. 1103)

The House bill requires the Secretary to announce acreage limitation programs for—

(1) wheat of no less than 6 percent in crop year 1992, 5 percent in crop year 1993, 7 percent in crop year 1994, and 5 percent in crop year 1995;

(2) feed grains of no less than 7½ percent in each of crop years 1992 through 1995;

(3) upland cotton of no less than 15 percent in crop year 1992 and 20 percent in each of crop years 1993 through 1995; and

(4) rice of no less than 18.5 percent in crop year 1992, 15 percent in crop year 1993, 14 percent in 1994, and 10 percent in 1995;

unless the Secretary estimates the stocks-to-use ratio will be less than 34 percent in the case of wheat, 20 percent in the case of feed grains, 30 percent in the case of upland cotton, and 16 percent in the case of rice.

The Senate amendment provides that the Secretary may not vary the uniform percentage reduction, applied under acreage limitations programs during the 1992 through 1995 crops of wheat, feed grains, cotton and rice, by more than 3 percentage points from that established in the preceding year. The Senate bill also requires the Secretary to carry out an acreage limitation program for each of the 1991 through 1995 crops of upland cotton in a manner that will result in a ratio of carry-over stocks to total utilization of 30 percent.

The Conference substitute adopts the House provision with an amendment that the minimum levels of acreage limitation for wheat and feed grains for the 1992 through 1995 crop years will not apply if the 1991 carry-in stocks of soybeans will be less than 325 million bushels. The Conference substitute also deletes the acreage limitation provisions for cotton, rice, and oats. (Sec. 1104)

(5) Oilseed marketing loan (H. 1105, S. 1104)

The House bill requires the Secretary to support the price of soybeans through loans in each of the 1991 through 1995 marketing years at a level of not less than $5.25 per bushel. The Secretary is also required to charge the producer a loan origination fee in connection with making a loan equal to not more than 7 percent of the amount of the loan.

Further, if the Secretary charges a loan origination fee for loans made for a crop of soybeans and makes loan deficiency payments for the crop, he must reduce the amount of any such loan deficien-

cy payment by an amount equal to the amount of the loan origination fee.

Notwithstanding any other provision of this section, the effective loan rate for a crop of soybeans (calculated as the loan level for the crop less any loan origination fees) under this section, may not be more than $4.87 per bushel.

The Senate amendment requires the loan rate for soybeans be no less than $5.50 per bushel for the 1991 through 1995 crop year and the loan rate for sunflower, canola, rapeseed, safflower and flaxseed may not be less than $0.097 per pound. If the projected soybean stocks-to-use ratio will exceed 7.5 percent, the Secretary may adjust the loan rate to $5.00 per bushel and may make a corresponding adjustment in the loan rate for other oilseeds.

The Conference substitute establishes a 2 percent loan origination fee for all supported oilseeds which shall be similarly applied to any loan deficiency payments. (Sec. 1105)

(6) Loan origination and program service fees (H. 1105, 1109, S. 1106, 1109)

The House bill requires the Secretary to charge producers of each of the 1991 through 1995 crops of sugarcane, sugar beets, honey, peanuts and tobacco a loan origination fee for price support loans for such crops of up to 3 percent of the amount of the loan. The Secretary is also authorized to charge wool and mohair producers a program service fee of up to 1 percent of each of the 1991 through 1995 crop years. Section 1109(b) provides for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use. The amount of the reduction will be 5 cents per hundredweight during calendar year 1991 and 11.25 cents per hundredweight during calendar years 1992 through 1995.

The Senate amendment contains similar provisions for sugar, honey, peanuts, tobacco, and wool and mohair. It provides for a reduction of 10 cents per hundedweight in the price of milk received by producers from January 1, 1991 through August 31, 1995.

The Conference substitute requires that producers and purchasers of the 1991 through 1995 crops of peanuts and tobacco remit to the Commodity Credit Corporation (CCC) a marketing assessment of 1 percent of the level of price support, to be shared equally by producer and purchaser.

First processors of sugarcane and sugar beets are also required to remit to CCC a marketing assessment of .18 cents per pound of cane sugar and .193 cents per pound of beet sugar in each of the 1991 through 1995 crop years. The .193 cent per pound of refined beet sugar assessment was converted as the dry equivalency basis of the .18 cent per pound of raw cane sugar assessment. The Managers intend that the assessment be applied by the Secretary of Agriculture in a manner that is fair and equitable in light of the relationship between raw cane sugar and refined beet sugar and will not result in unfair distortions in the market. The Managers also intend that the assessment be shared equitably between processor and producers, based upon the historical or contractual division of returns.

Honey producers are required to remit marketing assessments to CCC of 1 percent of the level of price support on all marketings of honey, excluding imports, in each of crop years 1991 through 1995. The assessment must be collected and remitted by the first handler of honey, to the extent practicable in a manner as provided for in the Honey Research, Promotion, and Consumer Information Act.

Wool and mohair producers will have 1 percent of the amount of their price support payments deducted in each of marketing years 1991 through 1995.

The provisions of the milk marketing assessment under the House bill are amended to provide refunds to producers who prove their marketings of milk did not increase over the prior year, and to provide that the assessment for future years would be adjusted to reflect any refunds. (Sec. 1105)

(7) Proven yields (H. 1107)

The House bill prohibits the Secretary, effective for each of the 1991 through 1995 crops to feed grains, from calculating farm program payment yields on the basis of the actual yields of feed grains, as provided in section 505(a) of the Agricultural Act of 1949 (as amended by section 1131 of S. 2830 (as passed by the House of Representatives on August 3, 1990)).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(8) End rows (H. 1108)

Section 1108 of the House bill prohibits producers from being allowed to meet acreage limitation or set-aside requirements by idling end rows, as povided in section 1122 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(9) Surface reservoir encouragement (H. 1109)

Section 1109(a) of the House bill prohibits the Secretary from establishing a program to encourage surface reservoirs, as provided in subtitle C of title XI of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(10) Producer reserve program for wheat and feed grains (S. 1107)

The Senate amendment establishes terms and conditions for providing producer grain reserve loans, repayment of loans, operation of the reserve and storage payments for grain in the reserve.

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(11) Payment of interest on certificates (S. 1108)

The Senate amendment requires that interest be paid on cash redemption of a commodity certificate issued by the Secretary to producers who hold the certificate for at least 150 days.

The House bill contains no comparable provision.

The Conference substitute deletes the Senate provision.

(12) Authorization levels for REA loans (H. 1201, S. 1201)

The House bill requires loans to be made and insured under section 301 of the Rural Electrification Act of 1936 at the following levels: $896 million in fiscal year 1991, $933 million in fiscal year 1992, $969 million in fiscal year 1993, $1008 million in fiscal year 1994, and $1048 million in fiscal year 1995. Notwithstanding any other provision of such law, the level of insured loans must be reduced by $224 million, $234 million, $244 million, $256 million and $267 million for each of fiscal years 1991 through 1995, respectively. The Administrator of the Rural Electrification Administration (REA) must increase the amounts of guaranteed loans otherwise made available to borrowers by the amount insured loans are reduced in each fiscal year pursuant to this section. The loans must be guaranteed at 90 percent of the principal amount of the loan.

The Senate amendment contains similar provisions, except that they provide for 99 percent loan guarantees.

The Conference substitute adopts the House provision with an amendment requiring that the reductions be allocated between the electric and telephone programs in proportion to the amount of insured funds made available in annual appropriations Acts. The Managers intend that if such insured funds are not specifically earmarked between the two programs, then the reduction should be made in accordance with the historical relationship of funds between the programs (72.24 percent for electric, 27.76 percent for telephone). The Conference substitute further requires the Administrator to accommodate electric borrowers, whose application for an insured loan is reduced or rejected because of the reductions in this section, by permitting additional capital to be obtained from other private sources, through the use of a loan guaranteed under this section, from internally generated funds of the electric borrower, or from private credit sources with a lien accommodation provided by the Administrator. No reduction of the 100 percent loan guarantees made by the Federal Financing Bank under the Rural Electrification Act is intended.

The Managers intend that the provisions of section 1201 not be construed to authorize the Administrator to—

(1) reduce the amount of any individual telephone loan application; or

(2) otherwise alter the operations of the electric or telephone loan programs beyond the specific provisions of the new section 314(e)

The Managers direct the Administrator to fully expend the funds appropriated for insured loans pursuant to subsection (c).

The provisions of this section are not intended to authorize the Administrator to divert insured loan funds to provide for future loan losses, or for any purpose other than those authorized under law. If the Administrator believes that potential loan losses under either the electric or telephone programs may require additional funding in the future, the Administrator shall request funding from the Congress for this specific purpose at the appropriate time.

The Managers further intend that the loan guarantees authorized under the new section 314(d) shall be made only upon the request of the borrower.

The Managers also emphasize that the new section 314(e)(3) applies only to electric program borrowers, and shall not be construed to in any way affect the operation of the telephone loan program or loans to telephone program borrowers.

(13) FmHA direct to guaranteed loans (H. 1202, S. 1202)

The House bill requires the Secretary, for each of fiscal years 1991 through 1995, to—

(1) reduce the amounts otherwise made available for insured loans made from the Agricultural Credit Insurance Fund established under section 309 of the Consolidated Farm and Rural Development Act by—

(A) $432,000,000 for fiscal year 1991;
(B) $564,000,000 for fiscal year 1992;
(C) $710,000,000 for fiscal year 1993;
(D) $809,000,000 for fiscal year 1994; and
(E) $857,000,000 for fiscal year 1995; and

(2) use the funds made available in each of the fiscal years to guarantee loans made from the Fund.

The House provision further requires that, notwithstanding any other provision of law, the Secretary must make or insure loans at the levels authorized by section 1202 for each of the fiscal years 1991 through 1995

The Senate amendment contains similar provisions but omits the requirement that, notwithstanding any other provision of law, the Secretary must make or insure loans at the levels authorized by section 1202 for each of the fiscal years 1991 through 1995.

The Conference substitute adopts the House provision with an amendment to increase the amount of loans reduced by $50 million in each fiscal year and to reduce the amount of insured farm operating loans and farm ownership loans in proportion to the levels authorized in the House bill. A provision is added requiring the Secretary to limit the reduction of insured loans if more than 70 percent of loans guaranteed under the interest rate reduction program authorized in section 351 of the Consolidated Farm and Rural Development Act have been received by persons who were not previously Farmers Home Administration borrowers. A provision extending for 2 years and modifying the interest rate reduction program is also added. Similarly, a provision extending for one year the demonstration program for the purchase of Farm Credit System land is included. (Sec. 1202)

The Conference substitute also adds the requirement that, notwithstanding any other provision of law, the Secretary must guarantee loans at the levels authorized by section 1202 for each of the fiscal years 1991 through 1995.

(14) APHIS inspection fees (H. 1203, S. 1203)

The House bill authorizes the Secretary to prescribe and collect fees to cover the cost of providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or

preinspection at a site outside the customs territory of the United States, of an international passenger.

Section 1203(b) requires any person who collects a fee under section 1203 to remit the fee to the Treasury of the United States prior to the date that is 31 days after the close of the calendar quarter in which the fee is collected.

Section 1203(c)(1) establishes an "Agricultural Quarantine Inspection User Fee Account" (Account), in the Treasury of the United States that will be a no-year fund for the use of the Secretary for quarantine or inspection services under this section.

Section 1203(c)(2)(A) requires that all fees collected under section 1203(c) be deposited in the Account.

Section 1203(c)(2)(B) authorizes to be appropriated amounts in the Fund for use by the Secretary of Agriculture for quarantine or inspection services.

Section 1203(d) requires the Secretary to adjust the amount of the fees to be assessed under section 1203 to reflect the cost to the Secretary in administering section 1203, carrying out the activities at ports in customs territory of the United States and preclearance and preinspection sites outside the customs territory of the United States in connection with the provision of agricultural quarantine inspection services, and maintaining a reasonable balance in the Account.

The Senate amendment contains a similar provision except that it also directs the Secretary of the Treasury to use the Agricultural Quarantine Inspection User Fee Account" to provide reimbursements to any appropriations accounts that incur the costs associated with the services authorized in section 1203(a) if such amounts are provided in advance in appropriations acts. Such costs are to reimbursed on a quarterly basis, and on the basis of estimates made by the Secretary of Agriculture of such costs incurred in the 3 month period immediately preceding the reimbursements. Adjustments to such reimbursements must be made to the extent necessary to correct prior estimates that were in excess of, or less than, the amount required to be reimbursed.

The Conference substitute deletes both provisions and adopts an amendment to Section 2509 of the FACT Act of 1990 to include international passengers and require appropriations be made to reimburse APHIS for the cost of quarantine and inspection services. The Managers intend that such fees collected under this program from trucks and trains should not exceed the following levels:

Fiscal year 1991—$6,747,000;
Fiscal year 1992—$7,159,000;
Fiscal year 1993—$7,595,000;
Fiscal year 1994—$8,059,000; and
Fiscal year 1995—$8,550,000.

The Managers also intend that the Secretary waive the collection of fees based on good-neighbor policies with bordering countries. (Sec. 1203)

(15) Additional Savings and other provisions (1204)

Passage of the Food, Agriculture, Conservation, and Trade Act of 1990 requires a number of technical and other changes to conform that Act to the budget reduction goals of the Omnibus Budget Rec-

onciliation Act of 1990. The Conference substitute provides for the necessary technical and conforming changes.

The Conference substitute also provides that nothing in the Omnibus Budget Reconciliation Act of 1990 authorizes or requires the Administrator of the Environmental Protection Agency to collect or assess any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act.

In Public Law 100-532, Congress established a program for the accelerated reregistration of pesticides at the Environmental Protection Agency (EPA). It was felt that the restoration of public confidence in the federal pesticide regulatory system was dependent upon bringing health and safety information on currently registered pesticides up to date as rapidly as possible. The additional program costs were to be offset by the imposition of fees upon registrants of pesticides and, at the time of enactment, it was estimated that these fees would total $152 million over the nine-year life of the reregistration program. Given this significant financial burden placed upon the registrants, P.L. 100-532 contained a prohibition against the imposition of any additional fees during the pendency of the reregistration program.

Recent reviews of the reregistration program by EPA indicate that the issue of user fees may need to be revisited during the 102nd Congress when this Committee has to reauthorize the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Until such a review is complete, it is necessary not to disturb the balance struck in P.L. 100-532.

(16) Market Promotion Program (H. 1204)

The House bill prohibits the Commodity Credit Corporation from making assistance available to carry out the market promotion program established under section 202 of the Agricultural Trade Act of 1978 (as amended by section 1221(a) of S. 2830 (as passed by the House of Representatives on August 3, 1990)) at a level in excess of $200,000,000 for each of the fiscal years 1991 through 1995.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(17) Integrated farm management program option (H. 1205)

The House bill directs the Secretary to make fair and equitable adjustments in acreage limitation or set-aside requirements applicable to producers participating in the integrated farm management program option established under section 1611 of S. 2830 (as passed by the House of Representatives on August 3, 1990).

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(18) Amendments to the Food Stamp Act and related provisions (H. 1301, 1302, 1303, 1304, 1305)

The House bill amends and extends the Food Stamp Act of 1977, the Agricultural and Consumer Protection Act of 1973, the Temporary Emergency Food Assistance Act of 1983, and the Nutrition Education Program.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

(19) Other rural development programs

The House bill prohibits the Secretary of Agriculture from expending any funds to implement the provision of title XXV of S. 2830 (as passed by the House of Representatives on August 3, 1990), and requires that titles XIX, XX, XXI, XXII, XXIII, XXIV, XXVI, XXVII, and XXVIII of S. 2830 (as passed by the House of Representatives on August 3, 1990) shall be carried out only as provided in advance in appropriations Acts.

The Senate amendment contains no comparable provision.

The Conference substitute deletes the House provision.

SUBTITLE C—EFFECTIVE DATE

(20) Effective date; readjustment of support levels (H. 1501)

The House bill provides that title I and the amendments made by that title will cease to be effective on July 1, 1992, if legislation to implement an agreement of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) for international agricultural trade is not enacted on or before June 30, 1992.

The Senate amendment contains no comparable provision.

The Conference substitute adopts the House provision with an amendment providing that this title and the amendments made by this title shall become effective 1 day after the enactment of the FACT Act, or December 1, 1990, whichever is earlier.

The Conference substitute also provides that if the United States does not enter into within the context of section 1102 (A) of the Omnibus Trade and Competiveness Act of 1988) an agriculture trade agreement under the General Agreement on Tariffs and Trade (GATT) by June 30, 1992, then the Secretary of Agriculture must increase program levels for export promotion programs by $1 billion and institute a marketing loan for wheat and feed grains, and may waive any minimum level for acreage reduction programs. If no GATT agreement enters into force for the United States by June 30, 1993, then the Secretary is required to consider (A) waiving all or part of the reductions in agricultural spending required by this title, (B) raising the level of funds made available for export programs, and (C) instituting a marketing loan program for wheat and feed grains. The Secretary is also authorized to take any of the actions listed in (A) through (C). If the Secretary uses this authority, the Secretary must take action under (A) and either or both (B) or (C).

Subsection (e) prohibits the Secretary from reducing income support, including target prices, under section 1302.

Subsection (f) provides that subsections (a) and (b) will no longer apply if Congressional "fast track" procedures become unavailable for a Uruguay Round agricultural trade agreement.

The Managers have provided in this section for aggressive action to expand agricultural exports in the event the current Uruguay Round of international trade negotiations is unsuccessful. The Managers are concerned by the reluctance of a few nations, chiefly the European Community (EC), to commit to meaningful agricultural policy reform. In the Managers' view, the Community's continued insistence on unacceptable terms (such as so-called "reba-

lancing" schemes to shut out U.S. oilseed and corn gluten exports) could jeopardize the entire Uruguay Round.

The mandatory marketing loan for wheat and feed grains will ensure that U.S. products compete against subsidized foreign commodities in the event that a GATT agreement is not reached. The Conference substitute also authorizes the Secretary to waive any minimum acreage reduction levels. The Secretary of Agriculture, at the Secretary's discretion, could increase the acres of U.S. land in production in order to ensure the availability of ample quantities of U.S. grain for export. Such action would further add to the cost of the European Community's Common Agricultural Policy and encourage the Community to reduce trade-distorting subsidies.

The Managers also understand that increasing plantings alone could lead to a reduction in producer prices. It is for this reason explicitly that the Managers have included a legislative mandate in subsection (e) that in no case may the Secretary reduce the level of income support provided to producers. This is a specific prohibition on reducing the target prices for program crops.

It is important to understand the consequences of failure to reach agreement. The Managers intend that U.S. programs to enhance export competitiveness be used more aggressively, not less, if other countries are unwilling to reform protectionist import barriers, high price supports and predatory export subsidies. To that end, the Managers have endeavored to provide the Department of Agriculture with a wide range of options to enhance U.S. agricultural competitiveness and exports in the event the Uruguay Round is not concluded successfully. (Sec. 1302)

TITLE II—BANKING, HOUSING, AND RELATED PROGRAMS

Explanation of the Statement of Managers on Title II

The House and Senate bills differed as to Federal deposit insurance assessment rate provisions. The Senate bill authorized the Federal Deposit Insurance Corporation to borrow from the Federal Financing Bank. The Senate bill contained a provision regarding priority of Federal Deposit Insurance Corporation claims.

The House and Senate bills contained different provisions concerning Federal Housing Administration (FHA) mortgage insurance. The conferees adopted the FHA provisions contained in the conference report accompanying S. 566, as described in the following section by section analysis.

The provisions of the House and Senate bills regarding the extension of the Federal Crime Insurance Program and the National Flood Insurance Program were identical.

The House receded to the Senate with an amendment that contains the flood and crime insurance provisions provided in both bills, the FHA provisions of the housing conference report, and resolves the issues regarding FDIC assessments as described in the following section by section analysis.

SECTION BY SECTION

SUBTITLE A—FEDERAL DEPOSIT INSURANCE ASSESSMENTS

Section 2001. Short Title

The "FDIC Assessment Rate Act of 1990"

Section 2002. FDIC authorized to increase assessment rates as necessary to protect insurance funds

Subsection (a) amends the Federal Deposit Insurance Act to permit the Board of Directors of the Federal Deposit Insurance Corporation to set premiums for Bank Insurance Fund (BIF) members at a rate determined by the Board to be appropriate to maintain the reserve ratio at the designated reserve ratio or to increase the actual reserve ratio of the BIF to the designated reserve ratio. If a higher rate is not specified, the assessment rate will be 0.15 percent. Factors to be considered by the FDIC in setting the rate include the BIF's expected operating expenses, case resolution expenditures, and income, and the impact of the assessment rates on insured banks' earnings and capitalization.

Subsection (b) conforms the Savings Association Insurance Fund assessment rate provisions to those of the BIF. If a higher rate is not specified, the assessment rate will be not less than 0.23 percent from January 1, 1991, through December 31, 1993; 0.18 percent from January 1, 1994 through December 31, 1997; and 0.15 percent from January 1, 1998.

Section 2003. FDIC authorized to make mid-year adjustments in assessment rates

Section 2003 amends the Federal Deposit Insurance Act to allow the FDIC to set assessment rates at such times as the FDIC determines to be appropriate. Rate changes must be announced not later than November 1 for the following January 1 to June 30 semiannual period and not later than May 1 for the following July 1 to December 31 semiannual period.

Technical and conforming amendments are made to various subsections of section 7 of the Federal Deposit Insurance Act to reflect the fact that (a) rates may be changed on a semiannual basis and (b) that assessment credits can be announced on a semiannual basis.

Section 2004. FDIC authorized to set designated reserve ratio as necessary in face of significant risk of substantial losses to insurance fund

Section 2004 eliminates the 1.50 percent designated reserve ratio ceiling and the requirement that investment earnings on reserves in excess of 1.25 percent of insured deposits shall be distributed to fund members.

Section 2005. FDIC authorized to borrow from the Federal Financing Bank

Section 2005 permits the FDIC, on behalf of the Bank Insurance Fund or the Savings Association Insurance Fund, to borrow from the Federal Financing Bank. Such borrowings are subject to the

same obligations limitation as borrowings from private lenders. No implications about the ability of other agencies to borrow from the Federal Financing Bank are intended.

SECTION-BY-SECTION OF THE HOUSE/SENATE CONFERENCE AGREEMENTS ON FHA PROVISIONS

SUBTITLE B—FHA MORTGAGE INSURANCE

Sec. 2101

Removes the termination date of FY 1990 from the $124,875 FHA mortgage limit.

Sec. 2102

Limits the insured principal obligation (including initial service charges, appraisal, inspection, and other fees as the Secretary may approve) from exceeding 98.75 percent of the appraised value of the property (97.75 percent of the appraised value in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

Sec. 2103

With respect to mortgages on 1- to 4-family dwellings that have been executed on or after October 1, 1994, authorizes the Secretary to establish and collect at the time of insurance a premium payment of 2.25 percent of the amount of the original insured principal mortagage. Requires the Secretary to refund all of the remaining unearned premium charges paid upon payment in full of the principal obligation prior to the maturity date of the mortgage.

In addition to the premium paid at the time of insurance, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments) for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance) for the first 11 years of the mortgage; (2) greater than or equal to 90 percent of such value for the first 30 years of the mortgage. For any mortgage involving an original principal obligation that is greater than 95 percent of the appraised value of the property, the Secretary is authorized to collect an annual premium during the 30 year period of the mortgage in an amount equal to 0.55 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments).

For mortgages executed during fiscal years 1991 and 1992, (after the effective date of regulations) the Secretary is authorized to establish and collect at the time of insurance, a single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage. In addition to this premium payment, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 per-

cent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term; (2) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and (3) greater than 95 percent of such value, for the first 10 years of the mortgage term.

For mortgages executed during fiscal years 1993 and 1994, the Secretary is authorized to establish and collect at the time of insurance, a single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of the mortgage. In addition to this premium payment, the Secretary is authorized to establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding any premium collected at the time of insurance and without taking into account delinquent payments or prepayments), for any mortgage involving an original principal obligation that is (1) less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term; (2) greater than or equal to 90 percent of such value but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and (3) greater than 95 percent of such value, for the first 30 years of the mortgage term.

Requires the Secretary to refund all of the unearned premium charges paid during fiscal years 1991–1994 upon payment in full of the principal obligation of the mortgage prior to maturity date.

Requires the Secretary to issue regulations to carry out this section and the amendments made by this section not later than the expiration of the 90 day period beginning on the date of the enactment of the Act.

Sec. 2104

In determining whether there is a surplus for distribution to mortgagors under this section, the Secretary shall take into account the actuarial status of the entire Fund.

Sec. 2105

Requires the Secretary to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25% within 24 months after the date of the enactment of this subsection and maintains such ratio thereafter.

Requires the Secretary to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 2.0% within 10 years after the date of the enactment of this subsection, and to ensure that the Fund maintains at least such capital ratio at all times thereafter.

Upon the expiration of the 24-month period beginning on the date of the enactment of this subsection, the Secretary must submit to the Congress a report describing the actions the Secre-

tary will take to ensure that the Mutual Mortgage Insurance Fund attains the capital ratio required above.

Provides definitions for this subsection:

(A) The term "capital" means the economic net worth of the Mutual Mortgage Insurance Fund, as determined by the Secretary under the annual audit below.

(B) The term "economic net worth" means the current cash available to the Fund, plus the net present value of all future cash inflows and outflows expected to result from the outstanding mortgages in the Fund.

(C) The term "capital ratio" means the ratio of capital to unamortized insurance-in-force.

(D) The term "unamortized insurance-in-force" means the remaining obligation on outstanding mortgages which are obligations of the Mutual Mortgage Insurance Fund, as estimated by the Secretary.

Requires the Secretary to annually conduct an independent actuarial study of the Mutual Mortgage Insurance Fund and to report annually to the Congress on the financial status of the Fund.

If, pursuant to the required independent annual actuarial study of the Mutual Mortgage Insurance Fund, the Secretary determines that the Mutual Mortgage Insurance Fund is not meeting the operational goals as outlined below, the Secretary is prohibited from issuing distributions, and may, by regulation, propose and implement any adjustments to the insurance premiums established above. Upon determining that a premium change is appropriate under the preceding sentence, the Secretary must immediately notify Congress of the proposed change and the reasons for the change. Such premium change will take effect not earlier than 90 days following such notification, unless the Congress acts during such time to increase, prevent, or modify the change.

Establishes the operational goals as—

(A) maintaining an adequate capital ratio;

(B) meeting the needs of homebuyers with low downpayments and first-time homebuyers by providing access to mortgage credit;

(C) minimizing the risk to the Fund and to homeowners from homeowner default; and

(D) avoiding adverse selection.

Sec. 2106

Amends the termination date of the Home Equity Conversion Program from September 30, 1991 to September 30, 1995.

Establishes that the total number of mortgages insured may not exceed 25,000.

SUBTITLE C—AUCTION OF FEDERALLY INSURED MORTGAGES

Section 207. Auction of multifamily mortgages

Amends Section 221(g)(4) of the National Housing Act to require the Department of Housing and Urban Development (HUD), in lieu of accepting assignment of the original credit instrument and the mortgage securing the credit instrument in exchange for receipt of debentures, to arrange for the sale of the beneficial interests in the

mortgage loan through an auction and sale of the mortgage loan, participation certificates, or other mortgage-backed obligations in a form acceptable to HUD. Requires HUD to arrange the auction and sale at a price, to be paid to the mortgagee, of par plus accrued interest to the date of sale. Provides that the sale price also include the right to a subsidy payment.

Requires HUD to conduct a public auction to determine the lowest interest rate necessary to accomplish a sale of the beneficial interests in the original credit instrument and the mortgage securing this credit instrument.

Requires a mortgagee, who elects to assign a mortgage, to provide HUD and persons bidding at the auction a description of the characteristics of the original credit instrument and mortgage securing the original credit instrument, including the principal mortgage balance, original stated interest rate, service fees, real estate and tenant characteristics, the level and duration of applicable federal subsidies and any other information determined by HUD to be appropriate. Requires HUD to provide information regarding the status of the property relating to the Emergency Low Income Housing Preservation Act of 1989 with respect to various prepayment provisions.

Requires HUD, upon receipt of the mortgagee's written description of the credit instrument, to promptly advertise for auction and publish mortgage descriptions in advance of the auction. Authorizes HUD to wait up to 6 months to conduct the action but prohibits HUD from holding the auction before 2 months after receiving the mortgagee's written notice of intent to assign its mortgage to HUD.

Requires HUD in any auction to accept the interest rate bid for purchase that HUD determines to be acceptable and requires HUD to publish the accepted bid in the Federal Register.

Requires settlement to occur not later than 30 business days after the winning bidders are selected in the auction, unless HUD determines that extraordinary circumstances require an extension.

Authorizes mortgagees to retain all rights to assign the mortgage loan to HUD if there are no acceptable bids received or settlement does not occur within the required time period.

Requires HUD, as part of the auction process, to agree to provide a monthly interest subsidy payment from the General Insurance Fund to the purchaser of the original credit instrument or the mortgage securing the credit instrument. Sets forth the manner in which subsidy payments are to be made.

Authorizes HUD to require that mortgage loans or participation certificates presented for assignment are to be auctioned off with servicing rights as whole loans and retained by the current servicer.

Requires HUD, to the extent practicable, to encourage State housing finance agencies, nonprofit organizations, tenant organizations and mortgagees, participating under an Emergency Low Income Housing Preservation plan of action, to participate in the auction.

Requires HUD to implement the requirements under this Section within 30 days from the enactment date and not subject them to the requirement of prior issuance of regulations in the Federal

Register. Requires HUD to issue implementing regulations within 6 months of the enactment date.

Prohibits any of these provisions from diminishing or impairing the low income use restrictions applicable to the project under the original regulatory agreement or the revised agreement entered into pursuant to the Emergency Low Income Housing Preservation Act or other agreements for the provision of federal assistance to the housing or its tenants.

Provides that these provisions do not apply after September 30, 1995, and requires HUD to report to the Congress on these provisions not later than January 31 of each year (beginning in 1992).

TITLE II—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 2301. EXTENSION OF THE FEDERAL CRIME INSURANCE PROGRAM

(a) General authority

Section 1201(b) of the National Housing Act (12 U.S.C. 1749bbb(b)) is amended by extending the Federal Crime Insurance Program for four years until September 30, 1995.

(b) Continuation of existing contracts

Section 1201(b)(1) of the National Housing Act (12 U.S.C. 1749bbb(b)(1)) is amended to allow policy holders to retain their coverage until contracts expire on September 30, 1996, in the event the Federal Crime Insurance Program is terminated.

(c) Limitation of premiums

Section 542(c) of the Housing and Community Development Act of 1987 (12 U.S.C. 1749bbb–10c) is amended by extending the limitation on premiums to no more than 15 percent until September 30, 1995.

SEC. 2302. EXTENSION OF THE NATIONAL FLOOD INSURANCE PROGRAM

(a) General authority

Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026(a)) is amended by extending the National Flood Insurance Program for four years until September 30, 1995.

(b) Emergency implementation

Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)) is amended by extending the emergency phase of the National Flood Insurance Program until September 30, 1995. Under the emergency phase, the program offers limited coverage and reduced premium rates to communities until flood studies are performed to determine Flood Insurance Rate Maps (FIRMS) and floodplain management ordinances are developed and adopted by the communities.

(c) Extension of limitation on premiums

Section 541(d) of the Housing and Community Development Act of 1987 (42 U.S.C. 4015), is amended by extending the limitation on premiums to no more than 10 percent until September 30, 1995.

(d) Extension of erosion provisions

Section 1306(c)(7) of the National Flood Insurance Act of 1968 (42 U.S.C. 4013(c)(7)) is amended by extending the relocation/demolition program for four years until September 30, 1995. The program enables homeowners with flood insurance coverage to file a claim for structures which are subject to imminent danger of collapse or subsidence due to water exceeding anticipated cyclical levels.

(e) Inclusion of costs in premiums

1. Estimates of premium income.—Section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)) is amended by including administrative expenses and mapping expenses incurred in carrying out the flood insurance program and the floodplain management programs in a policy service fee. This fee is not subject to any agents' commissions, company expense allowances or state or local premium taxes.

2. Establishment of chargeable premium rates.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by allowing the policy service fees of the estimated premium to actually be charged. These fees include the administrative costs of the flood insurance program and the floodplain management costs including mapping expenses.

3. National flood insurance fund.—Section 1310(a)(4) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)(4)) is amended by allowing administrative expenses to be paid out of the National Flood Insurance Fund subject to appropriations.

4. Administrative expenses.—Section 1375 of the National Flood Insurance Act of 1968 (42 U.S.C. 4126) is amended to allow all administrative expenses received by policy service fees to be paid from the National Flood Insurance Fund subject to appropriations.

5. Exception to limitation on premium increases.—Section 541(d) of the Housing and Community Development Act of 1987 (U.S.C. 4015 note) is amended to allow the total increase in fees and premiums to exceed the 10 percent cap for fiscal year 1991. Premium increases due to insurance losses, however remain capped at 10%. After fiscal year 1991 all administrative expenses (subject to appropriations) and program costs will be paid out of the National Flood Insurance fund and future premium increases will be limited to 10 percent.

TITLE III—STUDENT LOANS AND LABOR PROVISIONS

PENSION PROVISIONS

A. USE OF EXCESS PENSION PLAN ASSETS

1. Employer reversions
2. Transfers of excess pension assets to retiree health accounts

B. INCREASE IN PREMIUM RATES PAYABLE TO THE PENSION BENEFIT GUARANTY CORPORATION

House bill

To effectuate the policy changes contained in the House bill, amendments to both the Internal Revenue Code and the Employee

Retirement Income Security Act of 1974 (ERISA) are necessary. Thus in the House bill, amendments to ERISA were contained in Title III (Committee on Education and Labor) and amendments to the Internal Revenue Code were contained in Title XIII (Committee on Ways and Means). For a description of those provisions, see the relevent titles of H. Rept. 101-881 (101st Cong. 2d session).

Senate amendment

Unlike the House bill, the Senate amendment contained duplicate provisions amending both the Code and ESIRA. For a description of those provisions, see Title X (provisions of the Senate Labor and Human Resources Committee) and Title VII (provisions of the Senate Finance Committee) of the Senate amendment.

Conference agreement

To avoid confusion, both the statutory language implementing the conference agreement and the statement of managers appear in neither the labor or revenue titles of the bill. Instead, the agreement and statement are contained in a separate pension title: Title XII. This title has been jointly agreed to by conferees from the House Committees on Education and Labor and Ways and Means and the Senate Committees on Labor and Human Resources and Finance.

Reconciliation Conference Report: Labor Civil Penalties

HOUSE PROVISIONS

The House bill provided for:

(1) a seven-fold increase in the maximum allowable civil penalties for violations of the Occupational Safety and Health Act, plus mandatory minimum penalties of $7000 for each willful violation, $1,000 for each repeat violation, $700 for each serious violation, and $700 for each violation determined not to be serious;

(2) a five-fold increase in the maximum allowable civil penalties for violations of the Federal Mine Safety and Health Act, plus mandatory minimum penalties of $1000 for violations of mandatory health or safety standards, and $1000 for each day during which there is a failure to correct a violation;

(3) a ten-fold increase in the maximum allowable civil penalties for child labor violations under the Fair Labor Standards Act, plus mandatory minimum penalties of $1000 for each violation relating to child labor; and

(4) new civil penalties for certain unfair labor practices under the National Labor Relations Act: a $1000 minimum and $10,000 maximum per affected individual for violations of sections 8(a)(3) and 8(b)(2) of the NLRA, and the same minimum and maximum penalties for violations of sections 8(a)(5) and 8(b)(3) of the NLRA. (Sections 8(a)(3) and 8(b)(2) prohibit employers and unions from discriminating against individuals who engage in protected activity; sections 8(a)(5) and 8(b)(3) require employers and unions to engage in good faith collective bargaining.)

SENATE PROVISIONS

The Senate bill provided for (1) a five-fold increase in the maximum allowable civil penalties for violations of the Occupational Safety and Health Act; and (2) a three-fold increase in the maximum allowable civil penalties for violations of the Federal Mine Safety and Health Act.

CONFERENCE AGREEMENT

1. OSHA penalties

When the Occupational Safety and Health Act was enacted in 1970, it authorized a number of civil penalties: fines up to $10,000 for each willful or repeated violation of the Act; fines up to $1,000 for each serious or other-than-serious violation; fines up to $1,000 for each violation of the posting requirements; and fines up to $1,000 per day beyond a stated abatement date for failure to correct a violation. The maximum civil penalties under the OSH Act have never been increased. Simply to keep pace with inflation, the OSH Act maximum civil penalties must be increased more than threefold.

But returning OSH Act civil penalties to their original 1970-level will not be enough to deter violations and ensure adequate enforcement by the Occupational Safety and Health Administration (OSHA). In recent years, Congress has conducted oversight hearings on OSHA civil and criminal enforcement efforts. One major conclusion from those hearings is that OSHA has not lived up to its stated purpose: to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions."

In an effort to provide effective civil penalties, the conferees have increased the existing maximum penalty levels by seven times. Under the conference agreement, the maximum allowable penalties will be: $70,000 for each willful or repeated violations; $7,000 for each serious or other-than-serious violation; $7,000 for each violation of the posting requirements; and $7,000 per each day beyond a stated abatement date for failure to correct a violation.

These amounts are discretionary ceilings. In practice, most fines imposed are a fraction of the maximum penalty. In order to ensure that the most egregious violators are in fact fined at an effective level, the conferees also have adopted a mandatory minimum penalty of $5,000 for a willful violation of the OSH Act.

As enforced by OSHA and interpreted by the courts, a willful violation exists when there is an intentional and knowing violation of statutory requirements. For example, "willfulness" has been held to involve knowing, conscious and deliberate flouting of the Act and to include the element of obstinate refusal to comply. *See Frank Irey, Jr., Inc.* v. *Occupational Safety and Health Review Commission,* 519 F.2d 1200 (3d Cir.), *affirmed,* , 430 U.S. 442 (1975). Other courts have held that a willful violation is one involving voluntary action, done either with an intentional disregard of, or plain indifference to, the statutory requirements. *See L.R. Willson & Sons* v. *Donovan,* 685 F.2d 664 (D.C. Cir. 1982); *Georgia Elec. Co.* v. *Marshall,* 595 F.2d 309 (5th Cir. 1979). Moreover, the conferees understand that under current OSHA practice, only employers

that deliberately engage in a serious violation, or knowingly and intentionally violate the recordkeeping and reporting requirements, are subject to a willful citation. Thus the mandatory minimum penalty adopted by the conferees targets the most extreme violators.

The new mandatory OSH Act minimum penalty applies only to willful violations. No minimums are imposed for repeated, serious, non-serious or posting violations, or for failure to correct a violation. The mandatory minimum penalty for a willful violation is a penalty floor that is not intended to become a penalty ceiling. The conferees expect OSHA to issue fines well above this mandatory minimum level when the willful violation warrants such a penalty. At the same time, the conferees note that this mandatory minimum level applies to initial, assessed penalties. OSHA's existing authority to settle particular cases for amounts that are less than the penalties initially assessed remains unchanged, even in instances where the employer has been cited for a willful violation. The conferees do not intend to deprive the agency of the flexibility to settle cases involving willful violations, where appropriate, for amounts which are less than the mandatory minimums.

According to the Congressional Budget Office, the changes in OSH Act civil penalties will produce nearly $900 million in new federal revenues over five years. The conferees expect OSHA to assess significantly higher penalties across-the-board given the seven-fold increase in the maximum allowable penalty. All revenues collected under this provision will be deposited in the United States Treasury for purposes of federal deficit reduction.

2. MSHA penalties

The Federal Mine Safety and Health Act currently provides for a civil penalty of not more than $10,000 against an operator for each violation of a mandatory health or safety standard or other violation of the Act, and a civil penalty of not more than $1,000 against an operator for each day during which that operator fails to correct a cited violation of the Act. In the 21 years since the imposition of civil penalties for federal mine safety violations, these penalties have not been increased, while the cost of living has increased by nearly 360 per cent. In order simply to restore the civil penalty ceilings to their original level, the conferees must more than triple the ceilings. But a simple restoration will not achieve penalty levels high enough to serve as an effective deterrent to future violations of the Act. Thus the conferees have agreed to a five-fold increase in the maximum civil penalties. According to the Congressional Budget Office, this increase will produce nearly $250 million in additional federal revenues over the next five years. The conferees expect MSHA to assess significantly higher penalties across-the-board given the five-fold increase in the maximum allowable penalty.

3. Child labor penalties

The conferees have agreed to amend the Fair Labor Standards act to create a civil penalty ceiling of $10,000 for each violation of the FLSA provisions relating to child labor. The conferees have agreed to drop the minimum $1,000 penalty that was included in

the House provision. The increase in the maximum penalty for child labor violations responds to the documented need for enhanced enforcement in this area. Raising the maximum level will help deter violations and assist the Department of Labor in its enforcement of the law regulating child labor. According to the Congressional Budget Office, the changes in FLSA child labor civil penalties will produce $15 million in new federal revenues over the next five years. The FLSA has been modified to specify that these revenues will go to the U.S. Treasury and not to the Department of Labor.

4. National Labor Relations Act penalties

The conferees have agreed to drop the House provision relating to new NLRA civil penalties.

TITLE IV—MEDICARE/MEDICAID

1. Reductions in Payments for Capital-Related Costs of Inpatient Hospital Services for Fiscal Year 1991 (Section 12001 of the House Bill, section 6101 of the Senate amendment)

Present law

Capital-related costs (including depreciation, interest, and rent) are excluded from the prospective payment system (PPS) until September 30, 1991. Until that time, capital costs continue to be reimbursed on a cost basis.

The Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) reduced payment amounts for capital-related costs by twelve percent for FY 1988 beginning January 1, 1988, and fifteen percent for FY 1989. The Omnibus Reconciliation Act of 1989 (OBRA 1989) reduced payment amounts by fifteen percent for FY 1990, beginning January 1, 1990. Sole community hospitals are exempted from capital-related payment reductions. Current law would pay hospitals 100 percent of their capital-related costs in FY 1991.

House bill

Extends the capital-related payment reduction of 15 percent through FY 1991. Rural primary care hospitals are exempted from the reductions. Extends the exemption of sole community hospitals and essential access community hospitals (EACH) from the payment reductions.

Effective date: Enactment.

Senate amendment

Similar provision, except provides for a 10 percent reduction for capital-related payments attributable to portions of cost reporting periods or discharges occurring from October 1, 1991 and ending September 30, 1995. Requires the Secretary to provide prospective payments for capital-related costs at rates determined in a way that assures that the aggregate payments for such capital-related costs are not greater or less than those that would have been made for portions of cost reporting periods occurring during FY 1992, under the 10 percent capital reduction.

Provides that the Secretary may continue payment for fixed capital-related costs on a reasonable cost basis, subject to the percentage reduction.

Effective date: Enactment.

Conference agreement

MEDICARE PART A

1. Capital Reimbursement

Conference agreement

The conference agreement includes the Senate amendment, with an amendment providing the Secretary with the flexibility to adjust either or both the operating or captial payments, so long as the net reduction is 10 percent of what would have been othewise paid on a reasonable cost basis for capital costs in that fiscal year. The 10 percent reduction in capital-related costs under (b) is applicable only to subsection (d) hospitals. The reduction is equal to a 10 percent reduction of the amount of payments attributable to capital-related costs that would otherwise have been made to subsection (d) hospitals during such a fiscal year. Prior to the start of the fiscal year, the Secretary may estimate the 10 percent reduction based on the best available data.

The conferees anticipate that the Secretary may allow for a transition in folding capital into the prospective payment system. The conferees note that capital-related payments are excluded from PPS through September 30, 1991. The Secretary is required to develop a system for reimbursing capital on a prospective basis prior to that date. The conferees wish to reaffairm their intent to review the Secretary's proposal at such time as the Secretary issues a notice of proposed rule-making on capital reimbursement.

The conferees note that the Congressional Budget Office (CBO) currently projects that the total expenditures under Part A will increase from $52.7 billion to $58.3 billion, an increase of 10.6 percent, between FY 1991 and FY 1992, after implementation of the proposed reductions in payment incorporated in this report. Given this rate of increase, the conferees believe there is more than sufficient flexibility to assess, and to adjust as appropriate, capital payment policy prior to October 1, 1991.

2. Prospective Payment Hospitals (Section 12002 of the House Bill, Sections 6102, 6103, 6106(c), and 6106(j) of the Senate amendment)

Present law

(a) Changes in Hospital Update Factors.—PPS payment rates are updated each year by the use of an "update factor." For FY 1988-1990, separate update factors have applied to hospitals according to location (large urban, other urban, or rural). Current law would end this distinction beginning in FY 1991. For FY 1991 and subsequent years, the Secretary is required to increase the PPS payment rates by the projected increase in the market basket index, an inflation index which measures changes in the costs of goods and services purchased by hospitals.

(b) Updates for Rural and Inner-City Hospitals.—For FY 1990, rural, other urban, and large urban hospitals received separate PPS update factors for discharges occurring on or after January 1, 1990. Under current law, the increase in PPS payment rates for FY 1991 is set equal to the projected increase in the hospital market basket index.

(2) Disproportionate Share Adjustment.—(A) Increase for Large Urban Hospitals.—Disproportionate share payments are paid to urban hospitals that have 100 or more beds and rural hospitals with 500 or more beds, and a low-income patient percentage of 15 percent or more. The adjustment is increased by 0.6 percentage points for each 1.0 percentage point increase in the proportion of low income patients between 15 and 20.2, and by 0.65 for each 1.0 percentage point increase above 20.2 percent. Thus the adjustment is based upon the formula (P-15.6 + 2.5 or (P-20.2) .65 + 5.62, respectively, where "P" is the proportion of low income patients.

(B) Increase for Hospitals with Disproportionate Indigent Care Revenues.—Certain other urban hospitals qualify for a disproportionate share adjustment if the hospital is located in an urban area, has more than 100 beds, and can demonstrate that its net inpatient care revenues from other than Medicare and Medicaid payable by State and local governments for indigent care exceed 30 percent of the hospital's net inpatient revenue. These hospitals receive a disproportionate share adjustment of 30 percent.

(C) Repeal of Sunset.—The disproportionate share adjustment expires at the end of FY 1995.

(D) No Restandardizing for Recent Adjustments.—The Secretary is required to adjust standardized amounts to insure that additional payments to disproportionate share hospitals do not increase the aggregate payments made under PPS. OBRA 1989 increased the amount of disproportionate share hospital payments. Although this provision was intended to increase aggregate payments to PPS hospitals, the requirement for adjustments in standardized amounts was not modified. The Secretary made use of a general authority to make exceptions and adjustments in PPS rates to provide for the additional payments without restandardizing.

(c) Phase-in of Area Wage Index Update for FY 1991.—Under PPS, the labor-related portion of fixed payment amount for each discharge is adjusted by a wage index which reflects the relative level of hospital wages in the particular geographic area compared to national average hospital wages. The wage index is based on a 1984 survey of wages and wage-related costs, adjusted for inflation, conducted by the Health Care Financing Administration (HCFA).

OBRA 1987 directed the Secretary to propose a new wage index for FY 1991, reflecting, to the extent feasible, the earnings and paid hours of employment by occupational category. However, after evaluating the 1988 wage survey, it was determined that collecting earnings and paid hours by occupational category was not feasible, and the survey designed to collect this data was not used (Federal Register, Vol. 55, No. 90, May 9, 1990, p. 19444). The FY 1991 wage index proposed by the Secretary does not take occupational mix into account. Instead, the Secretary has proposed a new wage index, effective October 1, 1990, based on calendar year 1988 wage data.

The FY 1991 Continuing Appropriations, H.J. Res. 655, extends the area wage index applicable to hospitals during FY 1990 for discharges occurring on or after October 1, 1990, and before October 20, 1990.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—If the regional standardized amount for large urban, other urban, or rural hospitals in a census region is higher than the national standardized amount for such hospitals, payment to those hospitals in that region is based upon 85 percent of the national standardized amount and 15 percent of the regional standardized amount for fiscal years beginning with fiscal year 1988 and ending with fiscal year 1990. This provision is known as the regional floor.

The FY 1991 Continuing Appropriation, H.J. Res. 655, extends the current regional floor on standardized amounts through October 20, 1990.

(e) Reporting Requirements.—OBRA 1987 directed the Secretary to develop a uniform hospital reporting demonstration project in two States (the Secretary selected California and Colorado). In those States, hospitals are required to report statistical and cost information using a uniform reporting format developed by the Secretary.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—The Prospective Payment Assessment Commission (ProPAC) is a 17-member Commission appointed by the Director of the Office of Technology Assessment (OTA). The statutory responsibilities of ProPAC are to: (a) report recommendations to the Secretary of HHS on the appropriate annual increases in standardized amounts and target amounts for inpatient hospital services, and (b) make recommendations to the Secretary on changes in DRG classification or weighting factors and report to Congress its evaluation of any changes made by the Secretary.

(2) Reporting Requirements for Commission and Secretary.—

(A) By March 1 of each year, ProPAC is required to report to the Secretary its recommendations for the hospital update factor. In addition, the House Committee on Appropriations has directed ProPAC to submit an annual report to Congress on the impact of PPS on the American health care system; ProPAC currently publishes this report on June 1 of each year.

(B) The Secretary, by March 1 of each year, is required to report to the Congress an initial estimate of the update factor he will recommend for the coming year. By May 1 of each year, the Secretary is required to publish an updated recommendation on the update for public comment, taking ProPAC's recommendation into account; the publication is required to include ProPAC's March 1 report. By September 1, the Secretary is required to publish a final recommendation on the update factor.

(C) The OTA is required to report annually to Congress on the functioning and progress of the Commission.

(3) Composition of Commission.—In selecting the ProPAC Commissioners, the Director of the Office of Technology Assessment (OTA) is directed to include national experts, who provide a mix of

different professionals, broad geographic representation, and a balance between urban and rural representatives, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care.

(g) Physician Assistant Hospital Payment Offset.—OBRA 1986 provided for direct Medicare payment for services of physician assistants and authorized the Secretary to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities in order to avoid duplicate payments for the costs of those services.

(h) Determination of Reasonable Costs Relating to Swing Beds.—Reimbursement to hospitals for extended care services in swing beds is limited to the average of the Medicaid skilled nursing facility rates for the State. However, OBRA 87 eliminated in the Medicaid program the distinction between skilled nursing facilities and intermediate care facilities and established a new category of provider, nursing facility.

(i) Reduction in Indirect Medical Education Payments.—Medicare pays teaching hospitals an additional amount to reflect the indirect costs associated with graduate medical education programs. Payment for each discharge is increased by approximately 7.65 percent (on a curvilinear basis) for each 10 percent increase in the ratio of interns and residents to beds. The adjustment is scheduled to increase to 8.29 percent in FY 1996, when the disproportionate share adjustment is scheduled to expire.

House bill

(a) Changes in Hospital Update Factors.—Provides the following hospital update factors for fiscal years 1991 through 1995: for FY 1991, the market basket minus 2.0 percentage points; for FY 1992, the market basket minus 3.55 percentage points; for FY 1993, the market basket minus 1.0 percentage point; and for FY 1994-1995, the full market basket increase.

(b) Updates for Rural and Inner-City Hospitals.—

(1) Phase-out of Separate Average Standardized Amounts.—Further amends update factors established in (a), above, adjusting the update for hospitals in rural areas each year by an equal annual factor beginning with FY 1991 and ending with FY 1995, such that the gap between the rural and other urban standardized amounts would be closed by the beginning of FY 1995.

For discharges occurring in a fiscal year beginning on or after October 1, 1995, requires the Secretary to compute two average standardized amounts for hospitals located in large urban areas and for hospitals located in other areas. A single update factor, the market basket increase, will then be applied to hospitals located in both large urban areas and other areas, for discharges occurring in a fiscal year beginning on or after October 1, 1995.

(2) Disproportionate Share Adjustment.—(A) Increase for Large Urban Hospitals.—Increases the disproportionate share adjustment for urban hospitals with 100 or more beds by increasing the multiplier in the formulas, phased-in over the following fiscal years: (i) hospitals where the disproportionate patient percentage ("P") is be-

tween 15 and 20.2 percent: for FY 1991, (P~15).65 + 2.5; for FY 1992, (P~15).65 + 2.5; for FY 1993, (P~15).7 + 2.5; for FY 1994, (P~15).8 + 2.5; for FY 1995, (P~15).85 + 2.5. (ii) hospitals where the disproportionate patient percentage ("P") is over 20.2: for FY 1991 and FY 1992, (P~20.2).8 + 5.88; for FY 1993, (P~20.2).9 + 6.14; for FY 1994, (P~20.2).95 + 6.66; for FY 1995, (P~20.2) + 6.92.

(B) Increase for Hospitals With Disproportionate Indigent Care Revenues.—Increases the disproportionate share adjustment for hospitals that qualify on the basis of revenue for indigent care received from State and local governments to 35 percent.

(C) Repeal of the Sunset.—Makes the disproportionate share adjustment permanent. *(D) No Restandardizing for Recent Adjustments.*—(i) Requires that the Secretary not include the additional disproportionate share payments made as a result of the enactment of OBRA 1989; (ii) Requires that the Secretary not include the additional disproportionate share payments made as a result of the enactment of OBRA 1990 when standardizing updated PPS payment amounts.

(c) Phase-in of Area Wage Index.—For fiscal year 1991, requires the Secretary to apply a blended wage index that consists of 75 percent of the area wage index based on the calendar year 1988 survey, and 25 percent of the area wage index as determined using the calendar year 1984 survey. For fiscal years 1992 and 1993, requires the Secretary to apply the new area wage index based on solely the 1988 data.

Requires the Secretary to collect data on compensation and paid hours of employment in each occupational category, including the compensation of contract employees, and provide the data to ProPAC. Using this data, requires the Secretary to analyze and make recommendations to congress on adjusting the area wage index for occupational mix, by June 1, 1993.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—Makes the regional floor permanent. Requires the Secretary to extend the regional floor on a budget-neutral basis.

(e) Reporting Requirements.—Requires hospitals receiving disproportionate share adjustments, regional referral centers, sole community providers, Medicare-dependent small rural hospitals, and EACH facilities to report statistics and cost information using the uniform reporting format developed by the Secretary under the demonstration project.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—

(A) Requires ProPAC, in addition to its other functions, to make recommendations for each fiscal year to the Senate Finance Committee and House Ways and Means Committee on changes in any existing Medicare prospective payment systems for institutional services and on development of new institutional reimbursement policies. Reports are to include recommendations relating to: (a) payment to PPS hospitals, including DRG classification, adjustments for severity, and capital reimbursement, along with recommendations on the effectiveness and quality of U.S. health delivery systems and the effect of Medicare institutional reimbursement; (b) payment to large urban hospitals, including treatment of charity

care and bad debt and the relation between Medicare and programs that pay for services to low-income individuals; (c) payments to rural hospitals, including appropriate responses to problems with low occupancy, quality of care, and access to health care services; and (d) changes in Medicare policies that will constrain the costs of health care to employers.

(B) Eliminates the current requirement for recommendations to the Secretary on DRG weighting factors and a report to Congress evaluating the Secretary's actions.

(2) Reporting Requirements for Commission and Secretary.—

(A) Requires ProPAC's March 1 report on the update factor to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means; the report is to include ProPAC's general recommendations on the effectiveness and quality of U.S. health delivery systems. Requires ProPAC to report to the Committees by June 1 preceding each fiscal year on its activities in the preceding fiscal year.

(B) Requires the Secretary, in addition to recommending an update factor, to recommend other changes in existing prospective payment policies, and to include these recommendations in the May 1 and September 1 reports. If the Secretary's recommendations differ from ProPAC's, the May 1 report is required to include an explanation of why ProPAC's recommendations were not followed.

(C) Eliminates the annual OTA report.

(3) Composition of Commission.—Provides that the Commissioners are to include a mix of different professions, rather than "professionals," and that the professions may include, but are not limited to, physicians and registered nurses.

(g) Physician Assistant Hospital Payment Offset.—Repeals the provision authorizing the Secretary to reduce payments to hospitals and skilled nursing facilities.

(h) Determination of Reasonable Costs Relating to Swing Beds.—Provides that payments to hospitals for the routine costs of extended care services in rural areas in a State would be limited to the payments for such costs under the Medicare program for freestanding skilled nursing facilities in such areas in the State. Provides that the limit would be based on costs in the most recent year for which cost reporting data are available trended forward in the same manner as the limits currently applicable to skilled nursing facilities. Further specifies that if this limit reduces payments to hospitals from those received in the previous year, the reasonable cost of the services would be equal to the reasonable cost for the previous year.

(i) Reduction in Indirect Medical Education Payments.—No provision.

Effective date: (a) Applies to discharges occurring on or after January 1, 1991. (b)(1) Applies to payments for discharges on or after January 1, 1991; provisions relating to a single standardized amount for rural and other urban areas are effective October 1, 1995. (b)(2) Applies to discharges on or after July 1, 1991, except that the provision relating to changes made by OBRA 1989 is effective as if included in the enactment of OBRA 1989. (c) Enactment. (d) Applies to discharges on or after October 1, 1990. (e) Applies to

cost reporting periods beginning on or after October 1, 1990. (f) Enactment. (g) Effective as if included in the enactment of OBRA 1986. (h) Applies to services furnished on or after October 1, 1990.

Senate amendment

(a) Change in Hospital Update Factors.—Provides the following hospital update factors for FY 1991 through 1995: for FY 1991, update the PPS rates by the market basket minus 2 percent; for FY 1992, the market basket minus 1.5 percent; for FY 1993, the market basket minus 1.4 percent; and for FY 1994-1995, the full market basket increase.

(b) Updates for Rural and Inner-City Hospitals.—(1) Phase-out of Separate Average Standardized Amounts.—Similar provision, except that requires the Secretary to update rural standardized amounts by the full market basket increase during FY 1991-1993. For FY 1994, requires the Secretary to reduce by one-half the percentage difference between the average standardized amount for hospitals in large urban areas or other areas and the average standardized amount for hospitals in rural areas. For FY 1995, the Secretary is required to provide an equal average standardized amount for rural and other urban hospitals by reducing the remainder of the percentage difference between the rural and other urban hospital average standardized amounts.

(2) Disproportionate Share Adjustment.—(A) Increase for Large Urban Hospitals.—No provision. *(B) Increase for Hospitals With Disproportionate Indigent Care Revenues.*—No provision. *(C) Repeal of the Sunset.*—No provision. *(D) No Restandardizing for Recent Adjustments.*—Similar provision with respect to OBRA 1989 changes.

(c) Phase-in of Area Wage Index.—Similar provision. Requires ProPAC to examine State level and other available data measuring earnings and paid hours of employment by occupational category of hospital workers. Requires the analysis to include the impact of variation in occupational mix on the computation of the area wage index. Requires ProPAC to include the findings in its March 1991 report, and make recommendations regarding the feasibility and desirability of modifying the wage index computation to take into account occupational mix data.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—No provision.

(e) Reporting Requirements.—No provision.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities.—

(A) Similar provision, except specifies that reports are to include recommendations relating to: (a) payment to PPS hospitals, including DRG classification, adjustments for severity, and capital reimbursement; and (b) additional payments to hospitals under PPS, including payments to hospitals in large urban and rural areas, including regional referral centers and sole community hospitals, payments for indirect costs of medical education, disproportionate share adjustments, and outlier payments. Further requires that recommendations include recommendations on major revisions to PPS and hospital outpatient payments and recommendations on

payments to PPS-exempt hospitals, skilled nursing facilities, and home health agencies.

(B) Eliminates the requirement for a report to Congress evaluating the Secretary's actions.

(2) Reporting Requirements for Commission and Secretary.—

(A) Requires that ProPAC's March 1 report include any additional recommendations developed under section (1), above, relating to institutional reimbursement for the next fiscal year. Requires ProPAC to submit to Congress by June 1 of each year, beginning with calendar 1991, a report examining the American health care system, including cost and utilization trends, the financial condition of hospitals, and new cost containment methods used by private employers and insurers.

(B) Similar provision.

(C) Similar provision.

(3) Composition of Commission.—No provision.

(g) Physician Assistant Hospital Payment Offset.—No provision.

(h) Determination of Reasonable Costs Relating to Swing Beds.—No provision.

(i) Reduction in Indirect Medical Education Payments.—Reduces the adjustment to 6.8 percent for FY 1991 through FY 1995, and to 7.4 percent for FY 1996 and later years.

Effective date: (a) Applies to discharges occurring on or after January 1, 1991. (b)(1) Applies to payments for discharges on or after January 1, 1991; provisions relating to a single standardized amount for rural and other urban areas are effective October 1, 1994. (c) Enactment. (i) Applies to payment for discharges occurring on or after January 1, 1991.

2. PPS Hospitals

Conference agreement

(a) Update Factors.—The conference agreement includes the Senate amendment providing the following update factors for hospitals, applicable to payments for discharges occurring on or after January 1, 1991: for FY 1991, the market basket percentage increase minus 2.0 percentage points; for FY 1992, the market basket percentage increase minus 1.6 percentage points; for FY 1993, the market basket percentage increase minus 1.55 percentage points; and for FY 1994 and FY 1995, the full market basket percentage increase.

(b) Updates for Rural and Inner-City Hospitals.—

(1) Phase-out of Separate Average Amounts.—The conference agreement includes the House provision with the following amendments to rural hospital updates: for FY 1991, the market basket minus 0.7 percentage points; for FY 1992, the market basket percentage increase minus 0.6 percentage points; for FY 1993, the market basket percentage increase minus 0.55 percentage points; for FY 1994, the market basket percentage increase plus 1.5 percentage points; and for FY 1995, the market basket percentage increase plus such percentage increase as necessary to provide for the average standardized amount determined to equal the average standardized amount for hospitals located in an urban area (not located in a large urban area).

OBRA 1989 required the Secretary to report to Congress by October 1, 1990 on a legislative proposal to eliminate separate average standardized amounts. The conferees expect the Secretary to deliver a report making recommendations on further modifications needed to affect the elimination of separate average standardized amounts.

(2) Disproportionate Share Adjustment.—The conference agreement includes the House provision with amendments. For hospitals with more than 100 beds where the disproportionate patient percent is over 20.2: for discharges occurring on or after January 1, 1991, and before September 30, 1993, (P-20.2) (.7) + 5.88; for discharges occurring on or after October 1, 1993, (P-20.2) (.8) + 6.14. For such hospitals where the disproportionate patient percent is between 15 and 20.2 percentage points: for discharges occurring on or after January 1, 1991, and before September 30, 1993, (P-15) (.65) + 2.5; for discharges occurring on or after October 1, 1993, (P-15) (.7) + 2.5.

In eliminating the sunset on the disproportionate share adjustment, the conferees made a conforming amendment to delete the indirect medical education factor, 8.3 percent, that would have otherwise applied for discharges on or after October 1, 1995, if the disproportionate share adjustment sunset had not been eliminated.

(c) Phase-in of Area Wage Index.—The conference agreement includes the Senate amendment, with an amendment requiring the Secretary to pay hospitals using a wage index based solely on the 1988 wage data survey for discharges beginning on January 1, 1991.

The conferees note that the policy adopted through use of the 1984 wage survey data for three months and the use of the 1988 wage survey data for nine months achieves the goal of both bills by creating a 75/25 blend of such data in FY 1991.

(d) Permanent Extension of Regional Floor on Standardized Amounts.—The conference agreement includes the House provision, with amendments. The Secretary is required to extend the regional floor until September 30, 1993, and to make payments for discharges occurring during the period beginning October 1, 1990 through October 20, 1990, in a budget neutral manner.

The Secretary is required to collect data on the input prices associated with the non-wage-related portion of the adjusted average standardized amount. The conferees expect that the Secretary will collect the data necessary to create a non-labor cost index; create the index, and evaluate its application to hospital payments; and include the impact of that application on hospitals in the required report to the Congress.

(e) Reporting Requirements.—The conference agreement does not include the House provision.

(f) Responsibilities and Reporting Requirements of Prospective Payment Assessment Commission.—

(1) Expansion of Responsibilities: The conference agreement include the House provision, with amendments, requiring ProPAC to report annually to Congress, by June 1, on trends in health care costs, payment of institutional providers, and new methods of health care cost containment.

(2) Reporting Requirements for Commission and Secretary: The conference agreement includes the House provision, with amendments. ProPAC is required to conduct a study of hospital payment rates under State Medicaid programs and report to Congress by not later than October 1, 1991.

(3) Composition of the Commission: The conference agreement does not include the House provision.

The conferees note that the purpose of ProPAC is modified to focus on the development of new reimbursement policies and modification of current reimbursement policies which promote the delivery of efficient, accessible, high-quality health care. The Commission would be directed to focus on payments to institutional providers, including hospitals, outpatient departments, skilled nursing facilities, ambulatory surgical centers, and other facilities which may be defined in the future.

In performing this function the conferees intend that ProPAC would include in its analysis and recommendations, proposals for changes in policies regarding: (1) payment of inner-city hospitals, including appropriate recognition of bad debt and charity care costs; (2) payment or rural hospitals including recommendations on appropriate responses to issues affecting access to health care services in rural areas; and (3) policies which help constrain the costs of health care to employers, including changes in Medicare and its payment policies which may affect other payers.

(g) Physician Assistant Hospital Payment Offset.—The conference agreement includes the House provision.

(h) Determination of Reasonable Costs Relating to Swing Beds.—The conference agreement includes the House bill.

(i) Reduction in Indirect Medical Education Payments.—The conference agreement does not include the Senate amendment.

3. Expansion of DRG Payment Window (Section 12003 of the House Bill)

Present law

In order to prevent unbundling of hospital services, all services provided to an inpatient of a hospital are paid through the DRG payment system, although the Secretary may waive this provision in certain isolated circumstances. Outpatient services may not be billed on behalf of an inpatient of a hospital. An inpatient stay is defined as beginning at midnight of the day of admission. The Medicare Intermediary Manual states further that services provided for up to 24 hours prior to the day of admission are considered to be part of the hospital stay and are not separately reimbursable under Part B of Medicare.

House bill

Expands the definition of inpatient operating costs to include services provided on the day of admission and for up to 72 hours prior to a patient's date of admission to a hospital. Such services provided on the day of admission and for up to 72 hours prior to the day of admission would not be separately reimbursable under Part B, if Part A is the primary payer for the admission. Medicare

carriers would be responsible for assuring that payment was not made under Part B for these services.

Effective date.—Applies to services furnished on or after January 1, 1991.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision, with an amendment requiring tht the prospective payment system under section 1886(d) include the cost of all services provided during the 72-hour period ending on the date of the partient's admission are diagnostic services (including clincial diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary), for other services furnished on or after October 1, 1991, and for diagnostic services furnished on or after January 1, 1991.

Nothing in this provision requires the Secretary to take special action to adjust the DRG relative weights to reflect the additional services that would be covered by the DRG payment under this provision. The conferees expect that no adjustment will be made before FY 1993 when Part a billing data that would include the additional services would become available to recalibrate the relative weights.

The conferees note that paragraph (b)(1) is simply a statement of current policy as emdobied in the intermediary manual. For this reason, the conferees do not expect that there is a need for any further administrative action by the Department to implement this paragraph.

4. PPS-Exempt Hospitals (WM-Section 12005)

Present law

(a) Reduction in Payment for Capital-Related Costs.—Certain hospitals are exempt from PPS, including children's hospitals, psychiatric hospitals, rehabilitation hospitals, long-term care hospitals, and cancer hospitals so designated by December 31, 1990 (1991 in Maryland). Reductions in capital-related Medicare payments do not apply to PPS-exempt hospitals.

(b) Development of National Prospective Payment Rates for Current non-PPS Hospitals.—Children's hospitals, psychiatric hospitals, rehabilitation hospitals, long-term care hospitals, and cancer hospitals so designated by December 31, 1990 (1991 in Maryland) are exempt from PPS. PPS-exempt hospitals are reimbursed on the basis of reasonable costs, subject to limits known as target amounts, which are defined as the hospital's base-year costs inflated by a rate of increase limit.

(c) Appeals of Target Amounts.—

(1) Deadlines for Review and Decision.—The Secretary is directed to provide an exemption from, or an exception and adjustment to, a hospital's target rate if events beyond the hospital's control, or extraordinary circumstances, including changes in case mix and volume, or the closure of another hospital, cause a distortion in the hospital's costs. There are no time limits associated with the Secre-

tary's authority. OBRA 1989 required the Secretary to develop a process for hospitals to request exceptions and adjustments. Although the Secretary was required to develop such a process within six months of enactment, the Secretary has not yet developed the process.

(2) Standards for Assignment of New Base.—The Secretary may approve the use of a different base year for purposes of determining the appropriate target rate if the new base period is more representative of the reasonable and necessary cost of inpatient services.

(3) Guidance to Intermediaries and Hospitals.—No provision.

House bill

(a) Reduction in Payment for Capital-Related Costs.—Capital-related costs for PPS-exempt hospitals are reduced by fifteen percent in FY 1991 and 1992.

(b) Development of National Prospective Payment Rates for Current Non-PPS Hospitals.—Requires the Secretary to develop a proposal to modify the current system under which PPS-exempt hospitals are reimbursed for the operating costs of inpatient hospital services under Part A, or to replace the current system with a prospective payment system.

In developing a proposal for a prospective payment system, the Secretary is required to: consider the need to provide appropriate limits on increases in Medicare expenditures; provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice; consider the need to increase the payment otherwise made under the proposed system for patient cost or length-of-stay outliers; consider the need to increase payments to disproportionate share hospitals, teaching hospitals, and hospitals located in high-wage geographic areas; and, provide for the appropriate allocation of operating and capital-related costs of hospitals and distinct units of such hospitals that would be paid under the new system.

Requires the Secretary to submit the developed proposal to the Senate Committee on Finance and the House Ways and Means Committee by February 1, 1991. Requires the Prospective Payment Assessment Commission (ProPAC) to submit an analysis of and comments on the proposal, by May 1, 1991, to the same committees.

(c) Appeals of Target Amounts.—

(1) Deadlines for Review and Decision.—Requires that the performance standards and criteria for a fiscal intermediary (an agency or organization that contracts with HCFA to process Part A claims) include the ability to process a completed application of reconsideration of the target amount for a PPS-exempt hospital within 60 days after the application is filed, and, in cases where an incomplete application is received, the ability to return the application with instructions on how to complete the application no later than 60 days after the application is filed.

Requires the Secretary to announce a decision on any request for an exemption, exception, or adjustment not later than 120 days after receiving a completed application of such a request, and in-

clude a detailed explanation of the grounds on which the request was approved or denied.

(2) Standards for Assignment of New Base Period.—In making a determination about the assignment of a new base period, requires the Secretary to specifically consider: changes in applicable technologies, medical practices, or case mix severity that increase the hospital's costs; whether increases in wages and wage-related costs in the geographic area in which the hospital is located exceed the average increases in such costs by hospitals nationally; and other factors the Secretary considers appropriate.

(3) Guidance to Intermediaries and Hospitals.—Requires the administrator of HCFA to provide guidance to fiscal intermediaries reviewing applications for reconsideration of the target amount and to PPS-exempt hospitals to assist them in filing complete applications.

Effective date: (a) Effective for cost reporting periods beginning on or after October 1, 1990. (b), (c)(1) and (c)(3) effective upon enactment. (c)(2) Effective as if enacted in OBRA 1989.

Senate amendment

(a) Reduction in Payment for Capital-Related Costs.—No provision.

(b) Development of National Prospective Payment Rates for Current Non-PPS Hospitals.—No provision.

(c) Appeals of Target Amounts.—Similar provision, except requires the Secretary to announce a decision an any request for an exemption, exception, or adjustment by not later than 180 days after receiving a completed application, and requires that a detailed explanation of the reason for approval or denial of a request be included.

Effective date: (c) Effective as if included in the enactment of OBRA 1989.

Conference agreement

4. PPS-Exempt Hospitals

Conference agreement

(a) Reduction in Payments for Capital-Related Costs.—The conference agreement does not include the House provision.

(b) Development of National Prospective Payment Rates for Current non-PPS Hospitals.—The conference agreement includes the House provision, requiring the Secretary to develop a new prospective payment methodology for exempt hospitals, or to modify the target rate system for those hospitals currently exempted from the prospective payment system. In developing this methodology, the conferees expect that the Secretary will consider the special circumstances of some categories of exempt hospitals, such as cancer centers, with technical amendments.

(c) Appeals of Target Amount.—The conference agreement includes the Senate amendment, with an amendment, requiring the Secretary to announce a decision on any request for an exemption, exception or adjustment not later than 180 days after the fiscal intermediary receives a completed application.

(d) Adjustment to Payment Amounts.—PPS-exempt hospitals shall receive 50 percent of the amount by which their operating costs exceed the target amount. However, these additional payments are subject to a ceiling of 110 percent of the target amount.

The conference agreement includes the provision. The conferees note that the assignment of a new base period falls within the Secretary's discretionary authority to grant exemptions, exceptions, and adjustments to the TEFRA target amount. While the provision requires the Secretary to take into consideration certain factors in determining whether to assign a new base period, the Secretary may take into consideration other factors that might lead to a determination that a new base period is not warranted. In particular, the conferees would not expect that an increase in wage-related costs in the geographic area in which the hospitals are located would exceed the national average increase in such costs as a result of an automatic assignment of a new base period.

5. Freeze in Payments Under Part A through December 31, 1990 (WM-Section 12006)

Present law

Under current law, payments to hospitals are modified in several ways for FY 1991. Payments to hospitals increase by the market basket inflation index; new area wage indices become effective; the regional floor expires; and capital-related costs are reimbursed at 100 percent. Payments to hospices increase by the market basket inflation index. Payments to skilled nursing facilities and home health agencies do not change.

House bill

Freezes payments under Part A at FY 1990 levels through December 31, 1990.

Effective date: November 1, 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision, effective from October 21, 1990 through December 31, 1990.

The conferees expect that the Secretary will implement this provision by reducing the standardized amounts published in the Federal Register on September 4, 1990 by the market basket percentage increase of 5.2 percent.

The freeze in the update of the per resident amounts under section 1886(h) will be applied for portions of cost reporting periods occuring during this period. Future updates of such per resident amounts, like the update factor will be made as though the freeze did not occur.

6. Expansion of Hospice Benefit (Section 3112 of House bill, Section 6105 of Senate amendment)

Present law

A Medicare beneficiary who is terminally ill may elect to receive hospice services for two 90-day periods and one subsequent 30-day period, for a total of 210 days during an individual's lifetime. Beneficiaries making this election receive these services in lieu of most other Medicare benefits.

House bill

No provision.

Senate amendment

Provides for a subsequent period of coverage for hospice care, beyond the 210-day limit, if the beneficiary is recertified as terminally ill by the medical director or the physician member of the interdisciplinary group of the hospice program.

Effective date: Applies to care and services furnished on or after January 1, 1990.

Conference agreement

6. Expansion of Hospice Benefit.—The conference agreement includes the Senate amendment.

7. Miscellaneous and Technical Provisions Relating to Part A (Section 6106 of Senate amendment)

Present law

(a) Waiver of Liability for Skilled Nursing Facilities and Hospices.—When a provider furnishes services that are not covered under Medicare, the provider is not normally entitled to Medicare payment for those services. In order for payment to be made to a provider of care, Medicare law requires, at a minimum, that services be medically reasonable and necessary for the diagnosis or treatment of an illness or injury. It also excludes from payment care that is considered to be custodial in nature.

The program, however, has recognized that circumstances may exist where providers of services or beneficiaries could not have reasonably known that services would not be covered. Medicare has paid for a limited number of services which are not medically necessary or are determined to be custodial in nature, so long as it is determined that the provider or beneficiary did not know and could not reasonably have been expected to know that services would be uncovered. The provider is presumed not to know that coverage for certain services would be denied—it qualifies for a "favorable presumption"—when its denial rate is below a certain level. With this favorable presumption, its liability for denied claims below the threshold is waived and it is paid for these claims. The provider receives waiver of liability protection for denied claims below the threshold.

Under the waiver of liability policy for SNFs, facilities with a denial rate of up to 5 percent qualify for favorable presumptive status and are paid for these denied services. If their denial rate

exceeds 5 percent, facilities lose their favorable presumption, and are not automatically paid for their denied claims at or below the 5 percent threshold, and they must argue each claim on a case-by-case basis.

Under the waiver of liability policy for hospices, agencies with a denial rate of up to 2.5 percent qualify for favorable presumptive status and are paid for these denied services. If their denial rate exceeds 2.5 percent, agencies lose their favorable presumption, and are not automatically paid for their denied claims at or below the 2.5 percent threshold, and they must argue each claim on a case-by-case basis.

The skilled nursing facility provision is scheduled to expire October 31, 1990, and the hospice provision is scheduled to expire November 1, 1990.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—

(1) Priority in Discretionary Designations.—OBRA 89 established an Essential Access Community Hospital (EACH) program, under which grants may be made to States to develop rural health networks linking hospitals designated as EACHs with rural primary care hospitals (RPCHs). In order to qualify for Medicare reimbursement as an RPCH, a facility must be located in a State receiving a grant and must be designated by that State as an RPCH. The Secretary is authorized to designate as RPCHs up to 15 additional facilities that do not meet these requirements.

(2) Eligibility of Certain Closed Hospitals.—A hospital must meet the conditions of participation for a hospital when it applies for designation as an RPCH.

(3) Alternative Criteria for RPCH Designation.—In order to be designated as an RPCH by a State, a facility must have no more than 6 inpatient beds, ordinarily providing inpatient care for periods of no more than 72 hours.

(c) Skilled Nursing Facility Routine Cost Limits.—The Secretary of HHS is authorized to set limits on skilled nursing facility (SNF) routine service costs that will be recognized as reasonable and reimbursed under the program. The Secretary is required to establish separate per diem limits for freestanding and hospital-based SNFs as follows: For freestanding SNFs in urban and rural areas, the limits are set at 112 percent of the mean routine service costs of urban and rural hospital-based facilities, respectively.

Limits for urban and rural hospital-based facilities are set at the appropriate freestanding limit, plus 50 percent of the difference between the freestanding limit and 112 percent of the mean routine service cost for hospital-based facilities. An amount is added to the hospital-based SNFs that is attributable to excess overhead allocations resulting from Medicare reimbursement principles.

The current schedule of Medicare cost limits for SNFs is based on cost reports submitted by SNFs for cost reporting periods ending between October 1, 1982 and September 30, 1983. The Omnibus Budget Reconciliation Act of 1989 included a provision that required the Secretary to use cost reports for cost reporting periods beginning not earlier than October 1, 1985. This provision was not implemented.

(d) Nursing Home Reform Technical Amendments.—

(1) Nurse Aide Training.—Effective October 1, 1990, skilled nursing facilities (SNFs) participating in Medicare must use on their staffs as nurse aides only those persons who have completed approved training and competency evaluation programs. Specifically, the law prohibits SNFs from using (on a full-time, temporary, per diem, or other basis) persons as nurse aides for more than 4 months, unless the aide (1) has completed a training and/or a competency evaluation program approved by the State; and (2) is competent to provide nursing or nursing-related services. The law also requires States to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse. Nursing homes are required to consult these registries before hiring a person as a nurse aide.

OBRA 87 required the Secretary to establish requirements for State approval of nurse aide training and competency evaluation programs by September 1, 1988, and to specify in these requirements areas to be covered in programs, content of curriculum, minimum hours of initial and ongoing training and retraining, qualification of instructors, and procedures for determining competency. The law prohibits the approval of training and competency evaluation programs offered by a SNF, if the facility has been determined to be out of compliance with requirements for provision of services, residents' rights, and administration. In addition, an amendment included in OBRA 89 prohibits the approval of programs that impose charges for training and competency evaluation.

In 1989, HCFA issued an interim guidance document, effective May 12, 1989, setting out approval criteria for the States. On March 23, 1990, HCFA published a proposed regulation on approval criteria for nurse aide training and competency evaluation programs.

(2) Period for Resident Assessment.—OBRA 87 requires that nursing facilities conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be performed promptly upon, but no later than 4 days after, admission to the facility.

(3) Resident Access to Clinical Records.—OBRA 87 requires nursing facilities to assure the confidentiality of a resident's personal and clinical records.

(4) Maintaining Regulatory Standards for Certain Nursing and Related Services.—OBRA 87 requires SNFs to provide, directly or under arrangements, various kinds of services, including medically-related social services, dietary services, and an on-going program of activities. Final regulations published by HCFA on February 2, 1989, and effective October 1, 1990, specify qualifications for the persons providing these services. These are often different from regulations in effect prior to October 1.

(5) Ombudsman Program Coordination with State Survey and Certification Agencies.—States are required to notify State long-term care ombudsman (established under the Older Americans Act) of survey findings of noncompliance with any of the requirements for participation.

(6) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—Medicare requires that SNFs provide 24-hour li-

censed nursing care and use a registered professional nurse at least during the day tour of duty (of at least 8 hours a day) 7 days a week. The law authorizes the Secretary to provide waivers to certain rural SNFs for the registered nurse requirement for a 48-hour period.

(e) ProPAC Study of Medicaid Payments to Hospitals.—No provision.

(f) Clarification of Waiver Authority.—

(1) No provision.

(2) OBRA 1989 authorized the Secretary to waive nursing home survey and certification requirements for one year to test an approved alternative system in Wisconsin.

(g) Delay in Application to Geographic Classification Review Board.—OBRA 1989 required the appointment of a Geographic Classification Review Board, to consider appeals by hospitals for a change in classification from rural to urban or from one urban area to another. A hospital requesting such a change for a fiscal year must file its application by the first day of the preceding fiscal year. Guidelines to be used by the Board in evaluating applications were published by the Secretary on September 6, 1990, after the due date for FY 1992 applications.

(h) Review of Hospital Regulations with Respect to Rural Hospitals.—OBRA 87 required that the Secretary include a regulatory impact analysis in any notice of proposed rulemaking under Medicare if the rule is expected to have a significant impact on a substantial number of small rural hospitals, and make available a final impact analysis when the final version of such a rule is promulgated.

House bill

No provision.

Senate amendment

(a) Waiver of Liability for Skilled Nursing Facilities and Hospices.—Extends waiver of liability protection for skilled nursing facilities and hospices through December 31, 1995.

Effective date: Enactment.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—

(1) Priority in Discretionary Designations.—Requires the Secretary, in selecting the additional facilities for designation as RPCHs to give priority to hospitals that are not in a grantee State but that are participating in a rural health network in a grantee State.

(2) Eligibility of Certain Closed Hospitals.—Authorizes the Secretary to designate a closed hospital as an RPCH if the hospital closed within the last twelve months and the hospital met the conditions of participation at the time it closed.

(3) Alternative Criteria for RPCH Designation.—Allows a State to designate as an RPCH a facility that does not meet the 6 bed/72 hour rules but meets alternative limits on number of beds and duration of treatment established by the State.

Effective date: Enactment.

(c) Skilled Nursing Facility Routine Cost Limits.—Requires the Secretary to update SNF routine cost limits for cost reporting peri-

ods beginning on or after October 1, 1989, by using cost reports from cost reporting periods ending January 31, 1988 through December 31, 1988. Requires that limits be updated every 2 years beginning on or after October 1, 1992.

Effective date: Effective as if included in OBRA 89.

(d) Nursing Home Reform Technical Amendments.—

(1) Nurse Aide Training.—Includes a number of amendments to nurse aide training and competency evaluation requirements:

(A) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (or continuing) any actions against a State for its failure to meet the law's requirements pertaining to competency evaluation through procedures other than passing a written examination before the effective date of regulations issued by the Secretary, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(B) Part-Time Nurse Aides Not Allowed Delay in Training.—Provides that SNFs may not use individuals as nurse aides on a temporary, per diem, or any other basis on or after October 1, 1990, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(C) Clarification of Permissible Charges for Training of Aides Not Yet Employed by a Facility.—Permits accredited nonfacility-based nurse aide training and competency evaluation programs to impose charges on individuals who are not presently employed by a nursing facility or who have not yet had an offer for future employment at a facility. Further requires, for individuals employed or under contract for employment as a nurse aide within 12 months after successful completion of a nonfacility-based, State-approved nurse aide training and competency evaluation program, that the State ensure that the costs they incurred for these programs are reimbursed to them.

(D) Nurse Aide Registry.—Requires SNFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. Further requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry.

(E) Clarification of State Responsibility to Determine Competency.—Prohibits States from using subcontracts or other devices to determine that an aide is competent to provide nursing and nursing-related services.

(F) Qualification of Medicare Facilities to Provide Nurse Aide Training and Competency Evaluation.—Provides that a SNF would be ineligible to offer a training and competency evaluation program (1) if at any time on or after October 1, 1988, the facility has been terminated from participation in Medicare or Medicaid, until after the end of a period of at least 2 years during which no survey or investigation finds any deficiencies warranting termination and at least one standard survey has been conducted; or (2) the facility received a notice of termination at any time during the one year

period ending September 30, 1990, until after the completion of a subsequent standard survey which finds no deficiencies warranting the notice; or (3) is found in a standard survey or investigation to have deficiencies resulting in a civil monetary penalty in excess of $5,000, denial of payment, or appointment of temporary management, until the completion of a subsequent standard survey which finds no deficiencies warranting these sanctions.

(G) Retraining Required.—Requires those nurse aides who have not provided services for 24 consecutive months to complete either a nurse aide training and competency evaluation program or a new competency evaluation program.

(2) Period for Resident Assessment.—Extends the time limit for a resident's assessment from 4 days to 14 days after admission.

(3) Resident Access to Clinical Records.—Adds to this requirement the right to have access to current clinical records, promptly upon the reasonable request (as defined by the Secretary) of the resident or the resident's legal representative.

(4) Maintaining Regulatory Standards for Certain Nursing and Related Services.—Requires that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities be comparable or more strict in their requirements for these services as were regulations for these services prior to the enactment of OBRA 87. Further requires the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners, and report to Congress by January 1, 1993, on whether facilities have on their staffs persons with significantly different credentials as a result of new regulations that became effective October 1, 1990, and the impact of staff composition on quality of care.

(5) Ombudsman Program Coordination with State Survey and Certification Agencies.—Requires that State survey agencies enter into a written agreement with the Office of the State Long-Term Care Ombudsman (as defined by the Older Americans Act) to provide for information exchange, case referral, and prompt notification of the office of any adverse action to be taken against a nursing facility.

(6) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—Requires the Secretary to provide notice of the waiver to the appropriate State and substate long-term care ombudsman, to the protection and advocacy system and other appropriate State and private agencies, and ensure that a nursing facility that is granted a waiver make reasonable efforts to notify present and prospective residents of the facility (or a guardian or legal representative of residents) of the waiver.

Further requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for SNFs. Requires that if the Secretary determines that the establishment of minimum ratios is advisable, the report must specify appropriate ratios or standards.

Effective date. Effective as if included in OBRA 87.

(e) ProPAC Study of Medicaid Payments to Hospitals.—Requires the Prospective Payment Assessment Commission to conduct a

study of Medicaid hospital payment rates. Requires the study to examine the level of reimbursement under State programs, the relationship between Medicaid and Medicare payments, and the financial condition of affected hospitals, particularly those in urban areas treating large Medicaid and low-income populations. Requires the Commission to report its findings and recommendations to Congress by October 1, 1991.

Effective date: Enactment.

(f) Clarification of Waiver Authority.—

(1) Authorizes the Secretary to waive any provisions of Medicare law that are necessary to conduct a demonstration project for limited-service rural hospitals agreed to before the enactment of OBRA 1989.

(2) Removes the one-year time limit and extends the waiver to other States as part of a nursing home prospective case-mix payment demonstration project.

Effective date: Effective as if included in the enactment of OBRA 1989.

(g) Delay in Application to Geographic Classification Review Board.—Provides that an application shall be considered to have been filed by the first day of the preceding fiscal year if submitted within 60 days of the publication of the guidelines.

Effective date: Enactment.

(h) Review of Hospital Regulations with Respect to Rural Hospitals.—Requires the Secretary, within 12 months after enactment, to review the impact of Medicare regulations affecting PPS hospitals and determine which could be made less burdensome for rural hospitals without diminishing quality of care; requires that the review include standards related to staffing requirements. Requires the Secretary to report the results to Congress by April 1, 1992, including conclusions on appropriate changes in regulations.

Effective date: Enactment.

7. Miscellaneous and Technical Provisions Relating to Part A

Conference agreement

(a) Waiver of Liability for Skilled Nursing Facilities and Hospice.—The conference agreement includes the Senate amendment.

(b) Designation of Certain Hospitals as Rural Primary Care Hospitals.—The Conference agreement includes the House provision.

(c) Skilled Nursing Facility Routine Cost Limits.—The conference agreement includes the Senate amendment.

(d) Nursing Home Reform Technical Amendments.—The managers note that the amendments included below make minor and technical changes to the nursing home reform statute as originally enacted in 1987. The managers are aware that the Secretary will soon issue regulations implementing portions of the original law. The managers do not intend that the amendments below result in any further delay of forthcoming regulations.

(1) Nurse Aide Training.—

(A) No Compliance Actions Before Effective Date of Guidelines.—The conference agreement includes the Senate amendment, with an amendment prohibiting the Secretary from taking (or continuing) any actions against a State for its failure to meet the law's re-

quirements for approving nurse aide training and competency evaluation programs before the effective date of guidelines issued by the Secretary, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(B) Part-Time Nurse Aides Not Allowed Delay in Training.—The conference agreement includes the Senate amendment, with a modification to provide that SNFs may not use individuals as nurse aides on a temporary, per diem, leased, or an any other basis other than as a permanent employee, on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(C) Clarification of Permissible Charges for Training of Aides Not Yet Employed by a Facility.—The conference agreement includes the Senate amendment, with an amendment specifying that the prohibition on charging aides would apply to aides who are employed by or who have received an offer of employment from a facility. The conference agreement also includes a modification requiring States to provide for reimbursement of the costs incurred by persons in completing nurse aide training and competency evaluation programs, if they are not employed by or have not received an offer of employment from a facility. These costs would be reimbursed for aides employed within 12 months after completing a program and would be prorated during the period the aide is employed by the facility.

(D) Nurse Aide Registry.—The conference agreement includes the Senate amendment, with amendments. The agreement requires SNFs to consult any State nurse aide registry that the facility believes will include information about an aide. The conference agreement also requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 of OBRA 89 and those for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's registry. The agreement further prohibits States from imposing any charges on aides for establishing and maintaining the registries.

(E) Clarification of State Responsibility to Determine Competency.—The conference agreement includes the Senate amendment.

(F) Qualification of Medicare Facilities to Provide Nurse Aide Training and Competency Evaluation.—The conference agreement includes the Senate amendment, with an amendment. The agreement prohibits the approval of nurse aide training and competency evaluation programs offered by or in a skilled nursing facility which, within the previous 2 years—(a) has operated under a registered nurse waiver authorized under Medicare; (b) has been subject to an extended (or partial extended) survey under Medicare or Medicaid; or (c) has been subject to sanctions that may be imposed under current law, including a civil money penalty of not less than $5,000, denial of payment, appointment of temporary management, closing the facility or transferring residents, or termination. For the 2-year period beginning October 1, 1988, the conference agreement also prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which (a) has been terminated from participation in Medicaid or Medicare; or (b) has been subject to sanctions that may be imposed

under Medicaid or Medicare or applicable State law, including denial or payment, a civil money panalty of not less than $5,000, appointment of temporary management, or closing the facility or transferring residents.

(G) Retraining Required.—The conference agreement includes the Senate amendment.

(2) Period for Resident Assessment.—The conference agreement includes the Senate amendment.

(3) Maintaining Regulatory Standards for Certain Nursing and Related Services.—The conference agreement includes the Senate amendment, with a modification to require that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities include requirements that are at least as strict as those applicable to providers of these services prior to the enactment of OBRA 87. The agreement also deletes the requirement for the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners.

(4) Ombudsman Program Coordination with State Survey and Certification Agencies.—The conference agreement includes the Senate amendment, with an amendment to require State survey agencies to notify the Office of the State Long-Term Care Ombudsman of any adverse action taken against a facility under the enforcement section of nursing home reform law.

(5) Additional Requirements with respect to Medicare Nurse Staffing Waivers.—The conference agreement includes the Senate amendment, with a modification requiring the Secretary to provide notice of the waiver to the State long-term care ombudsman and the protection and advocacy system in the State for the mentally ill and mentally retarded, and requiring the facility to notify residents (or, where appropriate, the guardians or legal representatives of residents) and members of their immediate families of the waiver.

(6) Other Amendments.—The conference agreement includes other amendments:

(A) Disclosure of Information of Quality Assessment and Assurance Committees.—The conference agreement provides that a State or the Secretary may not require disclosure of the records of the quality assessment and assurance committee, except for determining the facility's compliance with the requirement for maintaining the committee.

(B) Resident Access to Clinical Records.—The conference agreement requires that access to records be provided within 24 hours (excluding hours during a week-end or holiday) after a request. The conference agreement also requires that access be provided to the resident's legal representative.

(C) Clarification on Findings of Neglect.—The conference agreement provides that a State can not make a finding of neglect by an individual if the individual demonstrates that neglect was caused by factors beyond the control of the individual.

(D) Timing of Public Disclosure of Survey Results.—The conference agreement requires that survey and certification information

be made available to the public within 14 calendar days after this information is made available to the facilities.

(E) Assurance of Appropriate Payment Amounts.—The conference agreement requires the Secretary to take into account in payments to SNFs the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each Medicare eligible resident.

(F) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—The conference agreement requires that SNFs provide treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

(G) Clarification of Definition of Nurse Aide.—The conference agreement clarifies that nurse aides do not include registered dieticians.

(H) Resident's Rights to Refuse Intra-Facility Transfers.—The conference agreement provides residents the right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility to a portion that is not. The agreement further provides that a resident's refusal to be transferred will not affect the resident's eligibility for Medicare.

(I) Inclusion of State Notice of Rights in Facility Notice of Rights.—The conference agreement requires SNFs to include in the written statement of rights that they are currently required to provide residents, a copy of the State notice of Medicaid rights of residents and spouses of residents.

(e) Designation of Pediatric Liver Transplant Facilities.—The conference agreement does not include the House provision.

(f) ProPAC Study of Medicaid Payments to Hospitals.—The conference agreement does not include the House provision.

(g) Clarification of Extension of Waiver for Finger Lakes Area Hospitals Corporation (FLAHC).—The conference agreement includes the Senate Amendment with an amendment clarifying the FLAHC waiver in OBRA 1989. The conference agreement modifies the test for periodic renewal of the FLAHC waiver to provide that aggregate payments made by Medicare under the FLAHC system since October 1, 1984, are compared to the aggregate payments which would have been made since that date if the hospitals had been paid under the national DRG system.

(h) Clarification of Secretarial Waiver Authority.—The conference agreement includes the Senate amendment, with modifications.

(i) Delay in Application to Geographic Classification Review Board.—The conference agreement includes provisions from both bills, with a House amendment to clarify the treatment of individual hospitals that are reclassified by the Board. the amendment provides that if the combined impact of all the reclassifications to a given urban area that are effective for this fiscal year reduce the wage index of the urban area by more than one percentage point, the wage index applicable to the hospitals that have been reclassified to the urban area would be determined as if the reclassified hospitals were located in that urban area. The wage data for all

the hospitals that have been reclassified to the same urban area would be combined to determine a single wage index value that would be applicable to those hospitals. In addition, the determination of whether wage data for hospitals that have been reclassified from a rural area to another geographic area should be included in the calculation of the wage index for the rural area based on the combined impact of all the reclassifications from the rural area.

The conference agreement includes a provision from both bills regarding the process for appealing a decision of the Board. The provision was included at the request of the Department of Justice due to concerns about the constitutionality of the relevant provisions of OBRA 1989. The conferees note that even though this provision, struck the first sentence of section 1886(d)(10)(C)(iii)(II), applicants that lose at the Board still must appeal the Board's decision to the Secretary no later than 15 days after the Board renders its decision. The conferees note that concern has been raised regarding the lack of judicial review for decisions of the Secretary concerning decisions of the board. The conferees intend to monitor closely the development of the board and to take appropriate action to provide for such judicial review as necessary. The conference agreement also provides an extension of the application submission deadline for hospitals requesting a change in their geographic classification for FY 1992.

With regard to the interim final rules for the geographic classification review board, the conferees are concerned that the recently promulgated rules do not include guidelines for joint application by hospitals in an urban area classified as other urban to seek reclassification to another urban area classified as large urban. As stated in subsection 6003(h) of OBRA 1989, the Secretary is to develop guidelines "for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area." The statute does not distinguish between rural and urban counties and neither should the Secretary. The omission of guidelines for urban hospitals to seek reclassification as a group is contrary to the intent of Congress in establishing the board and should be rectified at the earliest possible date.

The conferees are also concerned that the thresholds for consideration of applications by the board may be set too high and would urge the Secretary to consider changing them. In particular, the Committee is concerned that the 85 percent criterion for average hourly wages is too high and that the Secretary should consider a threshold of 70 percent for this purpose.

(j) Review of Hospital Regulations with Respect to Rural Hospitals.—The conference agreement includes the Senate amendment.

OTHER PART A TECHNICALS

The conference agreement includes the Senate provision with the following amendments:

(a) Hospital Obligations with Respect to Treatment for Emergency Medical Conditions and Women in Active Labor.—The conference agreement amends the provisions of the Social Security Act relating to hospital obligations with respect to treatment for emergency medical conditions and women in active labor by:

(1) Clarifying standards for civil money penalties: The conference agreement changes the standard for a civil money penalty for participating hospitals from knowingly violating a requirement of the statute to negligently violate a requirement.

(2) Application of penalties to small hospitals: The conference agreement reduces the maximum civil monetary penalties which could be imposed on a hospital that violates a requirement of the statute with less than 100 beds to $25,000.

(3) Clarifying standards for terminations of a hospital provider agreement: The conference agreement clarifies standards for termination of a hospital by deleting the provision for hospital termination from section 1867 of the Social Security Act and by providing that hospitals that fail to meet the requirements of section 1867 would be terminated under the provisions of the Social Security Act relating to Medicare conditions of participation. The provisions are effective for actions occurring on or after the first day of the sixth month beginning after enactment.

(b) Inspector General Study of Prohibition on Hospital Employment of Physicians.—The conference agreement requires the Secretary of the Department of Health and Human Services, acting through the Inspector General, to conduct a study on the effect of state laws which prohibit the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services. It further provides that the study include an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (relating to examination and treatment of individuals with an emergency medical condition and women in active labor), and to assess the impact of such prohibitions on the availability and accessibility of emergency medical care services for Medicare and Medicaid beneficiaries. Requires that the Secretary submit a report to Congress on the study no later than one year after enactment. The provision is effective upon enactment.

(c) Immediate Enrollment in Part A by Individuals Enrolled in an HOM or CMP.—The conference agreement includes the House provision with technical amendments.

(d) Swing Beds Certified Prior to May 1, 1987.—The conference agreement provides that hospitals that had entered into an agreement to provide extended care services in swing beds prior to May 1, 1987, and would continue to be eligible to do so regardless of whether the area in which the hospital is located is rural or urban.

(e) Prospective Payment System for Skilled Nursing Facility Services.—The conference agreement requires the Secretary of HHS to develop for SNF services a proposal to modify or replace the current reimbursement methodology with a prospective payment system.

In developing a prospective payment system, the Secretary is required to (1) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program without jeopardizing access to extended care services for individuals unable to care for themselves; (2) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice; (3) take into consideration

the need to increase the payment otherwise made under the new reimbursement system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or costs of treatment provided for under the applicable prospectively determined payment rate; (4) take into consideration the need to adjust payments under the system to take into account factors such as disproportionate share of low-income patients, and differences in wages and wage-related costs in various geographic areas, and other factors the Secretary considers appropriate; and (5) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

The Secretary (acting through the Administrator of the Health Care Financing Administration) is further required to submit any research studies to be used in developing the proposal to the Senate Finance Committee and the House Ways and Means Committee by April 1, 1991. The Secretary then must submit the SNF prospective payment proposal to the Committee by September 1, 1991, and the Prospective Payment Assessment Commission must submit an analysis of and comments on the Secretary's proposal to the Committees by March 1, 1992.

PART A

8. New Provision—Formerly section 12004 of the House Bill: Payments for Direct Medical Education Costs

SECTION 4004 OF THE CONFERENCE AGREEMENT

Payments for medical education costs

Current law

(a) Determination of Full-Time-Equivalent Residents.—Medicare's payment for the direct costs of approved medical education programs (including the salaries of residents and teachers, and other overhead costs directly attributable to the medical education program for training residents, nurses, and allied health professionals) are excluded from PPS. The direct costs of training nurses and allied health professionals are paid on a reasonable costs basis. The Consolidated Omnibus Reconciliation Act of 1985 (COBRA) replaced reasonable cost reimbursement for graduate medical education (residency training programs for physicians) with formula payments based on each hospital's per resident costs. Medicare payments to each hospital are based on the product of: (1) the hospital's approved cost per full-time equivalent (FTE) resident; (2) the weighted average number of FTE residents; and (3) the percentage of inpatient days attributable to Medicare Part A beneficiaries.

Each hospital's per FTE resident amount is calculated using data from a base year, increased by 1 percent for hospital cost reporting periods beginning on or after July 1, 1985, and updated in subsequent cost reporting periods by the change in the CPI. The number of FTE residents will be calculated at 100 percent after July 1, 1986, only for residents in their initial residency period (defined as the minimum number of years of formal training necessary to satisfy specialty requirements for board eligibility plus 1 year, but not

exceeding 5 years). For residents beyond the initial period of residency, the weighting factor is 0.50 FTE. Foreign medical school graduates are not counted as FTE residents unless they have passed certain designated examinations.

(b) Cap on Approved FTE Resident Amounts.—The approved FTE resident amount for a hospital is equal to the amount determined for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage in the CPI during the 12-month period ending at that midpoint, with adjustments to reflect previous under- or over-estimations in the projected percentage change in the CPI.

(c) Recognition of Costs of Hospital Supported Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—Pursuant to a regulation issued by the Secretary on January 3, 1984, the costs incurred by a hospital for the clinical costs of university-affiliated nursing and allied health education programs are not reimbursable under Medicare.

House bill

(a) Determination of Full-Time-Equivalent Residents.—For residents in their initial residency period, a primary care resident will be counted as 1.1 FTE; a resident specializing in internal medicine or pediatrics will be counted as 1.0 FTE; and all other residents will be counted as 0.75 FTE. For residents beyond the initial period of residency, the weighting factor is increased to 0.80 FTE. Primary care specialties include, family practice medicine, general internal medicine, or general pediatrics.

(b) Cap on Approved FTE Resident Amounts.—The approved FTE resident amount for a hospital is limited to 200 percent of the median of all approved FTE amounts for hospitals for cost reporting periods beginning in FY 1992, adjusted by the area wage index applicable to the hospital; decreasing to 175 percent in FY 1993, and to 150 percent in FY 1994.

(c) Recognition of Costs of Hospital Support Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—No provision.

Senate amendment

(a) Determination of Full-Time-Equivalent Residents.—No provision.

(b) Cap on Approved FTE resident Amounts.—No provision.

(c) Recognition of Costs of Hospital Supported Nursing and Allied Health Education Programs as Allowable Reasonable Costs.—Provides for the reimbursement for clinical costs of university-affiliated nursing programs related to clinical training on a hospital's premises for a hospital supported education program incurred by a hospital or educational institution related to the hospital by common ownership or common control occurring on or after October 1, 1990. Such incurred costs are considered to be for approved educational activities.

Prohibits the Secretary from recouping any alleged overpayments relating to costs which would be allowable under this provision, and to the extent such recoupments have already occurred, to refund the money to the hospitals involved. Directs the Secretary

to audit the hospitals involved to assure that costs of nursing and allied health programs were appropriately reported.

Conference agenda

The conference agreement includes the Senate amendment with modifications. The conferees note that this provision is a further modification of section 6205 of OBRA 89. Payments for hospital-supported programs would be limited to those programs for which a hospital claimed costs and was paid, at least on an interim basis, (as allowable nursing and allied health education costs payable on a reasonable cost basis under section 1861(v)(1)) on its most recent cost reporting period ending on or before October 1, 1989. The conferees note that in the case of hospital-operated nursing and allied health education programs, the Secretary does not recognize costs incurred by a related educational organization as allowable educational costs since such costs are a redistribution of costs from the educational institution to the hospital. Although the provision provides for recognition of the costs incurred by a related educational organization for clinical training on the hospital's premises in the case of a hospital-supported program, the conferees intend that nothing in the provision should be construed as requiring the Secretary to modify his current policy in regard to the determination of reasonable costs for a hospital-operated program.

The conferees note that the Secretary has recently begun to implement the graduate medical education policy enacted in COBRA 85. The conferees expect the Secretary to recoup overpayments identified as a result of implementing this policy over a four year period, after a one year delay. The Secretary may not recoup more than 25 percent of the total amount of such overpayments from a hospital during each of four fiscal years. Nothing in this provision should be construed to require the Secretary to continue to make such overpayments to such hospitals after the initial identification of such an overpayment.

PART B

1. Reduction in Payments for Specific Categories of Physicians Services (Sections 12101-12104 and 4001-4005 and 4013(a) of House bill; Sections 6111-6114 and 6121(c) of Senate amendment)

Present law

(a) Overvalued Procedures.—

(1) Payment Reductions.—OBRA '86 provided for a ten percent across the board reduction in the prevailing charges for cataract surgery. OBRA '87 provided for reductions in the prevailing charges for twelve procedures by two percent plus a sliding scale reduction ranging between zero and fifteen percent. The overvalued procedures were identified by the Physician Payment Review Commission (PPRC).

OBRA '89 provided for reductions in 244 overvalued procedures. Procedures were considered overvalued if the national average prevailing charge exceeded the amount that would be paid under the Resource Based Relative Value Scale (RBRVS) by more than 10 percent, based on the recommendations of the PPRC. The reduc-

tions were equal to one-third of the amount that each procedure was overvalued in each locality, but not more than 15 percent, effective April 1, 1990.

The services considered by the PPRC included 379 codes of the 1,400 procedures studied in the first phase of the Harvard RBRVS study, and did not include any services not in the first phase of that study.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—The calculation of the reduced prevailing charge is based on a comparison with the "locally adjusted reduced prevailing amount." The "locally-adjusted reduced prevailing amount" for a locality is defined as the product of the "reduced national weighted average prevailing charge" and the "adjustment factor for the locality". The "reduced national weighted average prevailing charge" is defined as the national weighted average prevailing charge for the service in 1989 (as determined by the Secretary using the best available data) reduced by the applicable 1990 reduction percentage for the service. The "adjustment factor" for a locality as the sum of:

The 1990 practice expense ratio for the service multiplied by the geographic practice cost index value specified for the locality for 1990; and

1 minus the practice expense ratio.

(3) Unsurveyed Procedures.—Reductions are only applied to surveyed procedures.

(b) Payments for Radiology Services.—

(1) Payment Rules.—OBRA '87 required the establishment of a fee schedule for radiology services based on a relative value scale. Payments for radiology services are based on the lesser of 1) actual charges and 2) a local conversion factor times the number of relative value units assigned to the professional and technical components of each procedure. The fee schedule applies to services provided by radiologists (board-certified or board-eligible radiologists, or to physicians for whom one-half of their Medicare charges are for radiology services). OBRA '87 set the radiology payments at 97 percent of the amount allowed under the fee schedule.

An additional reduction in the radiology payments of 4 percent, effective April 1, 1990 was included in OBRA '89. OBRA '89 also eliminated the January 1990 MEI update. Portable x-ray services were exempt from this reduction.

OBRA '89 also provided that most radiology services billed by other physicians could not exceed the payment that would be made under the radiology fee schedule.

When the radiology fee schedule was established, the fee schedule was to be established on the basis of carrier service areas. This has been used by the Secretary to mean carrier localities.

(2) Certain Screening Services.—The radiology fee schedule includes professional and technical components for services.

(3) "Split Billing".—Prior to 1989, interventional radiology services were reimbursed based on a method of "split billing" of multiple codes. OBRA '89 authorized a one year extension of this practice.

(4) Comparability Requirement.—All services reimbursed on a reasonable charge basis may be reduced by carriers if the carrier's

usual payment in its private business is less than the amount that would otherwise be payable under Medicare.

(5) Nuclear Medicine Services.—OBRA 1989 provided a partial exemption from the radiology fee schedule to physicians for whom nuclear medicine services constitute at least 80 percent of their Medicare billings. In 1990, one-third of the payment for nuclear medicine services is based on the fee schedule, with the remaining two-thirds based on 101 percent of the 1988 prevailing charge for the service. In 1991, payment is based on two-thirds of the fee schedule, one-third on the 1988 prevailing charge.

(c) Payments for Anesthesia Services.—OBRA '87 provided for the development and establishment of an anesthesiology fee schedule based on a relative value scale for services rendered on or after January 1, 1989. OBRA '86 provided for direct reimbursement for the services of certified registered nurse anesthetists (CRNAs).

OBRA '89 specified that the time units used in computing the relative value units under the relative value schedule would be based on the actual time, rather than rounded up to fifteen or thirty minute time units.

Anesthesiologists are reimbursed for the time they spend supervising anesthesia provided by CRNAs. When supervising multiple concurrent procedures by CRNAs, the amount payable to the anesthesiologists for base units is reduced by 10 percent for two concurrent procedures, 25 percent for three concurrent procedures, and 40 percent for four concurrent procedures.

(d) Pathology Services.—OBRA '87 provided for the development of a pathology fee schedule based on a relative value scale that could be used to pay for pathology services. The Secretary was required to submit a report to Congress on the pathology fee schedule. OBRA '89 provided that pathology services provided on or after January 1, 1991 would be paid based on the relative value scale developed by the Secretary.

House bill

(a) Overvalued Procedures.—

(1) Payment Reductions.—

Section 12101. Provides that prevailing charges for procedures identified as overvalued in OBRA '89 are to be reduced in 1991 by the same amount as such procedures were reduced under OBRA '89. The reduction equals an additional ⅓, or ½ of the remaining overvalued amount.

Corrects drafting error in OBRA 1989.

Section 4001 and 4013(a). Provides that the prevailing charges for procedures identified as overvalued in OBRA 1989 are to be reduced in 1991 after April 1, by 15 percent, or if less, one-third of the difference between the 1990 prevailing charge and the locally adjusted reduced prevailing amount.

Corrects drafting errors in OBRA 1989.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—

Section 12101. No provision.

Section 4001. Modifies the calculation for 1991 by specifying that the adjustment factor for a locality is the sum of:

The practice component percent, divided by 100, specified in the 1989 committee report, for the service, multiplied by the

geographic practice cost index for the locality as specified in Table 1 of the August 1990 Supplement to the Geographic Medicare Economic Index: Alternative Approaches; and

1 minus the practice component percent multiplied by the geographic physician work adjustment index value which is the geographic ¼ work index specified for the locality in such table 1.

Provides that for 1991, in computing the national weighted average, the prevailing charge in each locality must first be deflated by this adjustment factor.

(3) Unsurveyed Procedures.—

Section 12101. Provides for a 5 percent reduction in 1991 in prevailing charges for nonsurveyed physicians services except for the following:

Radiology, anesthesia and physician pathology services and services identified as overvalued in OBRA 1989;

Primary care services, hospital visits, consultations, second and third surgical opinions, preventive medicine visits, ophthalmology visits, psychiatric services, emergency care facility services, and critical care services;

Partial, simple and subcutaneous mastectomy, tendon sheath injections and small joint arthrocentesis, femoral fracture and trochanteric fracture treatments, endotracheal intubation, thoracentesis, thoracostomy, lobectomy, aneurysm repair, enterectomy, colectomy, cholecystectomy, cystourethroscopy, transurethral fulguration and resection, sacral laminectomy, tympanoplasty with mastoidectomy, and ophthalmoscopy.

Section 4005. Provides for a 2 percent reduction in the prevailing charge otherwise recognized for all physicians services (and 4 percent for services paid on a global basis) except for the following:

Radiology, anesthesia, and physician pathology services, and services identified as overpriced in OBRA 1989;

Primary care services, hospital inpatient medical services, consultations, preventive medicine visits, emergency care facility services, and critical care services;

Procedure codes specified in the conference report for OBRA 1990 for tendon sheath injections and small joint arthrocentesis, femoral fracture and trochanteric fracture treatments, endotracheal intubation, thoracentesis, thoracostomy, and transurethral fulguration and resection.

(b) Payments for Radiology Services.—

(1) Payment Rules—

Section 12102. Provides that the local conversion factors used for payments under the radiology fee schedule are reduced by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is reduced by six percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the reduced national weighted average conversion factor attributable to the physician work component and the geographic work index value for the locality; and (ii) the product of the remaining portion of the reduced national weighted average conversion factor and the geographic work

index value. In the case of a professional fee (or the professional component of a global fee), 80 percent of the conversion factor is considered attributable to the physician work component. In the case of a technical fee, the percentage is 35 percent. The adjustments are the same as those that would apply under RBRVS.

Provides that the local conversion factor is reduced to the adjusted local amount, up to a maximum reduction of fifteen percent. If the local conversion factor is less than the adjusted local amount, the local conversion factor would not change.

Specifies that the prevailing charges of radiology services not reimbursed under the fee schedule would be reduced to the fee schedule amount.

Specifies that the fee schedule is established on the basis of localities.

Section 4002. Provides that the reduction may be up to 8 percent. The calculation of the 1991 conversion factor used in a locality is determined as follows:

The Secretary is required to estimate the national weighted average of the conversion factors used in 1990. In making this calculation, the conversion factor in each locality is first deflated by the sum of ¾ of the specific 1990 locality index and ¼ of the fee schedule geographic index for the locality. This amount is to be reduced by 11 percent.

The Secretary is required to establish a 1990 locality index which reflects for each locality the ratio of the local conversion factor to the national weighted average.

The Secretary is required to establish a fee schedule geographic index value for each locality equal to the geographic adjustment factor which would be used under the fee schedule if: (1) the work, overhead, and malpractice expense indices contained in the published model fee schedule were used, and (2) the proportions that each component represented of the total relative value were the same as that specified for radiology in such model schedule.

The Secretary is to apply a locality conversion factor based on the product of: (1) the reduced national weighted average conversion factor; and (2) the sum of ¾ of the specific 1990 locality index and ¼ of the fee schedule geographic index for the locality.

Specifies that the geographic adjustment is phased-in such that in 1992, the 1990 locality index represents ½ in the calculation with the amount otherwise calculated under the fee schedule representing the other half. In 1993, ¾ is based on the fee schedule calculation and ¼ on the 1990 locality index.

Specifies that the fee schedule may be developed on a locality basis.

(2) Certain Screening Services.—

Section 12102. Reduces by 10 percent, effective for services furnished after Dec. 31, 1990, the relative values established for magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services.

Section 4002. No provision.

(3) "Split Billing".—

Section 12102. No provision.

Section 4002. Extends the "split billing" provision for interventional radiology services for an additional year, until January 1, 1992.

(4) Comparability Requirement.—

Section 12102. No provision.

Section 4002. Prohibits carriers from applying the comparable fee rule to services under the radiology fee schedule.

(5) Nuclear Medicine Services.—

Section 12102. No provision.

Section 4002. Provides that the 1990 payment rules apply in 1991.

(c) Payments for Anesthesia Services.—

Section 12103. Reduces the local conversion factors used for payments for anesthesia services by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is reduced by six percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the reduced national weighted average conversion factor attributable to the physician work component and the geographic work index value for the locality; and (ii) the product of the remaining portion of the reduced national weighted average conversion factor and the geographic practice cost index value. Seventy percent of the conversion factor is considered attributable to the physician work component. The adjustments are the same as those that would apply under RBRVS.

Provides that the local conversion factor is reduced to the adjusted local amount, up to a maximum reduction of fifteen percent. If the local conversion factor is less than the adjusted local amount, the local conversion factor would not change.

Extends the reduction in payments to anesthesiologists for supervising multiple concurrent services by CRNAs through December 31, 1995.

Section 4003. Provides that the reduction may be up to 15 percent. The Secretary is required to calculate a 1991 conversion factor to be used in a locality as follows:

The Secretary is required to estimate the national weighted average of conversion factors used in 1990. This amount is first to be deflated by the sum of ½ of the specific 1990 locality index and ½ of the fee schedule geographic index for the locality. This amount is reduced by 7 percent.

The Secretary is required to establish a 1990 index which reflects for each locality the ratio of the local conversion factor to the national weighted average.

The Secretary is required to establish an index value for each locality equal to the geographic adjustment factor which would be used under the fee schedule if: (1) the work, overhead, and malpractice expense indices contained in the published model fee schedule were used, and (2) the proportion of the total relative value for the work component was 55.9 percent, for the practice expense component—33.4 percent, and for the malpractice component—10.7 percent.

The Secretary is to apply a locality conversion factor based on the product of: (1) the reduced national weighted average conversion factor; and (2) the sum of ½ of the 1990 index for the locality and ½ of the RVS index value.

Extends the provision providing for reduction for supervision of concurrent services through December 31, 1995.

Contains no provision relating to the comparable fee rule.

(d) Pathology Services.—

Section 12104. Repeals the requirement to implement the pathology fee schedule and the requirement for the Secretary to submit a report to Congress on the pathology fee schedule.

Specifies that the prevailing charge for anatomic pathology services furnished on or after January 1, 1991 is to be 94 percent of the amount otherwise determined for 1990 after April 1 (taking into account OBRA 1990 amendments).

Section 4004. Repeals requirement to implement a pathology fee schedule but not the one requiring the Secretary to submit a report on a pathology fee schedule.

Specifies that the prevailing charge for physician pathology services furnished during 1991, is 93 percent of the amount used in 1990.

Effective date:

Sections 12101–12104. (a) Apply to services furnished after December 1990, except for the OBRA 1989 technical correction which applies to services furnished after March 1990. (b) Effective January 1, 1991, except for the provision relating to payment localities which is effective as if included in OBRA 1987. (c) and (d) Enactment.

Sections 4001–4005 and 4013(a). (a) and (c) Enactment. (b) Except as otherwise provided, applies to services furnished on or after January 1, 1991; provision authorizing locality adjustments to fee schedules applies to services performed on or after April 1, 1989. (d) Applies to services furnished on or after January 1, 1991.

Senate Amendment

(a) Overvalued Procedures.—

(1) Payment Reductions.—Similar to Section 4001.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—Modifies the calculation for 1991 by specifying that the adjustment factor for a locality is the sum of:

The 1990 practice expense component percent (divided by 100) for the service multiplied by the geographic practice cost index value specified for the locality for 1990; and

1 minus the practice expense component percent (divided by 100) for the service multiplied by the geographic work index value specified in the published model fee schedule.

(3) Unsurveyed Procedures.—Similar to WM provision except provides for a 4 percent reduction. Does not include second and third surgical opinions, ophthalmology visits, or psychiatric services in the excluded list.

(b) Payments for Radiology Services.—

(1) Payment Rules.—

Similar to Section 12102 except (1) the Secretary is required to adjust the conversion factor for each locality by the adjustment

factor for purposes of determining the national weighted average conversion factor; (2) the reduction in the national weighted average conversion factor is 12 percent; (3) the maximum reduction is 8 percent; and (4) in applying this calculation to global fees, the conversion factor to be applied is the sum of the conversion components for the professional and technical components computed separately.

Specifies that the prevailing charges of radiology services not reimbursed under the fee schedule are to be reduced to the fee schedule amount with the exception of nuclear medicine services and services subject to the OBRA 1989 provision limiting prevailing charges for services furnished by more than one specialty.

Provides that for the purposes of determining radiology payments in 1991 (and the adjusted historical payment basis), the Secretary is to establish a locality specific conversion factor floor that is equal to 80 percent of the national weighted average of the conversion factors used in 1990 (beginning in April) adjusted for the locality as specified above. The conversion factor applied in a locality in 1991 (and the adjusted historical payment basis) may not be less than this floor.

(2) Certain Screening Services.—No provision.

(3) "Split Billing".—Identical to Section 4002.

(4) Comparability Requirement.—Prohibits carriers from applying the comparable fee rule to services under the radiology fee schedule.

Prohibits inherent reasonableness adjustments under the radiology fee schedule.

(5) Nuclear Medicine Services.—Similar to Section 4002. Further, provides that the special payment amounts for 1990 (after Mar. 31) and 1991 are to be used instead of the weighted average prevailing charge amount in the calculations of the adjusted historical payment basis.

Provides that for purposes of determining the fee schedule amount for nuclear medicine services furnished on or after Jan. 1, 1992, the Secretary is to determine relative values in accordance with the methodology used for other physicians services; relative values developed under the radiology fee schedule may not be applied.

(c) Payments for Anesthesia Services.—Reduces the local conversion factors used for payments for anesthesia services by up to fifteen percent in 1991. The amount of the reduction in each locality is calculated as follows:

The national weighted average conversion factor that applied after April 1, 1990 is calculated. For this calculation, the Secretary is required to adjust the conversion factor for each locality by the adjustment factor;

The national weighted average conversion factor is reduced by four percent;

A local reduced conversion factor is calculated as the sum of: (i) the product of the portion of the reduced national average conversion factor attributable to the physician work and the geographic work index value for the locality published in the model fee schedule; and (ii) the product of the remaining portion of the reduced national weighted average conversion

factor and the geographic practice cost index value specified for the locality. Seventy percent of the conversion factor is considered attributable to the physician work component.

Provides that for the purposes of determining physician anesthesia payments in 1991 (and the adjusted historical payment basis for 1992–1994), the Secretary is to establish a locality specific conversion factor floor that is equal to 75 percent of the national weighted average of the conversion factors used in 1990 (beginning in April) adjusted for the locality as specified above. The conversion factor applied in a locality in 1991 (and the adjusted historical payment basis) may not be less than this floor.

Extends the reduction in payments to anesthesiologists for supervising multiple concurrent services by CRNAs through December 31, 1995.

Contains no provision relating to the comparable fee rule.

(d) Pathology Services.—Similar to WM provision except the prevailing charge is equal to 96 percent of the 1990 prevailing charge.

Limits reductions in the prevailing charge for the technical and professional components of an anatomic pathology service furnished by a physician through an independent laboratory. The reduction can not reduce the prevailing charge below 115 percent of the prevailing charge for the professional component of the service when provided by a hospital-based physician. For purposes of the limit, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians office.

Requires the Secretary to provide an appropriate payment adjustment to reflect the technical component of furnishing physician pathology services through an independent laboratory. The adjustment applies to services furnished on or after Jan. 1, 1992. For purposes of the adjustment, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians office.

Effective date: Enactment.

Conference agreement

(a) Overpriced Procedures.

(1) Payment Reductions.—The Conference agreement includes Section 12101 of the House provision.

(2) Definition of Locally Adjusted Reduced Prevailing Amount.—The Conference agreement does not include this provision.

(3) Unsurveyed Procedures.—The conference agreement includes Section 12101 of the House bill with an amendment deleted certain procedures from the excluded list. Technical procedures which are subject to the new limitation on the technical component for diagnostic tests are excluded from the reduction under this provision. Further, the reduction in prevailing charges for unsurveyed procedures is set at 6.5 percent.

(b) Payments for Radiology Services.—

(1) Payment Rules.—The conference agreement includes the Senate provision with an amendment. The agreement provides that the amount of the conversion factor in each locality is calculated as follows. The Secretary is to estimate the national weighted average conversion factor for services furnished in 1990 and reduce that

amount by 13 percent. Prior to calculating the national weighted average, the conversion factor in each locality is first to be deflated by the sum of ½ of the locally adjusted amount and ½ of the GPCI adjusted amount.

The Secretary is required to establish a local index for each locality. For 1991, the conversion factor applied in a locality to the professional or technical component of a service is the sum of ½ of the locally adjusted amount and ½ of the GPIC-adjusted amount.

The locally-adjusted amount is defined as the product of the reduced national weight average conversion factor and the 1990 index established for the locality.

The GPCI-adjusted amount is defined as the sum of two items. The first represents the product of the portion of the reduced national weighted average conversion factor attributable to physician work and the geographic index value for the service as published in the model fee schedule. The second represents the product of the remaining portion of the reduced national average conversion factor and the geographic practice cost index value for the locality.

The agreement specifies that in applying these factors to the professional component of a service, 80 percent is attributable to physician work. With respect to the technical component, 0 percent is attributable to physician work.

The agreement provides that the maximum adjustment in the conversion factor is 9.5 percent.

The agreement further provides for a special transition rule to the fee schedule for radiology services.

(2) Certain Screening Services.—The conference agreement includes the House provision with an amendment specifying that the amount otherwise payable for specified services is reduced by ten percent.

(3) Spit billing.—The conference agreement includes the Senate amendment.

(4) Comparability Requirement.—The conference agreement includes the Senate amendment.

(5) Nuclear Medicine Services.—The conference agreement includes the Senate amendment with an amendment striking the language relating to determination of relative values for 1992 and thereafter.

(c) Payments for Anesthesiology Services.—The conference agreement includes the Senate amendment with an amendment specifying that the reduction in the national weighted average conversion factor is seven percent.

(d) Pathology Services.—The Conference agreement includes Section 4004 of the House provision with an amendment providing a limitation on reductions for services furnished by a physician through an independent laboratory to the extent the reduction would reduce the prevailing charge below 115 percent of the prevailing charge for the professional component of such physician when furnished by a hospital-based physician in the same locality. Require the Secretary to provide an appropriate adjustment to reflect the technical component for furnishing physician pathology services through an independent laboratory.

2. Payments for Physicians Services (Section 12105 and 4006 of House bill; Section 6115 of Senate amendment)

Present law

(a) Update.—Customary and prevailing charge screens, fee schedules and limits on actual charges are scheduled to be updated on January 1 of each year. In general, prevailing charges are updated by the percentage change in the Medicare Economic Index (MEI).

OBRA '89 delayed the annual update to April 1, 1990. Primary care services were updated by 4.2 percent, the full amount of the MEI. The update for other services was two percent, except for radiology, anesthesiology, and services identified in OBRA '89 as overvalued which were not updated.

(b) Physician Medicare Volume Performance Standards.—OBRA '89 established a system of Medicare Volume Performance Standards (MVPSs) which is used for calculating the annual update in fees (conversion factor) for physician and certain other Part B services on or after January 1, 1992. Under this system, Congress would enact a specific level of increase in expenditures for a subsequent calendar year. In the absence of Congressional action, the rate of increase in expenditures is determined by a formula specified in law. The formula sets the allowed increase in expenditures under the MVPS equal to the sum of: (1) the percentage increase in fees; (2) the increase in number of Part B enrollees, excluding HMO risk-contracting enrolles; (3) an estimate of the historical rate of increase in volume of services; (4) any change in expected payments due to legislation or regulations; and (5) reduced by an amount equal to 0.5 percent for the year 1991, 1 percent for 1992, 1.5 percent for 1993, and 2 percent thereafter.

The update or conversion factor for the second calendar year beginning after the close of the year for which a volume performance standard is set is equal to the MEI, adjusted by the amount by which expenditures exceed or are under the standard, subject to certain limits specified in law.

Beginning in 1990, the MVPS provides for two separate standards to be established, one for surgical services, and one for all others.

(c) Revise Authority for PPRC.—The Physician Payment Review Commission (PPRC) was established in COBRA. Current law provides that the Commission's membership includes a variety of health professionals, researchers and representatives of consumers and the elderly.

Since it was established, the primary responsibility of the Commission has been the development of a physician payment reform proposal. Congress enacted payment reform in OBRA '89.

(d) Transition to the RBRVS for Primary Care Services.—The prevailing charges for primary care services are subject to a lower limit equal to 50 percent of the national average prevailing charge for participating physicians for such services. This lower limit is known as the "primary care floor."

For all physician services, the transition to the RBRVS beginning in 1992 is based on an amount known as the "adjusted historical payment basis." This is defined as the weighted average prevailing charge applied in the locality in 1991, adjusted to reflect

payments for services at amounts below the prevailing charge. The historical payment basis is determined without regard to physician specialty.

House bill

(a) Update.—

Section 12105. Specifies that the MEI update that applies in 1991 is equal to the full MEI for primary care services, and 0 percent for all other services. For 1992, the MEI otherwise applicable is reduced by 0.4 percent.

Section 4006. Specifies that the MEI update for 1991 is equal to the full MEI for primary care services and 0 percent for all other services.

(b) Physician Medicare Volume Performance Standards.—

Section 12105. Specifies that the MVPS for surgical services, nonsurgical services, and overall is set by a formula equal to the sum of the percentage growth in Part B enrolles (excluding HMO enrolles), the historical percentage growth in volume, and the percentage change in expected expenditures due to the provisions included in OBRA 1990 and any regulations issued by the Department which would effect the growth in expenditures for services covered by the MVPS system, minus an adjustment factor.

Provides that the same historical rates of growth in volume and growth in number of beneficiaries are used for surgical, nonsurgical, and overall categories of services. The adjustment factor is minus 1 percent in 1991, minus 1.5 percent in 1992, minus 2 percent in 1993, 1994, and 1995.

Specifies that the component reflecting changes in expenditures due to OBRA 1990 provisions varies between surgical and nonsurgical categories by the relative impact of the bill on expenditures for these two categories.

Section 4006. No provision.

(c) Revise Authority for PPRC.—

Section 12105. Revises PPRC responsibilities. Repeals requirements relating to development of a relative value scale and requirements for PPRC to consider various issues related to the reasonable charge payment system.

Amends current provision requiring PPRC to consider policies under Medicare to include: (1) major issues in the implementation of the RBRVS; (2) issues relating to further development of the volume performance standard system, including continuing development of State-based programs; (3) payment incentives to increase access to primary care and other services in innercity and rural areas, including Federal policies regarding the level of Medicaid payments to physicians; (4) the number and types of physicians being trained, including consideration of Medicare graduate medical education policy; (5) utilization review and quality of care, including revisions to the PRO and other Medicare quality assurance programs, and physician licensing and certification; and (6) options to help constrain the costs of health care to employers, including incentives under Medicare. In addition, requires PPRC to make recommendations regarding reforms in medical malpractice and physician licensing and certification.

Modifies PPRC membership provision to indicate that the professions listed for membership are illustrative.

Section 4006. No provision.

(d) Transition to the RBRVS for Primary Care Services.—

Section 12105. Increases the primary care floor to 75 percent for services rendered in 1991. Provides that for the purpose of determining the fees for primary care services increased under this provision after 1991, the historical payment basis will be determined without regard to the increase to 75 percent in the primary care floor. However, the fees for services whose payments are increased under this provision in 1991 may not be lower in 1992 than they were in 1991 after the increase in the floor.

Section 4006. Similar provision.

Effective date:

Section 12105. Effective for services provided on or after January 1, 1991, except (c) Enactment.

Section 4006. Applies to services furnished on or after January 1, 1991.

Senate amendment

(a) Update.—Specifies that the MEI update that applies April 1, 1991 is equal to the full MEI for primary care services and 0 percent for other services.

Specifies that in determining the customary charges for the period beginning April 1, 1991, the Secretary may not recognize any amounts of 1990 actual charges that exceed the customary charges for the nine month period beginning April 1, 1990. This limitation shall not prevent an increase in the percentage limit applicable to a new physician in a case where such new physician was subject to new physician limits in 1990.

(b) Physician Medicare Volume Performance Standards.—Provides that the adjustment factor is minus 1 percent in FY 1991, 1.5 percent in FY 1992, and 2.0 percent for each succeeding fiscal year. Specifies that the MVPS for 1991 is the sum of: (1) the Secretary's estimate of the rate of increase in expenditures for portions of the calendar year occurring in such fiscal year (determined without regard to OBRA 1990); and (2) the Secretary's estimate of the percentage increase or decrease in expenditures in the category of services involved that will result from changes in law or regulations. This sum is reduced by 2 percentage points.

(c) Revise Authority for PPRC.—No provision.

(d) Transition to the RBRVS for Primary Care Services.—No provision.

Effective date: (a) and (b) Enactment.

Conference agreement

(a) Update.—The Conference agreement includes the Senate amendment with an amendment which provides for a reduction of 4/10 of a percentage point in the update for 1992. The Conferees note that the freeze provision does not apply to ambulance services.

(b) Physician Medicare Volume Performance Standard.—The Conference agreement includes the Senate amendment with an amendment to assure this provision will not result in a lower or higher update for 1993 than would apply in the absence of this provision.

(c) Revise Authority for PPRC.—The Conference agreement includes the House provision with an amendment requiring the PPRC to comment on the President's budget recommendations for physicians services.

(d) Transition to RBRVS for Primary Care Services.—The Conference agreement includes the House provision with an amendment which sets the prevailing charge for primary care services at 60 percent. The agreement does not include the hold harmless provision. The provision is implemented in a budget neutral manner.

3. Other Provisions Relating to Payment for Physician Services (Section 12106-12108 and 4007-4012 of House bill; Sections 6116-6120, 6122-6125 of Senate amendment)

Present law

(a) New Physicians.—OBRA '87 provided that the customary charge screens of new physicians are set at a level no higher than eighty percent of the prevailing charge, as limited by the MEI, for the first year the physician is practicing in an area. The provision is not applicable to primary care services or services furnished in a rural area designated as a health manpower shortage area.

OBRA '89 provided that in the second year of practice, a new physician's customary charge is limited to 85 percent of the prevailing amount. The limit does not apply to primary care services or to services furnished in a rural health manpower shortage area. These limits expire on December 31, 1990.

(b) Payments for Assistants at Surgery.—Under certain circumstances, physicians are paid for serving as assistants at surgery. Typically, the prevailing charge for acting as an assistant is limited to 20 percent of the prevailing charge for the procedure that applies to the primary surgeon.

Payments for physician assistants serving as assistants at surgery cannot exceed 65 percent of the amount that would otherwise be recognized if performed by a physician serving as an assistant at surgery.

(c) Interpretation of EKGs.—Payments are not made for the interpretation of simple diagnostic tests. The payment for the interpretation is presumed to included in the payment for the hospital or office visit. EKGs are the exception to this rule; separate payments are currently made for interpretation of these tests.

(d) Payment for Technical Component of Diagnostic Tests.—Payment for diagnostic tests may be made under Part B on the basis of reasonable charges.

(e) Reciprocal Billing Arrangements.—Some carriers have recognized billing arrangements in which a physician occasionally covers for another physician. However, HCFA has considered prohibiting recognition of such arrangements.

(f) Aggregation Rule.—Hearings on Part B claims are not available unless the amount in controversy exceeds $500 and judicial review is not available unless the aggregate amount in controversy exceeds $1,000.

(g) Practicing Physicians Advisory Council.—No provision.

(h) Medical Review Screens.—Medical review screens used by carriers are generally not publicized.

(i) Advance Determinations by Carriers.—Medicare carriers review Part B claims in order to determine whether the item or service is covered by Medicare and whether or not it is medically necessary. In most cases the review is retrospective.

(j) Limitation on Beneficiary Liability.—Current law establishes a limit on actual charges of nonparticipating physicians known as the maximum allowable actual charge. These limits vary from physician to physician based on how much a physicians actual charge for a particular service exceeded Medicare's allowed amount in a base period.

OBRA 1989 established a new physician payment methodology which will be phased-in beginning in 1992. At the same time it established a new method for calculating the limit on actual charges for nonparticipating physicians, beginning in 1991. In 1991, the limit on actual charges for a physician is the same percentage (not to exceed 25 percent) above the 1991 recognized payment amount as his/her 1990 MAAC was above the 1990 recognized payment amount. Because of differing effective dates, total allowed charges for some services for which payments will increase under the new system—primarily evaluation and management services—will be lower in 1991 than in either 1990 or 1992.

(k) Statewide Fee Schedule Areas.—The day-to-day functions of reviewing Part B claims and paying benefits are performed by entities known as carriers.

Carriers are responsible for delineating prevailing charge localities. There are 238 prevailing charge localities nationwide; there is considerable variation in the size and configuration of these localities.

Under the physician payment reform provisions, current localities would be used. However, OBRA 1989 required PPRC to report to Congress by July 1, 1991 on the appropriateness of retaining current locality designations, changing to statewide designations, or adopting Metropolitan Statistical Areas or other payment areas for payment purposes.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—OBRA 1987 required the establishment of separate utilization review screens for physician visits in rehabilitation hospitals.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—No provision.

House Bill

(a) New Physicians.—

Section 12106. Extends the current provision for 1991 to specify that the customary charge limits are 80/85/90/95 percent of the prevailing charge in the first through fourth years of practice. Provides that beginning on January 1, 1992, these percentage limits for new physicians in their first through fourth years of practice apply to the amounts recognized under the RBRVS.

Section 4007. Similar provision except continues under RBRVS the exception for primary care services and services furnished in a rural area defined as a health manpower shortage area. Extends application of the provision to professional services furnished by health care practitioners. A health care practitioner is a physician assistant, certified nurse-midwife, qualified psychologist, nurse

practitioner, clinical social worker, physical therapist, occupational therapist, respiratory therapist, certified registered nurse anesthetist, or any other practitioner specified by the Secretary. The first year of practice is defined as the first year during which Medicare payments are made to the practitioner during the first six months.

Requires the Secretary in computing the conversion factor for 1992, to assume that these changes applied to all physicians services furnished during the year notwithstanding the effective dates.

(b) Payments for Assistant at Surgery Services.—

Section 12107. Requires the Secretary to determine, based on the most recent available data, for each class of surgical procedure, the national average percentage of such procedures performed under Part B which involve the use of an assistant at surgery. Maintains the current policy for a physician acting as an assistant at surgery for a procedure that involves the use of an assistant at least 50 percent of the time. Provides that when an assistant is used in 25 percent or more of such cases but less than 50 percent nationwide, the payment equals 75 percent of the payment basis that would otherwise apply. When an assistant is used in 5 percent or more of such cases but less than 25 percent nationwide, the payment equals 75 percent of the payment basis that would otherwise apply; however, such payments may only be made if the use of an assistant is approved in advance by the peer review organization. Payment may not be made for an assistant at surgery if an assistant is used in fewer than 5 percent of cases.

Section 4007. No provision.

(c) Interpretation of EKGs.—

Section 12108. Provides that payments for the interpretation of EKGs are to be treated in the same manner as the payment for the interpretation of other simple diagnostic tests under RBRVS, effective Jan. 1, 1992. Separate payments would not be made for interpretation of these tests, except when the EKG is not performed in conjunction with an office or hospital visit. Payment would continue to be made for the technical component of EKGs performed on an outpatient basis.

Excludes payments for EKG interpretations performed in conjunction with an office visit, or for inpatients, from the expenditure base used in determining the initial budget neutral conversion factor for the RBRVS.

Section 4007. No provision.

(d) Payment for Technical Component of Diagnostic Tests.—

Section 12108. No provision

Section 4008. Provides that when Part B payments are made for the technical, as distinct from the professional, component of diagnostic tests the reasonable charge (or other payment basis) may not exceed the national median of such charges (or payment basis) for such tests. The provision does not apply to clinical diagnostic laboratory tests and radiology services.

(e) Reciprocal Billing Arrangements.—

Section 12108. No provision.

Section 4009. Provides that payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided on an occasional, reciprocal basis by another physician in his or her absence. Such payments may only

be made if: (1) the first physician is unavailable to provide the services; (2) the individual has arranged to receive the services from the first physician; (3) the claim form includes the first physician's identifier number and indicates that it is for a "covered visit service;" and (4) the visit services are not provided by the second physician over a continuous period of longer than 30 days.

(f) Aggregation Rule.—

Section 12108. No provision.

Section 4010. Permits aggregation of claims for services furnished in the same 12-month period. If the claims involve common issues of law and fact relating to physicians services furnished in the same fee schedule area to two or more patients by two or more physicians, the aggregate amount in controversy must exceed $1,000 for a hearing and $2,500 for judicial review.

(g) Practicing Physicians Advisory Council.—

Section 12108. No provision.

Section 4011. Establishes a 15-member Practicing Physicians Advisory Council appointed by the Secretary. Members must have submitted at least 250 physicians services claims in the preceding year. At least 11 members must be MDs or DOs. Members are to include both participating and nonparticipating physicians and physicians practicing in rural and underserved areas. The Secretary is to consult with the Council concerning proposed changes in regulations and carrier manual instructions. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes. The Council is to meet at least once each calendar quarter; members are to be paid in the same manner as other advisory council members.

(h) Medical Review Screens.—

Section 12108. No provision.

Section 4012. Requires carriers to release medical review screens and associated screening parameters applicable for determinations of reasonable and necessary, prior to making payment denials for otherwise covered physicians services.

(i) Advance Determinations by Carriers.—No provision.

(j) Limitation on Beneficiary Liability.—No provision.

(k) Statewide Fee Schedule Areas.—No provision.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—No provision.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—No provision.

Effective date:

Sections 12106–12108, (a) Provisions concerning the third and fourth year of practice applies to services furnished in 1991 which were first subject to the limits in 1989 or thereafter; provisions relating to RBRVS apply to services furnished after 1991. (b) Applies to services furnished on or after January 1, 1991.(c) Effective January 1, 1992.

Sections 4007–4012. (a) Applies to services furnished after 1990, except that: (1) the provisions concerning the third and fourth year of practice apply only to physicians services furnished after 1991 and 1992; and (2) the provisions concerning the second, third, and fourth year of practice apply only to physicians services furnished after 1991, 1992, and 1993. (d) Applies to tests furnished on or after

January 1, 1991. (e) and (f) Applies to services furnished on or after the first day of the first month beginning more than 60 days after enactment. (g) Enactment (h) Applies to denial notices sent on or after January 1, 1991.

Senate amendment

(a) New Physicians.—Extends the current provision to specify that the customary charge limits are 80/85/90/95 percent of the prevailing charge in the first through fourth years of practice. Applies similar treatment to new physicians under RBRVS.

(b) Payments for Assistant at Surgery Services.—Specifies that if payment is made separately for a physician serving as an assistant-at-surgery, such payment may not exceed 16 percent of the payment for the global surgical service involved.

(c) Interpretation of EKGs.—No provision.

(d) Payment for Technical Component of Diagnostic Tests.—No provision.

(e) Reciprocal Billing Arrangements.—Provides that payment may be made in the case of services furnished by a physician other than the one submitting the claim either: (1) during a period not exceeding 14 continuous days in the case of an informal reciprocal arrangement; or (b) 90 continuous days (or longer, as specified by the Secretary) in the case of per diem or other fee for time compensation. The claim must identify the physician furnishing the service.

(f) Aggregation Rule.—No provision.

(g) Practicing Physicians Advisory Council.—No provision.

(h) Medical Review Screens.—Requires the Secretary to conduct a study of the effect of the release of prepayment medical review screen parameters on physician billings. The study is to be based on release of the same parameter or parameters at a minimum of six carrier sites. The Secretary is to report to Congress on the study by Oct. 1, 1992.

(i) Advance Determinations by Carriers.—Requires the carriers to make advance medical necessity determinations for expensive items and services specified by the Secretary.

Authorizes the carriers to make advance medical necessity determinations if:

The item or service is furnished or ordered by a physician for whom a substantial number of items and services have been disallowed, or for whom a pattern of overutilization has been identified by the carrier and the physician has been so informed and given an opportunity to respond;

The the carrier notifies the physician as to the kinds of items and services that will be subject to advance determinations, and

The carrier provides a general notice for entities likely to furnish the kinds of items or services described in such notice that are ordered by the physician.

Authorizes the carrier to make advance medical necessity determinations if:

The item or service is furnished by an entity for whom a substantial number of items or services have been disallowed, or a pattern of overutilization resulting from the business prac-

tices of the entity has been identified by the carrier and the entity has been so informed and given an opportunity to respond; and

The carrier notifies the entity of the kinds of items that will be subject to advance determinations.

Provides that these provisions do not apply to items and services under review by a PRO, to emergency cases or under such other circumstances as specified by the Secretary.

(j) Limitation on Beneficiary Liability.—Provides that the limit in 1991 for evaluation and management services provided by a nonparticipating physician is the same percentage (not to exceed 50 percent) above the 1991 recognized payment amount as the physician's 1990 MAAC was above the 1990 recognized payment amount.

(k) Statewide Fee Schedule Areas.—Requires the Secretary, under certain circumstances, to treat a State as a single fee schedule area for purposes of determining both the adjusted historical payment basis and the fee schedule amount for physicians services furnished on or after January 1, 1992. The State on or before April 1, 1991, must have written support for treatment of the State as a single fee schedule area from each member of its Congressional delegation and from organizations representing urban and rural physicians in the State. The Secretary may provide that its treatment of a State as a single fee schedule area will ensure that total payments for physicians services in 1992 are budget neutral compared to what they would otherwise have been.

Specifies that this provision may not be construed as limiting subsequent modifications to the locality structure through otherwise applicable administrative procedures.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—Requires the Secretary, within 180 days of enactment, to revise the screens to apply to all physician visits to an inpatient of a rehabilitation hospital or unit. The screen is to reflect a standard of physician care recognized for inpatients of acute care hospitals and units, particularly with respect to the frequency of visits by an attending physician. The Secretary is to provide that this provision be implemented in a budget neutral manner.

(m) Study of Payment Adjustment for Physicians Furnishing a High Volume of a Particular Procedure.—Requires PPRC to conduct a study of the feasibility and desirability of adjusting payments to individual physicians performing a high volume of a particular procedure in order to reflect economies of scale. Taking into account the potential impact on costs and access the Commission is to report on: (i) types of services or procedures for which such an adjustment would be appropriate; (ii) options for implementing such an adjustment; (iii) appropriate exceptions to such an adjustment; and (iv) appropriate safeguards to ensure access by beneficiaries to necessary services. The Commission is required to report by July 1, 1992 to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance.

Effective date: (a) Applies to services furnished on or after Jan. 1, 1991. (b) Applies with respect to services furnished on or after January 1, 1991. (e) Applies to services furnished on or after the date of enactment. (i) Becomes effective with respect to items and serv-

ices furnished on or after January 1, 1991. (j), (k), (l) and (m) Enactment.

Conference agreement

(a) New Physicians.—The Conference agreement includes Section 4007 of the House provision.

(b) Assistants at Surgery.—The Conference agreement includes the Senate amendment with an amendment which precludes payments for assistants at surgery where such assistant is used in less than five percent of the cases.

(c) Interpretation of EKG's.—The Conference agreement includes the House provision with a clarification specifying that a routine electrocardiogram interpretation covered by this provision is one specified under one of the following HCPCS codes: 93000, 93010, 93040, 93041, and 93042 (and any changes in these codes that may result). The provision is effective in 1992.

(d) Payment for Technical Component of Diagnostic Tests.—The conference agreement includes the House provision. The Conferees note that if a procedure is subject to a limitation under the provision reducing payments for overvalued procedures, it is not subject to the limitations under this provision. Further, if a procedure is subject to a limitation under this provision, it can not be subject to any limitation under the provision reducing payments for unsurveyed procedures.

(e) Reciprocal Billing Arrangements.—The Conference agreement includes the House provision with an amendment deleting the mandatory assignment requirement and a modification to change the continuous day limit to 60 days.

(f) Aggregation Rule.—The conference agreement includes the House provision with an amendment to provide for a study of the issue of the aggregation of appeals.

(g) Practicing Physicians Advisory Council.—The Conference agreement includes the House provision with an amendment to clarify the role of the advisory council.

(h) Medical Review Screens.—The conference agreement includes the Senate amendment.

(i) Advance Determinations by Carriers.—The conference agreement does not include the Senate amendment.

(j) Limitation on Beneficiary Liability.—The Conference agreement includes the Senate amendment with an amendment setting the maximum MAAC at 140 percent of the recognized charge for 1991 for evaluation and management services.

(k) Statewide Fee Schedule Areas.—The Conference agreement includes the Senate amendment with an amendment specifying that the provision applies to Oklahoma and Nebraska only.

(l) Utilization Screens for Physician Visits in Rehabilitation Hospitals.—The Conference agreement includes the Senate amendment with an amendment to require the Secretary to issue guidelines to assure that the level of review required when the new visit screen limit has been reached is to be uniform across localities.

(m) Study of Payment Adjustments for Physicians Furnishing a High Volume of a Particular Procedure.—The Conference agreement does not include the provision.

The Conference agreement further requires the Secretary to conduct a study of regional variations in impact of Medicare physician payment reform. The study is to examine factors contributing to variations in reasonable charges which are not attributable to variations in practice costs; the impact on access to services in areas that experience disproportionately large payment reductions under the fee schedule; and appropriate adjustments or modifications in the transition to or determining payments under the fee schedule.

4. Payments for Hospital Outpatient Services (Sections 12111 and 4021 of the House Bill and Section 6130 of the Senate amendment)

Present law

(a) Capital.—For hospital outpatient department services which are paid either on a reasonable cost basis or the lesser of reasonable costs and a blend of reasonable costs and charges, Medicare paid for hospital capital allocated to the outpatient department of the hospital at 100 percent of costs prior to fiscal year 1990.

OBRA '89 reduced payments for capital costs for outpatient services by 15 percent for portions of cost reporting periods beginning in fiscal year 1990. The reduction also applied to capital related to services that are reimbursed based on a blended amount; these services include radiology, diagnostic procedures and outpatient surgery. In the case of such blends or limits based on blends, the reduction applied only to the cost portion of the blended amount.

Outpatient capital costs of sole community hospitals were exempt from the reduction in OBRA '89.

(b) Outpatient Services on a Cost Related Basis.—Services in hospital outpatient departments are reimbursed under a variety of payment methodologies. Laboratory services and durable medical equipment are paid based on fee schedules; outpatient dialysis services are paid based on a prospective rate; and ambulatory surgical services and radiology services are subject to aggregate cost limits. Most other services are paid on a cost related basis.

(c) Development of Prospective Payment Proposal.—No provision.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—Payments to an eye, or eye and ear specialty hospital for ambulatory surgery that makes application to the Secretary in which it demonstrates: (1) that it received more than 30 percent of its total revenue from outpatient services; and (2) was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987 are made on the basis of a blend that consists of 75 percent of the hospital's costs and 25 percent of the applicable free-standing ambulatory surgical center rate. This blend will change to the 50/50 blend that applies to ambulatory surgery in all other hospitals for cost reporting periods that begin after fiscal year 1990.

(e) Payments for Ambulatory Surgery and Radiology.—Reimbursement for ambulatory surgery services performed in outpatient hospital departments are reimbursed the lesser of: (1) reasonable costs or customary charges, less 20 percent of hospitals' reasonable

charges, but not exceeding 80 percent of reasonable costs; or (2) the "blend" amount, which averages reasonable cost principles with free standing ambulatory surgery payment rates. The mix of the blend is 50 percent reasonable costs and 50 percent of the rate paid to fee standing ambulatory surgery centers. Payments for outpatient radiology services are subject to an aggregate limit for each hospital. The limit applies to both capital and non-capital costs and is the lesser of the reasonable costs or charges or a blend of hospitals' cost for providing these services and the prevailing charges for providing the same services in physicians' offices. The blend is based on 50 percent costs and 50 percent charges. Payment for intraocular lenses inserted at an ambulatory surgery center during or subsequent to cataract surgery is made on the basis of reasonable costs for class of lens involved.

House bill

(a) Capital.—Section 12111. The 15 percent reduction applied to capital costs for outpatient hospital services and the cost portion of outpatient hospital services paid on the basis of a blended amount by OBRA '89 for cost reporting years during the period beginning on October 1, 1989 and ending December 31, 1993 with one modification. In addition to sole community hospitals, rural primary care hospitals would also be exempt from the reduction.

Section 4021. Reduces payments for capital costs paid on a cost basis by 10 percent for cost reporting periods occurring during fiscal years 1991 or 1992, by 7.5 percent for payments attributable to portions of cost-reporting periods occurring during fiscal year 1993 or 1994, and by 5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1995. Sole community hospitals are exempt from the reduction.

(b) Outpatient Services on a Cost Related Basis.—Section 12111. Payments for services that are made on a cost related basis would be reimbursed at 98 percent of the recognized costs for payments attributable to cost reporting periods during the period beginning October 1, 1990 and ending December 31, 1993. This reduction would also apply to the cost portions of blended payment limits for ambulatory surgery and radiology services. Sole community hospitals and rural primary care hospitals would be exempt from this reduction.

Section 4021. Payments for hospital outpatient services reimbursed on a cost basis, other than payment for capital-related costs, would be paid at 95 percent of reasonable costs for cost reporting periods beginning on or after October 1, 1990. Outpatient services performed in hospitals receiving Medicare disproportionate share payments would be exempt from the reduction.

(c) Development of Prospective Payment Proposal.—Section 12111. Directs the Secretary to develop a proposal to replace the current payment system for hospital outpatient services with a prospective payment system. In developing this proposal, the Secretary must consider: (1) policies which provide for appropriate limits on growth in expenditures; (2) adjustments to account for changes in types of patients treated, volume, technology, and standards of medical practice; (3) incentives for hospitals to control costs of outpatient services; (4) appropriate bundling of services, such as global fees or

per episode units of payment; (5) whether services not currently paid on a cost related basis, such as outpatient dialysis and laboratory services, should be included in the new system; and (6) whether other adjustments would be necessary, including adjustments for teaching status, geographic areas with high wages, treatment of low-income patients, and capital.

The Administrator of the Health Care Financing Administration would be required to provide summaries of existing research findings on prospective payment for hospital outpatient services by January 1, 1991. This report would be submitted to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives. The Secretary would be required to submit a detailed proposal on prospective payment to the same committees by September 1, 1991. The Prospective Payment Assessment Commission would be required to submit an analysis and comments on the Secretary's proposal to the same committees by March 1, 1992.

Section 4021. No provision.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—Section 12111. The use of the special 75/25 blend would be extended to services provided in cost reporting periods beginning on or after October 1, 1988 and on or before January 1, 1995.

Section 4021. No provision.

(e) Payments for Ambulatory Surgery and Radiology.—Section 12111. Continues the use of the 50/50 blend for cost reporting periods beginning on or after October 1, 1988 and or or before December 31, 1990. For cost reporting periods beginning on or after January 1, 1991, payment for ambulatory surgery services and radiology services performed in outpatient hospital departments would be subject to aggregate cost limits based on a blend of 33 percent of the hospital's own costs and 67 percent of the amount that would be paid if provided in an ambulatory surgery center in the same area.

Reduces payment for insertion of an intraocular lens during or subsequent to cataract surgery in an ambulatory surgery center to $200 for services performed after the date of enactment and before December 31, 1992.

Section 4021. Reduces payment to hospitals for outpatient surgical procedures by reducing the standard overhead amount used in calculating the amount paid to ambulatory surgery centers for services from 100 percent of the standard overhead amount to 97.5 percent of the standard overhead amount. Exempts hospitals receiving Medicare disproportionate share payment adjustments from the reduction. Reduces payment for insertion of an intraocular lens during or subsequent to cataract surgery in an ambulatory surgery center to $200 for services performed on or after January 1, 1991 and before December 31, 1992.

Requires that a survey of actual audited costs incurred by ambulatory surgery centers, based on a representative sample of procedures, be taken not later than July 1, 1992 and every 5 years thereafter. Repeals provision permitting the Secretary to determine the appropriate time to adjust ambulatory surgery center rates and stipulates that, if the Secretary has not updated rates paid to ambulatory surgery centers in a year, the rates will be increased by

the consumer price index for all urban consumers for the 12 month period ending with June of the preceding year. Requires the Secretary to consult with appropriate trade and professional organizations in determining the list of procedures that may be performed at ambulatory surgery centers.

Effective date: Section 12111. Enactment. Section 4021. Provision (a) is effective upon enactment. Provision (b) applies to hospital outpatient services provided on or after January 1, 1991. Provision (e) is effective July 1, 1991.

Senate amendment

(a) Section 6130.—Reduces payments for capital-related costs for cost reporting periods occurring during the period beginning on October 1, 1989 and ending on September 30, 1991 by 15 percent. Reduces payments for capital-related costs for cost reporting periods occurring during the period beginning on October 1, 1991 and ending September 30, 1995 by 10 percent. Exempts sole community hospitals from the reduction.

(b) Section 6131.—Payments for outpatient hospital services that are made on a cost related basis would be reimbursed at 95 percent of the recognized costs for payments attributable to portions of cost reporting periods during the period beginning on October 1, 1990 and ending on December 31, 1995. This reduction would also apply to the cost portions of blended payment limits for ambulatory surgery and radiology services. Sole community hospitals would be exempt from this reduction.

(c) Section 6130.—No provision.

(d) Section 6131.—Extends the use of the 75/25 blend to services provided in cost reporting periods beginning on or after October 1, 1988 and before September 30, 1993.

(e) Payments for Ambulatory Surgery and Radiology.—Section 6131. No provision.

Effective date: Enactment.

Conference agreement

OUTPATIENT SERVICES

(a) Capital.—The conference agreement includes the House bill with an amendment. Capital costs for outpatient hospital services and the cost portion of outpatient hospital services paid on the basis of a blended amount for payments attributable to portions of cost reporting periods occurring during FY 91 would be reduced by 15 percent. Such payments would be reduced by 10 percent for portions of cost reporting periods occurring during FY 92, 93, 94 and 95. Sole community hospitals and primary care hospitals would be exempt from these reductions.

(b) Outpatient Services on a Cost-Related Basis.—The conference agreement includes the Senate amendment with an amendment. Payments for outpatient hospital services made on a reasonable cost basis would be reduced by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, 1992, 1993, 1994, or 1995.

(c) Prospective Payment System for Hospital Outpatient Services.—The conference agreement includes the House bill.

(d) Ambulatory Surgery in Eye, and Eye and Ear Specialty Hospitals.—The conference agreement includes the House provision.

(e) Amubulatory Surgery and Radiology.—The conference agreement includes the House bill with an amendment. For portions of cost reporting periods beginning on or after January 1, 1991, payment for ambulatory surgery services and radiology services performed in outpatient hospital departments would be subject to aggregate cost limits based on a blend of 42 percent of the hospital's costs and 58 percent of the fees for the same services performed outside the hospital.

5. Durable Medical Equipment (Sections 12112 and 4022 of House bill and Sections 6132 and 6133 of Senate Amendment)

Present law

(a) Overvalued Equipment.—OBRA 1989 reduced the fee schedule amounts for seatlift chairs and transcutaneous electrical nerve stimulation (TENS) devices by fifteen percent, effective April 1, 1990.

(b) Limits on Variations in Fees.—Current law provides for transition to a system of regional fees for three categories of DME by 1993. The categories are orthotics and prosthetics, rental-cap items, and oxygen and oxygen equipment. The regional fees would be based on a weighted average of local and regional payment amounts within each region, subject to certain upper and lower limits. Payments in 1990 are based solely on the local amounts; payments in 1993 would be based solely on the regional amounts. 1991 and 1992 would be transition years between the two amounts.

(c) Rental Cap Items.—OBRA '87 defined six categories of DME and established fee schedules for each category. Payment for items in the category of "other items of DME," often referred to as the "rental cap" category, is only on a rental basis. Items in this category include wheel chairs and hospital beds. The rental payment amount in 1989 and 1990 is ten percent of the purchase price of the item based on average submitted charges during a twelve month base period ending June 30, 1987, and updated by the percent increase in the Consumer Price Index (CPI-U) for the six month period ending December, 1987. Rental payments are made for up to fifteen months, after which a payment, equal to one month's rental, is made every six months for servicing.

OBRA '89 removed motorized wheelchairs from the "rental cap" category into the "frequently purchased" category with a provision allowing for treatment of such wheelchairs as customized equipment, subject to guidelines to be established by the Secretary.

(d) Frequently Serviced Items.—Items in the category known as "frequently serviced" are reimbursed on a rental basis. These items are defined as equipment which requires frequent servicing to avoid danger to the patient and includes such items as ventilators, intermittent positive pressure breathing machines and vaporizers. Rental payments for these items are based on average allowed charges for the items during a base period, updated by the percentage change in the CPI-U. There is no limit on the number of months that rental payments are made for "frequently serviced" items.

(e) Useful Lifetime of Rental Equipment.—There is currently no provision for replacement and for a new cycle of rental payments for items provided under the rental cap category.

(f) Enteral and Parenteral Equipment and Supplies.—Nutritional supplies for enteral equipment are reimbursed on a reasonable charge basis. The payment amounts for these services are updated by the CPI-U.

(g) Administrative Procedures.—The Secretary may require medical equipment suppliers to have a written order for an item from a physician prior to delivery of certain items.

(h) Orthotics and Prosthetics.—Orthotics and prosthetics are included in the covered items other than durable medical equipment category of DME. Payment for this category of equipment is made on a lump sum basis for purchase. Two elements for the basis of the payment for purchase of the equipment. The first is the base local purchase price, which is defined as the average reasonable charge in the locality for the purchase of the item for the 12 month period ending with June, 1987, updated by the consumer price index for all urban consumers for the six month period ending with December, 1987.

The second component consists of the regional purchase price, which is equal to the weighted averages of purchase prices in the region. Payment is made solely on the basis of local purchase prices in 1990. In 1991, payment is the sum of 75 percent of the local purchase price and 25 percent of the regional purchase price. In 1992, payment is equal to 50 percent of the local purchase price and 50 percent of the regional purchase price. In 1993 and subsequent years, payment is made solely on the basis of regional purchase prices. In 1991, the range of the recognized payment may not exceed 125 percent, or be lower than 85 percent of the average of the purchase prices recognized for all the carrier service areas in the U.S. In subsequent years, the range of the recognized payment amount may not be 120 percent or be lower than 90 percent of the average of the purchase prices recognized for all carrier service areas in the country.

(i) Oxygen and Oxygen Equipment.—No provision.

House bill

(a) Overvalued Equipment.—Section 12112. The fee schedule amounts for seatlift chairs and TENS devices would be reduced by fifteen percent.

Section 4022. Similar provision.

(b) Limits on Variations in Fees.—

Section 12112. The requirements relating to regional fees would be repealed, except for orthotics and prosthetics as described below. National upper and lower fee limits would be established for the following categories of DME: (1) inexpensive and routinely purchased DME; (2) items requiring frequent and substantial servicing; (3) miscellaneous items and other covered items; and (4) oxygen and oxygen equipment. Local fees above or below these limits would be phased to the national limiting amount in 1993.

National fee upper limits for an item would be defined as the median of the fees that apply in 1990. The upper limits would be updated annually. In 1991 and 1992, payments would be capped by

a weighted average of the local fee schedule amount and the national limit. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national limit. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national limit. In 1993, the fee schedule amounts in areas that exceed the upper limit would be set at the national limit.

National fee "floors" for an item would be defined as 85 percent of the median of the fees that apply in 1990. The fee floors would be updated annually. In 1991 and 1992, payments would be subject to a lower limit equal to a weighted average of the local fee schedule amount and the national floors. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national floor. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national floor. In 1993, the fee schedule amounts in areas that are below the national floor would be set at the floor.

Fees in areas that are between the median and 85 percent of the median would not be affected by this provision.

Section 4022. Identical provision.

(c) Rental Cap Items.—Section 12112. The fee schedules for rental cap items would be based on average allowed charges, rather than average submitted charges.

Rental payments for "rental cap" items would be based on ten percent of the average allowed purchase price during the base period for the first three months of rental, and 7.5 percent of the average allowed purchase price during the fourth through fifteenth months of rental. Total rental payments would equal 120 percent of the average allowed purchase price. No rental payments would be made after the fifteenth month.

In the tenth month of continuous rental, patients would be given the option to purchase the item of equipment. If the patient elects this option, rental payments would continue through the thirteenth month of rental when ownership of the item would transfer to the patient. No additional rental payments would be made. For items owned by patients, payments for maintenance and servicing would be determined by the Secretary to be appropriate for the particular type of equipment and would be based on reasonable charges. If the patient declines the purchase option, payments for the equipment and servicing would be the same as provided under current law.

Non-customized motorized wheelchairs would be returned to the category of other covered items of DME (the rental cap category). The Secretary would be authorized to treat customized wheelchairs under the payment provisions for the customized items category of DME.

Section 4022. Similar provision, except that payment would continue to be made on the basis of average submitted charges.

(d) Frequently Serviced Items.—Section 12112. Rental payments for items in the category known as "frequently serviced" would be limited to fifteen months. After the succeeding six month period, the Secretary would make payments for servicing every six months. The servicing payment could not exceed 200 percent of a monthly rental fee and would include payment for parts and labor not covered by warranty. The Secretary would be authorized to

make payments for necessary disposable supplies used in conjunction with the item. If the reasonable lifetime of the item is reached during a period of continuous use or if the Secretary determines, based on a carrier's investigation, that an item is lost or irretrievably damaged, monthly rental payments may be made for the replacement item on the same basis as the original item.

Section 4022. Identical provision.

(e) Useful Lifetime of Rental Equipment.—Section 12112. The Secretary would establish a reasonable useful lifetime for two categories of equipment: (1) miscellaneous items and devices; and (2) items requiring frequent and substantial servicing. The useful lifetime would be 5 years, unless the Secretary finds, based on program experience, that a longer or shorter period is appropriate for an item. After an item's useful lifetime is reached during a period of medical necessity, the Secretary would provide for a new cycle of rental payments.

Carriers would be permitted to make exceptions, and begin a new cycle of rental payments, for equipment that is lost or irreparably damaged.

Section 4022. Similar provision, except that the useful lifetime is not deemed to be 5 years, unless the Secretary finds otherwise.

(f) Enteral and Parenteral Equipment and Supplies.—Section 12112. No update of fees for enteral and parenteral equipment and supplies would be authorized for 1991.

Section 4022. Identical provision.

(g) Administrative Procedures.—Section 12112. Suppliers would be prohibited from distributing completed or partially completed Medicare medical necessity forms to patients for commercial purposes. Suppliers who knowingly and willfully distribute such forms would be subject to civil monetary penalties of up to $1,000 per form distributed.

For customized equipment and for equipment designated by the Secretary as requiring a prior written physician's order, suppliers could request prior approval of the item from a carrier in a form determined by the Secretary.

The Secretary would establish standards for the timeliness of carrier responses to such requests, and would incorporate such standards into the evaluations of carriers' performance.

Claims for items of DME that are potentially overused would be subject to special carrier scrutiny. The Secretary would publish, and periodically update, a list of such items. The list would include: seatlift chairs, transcutaneous electrical nerve stimulators, power-driven scooters, and such other items of DME as determined appropriate by the Secretary. The Secretary would include items that are: (1) mass marketed directly to beneficiaries; (2) marketed with offers to waive the coinsurance, or marketed as "free" or "at no cost" to beneficiaries with Medigap coverage or other coverage; (3) subject to a consistent pattern of overutilization; and (4) frequently denied based on a lack of medical necessity.

Section 4022. Similar provision.

(h) Orthotics and Prosthetics.—Section 12112. Payments for orthotics and prosthetics would continue to be made on the same basis as in current law, but under a new section of law. The transition to payment based solely on regional purchase prices would be delayed

by one year, to 1994 and the transition schedule to a regional basis would be revised. In 1991, payment would be made solely on the basis of local purchase prices. In 1992, payment would be based on the sum of 75 percent of the local purchase price and 25 percent of the regional purchase price. In 1990, payment would be the sum of 50 percent of the local purchase price and 50 percent of the regional purchase price.

No update for orthotic and prosthetic fees would be permitted in 1991. Directs the General Accounting Office to conduct a study of payments for prosthetic devices, orthotics and prosthetics under Medicare to examine the effect of the development and implementation of the Medicare fee schedules on payments for such items to orthotists and prosthetists. The report is due to the House Committees on Ways and Means and the Energy and Commerce and the Senate Finance Committee, including recommendations that the Comptroller General considers appropriate.

Section 4022. The Secretary would be required to conduct a study of the feasibility and desirability of establishing a separate fee schedule for suppliers of prosthetics, orthotics and prosthetic devices who provided professional medical services that would take into account the providers' costs in providing these services. The Secretary's report would be due to Congress one year after enactment.

(i) Oxygen and Oxygen Equipment.—Section 12112. Prohibits payment for home oxygen therapy services after the expiration of a three month period that begins on the date a patient first receives such services unless, in accordance with criteria developed by the Secretary in consultation with suppliers, the patient's attending physician certifies that, based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of the three month period, there is a continued medical need for the services. Directs the Secretary to permit home oxygen therapy suppliers to manage the follow-up testing process.

Section 4022. Stipulates that a patient receiving home oxygen therapy services, who at the time such services are initiated, have initial arterial blood gas values at or above a partial pressure of 50 or an arterial oxygen saturation at or above 85, will not receive services after a sixty days period has expired unless the patient's attending physician certifies a continuing medical need for the service. The physician's certification is to be based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of each 60 day period.

Effective date:

Section 12112. Effective for services provided on or after January 1, 1991, except for the following provisions: (1) the provision in item (g) requiring contracts with carriers to meet timeliness standards, which applies to contracts entered into on or after January 1, 1991. Provision (i) applies to patients who first receive home oxygen therapy services on or after January 1, 1991.

Section 4022 is effective for services provided on or after January 1, 1991, except as follow: (1) The provision prohibiting suppliers from distributing medical necessity forms applies to forms or docu-

ments distributed on or after January 1, 1991; (2) the provision regarding home oxygen services applies to items furnished on or after January 1, 1994, applies to patients who first receive home oxygen therapy services on or after January 1, 1991; and (3) a technical correction specifying that the provisions of OBRA '87 also applied to oxygen and oxygen equipment takes effect as if included in OBRA '87.

Senate amendment

(a) Overvalued Equipment.—No provision.

(b) Limits on Variations in Fees.—Section 6132. The requirements relating to regional fees would be repealed, except for orthotics and prosthetics. National upper and lower fee limits would be established for the following categories of DME: (1) inexpensive and routinely purchased DME; (2) items requiring frequent and substantial servicing; (3) miscellaneous items and other covered items; and (4) oxygen and oxygen equipment. Local fees above or below these limits would be phased to the national limiting amount in 1992.

National fee upper limits for an item would be defined as the median of the fees that apply in 1990. The upper limits would be updated annually by the covered item increase for that year. In 1991, payments would be capped by a weighted average of the local fee schedule amount and the national limit. In 1992 and subsequent years, the limit would be equal to the previous year's limit updated by the covered item increase for that year.

National fee "floors" for an item would be defined as 85 percent of the median of the fees that apply in 1990. The fee floors would be updated annually. In 1991 and 1992, payments would be subject to a lower limit equal to a weighted average of the local fee schedule amount and the national floors. In 1991, the average would be based on 67 percent of the local fee and 33 percent of the national floor. In 1992, the average would be based on 33 percent of the local fee and 67 percent of the national floor. In 1993, the fee schedule amounts in areas that are below the national floor would be set at the floor.

Fees in areas that are between the median and 85 percent of the median would not be affected by this provision.

(c) Rental Cap Items.—Section 6132. The fee schedules for rental cap items would be based on 110 percent of average allowed charges, rather than average submitted charges. Rental payments for "rental cap" items would be based on ten percent of the average allowed purchase price during the base period for the first three months of rental, and 7.5 percent of the average allowed purchase price during the fourth through fifteenth months of rental.

Total rental payments would equal 120 percent of the average allowed purchase price.

(d) Frequently Serviced Items.—No provision.

(e) Useful Lifetime of Rental Equipment.—No provision.

(f) Enteral and Parenteral Equipment and Supplies.—Section 6132. Identical provision to Section 12112.

(g) Administrative Procedures.—No provision.

(h) Orthotics and Prosthetics.—Section 6133. Identical provision to Section 12112.

(i) Oxygen and Oxygen Equipment.—Section 6132. Stipulates that a patient receiving home oxygen therapy services, who at the time such services are initiated, have initial arterial blood gas values at or above a partial pressure of 55 or an arterial oxygen saturation at or above 89, or such other values or saturations as the Secretary may specify, will not receive services after a sixty day period has expired unless the patient's attending physician certifies a continuing medical need for the service. The physician's certification is to be based on a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 15 days of each 60 day period.

Effective date: Section 6132. Effective for items or services furnished on or after January 1, 1991, except for provision (l), which is effective for patients who first receive home oxygen therapy services on or after January 1, 1991.

Section 6133. Effective for prosthetic devices orthotics and prosthetics furnished on or after January 1, 1991.

Durable Medical Equipment

Conference agreement

(a) Overvalued Equipment.—The conference agreement includes the House provision with an amendment. Payment for seatlift chairs would be limited to payment for the seatlift mechanism only. The fee schedule payment amounts for transcutaneous electrical nerve stimulators would be reduced by 15 percent.

(b) Limits on Variations in Fees.—The conference agreement contains the House provision contained in Section 4022 with an amendment that reduce the update by 1 percent in 1991 and 1992.

(c) Rental Cap Items.—The conference agreement includes the House bill. Suppliers providing power driven wheelchairs would be required to offer individuals an option to purchase the item; payment would be made on a lump-sum basis if the individual elects to purchase the item.

(d) Frequently Serviced Items.—The conference agreement includes the House bill with an amendment that permits the Secretary to replace an item under specified conditions.

(e) Useful Lifetime of Rental Equipment.—The conference agreement includes the House bill contained in Section 4022.

(f) Enteral and Parenteral Equipment and Supplies.—The conference agreement includes the House bill.

(g) Administrative Procedures.—The conference agreement includes the House bill contained in Section 12112 with modifications.

(h) Orthotics and Prosthetics.—The conference agreement includes the House provision.

(i) Oxygen and Oxygen Equipment.—The conference agreement includes the House bill contained in Section 4022 with modifications.

6. Clinical Laboratory Services (Section 12113 and 4023 of House bill; Section 6131 of Senate amendment;)

Present Law

(a) Laboratory Fee Schedule Update.—The laboratory fee schedules are generally updated each January 1 by the annual percentage change in the CPI–U over the preceding year.

(b) National Cap on Laboratory Fee Schedules.—The local laboratory fee schedules are subject to national ceilings. These ceilings are based on the median of all carrier-wide fee schedules established for that test in that laboratory setting. OBRA '89 reduced the cap from 100 to 93 percent of the national median.

(c) Clarification of Assignment Rule for Laboratory Tests.—In general, clinical laboratory tests are only reimbursed on an assigned basis. Since 1988, physicians have been prohibited from billing patients for such tests on an unassigned basis. A recent decision in the U.S. 6th Circuit Court of Appeals indicated that there may be some ambiguity as to whether the assignment requirement applies to such tests performed in all physician offices.

House Bill

(a) Laboratory Fee Schedule Update.—

Section 12113. Provides that the annual update in the laboratory fee schedule is reduced by 2 percent in 1991, 1992, and 1993.

Section 4023. No provision

(b) National Cap on Laboratory Fee Schedules.—

Section 12113. Reduces the national cap to 88 percent of the median, effective January 1, 1991.

Section 4023. Similar provision except reduction is to 85 percent of the median.

Removes requirement for report on national fee schedule and makes other technical corrections.

(c) Clarification of Assignment Rule for Laboratory Tests.—

Section 12113. Clarifies current statutory language to provide that all clinical laboratory tests provided in all settings (except by a rural health clinic) may only be billed on an assigned basis. This includes tests provided in physicians offices.

Section 4023. Similar provision. The definition of referring laboratory is clarified, effective May 1, 1990.

Effective date.

Section 12113. Enactment.

Section 4023. (b) Applies to tests furnished on or after January 1, 1991. (c) Applies as if included in the enactment of OBRA 1989.

Senate Amendment

(a) Laboratory Fee Schedule Update.—Provides that the annual update is 2 percent in 1991.

(b) National Cap on Laboratory Fee Schedules.—Reduces the national cap to 90 percent of the median, effective January 1, 1991.

(c) Clarification of Assignment Rule for Laboratory Tests.—No provision.

Effective date. Enactment.

Conference agreement

Clinical Laboratory Services

(a) Laboratory Fee Schedule Update.—
The Conference agreement includes the House provision with an amendment. The update is set at 2 percent for 1991, 1992, and 1993.

(b) National Cap on Laboratory Fee Schedules.—The Conference agreement includes Section 12113.

(c) Clarification of Assignment Rule for Laboratory Tests.—The Conference agreement includes Section 12113 of the House bill.

The Conference agreement includes Section 4023 of the House bill clarifying the definition of referring laboratory with a clarification. In calculating whether a laboratory bills for more than thirty percent of clinical diagnostic tests performed by another laboratory, referrals to wholly-owned subsidiaries are not counted.

7. Reduction of Payments under Part B Through December 31, 1990 (Section 12114 of the House Bill)

Present law

Under the Balanced Budget and Emergency Deficit Control Act of 1985, Medicare benefit payments may be reduced by a sequester of up to 2 percent pursuant to a sequester order by the President if deficit targets for the year are not met. The actual reduction applies to payments for services rendered on or after October 15 of a fiscal year. In order to obtain a 2 percent savings from the entire fiscal year, the actual reduction is 2.034 percent to account for services provided between October 1 and October 15.

Such an order was issued by the President with respect to fiscal year 1990 on October 15, 1989. OBRA '89 directed this sequester order to remain in effect for services under Part B until April 1, 1990. In addition, OBRA '89 provided for a sequester of 1.4 percent that applies to services provided during the last six months of fiscal year 1990.

If payments are reduced under a sequester, patient liability for deductible and coinsurance amounts are unchanged. Patient liability for balance bills may rise under a sequester if a physician's actual charge for a service is not at the maximum allowable actual charge (MAAC).

House bill

Section 12114. Payments to physicians, providers and suppliers under Part B would be reduced by 2 percent for the two month period beginning November 1, 1990. Patient liability for deductibles and coinsurance amounts would remain unchanged for claims billed on an assigned basis. No changes would be made in the computation of the average adjusted per capita cost (AAPC) for health maintenance organization (HMO) contracts or competitive medical plan (CMP) contracts to reflect the reduction.

Section E+C. No provision.

Effective date.—Applies to services provided on or after October 15, 1990 and prior to January 1, 1991.

Senate amendment

No provision.
Effective date. No provision.

MEDICARE PART B

7. Reduction of Payments under Part B

Conference agreement

The conference agreement includes the House bill with modifications. Payments would be reduced by 2 percent for payments made during the period beginning November 1, 1990 and ending December 31, 1990.

8. Miscellaneous and Technical Amendments (Sections 4024–4027, 4031 of House bill, Sections 6133(c) 6140–6146 of Senate amendment)

Present law

(a) Extension of Alzheimer's Disease Demonstrations.—In OBRA '86, Congress authorized $40 million for the conduct of up to 10 Alzheimer's disease demonstration projects. Each project provides comprehensive services to Medicare beneficiaries who are enrolled in the Alzheimer's disease demonstrations. The demonstrations were authorized for 3 years.

(b) Cataract Surgery Demonstration Project.—The Health Care Financing Administration is developing a pilot demonstration project to test the feasibility of developing an alternate pricing strategy for cataract surgery.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Under current law, the services of nurse practitioners are covered in specified circumstances, as follows: (1) the services must be those which would be covered if they were performed by physicians; (2) nurse practitioners must be working in collaboration with a physician; (3) services are covered only if they are performed in a skilled nursing facility or nursing facility; and (4) the nurse practitioner must practice within the scope of a State license where the services are performed. Reimbursement is made only on an assigned basis and may be made only to the employer of the nurse practitioner.

In the case of nurse practitioners serving as assistants at surgery, the payment amount is equal to 65 percent of the prevailing charge that would be recognized if performed by nonspecialist physicians. In the case of services performed in a hospital, the payment amount is equal to 75 percent of the prevailing charge that would be recognized for nonspecialist physicians. In the case of all other services, the payment amount is equal to 85 percent of the prevailing charge rate that would be recognized for nonspecialist physicians. Services of clinical nurse specialists are covered as incident to physicians' services if they would be covered if provided by a physician.

(d) Eyeglass Coverage Following Cataract Surgery.—Current law prohibits coverage of eyeglasses for refractive purposes. As a matter of policy, the Health Care Financing Administration considers intraocular lenses inserted during or after cataract surgery and

eyeglasses prescribed following cataract surgery to be prosthetic devices. As such, Medicare reimbursement is made for both.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—No provision.

(f) Medicare Carrier Notice to State Medical Boards.—Current law requires that if a Medicare carrier makes determinations or payments with respect to physicians' services, that the carrier implement specified programs.

(g) Partial Hospitalization Services.—Partial hospitalization services include the following services: (1) individual and group therapy with physicians, psychologists or other mental health professionals practicing within the scope of their State licenses; (2) occupational therapy requiring the skills of a qualified occupational therapist; (3) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients; (4) drugs and biologicals furnished for therapeutic purposes (which can not be self administered); (5) individualized activity therapies; (6) family counseling designed to treat the patient's condition; (7) patient training and education; (8) diagnostic services; and (9) other items provided by the Secretary. Partial hospitalization services are covered when they are reasonable and necessary for the diagnosis or active treatment of a patient; are reasonably expected to improve or maintain an individual's condition and functional level and prevent a relapse or hospitalization; and furnished under guidelines developed by the Secretary. Services are covered only if the program is hospital-based or hospital affiliated and must be a distinct and organized intensive ambulatory treatment service offering less than 24-hour daily care. The course of treatment must be prescribed, supervised and reviewed by a physician. Partial hospitalization services provided by community mental health centers or other free-standing institutions are not covered under Medicare.

(h) Certified Registered Nurse Anesthetists.—OBRA '86 provided for direct reimbursement for the services of certified registered nurse anesthetists (CRNAs) on an assigned basis for a two year period beginning January 1, 1989. Reimbursement is the lesser of actual charge, the prevailing charge that would have been recognized if the service had been performed by an anesthesiologist, or a fee schedule developed by the Secretary. The fee schedule incorporates base, time, modifier units and conversion factors. Separate conversion factors are used, depending on whether the CRNA is medically directed by a supervising physician or employed by a hospital. The conversion factors also vary by geographic area. The current rules for payment were established under a notice of a proposed rule, published January 26, 1989 and are being implemented through carrier instruction.

Under current law, rural hospitals are permitted to excluded costs for CRNA services from the prospective payment system and be reimbursed for them on a cost basis if they meet specified conditions.

(i) Payments to Community Health Center and Rural Health Clinics

(1) Payments to Community Health Centers.—Under regulation, Medicare currently makes payment to Federally Qualified Health Centers (FQHC). In general, these centers are health care clinics

receiving grants under sections 329, 330 or 340 of the Public Health Service (PHS) Act, which provides grants to Community Health and Migrant Health Centers, and centers providing health care to the homeless. Centers receiving grants to provide services to the homeless under section 340 of the PHS Act do not qualify as an FQHC unless they are also receiving grants under either section 329 or 330.

Centers receiving PHS grants under these sections are required to charge low-income patients for services on the basis of a sliding fee scale. Medicare currently pays for services on the basis of the lesser of costs or charges, even when the charges have been adjusted under required PHS sliding fee scales for low-income patients.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—No provision.

(3) Payments to Rural Health Clinics.—Rural health clinics applying for participation in Medicare are first certified by a State certifying agency which then forwards its approval to the Secretary for consideration. Services in clinics awaiting final action by the Secretary are covered, but the clinics must hold such claims until after the Secretary issues final approval.

In order to remain certified, rural health clinics must meet certain staffing requirements. Specifically, the clinic must have a nurse practitioner, physician assistant or certified registered nurse midwife available to furnish patient services at least 50 percent of the time the clinic operates.

The Secretary would have 60 days to approve or deny an applicant rural health clinic's certification as a rural health clinic, effective October 1, 1991. The 60 day period would begin on the date the State Agency that surveys the clinics approves the application.

Independent rural health clinics are reimbursed on the basis of an all-inclusive rate based on reasonable costs. In determining reasonable costs, the Secretary has developed productivity standards for staff working in the clinic. The current standards provide for different levels of productivity standards for physicians than for non-physician practitioners.

The Provider Reimbursement Review Board (PRRB) reviews and considers appeals of cost reports for entities defined as providers of services under the Medicare program.

(j) Coverage of Mental Health Professional Services.—No provision.

(k) Technical Corrections Relating To Physician Payment Provisions.—

(1) Comparability Adjustments.—Carriers may reduce payments for services paid on a reasonable charge basis if the carrier's usual payment in its private business is less than what is otherwise payable under Medicare. The Secretary is also permitted to make inherent reasonableness adjustments.

(2) Periodic Recalculation of GPCI.—The Secretary is required to review relative value units every five years and make appropriate adjustments. A similar requirement is not included for geographic indices.

(3) Volume Performance Standard.—Generally the Congress is expected to establish the volume performance standard. In the ab-

sence of Congressional action, a default standard is used. This standard is the sum of a number of factors.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—Current law provides that the Secretary may include time in the coding of visits and consultations only for services furnished on or after January 1, 1993.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—One factor that is included in the calculation of the default volume performance standard is the Secretary's estimate of the percentage change in physician expenditures in the fiscal year (not attributable to physicians' fees) which will result from changes in law or regulation.

(6) Miscellaneous Fee Schedule Corrections.—OBRA 1989 incorporated the physician payment reform requirements in a new section 1848. The requirements for a number of physician payment studies were retained, though some are no longer necessary.

(l) Minor and Technical Amendments—No provision.

House bill

(a) Extension of Alzheimer's Disease Demonstration.—Section 4124. Requires the Secretary to submit a final report on the Alzheimer's demonstration projects not later than one year after the demonstrations are completed.

Effective date: Enactment.

(b) Cataract Surgery Demonstration Project.—Section W+M. No provision.

Section 4026. Prohibits the Secretary from selecting providers to participate in any demonstration project to evaluate the effectiveness of alternative payments for cataract surgery based solely on the number of cataract surgeries performed. Required the Secretary to monitor the quality of services provided under the demonstration and to develop criteria for selecting providers to participate in the demonstration in consultation with physicians specializing in the care and treatment of eye conditions.

Effective date: Section 4026 Enactment.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Section W+M No provision.

Section 4024. The services of nurse practitioners would be expanded to cover those provided in a rural area, as determined by the Secretary of Health and Human Services for purposes of Medicare hospital reimbursement. The services of clinical nurse specialists would be covered under the following conditions: (1) the services would be covered if provided by a physician; (2) the clinical nurse specialist is practicing in collaboration with a physician; (3) the services are provided in a rural area, as determined by the Secretary for purposes of Medicare hospital reimbursement; and (4) the clinical nurse specialist is practicing within the scope of a state license. For both nurse practitioners and clinical nurse specialists practicing in rural areas, payments may be made only on an assignment related basis. Payment could be made directly to the practitioner or to a hospital, rural primary care hospital, physician, group practice, ambulatory surgery center, or rural health clinic with which the practitioner has an employment or contractual relationship. Hospitals or primary care rural hospitals billing on

behalf of nurse practitioners or clinical nurse specialists would be prohibited from treating any uncollected coinsurance amounts for these services as a bad debt for purposes of Medicare reimbursement. Any person who knowingly or willfully presents an unassigned claim is subject to civil money penalties of up to $2,000. Proceedings to initiate the imposition of civil money penalties would be conducted in the same manner as those initiated against other providers. The payment amount for services rendered in hospitals would be equal to 75 percent of the prevailing charge recognized for nonspecialist physicians. For all other services, the payment amount would be equal to 85 percent of the prevailing charge recognized for nonspecialist physicians, or the fee paid under the RB RVS fee schedule.

Effective date: Section W+M No provision. Section E+C Effective for services furnished on or after January, 1, 1990.

(d) Eyeglass Coverage Following Cataract Surgery.—Section W+M. No provision.

Section 4025. Includes corrective eyeglasses provided with intraocular lenses following cataract surgery, but not including replacement for such glasses.

Effective date: Section 4025. Effective for items and services furnished before, on or after the date of enactment.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—Section W+M. No provision.

Section 4027. Adds coverage of an injectable drug approved for the treatment of a bone fracture related to post-menopausal osteoporosis under the following specified conditions: (1) the patient's attending physician certifies that the patient is unable to learn the skills need to self-administer the drug or is otherwise physically or mentally incapable of self-administering the drug; and (2) the patient meets the requirements for Medicare coverage of home health services. Coverage is added for the drug and its administration furnished on or after January 1, 1991 and on or before December 31, 1992.

Directs the Secretary to conduct a study analyzing the effect of covering osteoporosis drugs under Medicare on patient health and the use of inpatient hospital and extended care services. Directs the Secretary to submit a report to Congress and to include recommendations regarding expansion of Medicare coverage to women with post-menopausal osteoporosis.

Effective date: Section W+M. No provision. Section 4027. Enactment.

(f) Medicare Carrier Notice to State Medical Boards.—

WM Technicals: No provision

Section 4031.—Requires Medicare carriers to refer cases of physician unethical or unprofessional conduct to the State medical board or boards responsible for the licensing of the physician involved.

Effective date:

WM Technicals: No provision.

Section 4031.—Applies to cases of unethical or unprofessional conduct that a carrier becomes aware of more than 60 days after enactment of this provision.

Requires the Secretary to provide for such modification of carrier contracts as may be necessary to incorporate the additional requirement imposed by this provision on a timely basis.

(g) Partial Hospitalization Services.—No provision.

(h) Certified Registered Nurse Anesthetists.—No provision.

(i) Payments to Community Health Center and Rural Health Clinics.—

(1) Payments to Community Health Centers.—No provision.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—No provision.

(3) Payments to Rural Health Clinics.—No provision.

(j) Coverage of Mental Health Professional Services.—No provision.

Effective date: No provision.

(k) Technical Corrections Relating To Physician Payment Provisions.—

(1) Comparability Adjustments.—No provision.

(2) Periodic Recalculation of GPCI.—No provision.

(3) Volume Performance Standard.—No provision.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—No provision.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—No provision.

(6) Miscellaneous Fee Schedule Corrections.—

WM: No provision.

Section 4013. Corrects certain technical and drafting errors in the Physician Payment Reform provisions of OBRA '89. In addition, the requirements for a number of reports are deleted.

Effective date: Enactment.

(l) Minor and Technical Amendments.—

Section 4032. Makes miscellaneous technical corrections.

Effective date: Section 4032. Enactment

Senate amendment

(a) Extension of Alzheimer's Disease Demonstration.—Section 6141. Extends authorization for the Alzheimer's disease demonstration projects for an additional two years.

Effective date: No provision.

(b) Cataract Surgery Demonstration Project.—No provision.

Effective date: No provision.

(c) Coverage of Nurse Practitioners and Clinical Nurse Specialists.—Section 6146. Provides for direct reimbursement for services of nurse practitioners and clinical nurse specialists in rural areas for the services that nurse practitioners and clinical nurse specialists are authorized to perform under State law or State regulatory mechanisms. Defines rural area as any area outside a metropolitan statistical area, as defined by the Office of Management and Budget. Defines nurse practitioner or clinical nurse specialist as an individual who: (1) is a registered nurse and is licensed to practice nursing in the State in which the services are performed; and (2) holds a Master's degree in nursing or a related field from an accredited institution; or (3) is certified as a nurse practitioner or clinical nurse specialist by a duly recognized professional nurses' association. Establishes payment for services at an amount equal to

75 percent of the prevailing charge (or Medicare fee schedule payment amount for participating physicians) in the area. Stipulates that payment may only be made on an assignment-related basis. 10/17/90

Effective date: Section 6146. Effective for services furnished on or after January 1, 1991.

(d) Eyeglass Coverage Following Cataract Surgery.—Section 6133. Excludes intraocular lenses from the definition of durable medical equipment. Prohibits the Secretary from issuing regulations which changes the coverage of conventional eye wear furnished to individuals who receive an intraocular implant during or following cataract surgery. Excludes routine regulations regarding prosthetic devices or exclusions from coverage from the prohibition. Specifies that one pair of eyeglasses following cataract surgery is a Medicare covered service.

Effective date: Section 6133. Effective for services furnished on or after January 1, 1991.

(e) Coverage of Injectable Drugs for Treating Osteoporosis.—No provision.

Effective date: No provision.

(f) Medicare Carrier Notice to State Medical Boards.—

No provision.

Effective date: No provision.

(g) Partial Hospitalization Services.—Section 6140. Covers partial hospitalization services provided in community mental health centers are covered. Such coverage is limited to community mental health centers that: (1) provide community mental health services required PHS Act; and (2) meet applicable State licensing or certification requirements for community mental health centers.

Effective date: Effective for services provided on or after April 1, 1991.

(h) Certified Registered Nurse Anesthetists.—Section 6142. Establishes the conversion factor for non-medically directed CRNAs at $15.50 for services furnished in 1991; $15.75 in 1992; $16.00 in 1993; $16.25 in 1994; $16.50 in 1995; and $16.75 in 1996. For services furnished in calendar years after 1995, the conversion factor will equal the previous year's conversion factor increased by the update determined under the RB RVS fee schedule for physician anesthesia services for that year. In 1991, the payment area to be used for calculating the conversion factor are the localities used for computing payments for physician anesthesia services. After 1991, the payment areas are to be the same as those used under the RB RVS fee schedule.

In 1991, the geographic adjustment factors applied to the conversion factors are the geographic work index value and the geographic practice cost index used for physicians' services for anesthesia services furnished in the locality, with 70 percent of the conversion factor attributable to work and 30 percent attributable to overhead for services. After 1991, the geographic adjustment factors applied to the conversion factors are the same as those used for physicians' services for anesthesia services under the RB RVS fee schedule, with the same percentages attributable to work, practice expenses and malpractice as under the RB RVS fee schedule. For medically-directed CRNAs, the conversion factor will be $10.50 for services

furnished in 1991; $10.75 in 1992; $11.00 in 1993; $11.25 in 1994; and $11.50 in 1995, and $11.70 in 1996. For services furnished after calendar year 1995, the conversion factor will equal the previous year's conversion factor increased by the update determined for physician anesthesia services that year.

The following exceptions are provided: (1) in the case of a conversion factor that is greater than $16.50 in 1990, the conversion factor for a calendar year after 1990 and before 1996 is equal to the 1990 conversion factor minus the product of multiplying the last digit of the calendar year and 20 percent of the amount by which the 1990 conversion factor exceeds $16.50; and (2) in the case of a conversion factor that exceeds $15.49, but is less than $16.51, the conversion factor for years after 1990 but before 1996 is the greater of the 1990 conversion factor or the actual conversion factor for that year for non-medically directed CRNAs. Conversion factors used to determine CRNA payments can not exceed the conversion factor used to determine the amount paid for physician services for anesthesia service in the area or locality. CRNA services provided in rural hospitals meeting certain requirements and paid on a cost basis, rather than through the prospective payment system for hospitals would continue to be exempt from paying for such services through the prospective payment system. 10/17/90

Effective date: Section 6142. Enactment.

(i) Payments to Community Health Center and Rural Health Clinics.—

(1) Payments to Community Health Centers.—Includes federally qualified health center services in the list of medical and other health services covered under Medicare Part B. Federally qualified health centers would be defined as: 1) centers receiving grants under any of sections 329, 330 and 340 of the PHS Act; 2) centers receiving payments as an FQHC as of January 1, 1990; and 3) centers that meet all PHS requirements to be eligible to receive such grants, whether or not they actually are receiving funds under these sections. Defines federally qualified health center services as the same services provided by rural health centers eligible to participate in Medicare. Such services must be provided to an outpatient of a federally qualified health center. The Secretary would be required to establish procedures for qualifying non-funded centers as meeting all of the PHS requirements.

Payment for services provided in federally qualified health centers would be on the same basis as reimbursement for rural health center services. Centers paid on a reasonable charge basis on January 1, 1990 could elect to continue receiving payments on that basis. Medicare would pay eighty percent of the all-inclusive rate without regard to the actual charge for the service. Beneficiaries would be exempt form the requirement to pay a Medicare Part B deductible for services rendered in a federally qualified health center. Coinsurance amounts would be equal to the difference between the actual charge for the service and Medicare's payment, but not more than twenty percent of the all-inclusive rate. Federally qualified health centers would be given a safe harbor from criminal or civil violations under Medicare's anti-kickback rules where an center gave a low-income beneficiary, who qualifies for services subsidized under the PHS Act, a partial or full waiver of Medicare

coinsurance amounts based on a PHS mandated sliding fee scale. Federally qualified health centers would have the same PRRB review and appeal rights as other providers under Medicare for low-income patients.

(2) GAO Study of Barriers to Hospital Admitting Privileges for Community Health Center Physicians.—The General Accounting Office (GAO) would be required to conduct a study to determine whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals. The study is to review: (1) how many physicians practicing in centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital; or (2) the criteria hospitals use in deciding whether to grant admitting privileges and whether these criteria act as significant barriers to health center physicians obtaining hospital privileges. GAO would submit a report on the study to the House Committees on Ways and Means and Energy and Commerce within 18 months of enactment, and would include in the report such recommendation considered appropriate.

(3) Payments to Rural Health Clinics.—The Secretary would be required to notify a rural health clinic of approval or disapproval of their certification as a rural health clinic not later than 60 days after the date that the State agency has determined or applied for the facility to be certified as a rural health clinic (whichever is later), if a State agency has determined that the facility is in compliance with Medicare's conditions of participation. The Secretary would be required to waive for a 1-year period the requirements that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife, or that the clinic require such providers to furnish services at least 50 percent of the clinics operating time to any facility that request such a waiver. Facilities demonstrating an inability, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period could obtain a waiver. Prohibits the Secretary from granting a waiver to a facility requesting a waiver within 6 months after the date of expiration of any previous such waiver for the facility. Requires the Secretary to grant a requested waiver within 60 days after the request is received, and the waiver will be deemed granted unless the request is denied within 60 days after the request is received. The Secretary would be required to determine the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic by taking into account the combined services of such staff, and not merely the service within each class of practitioner. Rural health clinics would have the same PRRB review and appeal rights as other Medicare providers.

(j) Coverage of Mental Health Professional Services.—Section 6140. Adds coverage of qualified mental health professional services. Stipulates that reimbursement is to be 80 percent of the lesser of the actual charge for the services or an amount determined under a fee schedule established by the Secretary. Payment for services may only be made on an assignment-related basis. Qualified mental health professional services are defined as services and services and supplies furnished as incident to services furnished by a marriage and family therapist, a psychiatric nurse on-site at a

community health care, and such services that are necessarily furnished on-site (other than at an off-site office of such therapists, nurse or counselor) as part of a treatment plan because of the inability of the individual furnished services to travel to the center because of physical or mental impairment, institutionalization, or similar circumstances. Requires the family therapist, psychiatric nurse or clinical mental health counselor to be legally authorized to perform the services under State law or State regulations and the services would otherwise be covered if furnished by a physician or as incident to a physician's services.

Defines a marriage and family therapist as individual who: (1) possesses a minimum of a master's degree in a field related to marriage and family therapy; (2) after obtaining such degree has performed at least 2 years of supervised clinical experience in the field of marriage and family therapy; (3) is licensed or certified by the State in which such services are preformed as a marriage and family therapist, married, family and child counselor, or is licensed under a similar professional title; or (4) in the case of an individual in a State in which does not provide for licensing or certification, is eligible for clinical membership in a national professional association that recognized credentials for clinical membership for marriage and family therapists, as determined by the Secretary.

Defines a psychiatric nurse as an individual who: (1) is licensed to practice professional nursing by the State in which the individual practices nursing; (2) performs such psychiatric nursing services as are authorized under the law of the State in which the individual practices psychiatric nursing; (3) possesses a minimum of a master's degree in nursing with a specialization in psychiatric and mental health nursing or a related field; or (4) possesses a minimum of a master's degree in a related field from an accredited educational institutionalization is certified as a psychiatric nurse by a duly recognized national professional nurse organization, as determined by the Secretary, or is eligible to receive such certification. 10/16/90

Effective date: Section S. Applies to services performed on or after January 1, 1991.

(k) Technical Corrections Relating to Physician Payment Provisions.—

(1) Comparability Adjustments.—Carriers are prohibited from adjusting fees under the RBRVS. The Secretary may not make inherent reasonableness adjustments under the RBRVS.

(2) Periodic Recalculation of GPCI.—Requires the Secretary to recompute periodically the geographic indices to reflect the most recent data.

(3) Volume Performance Standard.—Specifies that the default standard is the product of the specified factors.

(4) Elimination on the Restriction on the Incorporation of Time in Visit Codes.—Eliminates the restriction on the incorporation of time in visit costs.

(5) Treatment of Price Increases in Determining Performance Standards Rates of Increase.—Specifies that this calculation is to include an estimate of changes in law or regulations affecting the percentage increase in physicians fees.

(6) Miscellaneous Fee Schedule Corrections.—Similar to EC provision.

Effective date: Enactment

(l) Minor and Technical Amendments.—No provision.

Conference agreement

MEDICARE PART B

8. Miscellaneous and Technical Provisions

(a) Alzheimer's Disease Demonstrations.—The conference agreement includes the Senate amendment with an amendment.

(b) Prohibition of Competitive Bidding Demonstration for Cataract Surgery.—The conference agreement does not include this provision.

(c) Coverage of Nature Practitioners and Clinical Nurse Specialists.—The conference agreement includes the Senate amendment.

(d) Clarifying Coverage of Eyeglasses Provided with Intraocular Lenses Following Cataract Surgery.—The conference agreement includes the Senate amendment.

(e) Coverage of Injectable Drugs of Treatment of Osteoporosis.—The conference agreement includes the House bill.

(f) Medicare Carrier Notice to State Medical Boards.—The conference agreement includes the House bill.

(g) Partial Hospitalization Services.—The conference agreement includes the Senate amendment with modifications.

(h) Payments for Certified Registered Nurse Anesthetists.—The conference agreement includes the Senate amendment.

(i) Community Health Centers and Rural Health Clinics.—The conference agreement includes the House bill with amendments.

(j) Coverage of Mental Health Professional Services.—The conference agreement does not include this provision.

(k) Technical Amendments Relating to Physician Payment and Resource Based Relative Value Scale.—

(1) Prohibition of Comparability Adjustments.—The conference agreement includes the Senate amendment.

(2) Periodic Review of the Resource Based Relative Value Scale.—The conference agreement includes the Senate amendment.

(3) Volume Performance Standard.—The conference agreement includes the Senate amendment.

(4) Elimination of Restriction on Incorporation of Time in Visit Codes.—The conference agreement includes the Senate amendment.

(5) Treatment of Price in Determining Volume Performance Standard Rates of Increase.—The conference agreement includes the Senate amendment.

(6) Other Resource Based Relative Value Scale Technical Amendments.—The conference agreement includes a combination of the House provision and the Senate amendment.

(l) Minor and Technical Amendments.—The conference agreement includes the House provision with technical changes.

In addition, the conference report includes other provisions:

(1) Revise Information on Part B Claim Forms.—The conference agreement includes a provision modifying the ownership referral

reporting requirement on Part B claims form to delete the requirement that the claim include information on whether the referring physician is an interested investor. The effective date for the reporting requirement is October 1, 1990;

(2) Disclosure of Ownership of Suppliers.—The conference agreement includes a disclosure of ownership provision limited to suppliers and mobile labs.

(3) Consultation for Social Workers.—Clinical social workers would be required to consult with a patient's attending physician in accordance with criteria developed by the Secretary;

(4) Clarification of Extension of Municipal Health Service Project Waivers.—The extension of the waiver granted to municipal health services demonstrations under OBRA '89 is revised to clarify that the waivers are extended under the same basis and under the same conditions as the waivers were conducted on January 1, 1990.

Coverage of Screening Mammography

Present law

(a) In General.—Medicare general does not cover preventive services; therefore, routine screening mammograms have not been covered.

Medicare covers radiologic mammograms as a diagnostic test if: 1) a patient has distinct signs and symptoms for which a mammogram is indicated; 2) a patient has a history of breast cancer; or 3) a patient is asymptomatic, but on the basis of the patient's history and other factors the physician considers significant, the physician's judgment is that it is appropriate.

The Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) included a provision to expand Medicare coverage to include mammography screening. The benefit was repealed with the repeal of the Act in 1989 (P.L. 100-234).

(b) Frequency Limits.—No provision.

(c) Screening Mammography Quality Standards.—No provision.

(d) Payment Rules.—No provision.

(e) Limiting Charges of Nonparticipating Physicians.—No provision.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

(a) In General.—The conference agreement provides for Medicare coverage of "screening mammography," defined as a radiologic procedure provided to a woman for the early detection of breast cancer, including a physician's interpretation of the results of the procedure. Coverage would be effective for screening mammography performed on or after January 1, 1991.

Medicare payment for screening mammography would be made (1) only for screening mammography conducted consistent with frequency limits: (2) only if the screening mammography meets qual-

ity standards; (3) if the amount of the Medicare payment, subject to the Part B deductible, is equal to 80% of the lesser of the actual charge for the screening, the radiologic fee schedule amount, or the limit established for screening mammography, as described below.

The conference agreement requires the Secretary, in developing fee schedules for radiologists, to take into account the frequency limits applicable to screening mammography.

(b) Frequency Limits.—The conference agreement provides for frequency limits as follows. No payment would be made for screening mammography for women under age 35. Payment would be made for only 1 screening mammography for women over 34 but under 40. For women over 39 but under 50, payment would be made annually (provided 11 months elapse after the last screening) for those at high risk of developing breast cancer (determined using factors identified by the Secretary), or biennially (provided 23 months elapse after the last screening) for those not at high risk of developing breast cancer. For women over 49 but under 65, payment would be made annually (provided 11 months elapse after the last screening). For woman over 64, payment would be made biennially (provided 23 months elapse after the last screening).

The Secretary, in consultation with the Director of the National Cancer Institute, is required to review periodically the appropriate frequency for performing screening mammography, based on age and other factors the Secretary determines are pertinent. The Secretary is authorized to revise from time to time the frequency with which screening mammography may be paid for, but prohibits such revision before January 1, 1992.

(c) Screening Mammography Quality Standards.—The conference agreement requires the Secretary to establish quality standards to ensure the safety and accuracy of covered screening mammographies. The standards would include the following requirements:

(1) The equipment used must be specifically designed for mammography and must meet radiological standards established by the Secretary for mammography;

(2) The mammography must be performed by an individual who is either licensed by the State to perform such procedures, or is certified as qualified to perform such procedures by an appropriate organization (as specified by the Secretary in regulations);

(3) The mammography results must be interpreted by a physician who is either certified as qualified to interpret radiological procedures by an appropriate board (as specified by the Secretary in regulations), or is certified as qualified by a program (recognized by the Secretary in regulation as assuring the physician's qualifications); and

(4) There are satisfactory assurances that the results of the first screening mammography for which Medicare makes payment will be placed in permanent medical records maintained for the woman.

The conference agreement also requires the Secretary, when consulting with appropriate State agencies and recognized national listing or accrediting bodies or local agencies to develop conditions of participation for providers of services, to consult about whether screening mammography meets the quality standards provided in

this section. The Secretary is required to make agreements with able and willing States to use State (or local) agencies to determine whether screening mammography meet the quality standards provided in this section. If the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurances that any or all of the conditions of this section related to quality standards for screening mammography are met, the Secretary is authorized to treat such entity as meeting those conditions.

(d) Payment Rules.—The conference agreement provides for the following payment rules. The amount of the Medicare payment, subject to the Part B deductible, is equal to 80% of the lesser of: (1) the actual charge for the screening mammography, (2) the radiologic fee schedule amount, or (3) the limit established for screening mammography. The limit is $55 for screening mammographies performed in 1991; for those performed in subsequent years, the limit would be the prior year's limit, increased by the percentage increase in the MEI (Medical Economic Index).

The Secretary is required to review from time to time the appropriateness of the limit. For screening mammographies performed after 1992, the Secretary is authorized to reduce the limit, either nationally or in any area, to an amount that the Secretary estimates is necessary to ensure that screening mammographies of an appropriate quality are readily and conveniently available during the year.

The Secretary is required to provide for an appropriate allocation of the limit between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where the claim for professional services is separate from that for the radiologic procedure.

(e) Limiting Charges of Nonparticipating Physicians.—The conference agreement provides that for covered screening mammographies performed on or after January 1, 1991, if a nonparticipating physician or supplier provides the screening to an individual covered by Part B, the physician or supplier may not charge the individual more than the limiting charge or, if less, as defined in Section 1834(b)(5)(B) or Section 1848(g)(2). The limiting charge would be 125% of the screening mammography limit in 1991, 120% in 1992, and 115% after 1992. The Secretary is authorized to apply sanctions in accordance with Section 1842(j)(2) against physicians or suppliers who knowingly and willfully impose charges in violation of these limits.

PARTS A AND B

1. End Stage Renal Disease (Sections 12201 and 4123 of House Bill and Sections 6150 and 6151 of Senate Amendment)

Present law

(a) Payments to Dialysis Facilities.—Hospital and free-standing facilities are reimbursed under a composite rate formula that is weighted to reflect the proportion of patients dialyzing at home and the proportion of patients dialyzing in a facility. Under the composite rate, the current average payment is estimated at $125

per dialysis treatment in free-standing facilities and $129 per dialysis treatment in hospital units.

The Omnibus Reconciliation Act of 1989 required the Secretary to maintain the current composite rates through October 1, 1990 and prohibited the Secretary from changing the rates in effect as of September 30, 1990 unless prescribed regulatory procedures are followed.

(b) Self-Administration of Erythropoietin (EPO).—Medicare currently provides coverage for erythropoietin for Medicare renal dialysis patients who meet specified medical criteria. Self-administration of the drug is not covered. For patients who dialyze in a facility, payment is made to the facility in the form of an add-on to the composite rate. In order for patients who dialyze at home to receive Medicare coverage, the drug must be administered by a physician.

(c) Payments for Erythropoietin.—Medicare currently provides coverage for erythropoietin for renal dialysis patients if the drug is not self-administered. For patients who dialyze in a facility, payment is made to the facility in the form of an add-on to the composite rate. The Health Care Financing Administration (HCFA) established an add-on rate of $40 per treatment for dosages under 10,000 units and $70 for dosages of 10,000 units and above.

HCFA's payment rate was based upon average dose levels of 5,000 units. More recent data indicate that average dose levels have dropped to 2,700 units per treatment. The Medicare program pays eighty percent of these amounts, while beneficiaries are responsible for the remaining 20 percent. Facilities and physicians are prohibited from billing the beneficiary for additional amounts.

Physicians who administer the drug to home dialysis patients are reimbursed for the cost of the drug, plus a $2 administrative fee per treatment for supplies. The methods of reimbursing physicians for drug costs vary by carrier.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Staff assistants for home dialysis ESRD patients are not specifically reimbursed under law. Until February 1, 1990, Method II suppliers were paid on the basis of reasonable charges, and some suppliers provided staff assistants without additional compensation. OBRA '89 limited reimbursement to Method II suppliers to the same level paid to Method I providers, effective February 1, 1990. Some suppliers who had been providing staff assistants under reasonable charge reimbursement ceased doing so when Method II payments were capped. The Secretary subsequently decided, under experimental authority granted under Section 1881(f)(2) to provide staff assistants to a limited number of patients who had such assistants prior to the time when Method II reimbursement was capped.

House bill

(a) Payments to Dialysis Facilities.—Section 12201. Requires the Secretary to maintain the composite rate for hospital-based and free-standing dialysis facilities at a rate equal to the rate in effect May 13, 1986, reduced by $2.00 and increased by the amount of the reduction imposed by the continuation of the sequestration order enacted for FY 90 in OBRA 89. 10/17/90

Section 4123. No provision.

(b) Self-Administration of Erythropoietin (EPO).—No provision.

(c) Payments for Erythropoietin.—Section 12201. The Secretary would be directed to revise payments for erythropoietin. Payments would be based upon 1,000 unit increments. The Secretary would make payments of no more than $11.00 per 1,000 units up to a maximum payment of $70 per dose. The Secretary would continue to make payments as an add-on to the composite rate. Beginning in FY 92, the payment level for erythropoietin would be indexed to the implicit price deflator for the gross national product. 10/17/90

Section 4123. No provision.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Section 12201. No provision.

Section 4123. Directs the Secretary to establish a demonstration project to determine whether the services of a home dialysis aide can be covered under Medicare in a cost-effective manner that ensures patient safety. The demonstration is to be established within 6 months of enactment.

Under the demonstration, the Secretary is to make payments for 2 years to a Medicare provider (other than a skilled nursing facility) in an urban area and to a provider (other than a skilled nursing facility) in a rural area for services of a qualified home dialysis aide. Payments will be prospectively determined by the Secretary and made on a per treatment basis, except that the payment may not exceed the amount that would be paid by Medicare for ambulance service for transporting a patient to and from a dialysis facility.

An individual is eligible to participate in the demonstration if: (1) he or she is a Medicare ESRD beneficiary; (2) the attending physician certifies that the individual suffers from a permanent, serious medical condition (as specified by the Secretary) that precludes travel to and from a provider of services or a renal dialysis facility; and (3) no family member or other individual is available or able to provide assistance.

Home dialysis aides must meet the following requirements in order to be qualified to participate in the demonstration: (1) meets requirements established by the Secretary for home dialysis aides providing medical assistance and (2) meets any applicable standards established by the State in which the aide is providing services.

Not later than 6 months after the expiration of the demonstration, the Secretary is to submit a report to Congress on the results of the project, and is to include recommendations regarding appropriate eligibility criteria and cost control mechanisms.

An authorization of $2 million is made to carry out the demonstration project.

Effective date: Section 12201. Provision (a) takes effect for services furnished on or after January 1, 1992. Provision (c) applies to services provided on or after January 1, 1991.

Section 4023. Enactment

Senate amendment

(a) Payments to Dialysis Facilities.—Section 6150. The Secretary would be required to establish a rate for hospital-based and freestanding dialysis facilities at not less than the rate in effect Sep-

tember 30, 1990 for the period beginning October 1, 1990 and before October 1, 1993.

The Prospective Payment Assessment Commission would be directed to study the cost, services and profits associated with various dialysis modalities provided to ESRD patients. The Commission would be required to make recommendations to Congress regarding the method or methods and the levels at which the payments made to dialysis facilities for the facility component of dialysis services should be established for FY 93, and the methods used to update payments for subsequent years. In making recommendations, the Commission is to consider: (1) hemodialysis and other modalities of treatment; (2) the appropriate services to be included in such payments; (3) the adjustment factors to be incorporated, including facility characteristics such as hospital versus free-standing facilities, urban versus rural, size and mix of services; (4) adjustments for labor and non-labor costs; (5) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities; (6) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services; (7) disproportionate share adjustment; (8) educational cost adjustment; and (9) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

The Commission's report is due to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce by June 1, 1992. Not later than March 1 before the beginning of each fiscal year, beginning with fiscal year 1993, the Commission is to report its recommendations on a appropriate change factor to be used in updating payments for services rendered that fiscal year. The Commission is to consider conclusions and recommendations from the Institute of Medicine study.

(b) Self-Administration of Erythropoietin (EPO).—Section 6151. Coverage for erythropoietin and items related to its administration would be allowed for home renal dialysis patients who are competent to use the drug without medical or other supervision, subject to methods and standards established by the Secretary through regulation for the safe and effective use of the drug.

Erythropoietin, including self-administered erythropoietin, would not be included as a dialysis service for payment purposes under a prospective payment amount or comprehensive fee established for dialysis services. Payment for erythropoietin provided by a physician would be made on a reasonable charge basis. Payment for erythropoietin provided by a provider of services or a renal dialysis facility would be made in an amount determined by the Secretary. Payments to Method II suppliers of home dialysis supplies and equipment for self-administration of erythropoietin may be made if the Secretary determines that a patient can safely and effectively administer the drug in accordance with standard established by the Secretary.

Payment to Method II suppliers for erythropoietin that is self-administered is to be determined in the same manner as payment to a renal dialysis facility for the drug.

(c) Payments for Erythropoietin.—Section 6150 and 6151. No provision.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—Section 6151. Authorizes the Secretary to make payments to approved ESRD providers and facilities for the cost of home dialysis support services furnished to home dialysis patients under the direct supervision of the provider or facility. The Secretary is to establish a prospective method for determining the amount of payment to be made for home hemodialysis staff assistance furnished by a provider of services for a dialysis episode. The payment amount is to be in addition to the composite rate paid to the provider or facility for dialysis services.

The payment amount is to be calculated as follows. The national median hourly wage for a home hemodialysis staff assistant is multiplied by the national median time expended in the provision of home hemodialysis staff assistant services. The national median hourly wage and the national median average time expended for home hemodialysis services is to be determined annually based on the most recent data available. The national median hourly wage is to be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

Two-thirds of the labor portion of the composite rate applicable to the provider or facility (as adjusted to reflect area differences in wages) is to be subtracted from the product of the national median time expended in staff assistant services and the national median average time expended. The result is multiplied by the factor by which the labor portion of the composite rate is adjusted for area differences in wages.

Home hemodialysis staff assistance means the following services: (1) technical assistance with the operation of a hemodialysis machine in the patient's home and with the patient's care during in-home hemodialysis; and (2) administration of medications in the patient's home to maintain the patency of the extra corporeal circuit. Home hemodialysis staff assistants are qualified to receive Medicare reimbursement if they: (1) have met the minimum qualifications specified by the Secretary; and (2) meet the minimum qualifications specified in State law in the State where the aide is providing services.

Eligible patients means individuals who: (1) a physician certifies as being confined to a bed or wheelchair and who can not transfer themselves from a bed to a chair; or (2) have serious medical conditions (as specified by the Secretary) which would be exacerbated by travelling to and from a dialysis facility; and (3) are eligible for Medicare ambulance transportation to receive routine maintenance dialysis services, and based on the patient's medical condition, there is reasonable expectation that the transportation will be used by the patient for a period of at least 6 consecutive months, such that the cost of ambulance transportation during this 6-month period can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance; and (4) have no spouse, relative or other caregiver who either lives with the individual or comes to the individual's house periodically and is willing and able to assist the individual with home hemodialysis; and (5) the Secretary certifies annually as meeting these requirements.

Coverage of home hemodialysis staff assistance takes effect (if at all) after the Secretary establishes a demonstration project to test the cost-effectiveness of furnishing home hemodialysis staff assistance. The demonstration is to begin January 1, 1991 and continue through December 31, 1993, or the date that occurs the same number of days after such date as elapsed between January 1, 1991 and the first day on which services were furnished under the project. As of the date of enactment, any individual receiving staff assistance under the Secretary's experimental authority is deemed to be eligible for the demonstration, and any individual participating in the demonstration as of December 31, 1993, or the end of the demonstration, will continue to be eligible for home hemodialysis staff assistance under the same terms and conditions as under the demonstration. If the Secretary determined that it is not cost-effective to furnish home dialysis staff assistance, the demonstration will terminate as of December 31, 1993.

The number of eligible patients participating in the demonstration may not exceed 550 during any month, except that one eligible patient must be admitted to the demonstration for each individual ceasing to participate in the demonstration. The Secretary may implement the demonstration on a nationwide basis or at specific sites.

The Secretary is directed to transmit a preliminary report to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee not later than January 15, 1993, and a final report by December 31, 1993.

Effective date: Sections 6150 and 6151. Provisions (a) and (b) apply for services provided on or after January 1, 1991. Provision (d) takes effect, if at all, after the demonstration project establishes the cost-effectiveness of home hemodialysis staff assistance.

Conference agreement

1. End Stage Renal Disease

(a) Payments to Dialysis Facilities.—The conference agreement includes the House bill with an amendment. The Secretary would be required to maintain the composite rate in effect on September 30, 1990, without regard to reductions imposed in Section 11102 of OBRA '89, increased by $1.00, for services provided on or after January 1, 1991. The Prospective Payment Assessment Commission would be required to study the cost, services, and profits associated with various dialysis modalities provided to ESRD patients.

(b) Self-Administration of Erythropoietin.—The conference agreement includes the Senate amendment with a modification. The conference agreement does not preclude the Secretary from establishing guidelines that permit Method II suppliers to provide home dialysis patients with erythropoietin. Effective for services rendered on or after July 1, 1991.

(c) Payments to Erythropoietin.—The conference agreement includes the House bill with modifications. The $70 cap on payment would be eliminated. Payments would be based on 1,000 unit increments of erythropoietin rounded to the nearest 100 units.

(d) Demonstration for Staff-Assisted Home Hemodialysis.—The conference agreement includes the Senate amendment with amend-

ments. The demonstration is to begin within nine months of enactment and to continue for three years. The Secretary would conduct a study to determine whether staff assisted home hemodialysis services are cost effective and safe for qualified ESRD beneficiaries. The study would be designed with a treatment and comparison group; the treatment group would be limited to 800 individuals receiving staff assisted dialysis services during the demonstration. The Secretary would be required to submit an interim report to Congress by December 1, 1992 and a final report by December 31, 1995. The Secretary's final report is to include recommendations regarding appropriate eligibility criteria and cost control mechanisms. Expenditures for the demonstration are to be made from the Federal Supplementary Medical Insurance (SMI) Trust Fund. Expenditures from the SMI trust fund for the demonstration are expected to be $14 million from FY 91 to FY 95.

2. Extension of Secondary Payer Provisions (Sections 12202, 4121, and 4122(b) of the House bill; Section 6152 of the Senate amendment)

Present law

(a) Extension of Transfer of Data.—Medicare is a secondary payer under specified circumstances when Medicare beneficiaries are covered by other third party payers. Medicare is secondary payer to automobile, medical, no-fault and liability insurance. In addition, Medicare is secondary payer to certain employer group health plans for items and services provided to aged and disabled beneficiaries, and to end-stage renal disease (ESRD) beneficiaries during the first 12 months of a beneficiary's entitlement to Medicare on the basis of ESRD.

The Department of Health and Human Services (HHS) identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies.

As a result of changes made in OBRA 1989 (P.L. 101-239), HHS is provided a 2-year period for matching Internal Revenue Service (IRS) tax records to records of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) to identify working beneficiaries and their spouses to improve the identification and collection of Medicare secondary payer cases. Medicare contractors are required to use this new information to contact employers to determine whether the employer provided health coverage, during what time period, and the nature of such coverage. Employers are required to respond to such inquiries within 30 days.

Current restrictions on the disclosure of information under the Internal Revenue Code and the Privacy Act also apply to the new information provided by SSA and IRS to HCFA.

The present law requirement that employers respond to inquiries from Medicare contractors about employer coverage of beneficiaries and their spouses expires for inquiries made after September 30, 1991. In addition, the present law requirement that 1) the Treasury

Secretary respond to requests from SSA to disclose IRS taxpayer identification information about Medicare beneficiaries and their spouses, and 2) SSA respond to requests from HCFA to disclose such information expires for requests made after September 30, 1991. The Treasury Secretary is not required to respond to requests made before September 30, 1991, for information relating to 1990 or thereafter, and SSA is not required to respond to requests made before September 30, 1991, for information relating to 1991 or thereafter.

(b) Extension of Application to Disabled Beneficiaries.—OBRA 1986 (P.L. 99-509) required that Medicare be the secondary payer for disabled Medicare beneficiaries who are covered by a "large group health plan" for items and services furnished on or after January 1, 1987, and before January 1, 1992. "Large group health plan" is defined as an employer or employee organization plan of an employer that employs at least 100 employees. This provision expires January 1, 1992.

(c) Extension of Renal Disease Period.—Medicare is the secondary payer, for a 12-month period, for beneficiaries who are entitled to Medicare solely on the basis of end-stage renal disease and who are covered by an employer-based group health plan. The 12-month period begins with the earlier of 1) the month in which the individual initiates a regular course of renal dialysis, or 2) the month in which an individual who receives a kidney transplant could become entitled to Medicare.

A technical aspect of the law effectively limits Medicare's secondary status to the first 9 months of an individual's Medicare entitlement. This is because entitlement to Medicare as an ESRD beneficiary begins with the third month after the month in which a regular course of dialysis is initiated (except in the case of kidney transplant recipients), while the law requires employer plans to be primary for the 12-month period beginning with the month dialysis is initiated.

(d) Prohibiting Certain Employer Marketing Activities.—No provision.

House bill

(a) Extension of Transfer of Data.—

Section 12202. Amends the Social Security Act to extend through September 30, 1995, the requirement that employers must respond to inquiries from Medicare contractors about employer coverage of beneficiaries and their spouses. Amends the Internal Revenue Code to extend through September 30, 1995, the requirement that the Treasury and SSA respond to requests concerning taxpayer information. For requests made before September 30, 1995, provides that the Treasury would not be required to respond to requests for information for 1994 and thereafter, and SSA would not be required to respond to requests for information relating to 1995 or thereafter.

Section 4121. Amends the Social Security Act to eliminate the September 30, 1991 sunset of the requirement that employers must respond to inquiries from Medicare contractors.

(b) Extension of Application to Disabled Beneficiaries.

Section 12202. Amends the Social Security Act to extend the application of this provision to items and services furnished before October 1, 1995.

Section 4121. Eliminates the January 1, 1992 sunset of this provision.

(c) Extension of Renal Disease Period.—

Section 12202. No provision.

Section 4121. Extends the period during which employer-based health coverage is the primary payer for ESRD beneficiaries from 12 to 18 months.

(d) Prohibiting Certain Employer Marketing Activities.—

Section 12202. No provision.

Section 4122(b). Provides that it would be unlawful for an employer or other entity to offer any financial or other incentive for an individual not to enroll (or to terminate enrollment) under a group health plan which would (in case of such enrollment) be a primary plan, unless such incentive is also offered to all individuals who are eligible for coverage under the plan.

Provides that entity that violates this requirement would be subject to a civil money penalty of not to exceed $5,000 for each such violation. Provides that certain provisions of Section 1128A of the Social Security Act would apply to the civil money penalty.

Effective date:

Section 12202.—Enactment, except (a) related to requests made of the Treasury would apply to requests made on or after enactment.

Sections 4121 and 4122(b). Enactment, except (c) applies to group health plans for plan years beginning on or after January 1, 1991, and (d) applies to incentives offered on or after enactment.

Senate amendment

(a) Extension of Transfer of Data.—Identical to Section 12202.

(b) Extension of Application to Disabled Beneficiaries.—Identical to Section 12202.

(c) Extension of Renal Disease Period.—Extends the period during which employer-based group health coverage is the primary payer from 12 months to 24 months. Provides that this provision would be effective for items and services furnished on or after February 1, 1991 and before January 1, 1996 (with respect to periods beginning on or after February 1, 1990).

Revises current law to provide that (1) employer-based group health plans would be primary to Medicare during the 24-month period that begins with the first month in which the individual becomes entitled to Medicare benefits on the basis of ESRD, and (2) such plans would not be prohibited from being secondary payer during a period occurring before or after this 24-month period.

Requires the Comptroller General to study and report to the Committees on Ways and Means, Energy and Commerce, and Finance on the impact of the extension to 24 months on individuals eligible for Medicare on the basis of ESRD. Requires the report to include information relating to:

(1) the number and geographic distribution of such individuals for whom Medicare is secondary;

(2) the amount of savings to Medicare achieved annually from this provision;

(3) the effect on access to employment, and employ-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of Medicare's cost-sharing requirements after employment-based insurance becomes secondary); and

(4) the effect on the amount paid for each dialysis treatment under employment-based health insurance; and

(5) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which Medicare is secondary.

Requires the Comptroller General to submit a preliminary report not later than January 1, 1993, and a final report not later than January 1, 1995.

(d) Prohibiting Certain Employer Marketing Activities.—No provision.

Effective date: Enactment, except the provisions in (a) relating to requests made of the Treasury would apply to requests made on or after enactment; those in (c) extending the employer's primary period for ESRD beneficiaries from 12 to 24 months, and starting the period with the first month in which the individual becomes entitled to Medicare benefits on the basis of ESRD—would apply to periods beginning on or after February 1, 1990; those in (c) making employer plans primary for ESRD beneficiaries would be effective January 1, 1992 for beneficiaries whose employers have 1,000 or more employees, January 1, 1993 for beneficiaries whose employers have 100 or more employees, and January 1, 1994 for all other beneficiaries.

Conference agreement

2. Extension of Secondary Payer Provisions

(a) Extension of Transfer of Data.—The conference agreement includes the House bill.

(b) Extension of Application to Disabled Beneficiaries.—The conference agreement includes the House bill.

(c) Extension of Renal Disease Period.—The conference agreement includes the Senate amendment, with an amendment that the period during which employer-based health coverage would be the primary payer for ESRD beneficiaries is 18 months.

(d) Prohibiting Certain Employer Marketing Activities.—The conference agreement includes the House bill.

3. Patient Self-determination (Section 4122 of the House bill; section 6157 of the Senate amendment)

Present law

Most States have enacted legislation defining a patient's rights to make decisions regarding medical care, including: (1) the right to accept or refuse medical or surgical treatment, and (2) the right to

formulate advance directives, such as through the appointment of an agent or surrogate to make decisions on his or her behalf ("durable power of attorney") and written instructions about health care ("living will").

There are no current requirements relating to advance directives under Medicare. There are provisions in current law that establish the basic obligations of hospitals, physicians and other providers under the Medicare program, and that define certain terms. The Joint Commission on the Accreditation of Health Care Organizations (JCAHO) which provides "deemed status" to many hospitals under the Medicare program, does require hospitals to have protocols for decision-making on "do not resuscitate" orders. Also, current law requires hospitals, as a condition of participation in the Medicare program, to establish written protocols for the identification of potential donors.

House bill

(a) Condition of Participation for Home Health Agencies.—No provision.

(b) As a Contractual Condition for HMOs and CMPs.—Provides that Medicare contracts with HMOs/CMPs include a provision that the organization will comply with requirements relating to patient advance directives, including living wills and other instructions recognized under State law relating to care when an individual is incapacitated. Requires that organizations have written policies and procedures to (a) inform all adult enrollees at the time of enrollment of their right to accept or refuse treatment and to execute an advance directive and of the organization's policies on implementation of that right, (b) document in medical records whether or not an individual has executed an advance directive, (c) not condition treatment or otherwise discriminate on the basis of whether an individual has executed an advance directive, (d) comply with State laws on advance directives, and (e) provide education for staff and the community on advance directives. Requires other types of prepaid organizations, as a condition for Medicare payment, to provide assurances that they will comply with the same requirements.

(c) Requiring Provision of Information Regarding Patient's Rights.—No provision but see (b) above.

(d) Enforcement.—Compliance with these provisions is a Medicare contract requirement.

(e) Assistance in Development and Distribution of Patients' Rights Document.—No provision.

(f) Inclusion of Certain Information in Annual Medicare Beneficiary Mailing.—No provision.

(g) Study.—No provision.

(h) Public Education Project.—No provision.

Effective date: Applies to Medicare HMO (risk and other) contracts as of the first day of the first month beginning more than one year after enactment.

Senate amendment

(a) Condition of Participation for Home Health Agencies.—Amends the Medicare conditions of participation for home health

agencies to require that such agencies maintain written policies and procedures respecting advance directives.

(b) As a contractual condition for HMOs and CMPs.—Requires that as a condition for a Medicare contract that each risk-sharing HMO/CMP and other type of prepaid organization meet the requirements relating to maintaining written policies and procedures respecting advance directives.

(c) Requiring Provision of Information Regarding Patient's Rights.—Amends the provision of the Social Security Act relating to Medicare provider agreements. Requires that hospitals, skilled nursing facilities, home health agencies, hospice programs, HMOs/CMPs, other prepaid organizations, and comprehensive outpatient rehabilitation facilities comply with new provisions relating to maintaining written policies and procedures with respect to all adult individuals receiving medical care.

Requires that adult individuals be provided written information concerning: (1) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives, and (2) the policies of the provider or HMO/CMP respecting the implementation of such rights. Requires the provider or HMO/CMP to inquire of an individual (or a family member) whether the individual has executed an advanced directive and document in the individual's medical record the response to the inquiry. Requires the provider or HMO/CMP to ensure compliance with requirements of State law respecting advance directives at facilities of the provider or HMO/CMP, and to provide (individually or with others) for education for staff on issues concerning advance directives. Defines advanced directive to mean a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of such care when the individual is incapacitated.

Prohibits a provider or organization from conditioning the provision of care or otherwise discriminating against an individual based on whether or not the individual has executed an advanced directive. Provides that this is not to be construed as requiring the provision of care which conflicts with an advanced directive.

(d) Enforcement.—Compliance with these provisions is required as part of the Medicare provider agreements and Medicare contracts with HMOs/CMPs and other prepaid plans.

(e) Assistance in Development and Distribution of Patients' Rights Document.—Requires the Secretary to assist, in each State, an appropriate State agency, association, or private entity in developing a State-specific document that describes patients' rights in the State that could be distributed to providers and physicians for use in complying with the requirements that they provide patients' rights information to their patients. Requires the Secretary to assist such agency, association, or entity in the distribution of copies of the documents.

(f) Inclusion of Certain Information in Annual Medicare Beneficiary Mailing.—Requires the Secretary to mail information to Social Security recipients, add a page to the Medicare handbook with respect to the provisions of the Act, and provide for and install a na-

tionwide, toll-free informational number to provide State agencies, private entities, and Medicare and Medicaid eligible individuals with information regarding the option to execute advance directives and the rights of individuals as provided for under this Act.

(g) Study.—Requires the Secretary to conduct a study or enter into an agreement with a private entity to conduct a study and submit a report to Congress with respect to the implementation of directed health care decisions. Requires that the study: (1) evaluate the experience of practitioners, providers, and government regulators in complying with the provisions of this Act; (2) assess the awareness and utilization of advance directives as a result of this Act; (3) investigate methods of encouraging reciprocity among States in the enforcement of advance directives; (4) report on the manner in which treatment decisions are made in the absence of advance directives; and (5) make such recommendations for legislation as may be appropriate to carry out the purposes of this Act. Requires the study and report to be submitted to Congress no later than 4 years after enactment.

(h) Public Education Project.—Requires the Secretary to develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions. Requires the Secretary to develop or approved nationwide informational materials that would be distributed by providers under the requirements of this Act, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

Effective date: Applies with respect to services furnished on or after the first day of the first month beginning more than one year after enactment, except the provisions affecting Medicare HMO contracts apply to contracts as of the first day of the first month beginning more than one year after enactment.

Conference agreement

3. Patient Self-Determination/Living Wills.—The conference agreement includes the Senate bill with modifications. The agreement provides that the provider or organization provide written information to each individual which includes the written policies respecting the implementation of such rights. The provider or organization is required to document in the individual's medical record whether or not the individual has executed an advanced directive. The provider organization is required to ensure compliance with requirements of State law whether statutory or as recognized by the courts of the State respecting advance directives at facilities of the provider or organization. The conference agreement specifies the times at which the written information must be provided to an adult individual, and modifies the definition of advanced directive. It further provides that nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive. The conference agreement does not

include the study of the implementation of directed health care decisions or the public education project.

4. Health Maintenance Organizations (Section 4122 of the House bill; section 6153 of the Senate amendment)

Present law

(a) Restrictions on Incentive Payments to Physicians.—OBRA 1986 prohibited hospitals and health maintenance organizations (HMOs) or similar entities with a risk contract under Medicare or Medicaid from making payments to a physician, directly or indirectly, as an inducement to reduce or limit services provided to beneficiaries or enrollees. For HMOs, the effective date has been delayed until April 1, 1991.

(b) Revisions in Methodology Used to Determine AAPCC.—The Secretary is required to annually determine, and announce in a manner intended to provide notice to interested parties, a per capita rate of payment for each class of beneficiaries enrolled with an HMO/CMP on a risk basis. This notice is required to be promulgated by September 7 of each year, with an explanation of the methodology due 45 days earlier (beginning with the announcement for 1991). The per capita rate of payment must equal 95 percent of the adjusted average per capita cost (AAPCC), the projected average cost in the coming year of providing Medicare benefits to a comparable group of beneficiaries who are not enrolled in an HMO/CMP and receive care on a fee-for-service basis.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—HMOs/CMPs are required to provide the full scope of Medicare services to enrolled beneficiaries. From time to time the Secretary promulgates national coverage decisions, which determine whether specific procedures or items may be paid for under Medicare, and under what conditions.

(d) Permitting Continuous Enrollment of Certain Retirees.—No provision.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

No more than 50 percent of enrollees in an HMO/CMP with a Medicare risk-sharing contract may be Medicare or Medicaid beneficiaries; the Secretary may waive this requirement for an HMO/CMP serving an area with a high Medicare and Medicaid population. The requirement may also be waived for the first 3 years of a contract with an HMO/CMP owned and operated by a governmental entity if the HMO/CMP is making reasonable efforts to enroll members who are not Medicare or Medicaid beneficiaries. (A separate limit of 75 percent Medicare and Medicaid enrollment applies to HMOs contracting with Medicaid.) In addition, an HMO/CMP must have at least 5,000 members to qualify for a risk-sharing contract, unless it primarily serves members residing outside urbanized areas.

(f) Prohibiting Certain Employer Marketing Activities.—No provision.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—No provision.

(h) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(i) Study of Chiropractic Services.—No provision.

House bill

(a) Restrictions on Incentive Payments to Physicians.—No provision.

(b) Revisions in Methodology Used to Determine AAPCC.—No provision.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—No provision.

(d) Permitting Continuous Enrollment of Certain Retirees.—Provides that if an individual is enrolled in an HMO/CMP under a health plan sponsored by the individual's employer or a spouse's employer, and if the individual or spouse retires, the individual may be enrolled retroactively under a Medicare risk-sharing contract with that HMO/CMP. The enrollment may be effective as of the first month of retirement if it occurs no later than 3 months after the date of retirement.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

(1) Waiver of 50/50 Rule.—No provision.

(2) Temporary Waiver for Related Entities.—No provision.

(3) Waiver of Certain HMO Requirements.—No provision.

(f) Prohibiting Certain Employer Marketing Activities.—See item 2, above, for provision relating to Medicare as a secondary payer.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—See item 3, above, for provisions relating to advance directives in HMOs.

(h) Extension of Waivers for Social Health Maintenance Organizations.—See item 7, below, for provisions relating to extension of the social health maintenance organization (SHMO) waivers.

(i) Study of Chiropractic Services.—No provision.

Effective date: Enactment.

Senate amendment

(a) Restrictions on Incentive Payments to Physicians.—Requires that Medicare risk-sharing contracts with HMOs or competitive medical plans (CMPs) prohibit the organization from operating a physician incentive plan unless the following requirements are met: (1) no specific payment may be made to physicians as an inducement to withhold or limit services to specific enrollees, and (2) if physicians or physician groups are placed at serious risk for services than their own, the HMO/CMP must provide adequate stop-loss protection (as determined by the Secretary taking into account the size of the group and the number of enrollees served) and must periodically survey enrollees to ensure that they have adequate access and are satisfied with the quality of services. Requires the HMO/CMP to provide the Secretary with sufficient information about the incentive plan to determine compliance. Provides that, if the Secretary determines that a violation of these requirements has occurred, the Secretary may impose a $25,000 civil monetary penalty for each such determination and/or suspend new enrollments or payment for new enrollees until satisfied that the viola-

tion will not recur. Repeals the OBRA 1986 prohibition of incentive payments by HMOs/CMPs with Medicare risk-sharing contracts.

(b) Revisions in Methodology Used to Determine AAPCC.—Requires the Secretary to submit a proposal for revisions in the HMO/CMP payment methodology to Congress by January 1, 1992, with the revisions to take effect for rate years beginning January 1, 1993. Requires that the proposed methodology improve the prediction of actual service use and expenditures for enrollees of each HMO/CMP, either through modification of the AAPCC formula to include such factors as health status adjusters or prior utilization measures or through use of a new alternative to the AAPCC. Requires that the proposal include data to support recommended changes and to show that the revised methodology can account for at least 15 percent of total variation in annual medical expenses for Medicare beneficiaries, as certified by the American Academy of Actuaries. Requires that the Secretary publish the proposal as a notice of proposed rulemaking by March 1, 1992, that the General Accounting Office review the Secretary's proposal and make a recommendation to Congress on appropriate modifications, and that the Secretary issue a final rule taking into account those recommendations by August 1, 1992.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—Provides that, if the Secretary issues a national coverage decision in the period between annual HMO/CMP rate announcements, and the Secretary determines that the decision will significantly affect HMO/CMP costs, the decision will not be binding on the HMO/CMP until the first year following the next rate announcement; in the interim, any additional benefits provided as a result of the decision will be paid directly by Medicare on a fee-for-service basis.

(d) Permitting Continuous Enrollment of Certain Retirees.—Similar provision, except requires that, on or before the intended effective date of enrollment, the beneficiary must sign the explanation of enrollees' rights ordinarily required to be furnished to Medicare HMO/CMP enrollees.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—

(1) Waiver of 50/50 Rule.—Permits a waiver of the 50 percent limit for an HMO/CMP meeting the following requirements: (i) the HMO/CMP has shown a profit for the last 3 years or, for a new HMO/CMP, the parent company assures its solvency; (ii) the HMO/CMP has had a Medicare risk contract for 3 years or, for a new HMO/CMP, the parent company has operated an HMO for 5 years and has had a Medicare risk contract for 2 years in 2 or more States; (iii) the HMO/CMP has a total of at least 100,000 enrollees; (iv) the HMO/CMP has no serious quality problems, as determined by the Secretary, has agreed to annual quality review by the Secretary; (v) the HMO funds an annual membership survey conducted and reported to the Secretary by an independent survey firm, including satisfaction measures for Medicare enrollees, for Medicare enrollees with a recent hospital discharge, and for Medicare beneficiaries who have disenrolled; (vi) the HMO/CMP provides its Medicare enrollees with special services targeted to the elderly, including a multi-disciplinary geriatric assessment and, for

enrollees dependent in 3 or more activities of daily living for at least 3 months, specified home and community-based long-term care services. Provides that a waiver of the 50-percent rule shall be approved for a 3-year period and that the required additional benefits for Medicare enrollees must also be available for a 3-year period. Requires the Secretary to review the HMO/CMP's compliance with the waiver requirements annually and permits withdrawal of the waiver in the event of noncompliance. Requires the Secretary to evaluate the cost and impact of any waiver, including its impact on the financial viability of the HMO/CMP, and to report to Congress within 2 years after enactment on whether any changes should be made in the 50 percent rule.

(2) Temporary Waiver for Related Entities.—Provides that, for a period of 2 years, in determining whether an HMO/CMP that has a Medicare contract meets the 50 percent rule, there may be combined with the HMO/CMP's enrollees the enrollees of an organization related to the HMO/CMP by common ownership and control, if the organization provides services in the same area as the HMO/CMP through essentially the same providers, uses a functionally integrated quality assurance program, and shares specified administrative functions with the HMO/CMP.

(3) Waiver of Certain HMO Requirements.—Provides that, in determining whether Managed Care, Inc., an affiliate of CHP (the medical group affiliated with Long Island Jewish Medical Center) meets the 50 percent rule and the 5,000 enrollee minimum, Managed Care may count as enrollees the members of a State-licensed HMO for whom CHP has agreed to assume full financial risk for hospital and physician services. The same enrollees may not be counted by any other organization for the purpose of applying the same tests. Provides that the waiver for Managed Care will expire two years after enactment.

(f) Prohibiting Certain Employer Marketing Activities.—No provision.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—No provision.

(h) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(i) Study of Chiropractic Services.—Requires the Secretary to study the availability of Medicare-covered chiropractic services to HMO enrollees and the arrangements and types of practitioners involved in furnishing such services. Requires that the study be based on contracts entered into or renewed on or after January 1, 1991, and before January 1, 1993. Requires an interim report to The House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance by January 1, 1992, and a final report, including recommendations on changes needed to assure access to such services, by January 1, 1993.

Effective date: (a) Effective January 1, 1992, except that the repeal of the OBRA 1986 prohibition of physician incentive payments is effective on enactment. (c) applies to coverage decisions made on or after September 7, 1990. (d) Applies to individuals enrolling on or after January 1, 1991. All other provisions effective on enactment.

Conference agreement

4. Health Maintenance Organizations

(a) Restrictions on Incentive Payments to Physicians.—The conference agreement requires that Medicare risk-sharing contracts with HMOs or competitive medical plans (CMPs) prohibit the organizations from operating a physician incentive plan unless the following requirements are met: (1) no specific payment may be made to physicians as an inducement to withhold or limit services to specific enrollees, and (2) if physicians or physician groups are placed at serious risk for services than their own, the HMO/CMP must provide adequate stop-loss protection (as determined by the Secretary taking into account the size of the group and the number of enrollees served) and must periodically survey enrollees to ensure that they have adequate access and are satisfied with the quality of services. Requires the HMO/CMP to provide the Secretary with sufficient information about the incentive plan to determine compliance. Provides that, if the Secretary determines that a violation of these requirements has occurred, the Secretary may impose a $25,000 civil monetary penalty for each such determination and/or suspend new enrollments or payment for new enrollees until satisfied that the violation will not recur. Repeals the OBRA 1986 prohibition of incentive payments by HMOs/CMPs with Medicare risk-sharing contracts. The provisions relating to the regulation of incentive plans apply to contract years beginning on or after January 1, 1992. The provision relating to the repeal of the OBRA 1986 prohibition of incentive payments is effective upon enactment.

(b) Revisions in Methodology Used to Determine AAPCC.—The conference agreement includes the Senate amendment with modifications. Provides that the proposal include an analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(c) Application of National Coverage Decisions to Risk-Sharing Contracts.—The conference agreement includes the Senate amendment.

(d) Permitting Continuous Enrollment of Certain Retirees.—The conference agreement includes the Senate amendment.

(e) Application of 50 Percent Limit on Medicare/Medicaid Enrollment.—The conference agreement does not include the Senate amendment.

(f) Prohibiting Certain Employer Marketing Activities.—See section relating to Medicare as a secondary payer.

(g) Patient's Right to Participate in and Direct Health Care Decisions.—See section relating to provisions relating to advance directives.

(h) Extension of Waivers for Social Health Maintenance Organizations.—See section relating to extension of the social health maintenance organization (SHMO) waivers.

(i) Study of Chiropractic Services.—The conference agreement includes the Senate amendment.

In addition, the conference agreement extends the limit on charges for out-of-plan and emergency physicians and ESRD services to all out-of-plan and emergency services under Part B.

5. Changes in Medigap Standards (Sections 4301-4309 of the House bill; Section 6155 of the Senate amendment)

Present law

(a) Simplification of Policies.—Section 1882 of the Social Security Act requires that in order for a Medigap policy to be certified by the Secretary, it must meet minimum requirements, including benefit requirements, contained in model standards approved by the National Association of Insurance Commissioners (NAIC). In addition, for a State Medigap regulatory program to be approved by HHS, it must apply such minimum requirements.

In its model regulations, the NAIC has defined minimum benefit standards as follows:

(1) coverage of coinsurance for Medicare-eligible hospital expenses for days 61 through 90 in a benefit period; (2) coverage of either all or none of Medicare's inpatient hospital deductible; (3) coverage of coinsurance for Medicare-eligible hospital expenses for Medicare's lifetime reserve days; (4) after exhausting Medicare's lifetime reserve days, coverage of 90 percent of all Medicare-eligible hospital expenses, subject to a lifetime maximum benefit of an additional 365 days; (5) coverage of the Part A blood deductible (3 pints); (6) coverage of Medicare's Part B coinsurance, subject to the Part B deductible; and (7) coverage of the Part B blood deductible (3 pints), subject to the Part B deductible.

The States of Massachusetts, Minnesota, and Wisconsin have implemented their own standardized benefit options.

(b) Uniform Policy Description.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards require insurers issuing Medigap policies to provide an outline of coverage that describes the features of the policy, including Medicare's benefits and the policy's benefits, according to a uniform format.

(c) Prevention of Duplicate Medigap Coverage.—Section 1882 of the Social Security Act prohibits an individual from knowingly selling a Medigap policy with knowledge that such policy substantially duplicates other health benefits to which the individual is entitled (other than benefits the individual is entitled to under State or Federal law, excluding Medicare). If the Medigap policy pays benefits regardless of other health benefits coverage, such a policy is not considered duplicative. The penalty for non-compliance includes a fine under Title 18 or imprisonment for not more than 5 years, or both, and, in addition or in lieu of such a criminal penalty, a civil money penalty of not to exceed $5,000 for each such prohibited act.

The NAIC standards require Medigap application forms to contain questions about prior and existing Medigap coverage and Medicaid coverage. Such standards require agents to list on the application form any other health insurance policies they have sold to the applicant. Agents are required to make reasonable efforts to determine the appropriateness of a recommended purchase or replace-

ment. The sale of a Medigap policy to an individual already having such a policy is prohibited unless the combined coverage insures no more than 100 percent of actual medical expenses. The NAIC standards require insurers to report to the States annually by March 1 information on State residents whom the insurer has covered with more than 1 Medigap policy. If the sale involves a replacement, the insurer must give the applicant a notice regarding the replacement, in a format developed by the NAIC, which is to be signed by the applicant and the agent.

(d) Loss Ratio Requirements.—Section 1882 of the Social Security Act provides that approved Medigap policies must meet loss ratios (estimated for the period for which rates are computed) of at least 75 percent for group policies and 60 percent for individual policies. Direct response policies (those sold through the mail or by mass media advertising) are permitted to meet the 60 percent individual standard. The law provides that loss ratios are the ratios of incurred claims to earned premiums, estimated in accordance with accepted actuarial principles and practices. Information on actual loss ratios is required to be reported to States on forms conforming to those developed by NAIC, or such ratios will be monitored in an alternative manner approved by the Secretary.

The NAIC standards require that actual loss ratios must be at least 75 percent for group policies and 60/65 percent for individual policies. Direct response policies are required to meet the 75 percent group standard. Policies in force for less than 3 years are not required to meet the standards until their third year. Medigap insurers are required to file annually their rates, rating schedules, and supporting documentation including loss ratios to demonstrate that they comply with the standards. The standards require that premium adjustments be made as necessary to produce anticipated loss ratios, including when Medicare's benefits change.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards provide that an insurer may not cancel or nonrenew a Medigap policy for any reason other than nonpayment of premium or material misrepresentation. If a group Medigap policy is terminated by the group policyholder and is not replaced, the insurer must offer certificateholders an individual Medigap policy which either provides for continuation of the benefits contained in the group policy or provides only such benefits as are required to meet the minimum standards. If membership in a group is terminated, the insurer must offer the certificateholder conversion to an individual policy (as described in the preceding sentence) or, at the option of the group policyholder, continuation of coverage under the group policy. If a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the standards require the succeeding insurer to offer coverage to all persons covered under the old group policy on its termination date. Coverage under the new group policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

The NAIC standards prohibit Medigap policies from denying a claim for a preexisting condition for losses incurred more than 6

months from the coverage effective date. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the coverage effective date. The NAIC standards require that if a Medigap policy is replaced by another Medigap policy, the new policy must waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods for similar benefits to the extent such time was spent under the original policy.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—Section 1882 of the Social Security Act contains no loss ratio provisions for hospital indemnity and dread disease policies.

The NAIC Guidelines for Filing of Rates for Individual Health Insurance Forms (including individual hospital indemnity and dread disease policies) include minimum loss ratios of 60 percent for optionally renewable policies, 55 percent for conditionally and guaranteed renewable policies, and 50 percent for noncancellable policies. States vary in their requirements for loss ratios for hospital indemnity and dread disease policies.

(g) Enforcement of Standards.—Section 1882 of the Social Security Act includes provisions for the regulation of Medigap policies, including:

(1) a program of voluntary submission by States of their Medigap regulatory programs for approval by a Supplemental Health Insurance Panel;

(2) a voluntary certification program of Medigap policies by the Department of Health and Human Services (DHHS); and

(3) civil and criminal penalties for certain abusive sales practices.

Section 1882 contains certain requirements for Medigap policies; in addition, it incorporates by reference requirements provided in model standards (including law and regulations) approved by the National Association of Insurance Commissioners (NAIC).

The Federal/NAIC Medigap standards are implemented in two ways. States may submit their Medigap regulatory programs for approval to the Supplemental Health Insurance Panel, which consists of the Secretary and 4 State commissioners or superintendents of insurance appointed by the Secretary to the Panel. If such State programs meet or exceed the Federal/NAIC standards, then policies approved in those States are deemed to meet the Federal requirements. In States that do not have approved Medigap regulatory programs, individual insurers may voluntarily submit their policies to the Voluntary Certification Program at HHS to be certified.

Section 1882 also provides civil and criminal penalties for certain abusive sales practices, including making false statements and misrepresentations, falsely claiming to represent any Federal agency in order to sell insurance, selling health insurance policies that substantially duplicate other health benefits, and mailing into a State Medigap policies that have not been approved.

(h) Requiring Approval of State for Sale in the State.—Section 1882 of the Social Security Act provides that a Medigap policy sold through the mail can be considered to be approved in a State if (1)

the policy has been certified by the Secretary or was issued in a State with an approved regulatory program; (2) the policy has been approved by the commissioners of insurance in States in which more than 30 percent of such policies are sold; or (3) the State has in effect a law which the State's commissioner of insurance has determined gives him or her the authority to review and approve, or effectively bar from sale, in the State such a policy. Such a policy would not be deemed to be approved by a State if the State notifies the Secretary that such policy was disapproved by the State after providing appropriate notice and opportunity for hearing according to the procedures (if any) of the State.

(i) Counseling and Education Programs.—Section 1882 of the Social Security Act requires the Secretary to provide to all Medicare beneficiaries (and, to the extent feasible, to prospective beneficiaries) such information as will permit them to evaluate the value of Medigap policies to them and the relationship of Medigap policies to Medicare benefits. The Secretary is required to (1) inform beneficiaries about marketing and sales abuses subject to sanctions under Section 1882 and the manner in which they may report any such action or practice to an appropriate official of HHS or a State, and (2) publish the toll-free telephone number for individuals to report suspected violations of the marketing and sales requirements. The Secretary must also provide Medicare beneficiaries with a listing of the addresses and telephone number of State and Federal agencies and offices that provide information and assistance to individuals about the selection of Medigap policies.

(j) GAO Reports and Studies.—No provision.

(k) Increase in Civil Money Penalties.—Section 1882 of the Social Security Act provides for civil money penalties of not to exceed $5,000 for violations of the marketing and sales practices provisions.

(l) Premium Increases.—No provision.

(m) Limitations on Certain Sales Commissions.—Section 1882 of the Social Security Act contains no provision.

The NAIC standards provide that first year commissions or other compensation for an agent may not exceed 200 percent of the commission or other compensation for selling or servicing the Medigap policy in the second year. The commission or total compensation in subsequent (renewal) years must be the same as that provided in the second year, and must be provided for a reasonable number of renewal years. Entities are prohibited from providing compensation to agents greater than the renewal compensation payable by the replacing insurer on renewal policies if an existing policy is replaced, unless benefits of the new policy are clearly and substantially greater than benefits under the replaced policy.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—No provision.

(o) Additional Enforcement Through Public Health Service Act.—No provision.

(p) Medicare Select Policies.—NAIC Medigap standards specify certain minimum benefit and policy provisions that must be met for a Medigap policy to be approved. These requirements can make it difficult for preferred provider arrangements, which include ben-

efit and cost-sharing variations as incentives for enrollees to seek care with lower-cost preferred providers, to offer Medigap policies.

House bill

(a) Simplification of Policies.—In order for a Medigap policy to be certified by the Secretary, requires that such policies meet new simplification standards approved by the NAIC (or, if NAIC does not approve such standards, by the Secretary). (See (g)(4) Promulgation of Regulations, below, for additional information about promulgation of standards.) Such standards must provide for a core group of basic benefits (not including payment of any deductibles), and a group of benefits including the core group and common additional benefits. Provides that the total number of different benefit packages (including the core group, the core plus common benefits, and each other combination of benefits that may be offered as a separate benefit package) cannot exceed 10.

Provides that, to the extent possible, the benefit requirements must include benefits that offer consumers the ability to purchase the benefits available in the market on the date of enactment, and that balance the objectives of simplifying the market to facilitate policy comparisons, avoiding adverse selection, providing consumer choice, providing market stability, and promoting competition.

Authorizes the Secretary, upon application by a State, to waive the simplification standards for a period of up to 3 years in order to demonstrate the offering of new or innovative benefits, including managed care features. Requires the Secretary to evaluate the new or innovative benefits to determine whether they should be added to the NAIC simplification standards. If so, requires the Secretary to request NAIC to modify the standards; if NAIC fails to do so in a timely manner, requires the Secretary to modify the standards. Provides that not more than 3 additional groups of benefits may be added.

Provides that States may restrict the groups of packages of benefits, except for the core group of basic benefits and the core plus common group of benefits.

Provides that Medigap issuers would not be prevented from providing, through arrangements with vendors, for vendor discounts to policyholders to purchase items or services not covered under the Medigap policy.

Requires anyone who sells a Medigap policy to an individual to make available to the individual both a Medigap policy with only the core group of benefits, and a Medigap policy with the core plus common benefits. Provides that violators would be subject to a civil money penalty of not to exceed $25,000 for each such violation.

(b) Uniform Policy Description.—Requires that policy issuers must provide, before the sale of a Medigap policy, a summary information sheet which describes the policy's benefits and premium, and the average loss ratio for the most recent 3-year period (or, for policies not in effect for 3 years, the average loss ratio expected during the third year). Requires that such information be on a standard form approved by the State (in consultation with the Secretary), consistent with the NAIC simplification standards. Provides that violators would be subject to a civil money penalty of not to exceed $25,000 for each such violation.

Requires that the simplification standards include uniform benefit language and definitions and uniform format to be used in the policy with respect to such benefits.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—Provides that it would be unlawful for a person to issue or sell a Medigap policy to an individual entitled to Medicare benefits, whether directly, through the mail, or otherwise, unless the person obtains from the individual, as part of the application, a written statement signed by the individual stating what health insurance policies the individual has, from what source, and whether the individual is entitled to Medicaid. Provides that the written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. Provides that the statement must be on a form that includes specified language regarding duplicative benefits and that counseling services may be available in the State.

Provides that it would also be unlawful to sell or issue a Medigap policy to someone whose written statement indicates that they have another Medigap policy or are entitled to Medicaid.

Provides that it would not be unlawful to sell or issue a Medigap policy to an individual who has a Medigap policy but is not entitled to Medicaid, if the individual indicates in writing that the policy replaces the other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective.

Provides that the penalty for violations would be a fine under Title 18, or imprisonment for not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, a civil money penalty of not to exceed $25,000 for each such violation.

Amends current law to: (A) delete that the Medigap issuer must "knowingly" sell a duplicative policy to be in violation; (B) delete that the duplicative policy must "substantially" duplicate other benefits; (C) include Medicaid benefits as those which cannot be duplicated; (D) increase the penalty for violations from $5,000 to $25,000; and (E) authorize persons aggrieved by a violation to recover in a civil action threefold the damages sustained, any other appropriate relief (including punitive damages), and the costs of the suit (including reasonable attorney's fees).

(2) Suspension of Policies During Receipt of Medicaid Benefits.—Requires that Medigap policies suspend their benefits and premiums for any period in which the policyholder has applied for and is determined to be entitled to Medicaid, only if the policyholder notifies the Medigap issuer within 90 days after becoming entitled to Medicaid. Provides that if the policyholder loses entitlement to Medicaid, the policy would be automatically reinstated as of the termination of Medicaid entitlement, if the policyholder provides notice within 90 days after the loss of entitlement.

Provides that this provision would not affect the authority of a State to purchase Medigap policies for those entitled to Medicaid.

(d) Loss Ratio Requirements.—Amends current law to require that certified Medigap policies or health insurance policies that are indemnity or dread disease policies (as defined by the Secretary in consultation with the NAIC) may not be issued or sold in any State unless the policy has returned (for the most recent 3-year period,

on the basis of incurred claims experience and earned premiums and in accordance with accepted actuarial principles and practices and standards developed by the NAIC) to policyholders in the form of aggregate benefits, loss ratios of a least 75 percent for group Medigap policies, at least 70 percent for individual Medigap policies, and at least 60 percent for group and individual indemnity and dread disease policies.

Requires that policy issuers must annually submit to the State information on actual loss ratios on forms conforming to those developed by the NAIC.

Requires policy issuers to annually provide a proportional credit of the amount of premiums received necessary to assure that the loss ratios (net of any credits) comply with the loss ratio requirements. Provides that such credits would be required for each type of policy by policy number, and would not apply for the first 2 years of a policy. Requests the NAIC to submit to Congress a report containing recommendations on adjustments in the loss ratio percentages that may be appropriate in order to apply the credit requirement to the first 2 years in which policies are in effect. Provides that the credit must include interest from the end of the policy year involved until the date of the credit, at a rate, specified by the Secretary from time to time, that is not less than the average rate of interest for 13-week Treasury notes. Requires that each issuer of a policy subject to the credit requirements would be liable to policyholders for such credits.

Provides that States may require higher loss ratio percentages.

Requires GAO to periodically, not less often than once every 3 years, to perform audits of the compliance of Medigap policies with loss ratio and premium increase requirements, and to report the results to the State involved and to the Secretary. Authorizes the Secretary to independently perform such compliance audits.

Provides that persons who issue policies in violation of the loss ratio and premium increase requirements would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain provisions of Section 1128A would apply to the civil money penalty.

Requires that approved State programs must require that a copy of each Medigap policy, its most recent premium, and its loss ratios for the most recent 3-year period be maintained and made available to interested persons.

Requires that policy issuers provide, before the sale of the policy, a summary information sheet which describes benefits, premiums, and loss ratios for the most recent 3-year period.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Requires that Medigap policies be guaranteed renewable, and that the issuer may not cancel or nonrenew the policy 1) solely on the ground of the individual's health status, and 2) for any reason other than nonpayment of premium or material misrepresentation.

Requires that if the Medigap policy is terminated by the group policyholder and is not replaced, the issuer must offer certificateholders an individual Medigap policy which (at the option of the certificateholder) provides for continuation of the group policy's benefits, or for such benefits as otherwise meet the requirements of

this section. Provides that if an individual terminates membership in a group through which they have a group Medigap policy, the issuer must 1) offer an opportunity to convert to an individual policy that continues the group policy's benefits or benefits meeting this section's requirements, or 2) at the option of the group policyholder, offer continuation of coverage under the group policy. Provides that if a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the succeeding issuer must offer coverage to all persons covered under the old group policy on its termination date. Prohibits coverage under the new policy from resulting in any exclusion for preexisting conditions that would have been covered under the old group policy.

Requires an entity that issues Medigap policies in a State to offer any individual who is 65 or older and who resides in the State, upon request of the individual during the 6-month period beginning with the first month in which the individual has attained such age and is enrolled in Part B, the opportunity of enrolling in a Medigap policy that provides for a core group of basic benefits and a Medigap policy that provides for a core group and common additional benefits, without conditioning the issuance or effectiveness of such a policy on, and without discriminating in the price of such policy based on, the medical or health status or the receipt of health care by the individual.

Provides that policies may exclude benefits during the first 6 months based on a preexisting condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before it became effective.

Requires that if a Medigap policy replaces another such policy which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new policy for similar benefits.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—Requires that no health insurance policy that is an indemnity or dread disease policy (as defined by the Secretary in consultation with the NAIC) can be issued in any State unless the policy returns (for the most recent 3-year period) a loss ratio of at least 60 percent for both group and individual policies.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—Provides that no Medigap policy may be sold, issued, or renewed in any State unless the State's regulatory program provides for the application and enforcement of the Section 1882 standards (including the NAIC simplification standards) by the date specified below, or the Secretary has certified that the policy meets such standards. Provides that any person who issues or sells a Medigap policy, after the effective date of the NAIC simplification standards, in violation would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain provisions of Section 1128A would apply to the civil money penalties.

(2) Certification of State Programs by the Secretary.—Abolishes the Supplemental Health Insurance Panel and provides that the Secretary, rather than the Panel, would approve State regulatory programs. Requires the Secretary periodically to review State regu-

latory programs to determine if they continue to meet the standards. Provides that if the Secretary finds that a State program no longer meets the standards, before making a final determination the Secretary must provide the State an opportunity to adopt a plan of correction that would permit the State to continue to meet the standards. Provides that if the Secretary makes a final determination that the State program, after such an opportunity, fails to meet the standards, the program would no longer be approved.

(3) State Enforcement.—Requires that State programs enforce, as well as apply, the NAIC standards.

(4) Promulgation of Regulations.—Provides that if, within 9 months of enactment, the NAIC promulgates limits on groups of benefits that may be offered by a Medigap policy (consistent with this bill), uniform benefit language and definitions, uniform benefit format, and transitional requirements as described below (collectively known as the "NAIC simplification standards"), then these standards are to be applied in each State for policies to be approved. Provides that if NAIC does not promulgate such standards, then the Secretary must promulgate such standards, not later than 18 months from enactment.

Provides that approved State programs must apply these standards by the earlier of (A) the date the State adopts the NAIC standards, or (B) 1 year after the NAIC or the Secretary first adopts the standards.

Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legislation appropriating funds) to revise the Medigap standards, but the State legislature is not scheduled to meet in 1992, the effective date would be the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For States that have a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that in promulgating the simplification standards, NAIC or the Secretary must consult with a working group composed of representatives of issuers of Medigap policies, consumer groups, Medicare beneficiaries, and other qualified individuals. Requires that such representatives be selected in a manner to assure balanced representation among the interested groups. Provides that if Medicare benefits (including deductibles and coinsurance) change and the Secretary determines, in consultation with the NAIC, that changes in the simplification standards are needed, then these provisions for modification of the standards would apply to subsequent changes.

Provides transitional requirements for Medigap policies issued before the effective date of the NAIC (or Federal) simplification standards and which do not meet such standards. Provides that any renewal of such policy would be in violation unless the issuer offers to the policyholder, not later than 60 days before the effective date of the renewal, 2 Medigap policies each of which (A) complies with the standards; (B) waives any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the policy for similar benefits to the extent such time was spent under the policy being replaced; and (C) pro-

vides for classification of premiums on terms that are at least as favorable to the policyholder as those applied to the policyholder on the effective date of the standards. Provides that one of the policies must include the core group of basic benefits and the other must include the core group and common additional benefits.

(5) Disclaimer for Unapproved Policies.—No provision.

(h) Requiring Approval of State for Sale in the State.—Strikes from current law language authorizing alternative methods for approval in a State of Medigap policies sold through the mail, and provides instead that it is illegal to sell Medigap policies that have not been approved by a State with an approved regulatory program or certified by the Secretary.

Provides that nothing in this section should be construed as affecting the right of any State to regulate Medigap policies which are considered to be issued in another State. Increases the maximum civil money penalty for violations from $5,000 to $25,000.

(i) Counseling and Education Programs.—Requires the Secretary to request the NAIC to establish an educational program to educate consumers on the Medigap simplification standards.

Requires the HHS Secretary to establish a health insurance advisory service program, known as the "beneficiary assistance program," to assist Medicare-eligible individuals with the receipt of services under Medicare, Medicaid, and other health insurance programs. Requires that the beneficiary assistance program must provide assistance 1) through operation using local Federal offices that provide information on the Medicare program, 2) using community outreach programs, and 3) using a toll-free telephone information service. Requires that the beneficiary assistance program provide for information, counseling, and assistance for Medicare-eligible individuals with respect to at least the following:

(1) For Medicare: eligibility; benefits (covered and not covered); process of payment for services; rights and process for appeals of determinations; other Medicare-related entities such as peer review organizations, fiscal intermediaries, and carriers; and recent legislative and administrative changes in the Medicare program.

(2) For Medicaid: eligibility, benefits, and the application process; linkages between the Medicaid and Medicare programs; referral to appropriate State and local agencies involved in the Medicaid program.

(3) For Medigap policies: the program under Section 1882 of the Social Security Act and its standards; how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies; appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies; and other issues deemed appropriate by the Secretary.

Also requires that the beneficiary assistance program provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the Medicare program and to improve the relationship between beneficiaries and the program.

Requires the Secretary, through the HCFA Administrator, to develop appropriate educational material and other appropriate techniques to assist employees in carrying out this section.

Requires the Secretary to take any necessary steps to assure that Medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

Requires the Secretary to include, in an annual report to Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to Medicare-eligible individuals. Requires the Secretary to include in the report recommendations for such changes as may be desirable to improve the relationship between the Medicare program and Medicare-eligible individuals.

(j) GAO Reports and Studies.—Requires the Comptroller General to examine the effectiveness of the Medigap simplification program established under this subsection and the impact of the program on consumer protection, health benefit innovation, consumer choice, and health care costs. Requires the Comptroller General, within 4 years of enactment, to report to Congress on this examination, including such recommendations on the appropriate roles of the NAIC, States, and the Secretary in carrying out such program as he/she deems appropriate.

(k) Increase in Civil Money Penalties.—Increases civil money penalties from $5,000 to $25,000 for false statements of material fact with respect to the compliance of a Medigap policy with the standards, and for mailing a policy into a State for a prohibited purpose.

(l) Premium Increases.—Requires that a Medigap policy or a health insurance policy that is an indemnity policy or dread disease policy (as defined by the Secretary in consultation with the NAIC) may not be issued or sold in any State unless any premium increase or the initial establishment of the premium is made as follows. Requires the issuer to submit to the State (at such time as the State specified, but not earlier than 90 days before the proposed effective date), the proposed premium amounts, including information, certified as accurate by an actuary, that establishes that the premium amounts are reasonable in relation to the benefits and that the resulting loss ratio will meet the loss ratio requirements. Provides that these requirements do not preempt a State from requiring the review or approval of premiums not otherwise required by this section or providing additional requirements for the approval of premiums.

(m) Limitations on Certain Sales Commissions.—Provides that it is unlawful for a person who provides for a commission or other compensation to an agent or other representative for the sale of a Medigap policies to provide 1) a first year commission or other first year compensation that exceeds 200 percent of the commission or other compensation for selling or servicing of the policy in a second or subsequent year, or 2) for compensation with respect to replacement of such a policy that is greater than the compensation that would apply to the renewal of the policy. Defines "compensation" to include pecuniary and nonpecuniary compensation of any kind relating to the sale or renewal of a policy and specifically includes bonuses, gifts, prizes, awards, and finders' fees.

Provides that violators would be fined under Title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, would be subject to a civil money penalty of not to exceed $25,000 for each violation.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—Provides that the definition of a Medigap policy under Section 1882 of the Social Security Act would not include a policy or plan of an HMO or other direct service organization that offers benefits under Medicare, including services under a contract under Section 1833 or Section 1876.

(o) Additional Enforcement Through Public Health Service Act.—Provides that a person who fails to meet the requirements of Section 1882(o)(5) of the Social Security Act as added by this bill (relating to discriminatory practices in the sale of Medigap policies, such as preexisting condition limitations and limitations on medical underwriting) would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain sections of Section 1128A of the Social Security Act would apply to the civil money penalty.

Provides that a person who issues or sells a Medigap policy or a health insurance policy that is an indemnity or dread disease policy (as defined by the HHS Secretary) in violation of Section 1882(q)(1) as added by this bill (relating to loss ratios and premium increases) would be subject to a civil money penalty of not to exceed $25,000 for each such violation. Provides that certain sections of Section 1128A of the Social Security Act would apply to the civil money penalty.

Provides that whoever violates Section 1882(o)(5)(A) of the Social Security Act as added by this bill (relating to sales commissions) would be fined under Title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, would be subject to a civil money penalty of not to exceed $25,000 for each prohibited act.

(p) Medicare Select Policies.—No provision.

Effective date: Enactment, except (c), (d) (f) and (l) apply to policies issued or sold more than 1 year after enactment; portions of (e) related to preexisting conditions and medical underwriting apply 1 year after enactment; (h) applies to policies mailed, or caused to be mailed, on and after July 1, 1991; and (n) applies to compensation provided on or after 1 year after enactment.

Senate amendment

(a) Simplification of Policies.—In order for a Medigap policy to be certified by the Secretary, requires that such policies meet new simplification standards approved by the NAIC (or, if NAIC does not approve such standards, by the Secretary). (See (g)(4) Promulgation of Regulations, below, for additional information about promulgation of standards.) Provides that such standards must provide for 1) groups of basic benefits, or additional, optional benefits, as may be appropriate; 2) identification of a core group of basic benefits that includes only the minimum benefits required of Medigap policies on the date of enactment, not including payment of any deductible; and 3) if the simplification standards provide for Medigap benefits to be offered as A) a core group of basic benefits plus a defined list of optional additional benefits, or B) through defined benefit packages or policies, then the total number of defined optional additional benefits or different benefit packages (counting the core group) cannot exceed 10; if the simplification standards provide for

Medigap benefits to be offered through defined benefits that the insurer packages as it deems appropriate, then the total number of packages offered by an insurer cannot exceed 4, and the total number of benefits to be packaged may not exceed 10.

Provides that, to the extent possible, the benefit requirements must include benefits that offer consumers the ability to purchase the benefits available in the market on the date of enactment, and that balance the objectives of simplifying the market to facilitate direct comparison of policy prices and benefits, avoiding adverse selection, providing consumer choice, and promoting market stability.

Prohibits a State with an approved regulatory program from permitting the grouping of benefits unless the grouping meets the simplification standards. Authorizes the State, upon application by an insurer, to waive the simplification standards to permit the issuance and sale of a Medigap policy in order to demonstrate the offering of new or innovative benefits. Provides that any such new or innovative benefits must be offered in a manner as approved by the State which is consistent and practically achievable under the simplification standards. Provides that new or innovative benefits may include benefits that are not otherwise available and are cost-effective.

Provides that States may restrict the groups of benefits that may be offered in Medigap policies in the State, but a State with an approved program may not restrict the offering of a Medigap policy consisting only of the core group of benefits.

Requires that if a Medigap policy provides for a group of benefits other than the core group of basic benefits, the policy issuer must make available to the individual a Medigap policy with only the core group of benefits.

(b) Uniform Policy Description.—Requires that policy issuers must provide, before the sale of a Medigap policy, a summary information sheet which describes the policy's benefits (including any optional benefits) and the average loss ratio for the most recent 3-year period (or, for policies not in effect for 3 years, the average loss ratio expected during the third year), and which allows a direct comparison of benefits and prices among policies.

Requires that the simplification standards include uniform benefit language and format to be used with respect to the benefits.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—Provides that it would be unlawful for a person to issue or sell a Medigap policy to an individual entitled to Medicare benefits, whether directly, through the mail, or otherwise, unless the person obtains from the individual, as part of the application, a written statement signed by the individual stating what Medigap policies the individual has, from what source, and whether the individual has applied for and been determined to be entitled to Medicaid. Provides that the written statement must be accompanied by a written acknowledgment, signed by the seller, of the request for and receipt of the statement. Provides that the written acknowledgment does not constitute verification or affirmation by the seller of the truth of any information supplied by the individual in the written statement.

Provides that the written statement must be on a form that states that a Medicare beneficiary does not need more than 1 Medi-

gap policy; states that individuals aged 65 or older may be eligible for benefits under the Medicaid program, that such individuals usually do not need a Medigap policy, and that benefits and premiums under any Medigap policy would be suspended upon request of the policyholder when entitled to Medicaid; and includes the toll-free telephone number established by the Secretary under new Section 1889, the address and local telephone number of any counseling program offered by or with the assistance of the State under Medicaid, the State insurance department, or a State agency on aging for individuals considering purchase of a Medigap policy, and the address and local telephone number of the State Medicaid office.

Provides that it would also be unlawful to sell or issue a Medigap policy to someone whose written statement indicates that they have another Medigap policy or are entitled to Medicaid.

Provides that it would not be unlawful to sell or issue a Medigap policy to an individual who has another Medigap policy if (A) the individual indicates in writing that the policy replaces the other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective; (B) the seller certifies in writing that such policy will not, to the best of the seller's knowledge, duplicate coverage (taking into account any such replacement); and (C) a State Medicaid plan pays the premiums for the Medigap policy or pays less than an individual's full liability for Medicare cost sharing.

Provides that the penalty for violations would be a fine under Title 18, or imprisonment for not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, a civil money penalty of not to exceed $25,000 for each such violation.

Amends current law to: (A) delete that the Medigap issuer must "knowingly" sell a duplicative policy to be in violation; (B) delete that the duplicative policy must "substantially" duplicate other benefits; (C) include Medicaid benefits as those which cannot be duplicated; and (D) increase the penalty for violations from $5,000 to $25,000.

(2) Suspension of Policies During Receipt of Medicaid Benefits.—Requires that Medigap policies suspend their benefits and premiums at the request of the policyholder for any period in which the policyholder indicates that they have applied for and been determined to be entitled to Medicaid. Provides that if the policyholder loses entitlement to Medicaid, the policy would be automatically reinstated as of the termination of Medicaid entitlement, if the policyholder provides notice within 90 days after the loss of entitlement.

(d) Loss Ratio Requirements.—Amends current law to require that certified Medigap policies or health insurance policies may not be issued or sold in any State unless the policy can be expected to return (as estimated for the entire period for which rates are computed, on the basis of incurred claims experience and earned premiums and in accordance with accepted actuarial principles and practices and standards developed by the NAIC) to policyholders in the form of aggregate benefits, loss ratios of a least 75 percent for group policies and at least 65 percent for individual policies. Provides that policies issued as a result of solicitations of individuals

through the mails or by mass media advertising are deemed to be individual policies.

Requires that policy issuers must annually submit to the State information on actual loss ratios on forms conforming to those developed by the NAIC.

Requires policy issuers to provide a proportional refund, or a credit against future premiums of a proportional amount, based on premiums paid, of the amount of premiums received necessary to assure that the loss ratio (net of any refunds or credits) complies with the loss ratio requirements. Provides that such refunds or credits would be applied to each type of policy by policy number, and would not apply for the first 2 years of a policy. Provides that the refund or credit must be made to each policyholder insured under the policy as of the last day of the year involved. Provides that the refund or credit must include interest from the end of the policy year involved until the date of the refund or credit at a rate, specified by the Secretary from time to time, that is not less than the average rate of interest for 13-week Treasury notes. Provides that refunds or credits against premiums due must be made not later than the third quarter of the succeeding policy year.

Provides that States may require higher loss ratio percentages.

Requires GAO to periodically, not less often than once every 3 years, perform audits of the compliance of Medigap policies with loss ratio requirements, and to report the results to the State involved and to the Secretary.

Requires that approved State programs must require that a copy of each Medigap policy, its most recent premium, and its loss ratios for the most recent 3-year period be maintained and made available to interested persons.

Requires that policy issuers provide, before the sale of the policy, a summary information sheet which describes its benefits and loss ratios for the most recent 3-year period, and must disclose to any potential buyer, in the case of a benefit for which the premium attributable to that benefit is at least 75 percent of the nominal value or maximum payout of such benefit, the premiums and maximum payout of the benefit.

Requests the Comptroller General, in consultation with the NAIC, to submit to Congress a report containing recommendations on adjustments in the loss ratio percentages that may be appropriate in order to apply the refund/credit requirement to the first 2 years in which policies are in effect.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—Requires that Medigap policies be guaranteed renewable.

Requires that if a Medigap policy is terminated by the group policyholder and is not replaced, the issuer must offer certificateholders an individual Medigap policy which (at the option of the certificateholder) provides for continuation of the group policy's benefits, or for such benefits as otherwise meet the requirements of this section. Provides that if an individual terminates membership in a group through which they have a group Medigap policy, the issuer must 1) offer an opportunity to convert to an individual policy that continues the group policy's benefits or benefits meeting this section's requirements, or 2) at the option of the group policy-

holder, offer continuation of coverage under the group policy. Provides that if a group Medigap policy is replaced by another group Medigap policy purchased by the same policyholder, the succeeding issuer must offer coverage to all persons covered under the old group policy on its termination date. Prohibits coverage under the new policy from resulting in any exclusion for preexisting conditions that would have been covered under the old group policy.

Prohibits a Medigap policy from denying a claim for losses incurred for a preexisting condition more than 6 months after the coverage effective date and from defining a preexisting condition as a condition for which medical advice was given or treatment was recommended by or received from a physician more than 6 months before the coverage effective date.

Provides that if a Medigap policy replaces another such policy, any period under the policy being replaced during which claims were denied by reason of a preexisting condition, exclusion period, rating period, elimination period, or probationary period must be credited toward any such period under the new policy.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—No provision.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—No provision.

(2) Certification of State Programs by the Secretary.—Provides that the Secretary, rather than the Supplemental Health Insurance Panel, would determine whether State regulatory programs continue to meet Medigap standards. Provides that if the Secretary finds that a State program no longer meets the standards, before making a final determination the Secretary must give the State an opportunity to adopt a plan of correction that would permit the State to continue to meet the standards.

(3) State Enforcement.—Requires that approved State regulatory programs report to the Secretary on the implementation and enforcement of Standards and requirements of this bill at intervals established by the Secretary. Requires that this report include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary, in consultation with the NAIC, may specify.

(4) Promulgation of Regulations.—Provides that if, within 9 months of enactment, the NAIC revises the NAIC Model Regulation to incorporate all the requirements and standards of this bill, then these standards are to be applied in each State for policies to be approved. Provides that if NAIC does not promulgate such standards, then the Secretary must promulgate such standards, not later than 18 months from enactment.

Provides that approved State programs must apply these standards by the earlier of A) the date the State adopts the NAIC or Federal simplification standards, or B) 1 year after the NAIC or the Secretary first adopts the standards.

Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legisla-

tion appropriating funds) in order for Medigap policies to meet the simplification standards, but the State legislature is not scheduled to meet in 1991, the effective date would be the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1991. For States that have a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that in promulgating the simplification standards, the NAIC or the Secretary must consult with a working group composed of representatives of issuers of Medigap policies, consumer groups, Medicare beneficiaries, and other qualified individuals. Requires that such representatives be selected in a manner to assure balanced representation among the interested groups.

Provides that every 3 years the Secretary, in consultation with the NAIC, must evaluate the appropriateness of new or innovative benefits and determine whether the incorporation of such benefits into the simplification standards would further the purposes of such standards. If within 90 days after a request from the Secretary the NAIC makes a determination that modification of the NAIC simplification standards is appropriate and modifies the standards to include the additional group of benefits (including accompanying language and format), provides that such modified standards would be applied in each State. If the NAIC does not make such a determination, authorizes the Secretary to make such a determination and modify the simplification standards.

Provides that approved State programs must apply these standards modified to include additional benefits by the earlier of A) the date the State adopts the modified NAIC or Federal simplification standards, or B) 1 year after the NAIC or the Secretary first adopts the modified standards. Provides that for States the Secretary identifies, in consultation with the NAIC, as requiring State legislation (other than legislation appropriating funds) in order for Medigap policies to meet the simplification standards, but the State legislature is not scheduled to meet within the 1-year period after the NAIC or the Secretary adopts the modified standards, the effective date would be the first day of the first calendar quarter after the close of the first legislative session of the State legislature that begins after the date the NAIC or the Secretary adopts the modified standards. For States having a 2-year legislative session, provides that each year of such session would be deemed to be a separate regular session.

Provides that if Medicare benefits are changed and the Secretary determines, in consultation with the NAIC, that changes in the simplification standards are needed, then these provisions for modification of the standards would apply.

Provides transitional requirements that the simplification standards would not apply to Medigap policies issued to a policyholder before the effective date of the NAIC (or Federal) simplification standards.

Authorizes the Secretary to waive the application of simplification standards in those States that on the date of enactment have in place an alternative simplification program.

Requires the Secretary, within 2 years of enactment, to report to Congress on the adoption of the Medigap standards and requirements in this bill, including the identification of States that do and do not have regulatory programs that meet the requirements of this bill, and the reasons for the failure of any States to adopt some or all of the standards.

(5) Disclaimer for Unapproved Policies.—Requires that if an insurer issues a Medigap policy in a State without an approved regulatory program and which the Secretary has determined does not provide consumer protection as great as would be offered under an approved program, and if the policy has not been certified by the Secretary, the insurer must A) prominently display in at least 12 point type on any advertisement for that policy, on each page of the outline of coverage, and on the first page of the policy the following statement: "This policy has not been certified by the Secretary of the United States Department of Health and Human Services as meeting Federal requirements for medicare supplemental policies;" and B) require the purchaser to sign the following statement: "I understand that this policy has not been certified by the Secretary of the United States Department of Health and Human Services as meeting Federal requirements for Medicare supplemental policies."

Provides that insurers violating these requirements would be subject to a civil monetary penalty not to exceed $25,000 for each violation.

(h) Requiring Approval of State for Sale in the State.—Strikes from current law language authorizing alternative methods for approval in a State of Medigap policies sold through the mail, providing that sale would be prohibited unless the policy has been approved by the State insurance commissioner.

(i) Counseling and Education Programs.—Requires the Secretary to make grants to qualified States to provide information, counseling and assistance relating to the procurement of adequate and appropriate health insurance coverage for Medicare beneficiaries. Authorizes the Secretary to prescribe regulations to establish a minimum level of funding for such grants. Requires States applying for a grant to submit a plan for the program that would (1) establish or improve on a program that includes information about obtaining benefits and filing claims under Medicare and Medicaid, Medigap policy comparison information and information for filing Medigap claims, information regarding long-term care insurance, and information on other types of health insurance benefits the Secretary determines is appropriate; (2) establish a system of referral to appropriate Federal or State agencies for assistance with health insurance coverage problems, including legal problems; (3) provide for sufficient staff (including volunteers); (4) provide assurances that staff have no conflict of interest; (5) provide for the collection and dissemination of timely health care information to staff and regular staff meetings and continuing education programs; (6) provide for training programs for staff; (7) provide for the coordination of the exchange of information between State government staffs and staff of the program; (8) make recommendations concerning consumer issues and complaints to State and Federal health insurance agencies; (9) establish an outreach program to provide health

insurance information, counseling and assistance; and (10) demonstrate, to the satisfaction of the Secretary, an ability to provide the required counseling and assistance.

Provides that States with existing programs must, in order to receive a grant, demonstrate that they will maintain activities of the program at least at the level immediately prior to the issuance of the grant. Provides that if an existing program is substantially similar to that required in order to receive a grant, the Secretary may waive some or all of the requirements and issue a grant to increase the number of services offered by the program, experiment with new methods of outreach, or expand the program to geographic areas of the State not previously served.

Requires the Secretary to consider the following in issuing a grant: (1) the commitment of the State, including the level of cooperation demonstrated by the office of the chief insurance regulator, other officials who oversee insurance plans issued by nonprofit hospital and medical service associations, State agencies administering Medicaid funds and those appropriated under the Older Americans Act; (2) the population of eligible individuals in the State as a percentage of the State's population; and (3) the relative costs and special problems with providing health care information, counseling, and assistance to the rural areas of the State.

Requires States that receive grants to issue an annual report to the Secretary, within 180 days of receiving the grant and annually thereafter, concerning (1) the number of individuals served; (2) an estimate of the amount of funds saved by the State and by eligible individuals in the State; and (3) problems eligible individuals encounter in procuring health care coverage.

Within 180 days of enactment, and annually thereafter, requires the Secretary to issue a report to the Committees on Finance, Aging (House and Senate), Ways and Means, and Energy and Commerce that (1) summarizes the allocation and expenditure of the grant funds; (2) summarizes the scope and content of training conferences; (3) outlines problems that eligible individual encounter in procuring health care coverage; (4) makes recommendations to address problems of procuring coverage; (5) evaluates the effectiveness of the programs and makes recommendations regarding continued authorization of funds (for the report issued 2 years after enactment).

Authorizes appropriations of $10 million for each of fiscal years 1991 through 1993 in equal parts from the HI and SMI trust funds for such grants.

Adds a new Section 1889 to the Social Security Act requiring the Secretary to provide information via a toll-free telephone number on Medicare's programs and on Medigap policies, including the relationship of Medicaid programs to Medigap policies. Authorizes the Secretary to conduct demonstration projects in up to 5 States to establish statewide toll-free telephone numbers for providing information on Medicare benefits, Medigap policies available in the State, and Medicaid benefits.

(j) GAO Reports and Studies.—Requires the Comptroller General, within 4 years of enactment, to report to Congress describing the impact of the simplification program on consumer protection, health benefit innovation and value of innovative benefits, con-

sumer choice, and health care costs, and including such recommendations on the appropriate roles of the NAIC, States, and the Secretary in carrying out such a program as he/she deems appropriate.

(k) Increase in Civil Money Penalties.—Increases civil money penalties from $5,000 to $25,000 for false statements of material fact with respect to the compliance of a Medigap policy with the standards, and for mailing a policy into a State for a prohibited purpose.

(l) Premium Increases.—Provides that approved State programs must provide for a process for approving or disapproving proposed Medigap premium increases and must establish a policy for the holding of public hearings prior to approval of a premium increase.

(m) Limitations on Certain Sales Commissions.—No provision.

(n) Treatment of Plans Offered by Health Maintenance Organizations.—Provides that the definition of a Medigap policy under Section 1882 of the Social Security Act does not include any such policy or plan under a contract under Section 1876.

(o) Additional Enforcement Through Public Health Service Act.—No provision.

(p) Medicare Select Policies.—Provides that if a policy meets the NAIC Model Standards except that its benefits are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy would be treated as meeting the standards if:

(1) full benefits are provided for items and services furnished through a network of entities that have entered into contracts with the policy issuer;

(2) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition, and it is not reasonable given the circumstances to obtain the services through the network;

(3) the network offers sufficient access; and

(4) the issuer of the policy has an arrangement for an ongoing quality assurance program for items and services furnished through the network.

Requires that approved State Medigap regulatory programs must provide for the application of the above requirements in the case of policies that meet the NAIC standards except that the benefits are limited to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities).

Authorizes the Secretary to enter into a contract with an entity whose policy has been certified under new subsection (r) or has been approved by a State under similar requirements to determine whether items and services (furnished to individuals entitled to Medicare benefits and benefits under that policy) are not allowable under Medicare's definitions of items and services considered reasonable and necessary. Provides that payments to the entity must be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors the Secretary finds appropriate. Certain Social Security Act requirements related to the use of carriers to administer Medicare benefits and review by peer review organizations would apply to the entity.

Effective date: Enactment, except (d) and (f) apply to policies sold or issued more than 1 year after enactment; and (h) applies to policies mailed, or caused to be mailed, on and after July 1, 1991.

5. Changes in Medigap Standards

Conference agreement

(a) Simplification of Policies.—The conference agreement includes the House bill, with amendments as follows:

(1) the simplification standards must provide for groups of benefits that include a core group of benefits plus up to 9 other groups of benefits packages;

(2) all insurers must offer the core group of benefits;

(3) new or innovative benefits could be offered in addition to the core group or other specified group of benefits if approved by the State (for a policy issued in a State with an approved program) or by the Secretary (for any other policy), if the policy otherwise complies with the simplification standards;

(4) there would a civil money penalty of not to exceed $25,000 for noncompliance with the simplification standards;

(5) the Secretary would waive the application of the simplification standards with regard to the limits on benefits in States with alternative simplification programs on the date of enactment;

(6) the simplification standards would apply to new policies issued after the State adopts the standards; insurers would not be required to offer new policies meeting the simplification standards to individuals renewing their Medigap policies;

(7) the Secretary would review the simplification standards after 3 years to determine if changes are necessary to accommodate new benefits.

(b) Uniform Policy Description.—The conference agreement includes the House bill, with an amendment that would require the outline of coverage's contents to be specified by the National Association of Insurance Commissioners.

(c) Prevention of Duplicate Medigap Coverage.—

(1) Statement Regarding Other Health Benefits Coverage.—The conference agreement includes the Senate amendment, with amendments as follows. Civil money penalties of $15,000 for sellers (i.e., agents) and $25,000 for issuers (i.e., companies) would be imposed for failing to obtain the written statement concerning duplication or selling a policy to an individual who indicates on the written statement that they have another Medigap policy or that they are entitled to Medicaid. Agents would not be held liable for noncompliance if the written statement is signed, answered completely, and reflects nonduplication. In addition to other requirements, the statement must also indicate that counseling services may be available in the State and may provide the telephone number for such services.

(2) Suspension of Policies During Receipt of Medicaid Benefits.—The conference agreement includes the Senate amendment, with

an amendment that the period of suspension of the Medigap policy not exceed 24 months.

(d) Loss Ratio Requirements.—The conference agreement includes the Senate amendment, with amendments as follows. Noncompliant companies that fail to issue rebates/credits would be subject to civil money penalties under Title XVIII. Loss ratios must be calculated in accordance with a uniform methodology, including uniform reporting standards, specified by the NAIC. States would be required to report annually to the Secretary on Medigap loss ratios and the use of sanctions for policies that fail to meet the loss ratio standards. The Secretary would be required to submit in February of each year (beginning with 1993) a report to the Committees on Energy and Commerce, Ways and Means, and Finance on loss ratios of Medigap policies and the use of sanctions, including a list of the policies that failed to comply with the loss ratio requirements. Sale of a Medigap policy in violation of the loss ratio standards would be subject to a civil money penalty of not to exceed $25,000 for each violation.

(e) Renewability, Replacement, and Coverage Continuation; Preexisting Condition and Medical Underwriting Limitations.—The conference agreement includes the House bill regarding the requirement that Medigap policies be guaranteed renewable. The conference agreement includes the House bill regarding the prohibition of medical underwriting for 6 months after an individual becomes entitled to Part B, and may not condition the issuance or effectiveness of the policy, or discriminate in the price of the policy, on the medical or health status or the receipt of health care by the individual.

(f) Minimum Loss Ratios for Daily Hospital Indemnity and Dread Disease Policies.—The conference agreement does not include the House bill.

(g) Enforcement of Standards.—

(1) Mandatory Conformity with Standards.—The conference agreement includes the House bill, providing that no Medigap policy may be sold or issued unless the policy either is sold or issued in a State with an approved regulatory program, or has been certified by the Secretary.

(2) Certification of State Programs by the Secretary.—The conference agreement includes the House bill, which provides for the period review of State regulatory programs by the Secretary.

(3) State Enforcement.—The conference agreement includes the Senate amendment.

(4) Promulgation of Regulations.—The conference agreement includes the House bill.

(5) Disclaimer for Unapproved Policies.—The conference agreement does not include the Senate amendment.

(h) Requiring Approval of State for Sale in the State.—The conference agreement includes the Senate amendment.

(i) Counseling and Education Programs.—The conference agreement includes the House bill and the Senate amendment regarding health insurance information, counseling, and assistance grants; a health insurance advisory service program; and the Medicare and Medigap toll-free telephone number, with an amendment that only States with approved Medigap regulatory programs would be eligi-

ble to receive health insurance information, counseling, and assistance grants.

The conferees direct the Secretary of Health and Human Services to build on existing health insurance advisory service programs for Medicare beneficiaries and require such programs to provide information, counseling and assistance regarding Medicare, Medicaid, and Medigap policies. The conferees intend that the Health Care Financing Administration be responsible for providing these advisory services, pending available resources.

(j) GAO Reports and Studies.—The conference agreement includes the House bill, with an amendment requiring the GAO to study and report on loss ratios, insurance products similar to Medigap, duplicate health coverage for Medicare beneficiaries with retiree health coverage, medical underwriting in Medigap policies, and the impact of higher loss ratios that States may establish.

(k) Increase in Civil Money Penalties.—The conference agreement includes the Senate amendment.

(l) Premium Increases.—The conference agreement includes the Senate amendment.

(m) Limitations on Certain Sales Commissions.—The conference agreement does not include the House bill. The conferees intend that the NAIC, in promulgating changes in the Model Medigap Regulations to reflect this act, shall delete all after the word "unless" in Section 12(C) of its Model Regulation adopted in December 1989, and in Section 12(D) shall broaden the definition of "open compensation" to include acquisition costs where appropriate and advances and deferred compensation.

(n) Treatment of Plans Offered by Health Maintenance Organizations and Competitive Medical Plans.—The conference agreement includes the House bill with an amendment to exempt Section 1876 risk and cost contracts. The amendment also includes a time-limited exemption for Section 1833 cost contracts. The conferees understand that in certain situations Medicare beneficiaries enrolled in Section 1833 contracts are provided comprehensive health benefits at a reasonable price. However, because of the possibility of differences between Section 1833 cost and Section 1876 risk and cost contracts, the conferees instruct the Secretary to review conditions under which Section 1833 cost contractors are required to provide or arrange for all Part B items and services, the extent to which beneficiaries are accorded access to a grievance procedure and Secretarial review of marketing materials, and circumstances under which beneficiaries may enroll in Section 1833 cost controls. The conferees also expect the Secretary to review Medicare Parts A and B costs of beneficiaries enrolled in Section 1833 cost contracts compared to beneficiaries not enrolled in such contracts. The conferees expect this report along with recommendations will be submitted to the Committees on Finance, Ways and Means, and Energy and Commerce by July 1, 1991. Upon submission of the Secretary's study and recommendations, the conferees expect Congress to consider modifying the time-limited exemption for Section 1833 contracts.

(o) Additional Enforcement Through Public Health Service Act.—The conference agreement does not include the House bill.

(p) Medicare Select Policies.—The conference agreement includes the Senate amendment, with an amendment that the Medicare select provisions would be applied in a 15-State demonstration, conducted for 3 years (1992–1995).

6. Peer Review Organization Amendments.—(Section 4101–4106 of the House bill, section 6154 of the Senate amendment)

Present Law

(a) Use of Corrective Action Plans.—Peer Review Organizations (PROs) review the appropriateness, reasonableness and medical necessity, and quality of care provided to Medicare patients. If, after reasonable notice, a PRO determines that a practitioner has either failed to comply with program obligations in a substantial number of cases, or has grossly and flagrantly violated these obligations, the PRO is required to refer the case to the Secretary. The Secretary may, in addition to other sanctions, exclude the practitioner from the Medicare program if the Secretary finds that the practitioner has demonstrated an unwillingness or lack of ability substantially to comply with program obligations.

(b) Optometrists and Podiatrists.—The Omnibus Budget Reconciliation Act (OBRA) of 1989 required PROs to establish procedures for involving non-physicians in the review of services within their own profession.

Existing law permits only physicians, osteopaths and, for dental surgery, dentists to be utilized in making final determinations of PRO payment denials.

PROs are required to utilize the services of practitioners of, or specialists in, the various types of medicine (including dentistry), or other types of health care in reviewing services provided by practitioners or specialists in the same profession.

(c) Exchange of Information with State Licensing Boards.—Current law requires each PRO to collect information relevant to its functions, to keep and maintain such records in such form as the Secretary may require, and to permit access to and use of any such information and records as the Secretary may require to carry out PRO responsibilities, subject to the provision of the law relating to prohibition on information disclosure. This provision limits the circumstances under which, and to whom, a PRO may disclose information obtained in the course of its activities relating to the review of Medicare services. The PRO is required, at the request of a State licensing board, to release information relating to a specific case, but only to the extent that such data and information are required by that board to carry out its responsibilities.

(d) Coordination of PROs and Carriers.—Current law requires that a PRO notify the Medicare carrier whenever it makes a determination that Medicare payment should be denied for services furnished to a patient. It also requires that each PRO coordinate activities, including information exchanges, which are consistent with the economical and efficient operation of programs among appropriate public and private agencies, including Medicare carriers. There is no requirement that the Secretary provide for a study of PRO coordination with Medicare carriers. Current law requires that if a Medicare carrier makes determinations or payments with

respect to physicians' services, that the carrier implement specified programs.

(e) Confidentiality of Peer Review.—Current law provides that no patient record in possession of a PRO can be subject to subpena or discovery proceedings in a civil action.

(f) Role of PROs in Review of Hospital Transfers.—Section 1867 of the Social Security Act requires hospitals as a condition of Medicare participation, to comply to the extent applicable with requirements relating to the examination and treatment for emergency medical conditions and women in active labor. These provisions are sometimes referred to as the "hospital patient protection" or "antidumping" provisions.

Section 1154 of the Social Security Act specifies the functions of the Peer Review Organizations. It provides, in general, that any utilization and quality control peer review organization entering into a contract with the Secretary must review specified professional services to determine whether they are reasonable and medically necessary; whether the quality of such services meets professionally recognized standards of health care; and whether or not the services are provided in an appropriate setting. There is no current requirement that PROs review sanction recommendations under the patient protection provisions (section 1867) of the Social Security Act.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—Peer Review Organizations (PROs) review the appropriateness, reasonableness and medical necessity, and quality of care provided to Medicare patients. If, after reasonable notice, a PRO determines that a practitioner has either failed to comply with program obligations in a substantial number of cases, or has grossly and flagrantly violated these obligations, the PRO is required to refer the case to the Secretary. The Secretary may, in addition to other sanctions, exclude the practitioner from the Medicare program if the Secretary finds that the practitioner has demonstrated an unwillingness or lack of ability substantially to comply with program obligations.

(h) Clarification of Limitation on Liability.—Current law extends immunity from criminal or civil liability to any person employed by, or who has a fiduciary relationship with, or who furnishes professional services to a PRO, provided that he or she has exercised due care in performing duties under the PRO law.

House bill

(a) Use of Corrective Action Plans.—No provision.

(b) Optometrists and Podiatrists.—Amends the statute to provide that in addition to doctors of medicine, osteopathy and dentistry, PROs may use doctors of podiatry and optometry in making final payment denial determinations.

Requires that, to the extent necessary and appropriate, PROs utilize the services of practitioners of, or specialists in, the various types of medicine (including dentistry, optometrists and podiatrists) or other types of health care.

(c) Exchange of Information with State Licensing Boards.—Amends the Social Security Act relating to PRO functions to require that each PRO notify the State boards or boards responsible

for the licensing or disciplining of any physician when the PRO submits a report and recommendations to the Secretary with respect to sanctioning a physician who has been determined by the PRO to have failed in a substantial number of cases to comply with his or her obligations or to have grossly and flagrantly violated any such obligation.

Amends the Social Security Act relating to the prohibition of disclosure of information by the PROs. Require that each PRO provide notice to the State medical board when the PRO submits a sanctions report and recommendations to the Secretary with respect to a physician for whom the board is responsible for licensing.

(d) Coordination of PROs and Carriers.—Amends the Medicare law to require that in carrying out coordinating activities with carriers and other entities, as may be appropriate, that each PRO provide in a manner specified by the Secretary for: (1) information exchange in accordance with specifications of the Secretary; (2) development of common utilization and quality review claim edits and specific medical review criteria used to identify individual claims for review; and (3) collaboration on the analysis of utilization trends and on the results of medical reviews and collaboration on the development of claim edit standards and review criteria. Amends the law relating to Medicare carriers to require that carriers coordinate their activities with those of PROs, in the manner specified by the Secretary, to carry out the coordination activities specified above. Requires the Secretary to report by January 1, 1992 to the House Committees on Ways and Means and Energy and Commerce and the Senate Finance Committee on the implementation of the amendments made by this section.

(e) Confidentiality of Peer Review.—Amends current law to provide that no document or other information produced by a PRO in connection with its deliberations in making quality determinations is subject to subpena or delivery in any administrative or civil proceeding except that a PRO is required to provide, upon request of a practitioner or other person adversely affected by such PRO's quality determination, a summary of the PRO's findings and conclusions in making such a determination.

(f) Role of PROs in Review of Hospital Transfers.—Requires the consultation of the Secretary with PROs with respect to allegations of violations of the provisions of requirements of section 1867 of the Social Security Act relating to the examination and treatment of emergency medical conditions and women in labor.

(1) In General: Requires the Secretary to require the appropriate PRO to review the medical condition of the individual and provide a report concerning its findings and professional opinions with respect to certain concerns. Specifies these concerns to be: (1) whether the individual had an emergency medical condition which had not been stabilized, and (2) if the individual was transferred, whether, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweighed the increased risks to the individual (and, in the case of labor, to the unborn child) from effecting the transfer, and whether the transfer was an appropriate transfer (as defined under the

law). Requires, except in the case in which a delay would immediately jeopardize the health or safety of individuals, that the Secretary request such a review before terminating or suspending the provider from Medicare or imposing civil monetary penalties and to provide for at least 60 days for the review. (2) Conforming Amendments: Amends the PRO provisions of the Social Security Act by requiring each PRO to provide for a review and report to the Secretary as stated under the patient protection provisions of the law. Requires the PRO to provide reasonable notice of the review to the physician and hospital involved. Requires that within the time period permitted by the Secretary, the PRO must provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—Amends the law relating to PRO sanctions to require the Secretary to notify the State board responsible for the licensing of the physician when the Secretary effects an exclusion of the physician from the Medicare program.

(h) Clarification of Limitation on Liability.—No provision.

Effective date: (a) no provision; (b) applies to contracts entered into or renewed on or after enactment; (c) applies to notices of proposed sanctions issued more than 60 days after enactment; (d) enactment; (e) applies to all proceedings as of enactment; (f) subsection (1) applies on the first day of the first month beginning more than 60 days after enactment; subsection (2) applies to contracts as of the first day of the first month beginning more than 60 days after enactment; (g) applies to sanctions effected more than 60 days after enactment; (h) no provision.

Senate amendment

(a) Use of Corrective Action Plans.—Provides that before a PRO submits its report and recommendations to the Secretary, the PRO may provide the practitioner or person with the opportunity to enter into and complete a corrective action plan (which may include remedial education) if appropriate. Provides that in determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with their obligations, the Secretary is required to consider the practitioner's or person's unwillingness or lack of ability, during the period before the PRO submits its recommendations, to enter into and successfully complete a corrective action plan.

(b) Optometrists and Podiatrists.—Similar to section 4106 but uses the term podiatric medicine instead of podiatry.

(c) Exchange of Information with State Licensing Boards.—No provision.

(d) Coordination of PROs and Carriers.—No provision.

(e) Confidentiality of Peer Review.—No provision.

(f) Role of PROs in Review of Hospital Transfers. No provision.

(g) Notice to State Medical Boards when Adverse Actions are Taken. No provision.

(h) Clarification of Limitation on Libability.—Clarifies that PROs are also included in the limitation on liability and provides

that the limitation on liability is extended provided that due care was exercised in the performance of such duty, function, or activity (as provided under the law).

Effective date: (a) applies to initial determinations made by PROs on or after January 1, 1991; (b) applies to contracts entered into on or after enactment; (c) no provision; (d) no provision; (e) no provision; (f) no provision; (g) no provision; (h) enactment.

Conference agreement

6. Provisions Relating to Peer Review Organizations

(a) Use of Corrective Action Plans.—The conference agreement includes the Senate amendment. The provision applies to initial determinations made by PROs on or after the date of enactment.

(b) Optometrists and Podiatrists.—The conference agreement includes the Senate amendment.

(c) Exchange of Information with State Licensing Boards.—The conference agreement includes the House bill with a modification to provide that if the PRO finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the PRO is required to notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.

(d) Coordination of PROs and Carriers.—The conference agreement includes the House bill with modifications to require that the Secretary develop a plan to coordinate the physician review activities of PROs and carriers. The plan is required to include (A) the development of common utilization and medical review criteria; (B) criteria for the targetting of reviews by PROs and carriers; and (C) improved methods for exchange of information among PROs and carriers. The conference agreement requires the Secretary to submit to Congress a report on the development of the plan and to include in the report such recommendations for changes in legislation as may be appropriate.

(e) Confidentiality of Peer Review.—The conference agreement includes the House bill.

(f) Role of PROs in Review of Hospital Transfers.—See the provision amending Medicare Parts A and B related to Hospital Transfers.

(g) Notice to State Medical Boards when Adverse Actions are Taken.—The conference agreement includes the House bill.

(h) Clarification of Limitation on Liability.—The conference agreement includes the Senate amendment.

The conference agreement also includes miscellaneous technical amendments relating to patient notification requirements and clarification of applications of criteria for denial of payments.

7. Miscellaneous and Technical Provisions Relating to Parts A and B

Present law

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—Under OBRA of 1987 (P.L. 100-203), the Secretary is prohibited from issuing any final

regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down Medicare claims processing or delaying the rate at which claims are paid. The provision expires September 30, 1990.

(2) Waiver of Liability for Home Health Agencies.—When a provider furnishes services that are not covered under Medicare, the provider is not normally entitled to Medicare payment for those services. In order for payment to be made to a provider of care, Medicare law requires, at a minimum, that services be medically reasonable and necessary for the diagnosis or treatment of an illness or injury. It also excludes from payment care that is considered to be custodial in nature.

The program, however, has recognized that circumstances may exist where providers of services or beneficiaries could not have reasonably known that services would not be covered. Medicare has paid for a limited number of services which are not medically necessary or are determined to be custodial in nature, so long as it is determined that the provider or beneficiary did not know and could not reasonably have been expected to know that services would be uncovered. The provider is presumed not to know that coverage for certain services would be denied—it qualifies for a "favorable presumption"—when its denial rate is below a certain level. With this favorable presumption, its liability for denied claims below the threshold is waived and it is paid for these claims. The provider receives waiver of liability protection for denied claims below the threshold.

For home health agencies, waiver of liability protection is available for two separate categories of denials. One waiver applies to medical denials, i.e. to claims that are denied because the care was not medically necessary or was determined to be custodial in nature. Since 1987, another waiver has applied to services determined to be non-covered because the beneficiary was not "homebound" or did not require "intermittent" skilled nursing care. These are referred to as technical denials.

For both categories, the principal criterion for meeting the favorable presumption test is a denial rate of 2.5 percent or less. Waiver of liability protection for both medical and technical denials expires November 1, 1990.

(3) Extension of Waivers for Social Health Maintenance Organizations.—The Deficit Reduction Act of 1984 (P.L. 98-369) required the Secretary to grant 3-year waivers for demonstrations of social health maintenance organizations, which provide integrated health and long-term care services on a prepaid capitated basis. The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) required the Secretary to extend the waivers through September 30, 1992.

(b) Home Health Wage Index.—Medicare pays home health agencies the reasonable cost of covered services subject to annual limits. The annual limits are set at 112 percent of the average labor and non-labor costs freestanding agencies incur in delivering services, with adjustments made in the labor-related portion of these average costs to reflect geographic variations in wage levels.

OBRA 87 required the Secretary to use a wage index for home health agency cost limits that is based upon audited wage data obtained from home health agencies, and to apply this index to cost

reporting periods beginning on or after July 1, 1988. The Medicare Catastrophic Coverage Act of 1988 delayed the application of the home health wage index to cost reporting periods beginning on or after July 1, 1989. On June 30, 1989, HCFA published the new wage index.

OBRA 89 included a provision that required the Secretary to continue using the hospital-based wage index for home health agency cost limits until cost reporting period beginning on or after July 1, 1991.

(c) Clarification of Definitions Relating to Physician Ownership/ Referral.—Effective January 1, 1992, a physician is prohibited from referring a patient to a provider of clinical laboratory services with which the physician has a financial relationship.

(d) Clarification of Payment to Hospital-Based Nursing Schools.—The direct costs of approved medical education programs operated by a hospital are excluded from PPS and paid on a reasonable cost basis. HCFA has ruled that the costs of education programs operated at a hospital but controlled by another institution are not payable on a reasonable cost basis, but are included in PPS rates.

The Technical and Miscellaneous Revenue Act (TAMRA) of 1988 provided an exception to this rule for a hospital paid under a demonstration waiver that expired on September 30, 1985. Known as the "TAMRA exception," the law provided that if during such a hospital's FY 1985 cost reporting period, the hospital incurred substantial costs due to educational activities of a nursing college with which it shared common directors, the educational activities are considered to be allowable as reasonable costs under Medicare.

OBRA '89 provided that the educational costs incurred by a hospital-based nursing school are considered allowable costs if, prior to June 15, 1989, and thereafter, the hospital incurred substantial costs in training students and operating the school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or in the immediate proximity of the hospital. OBRA '89 also allowed a hospital paid under the TAMRA exception to be reimbursed for reasonable costs of training nursing students retroactively for hospital cost reporting periods beginning in FY 1986.

(e) Case Management Demonstration Project.—Case management is not a covered service under Medicare and there are no requirements under current law for Medicare beneficiaries to receive case management services. The Medicare Catastrophic Coverage Act, P.L. 100-360, authorized the establishment of four demonstration projects under which an appropriate entity agrees to provide case management services to Medicare beneficiaries with selected catastrophic illnesses. The demonstration was subsequently repealed in the repeal of the Medicare Catastrophic Coverage Act.

(f) Payments for Graduate Medical Education.—The direct costs of approved medical education programs (including the salaries of residents and teachers, and other overhead costs directly attributable to the medical education program for training residents, nurses, and allied health professionals) are excluded from PPS. The direct costs of training nurses and allied health professionals are paid on a reasonable costs basis. The Consolidated Omnibus Reconciliation Act of 1985 (COBRA) replaced reasonable cost reimbursement for

graduate medical education (residency training programs for physicians) with formula payments based on each hospital's per resident costs. Medicare payments to each hospital are based on the product of: (1) the hospital's approved cost per full-time equivalent (FTE) resident; (2) the weighted average number of FTE residents; and (3) the percentage of inpatient days attributable to Medicare Part A beneficiaries.

Each hospital's per FTE resident amount is calculated using data from a base year, increased by 1 percent for hospital cost reporting periods beginning on or after July 1, 1985, and updated in subsequent cost reporting periods by the change in the CPI. The number of FTE residents is calculated at 100 percent after July 1, 1986, only for residents in their initial residency period (defined as the minimum number of years of formal training necessary to satisfy specialty requirements for board eligibility plus 1 year, but not exceeding 5 years). For residents beyond the initial period of residency, the weighting factor is 0.50 FTE. Foreign medical school graduates are not counted as FTE residents unless they have passed certain designated examinations.

(g) HCFA Service Fellows Program.—No provision.

(h) New Technology Intraocular Lenses.—No provision.

(i) Miscellaneous Technical Corrections.—A home health aide training and competency evaluation program, or a competency evaluation program, may not be offered by or in a home health agency which, within the previous two years, has been determined to be out of compliance with the requirements specified in by Medicare. Deficient agencies are prohibited from training individuals who are responsible for providing much of patient care.

(j) Psychology and Nurse-Midwife Services for Inpatients.—OBRA '89 provided direct reimbursement for the services of clinical psychologists. In coverage instructions implementing this provision, the Health Care Financing Administration indicated that services rendered to inpatients of hospitals by clinical psychologists are directly reimbursable under Part B because they are "bundled" services for which hospitals are reimbursed.

House bill

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—No provision.

(3) Waiver of Liability for Home Health Agencies.—No provision.

(4) Extension of Waivers for Social Health Maintenance Organizations.—No provision.

(b) Home Health Wage Index.—No provision.

(c) Clarification of Definitions Relating to Physician Ownership/Referral.—

(d) Clarification of Payment to Hospital-Based Nursing Schools.—No provision.

(e) Case Management Demonstration Project.—No provision.

(f) Payments for Graduate Medical Education.—Provides that, for residents in their initial residency period, a primary care resident is to be counted as 1.1 FTE; a resident specializing in internal medicine or pediatrics other than primary care is to be counted as 1.0 FTE; and all other residents is to be counted as 0.90 FTE. For residents beyond the initial three years of period of residency, in-

creases the weighting factor to 0.80 FTE. Defines primary care specialties as including family practice medicine, general internal medicine, or general pediatrics.

Limits the approved amount per FTE resident in each year to a set percent of the national median, adjusted for local costs, of the hospital specific approved FTE resident amounts. Provides that the approved FTE resident amount for a hospital is limited to 200 percent of the median of all approved FTE amounts for hospitals for cost reporting periods beginning in FY 1992, adjusted by the area wage index applicable to the hospital; lowers the cap to 175 percent in FY 1993, and to 150 percent in FY 1994.

Effective date: Enactment.

(g) HCFA Service Fellows Program.—No provision.

Effective date: No provision.

(h) New Technology Intraocular Lenses.—No provision.

(i) Miscellaneous Technical Corrections.—Modifies the conditions under which a home health agency is precluded from offering a home health aide training and competency program, or a competency evaluation program.

Effective date: Enactment.

(j) Psychology and Nurse-Midwife Services for Inpatients.—No provision.

Senate amendment

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—Makes permanent the prohibition on the Secretary from issuing any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up Medicare claims processing or delaying or increasing the rate at which claims are paid.

(2) Waiver of Liability for Home Health Agencies.—Extends the waiver of liability as applied to medical and technical denials through December 31, 1995.

(3) Extension of Waivers for Social Health Maintenance Organizations.—Extends the waivers for the social health maintenance organization (SHMOs) demonstration through December 31, 1995.

(b) Home Health Wage Index.—Requires the Secretary to use for home health agency cost limits the hospital wage index applicable during the fiscal year to the hospital located in the geographic area in which the home health agency is located. Specifies a transition period for phasing in the use of the 1988 hospital wage index. For home health agency cost reporting periods that begin between July 1, 1991 and June 30, 1992, the wage index would be based on a combined area wage index consisting of two-thirds of the 1982 hospital wage index now in use and one-third of the 1988 index. For cost reporting periods beginning between July 1, 1992 and June 30 1993, the combined area wage index would consist of one-third of the 1982 index and two-thirds of the 1988 index. For cost reporting periods beginning on or after July 1, 1993, the 1988 wage index or any later version that may be in effect would be used. Requires the Secretary, in updating the wage index for the limits, to provide that payments to home health agencies will be no greater or lesser

than payments would have been without regard to the update of the wage index.

Effective date: Applies to home health agency cost reporting periods beginning on or after July 1, 1993.

(c) Clarification of Definitions Relating to Physician Ownership/ Referral.—Adds an exception to the prohibition on financial or compensation arrangements. The prohibition does not apply in the case of a referral for clinical laboratory services furnished by a hospital pursuant to a referral by a physician who has a financial relationship with a hospital that does not involve the provision of such services.

Effective date: Applies as if included in the enactment of OBRA 1989.

(d) Clarification of Payment to Hospital-Based Nursing Schools.—Establishes a payment policy for reimbursing hospitals for the clinical costs of hospital supported education programs. Prohibits the Secretary from recoupment of alleged overpayments made prior to October 1, 1990, for hospital supported education programs on the grounds that the costs were not allowable costs under Medicare.

Effective date: Enactment.

(e) Case Management Demonstration Project.—Requires the Secretary to resume three case management demonstration projects: (1) the project proposed to be conducted by Providence Hospital for case management of elderly at risk for acute hospitalization; (2) the project to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients; and (3) the project to be conducted by Key Care Health Resources, Inc. to examine the effects of case management of 2,500 high cost Medicare beneficiaries. Requires that the projects be subject to the same terms and conditions established under the Medicare Catastrophic Coverage Act.

Effective date: Enactment.

(f) Payments for Graduate Medical Education.—Provides that, in the case of a hospital that had a graduate medical education program in FY 1984, and that made a commitment to expand its program that was not fully reflected in costs incurred during a cost reporting period beginning in that year, the hospital may request the use of an alternate base year for determining the approved amount per FTE resident. Requires the Secretary to assess the appropriateness of an alternate year based on per-resident amounts for comparable programs. Provides that, if the Secretary approves the request, payments based on the alternate base year will begin with the first cost reporting period for which the Secretary determines the expansion has been substantially implemented.

Effective date: Enactment.

(g) HCFA Service Fellows Program.—Section S. Authorizes the Administrator of the Health Care Financing Administration to establish a HCFA Fellows Service Program under which up to 10 individuals from the private sector or academia who have demonstrated exceptional competence, highly specialized skills or knowledge may conduct health care related research, studies and investigations within HCFA.

Qualified individuals may be appointed by the Administrator without regard to civil service personnel rules to serve for a period

not to exceed 2 years, except that extensions may be granted for up to two years in individual cases under exceptional circumstances. Individuals appointed as fellows are not to be included in determinations of full-time equivalent employees of the Department of Health and Human Services. Authorizes the Administrator to expend up to $750,000 annually on the fellows program, including salary costs.

Effective date: Enactment.

(h) New Technology Intraocular Lenses.—Section 6145. Requires the Secretary to develop and implement a process by which interested parties may request review by the Secretary of the appropriate reimbursement under (incorrect section reference) with respect to a class of new technology intraocular lenses. Such lenses may not be considered as a class of new technology lenses unless they have been approved by the Food and Drug Administration.

Directs the Secretary to take into account whether use of the less is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision or other comparable clinical advantages in determining whether to provide an adjustment of payment with respect to a particular lens.

Requires the Secretary to publish a notice in the Federal Register at least once a year of the requests that the Secretary has received for review of new technology IOLs. Requires the Secretary to provide a 60 day comment period on the notice and to publish a notice of his determination with respect to intraocular lenses listed in the notice within 120 days after the close of the comment period.

Effective date: Enactment.

(i) Miscellaneous Technical Corrections.—No provision.

Effective date: No provision.

(j) Psychology and Nurse-Midwife Services for Inpatients.—Section 6144. Provides for coverage and direct reimbursement for the services of clinical psychologists and certified nurse midwives rendered to individuals who are inpatients in hospitals.

Effective date: Section 6144. Effective for services furnished on or after January 1, 1991.

Conference agreement

7. Technical

(a) Extension of Expiring Provisions.—

(1) Prohibition on Payment Cycle Changes.—The conference agreement includes the Senate amendment with an amendment which makes permanent the prohibition on the Secretary from issuing any final regulation, instruction, or other policy change that is primarily intended to have the effect of slowing down or speeding up Medicare claims processing or delaying or increasing the rate at which claims are paid.

(2) Waiver of Liability for Home Health Agencies.—The conference agreement includes the Senate amendment.

(3) Extension of Waivers for Social Health Maintenance Organizations (SHMOs).—The conference agreement includes the Senate amendment, with an amendment to require the Secretary to add

up to 4 additional SHMO demonstration projects not less than 1 year after the date of enactment of this act. The agreement requires that the new projects demonstrate the effectiveness and feasibility of innovative approaches to refining targeting and financing methodologies and benefit design, including the effectiveness and feasibility of (a) the benefits of expanded post-acute and community care case management through links between chronic care case management services and acute care providers; (b) refining targeting or reimbursement methodologies; (c) the establishment and operation of a rural services delivery system; or (d) the effectiveness of second-generation sites in reducing the costs of the commencement and management of health care service delivery. The agreement authorizes $3.5 million for the costs of technical assistance and evaluation related to these projects.

The conference agreement also includes a provision that extends an clarifies the OBRA 1989 prohibition on cost-saving policies worth more than $50 million issued in regulations prior to the end of the fiscal year. The conference agreement prohibits the Secretary from issuing any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to reduce the Medicare current services baseline by more than $50,000,000 with three exceptions: (a) the Secretary may issue proposed changes prior to May 15 preceding the fiscal year; (b) the Secretary may issue final regulation, instruction or other policy with respect to the fiscal year on or after October 15 of the fiscal year; (c) the Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the final year if required to implement specific provisions required by the law. Applies for the period FY 1991-FY 1993, or if later, the last fiscal year for which there is a maximum deficit amount (i.e. Gramm-Rudman deficit target) specified under the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344).

(b) Home Health Wage Index.—The conference agreement includes the Senate amendment with a modification to assure budget neutrality.

(c) Clarification of Definitions Relating to Physician Ownership/ Referral.—The conference agreement includes the Senate amendment with a modification. The provision corrects technical drafting errors in the definition of referral by a referring physician. The term investor as having a specified financial relationship with an entity, including an ownership or investment interest, other than ownership in large, publicly traded corporations and certain other ownership or investment interests excepted under current law, or compensation arrangements other than those excepted under current law.

The modification excludes from reporting requirements certain entities which bill Medicare very infrequently, and claims from foreign providers. The Secretary is authorized to collect data from selected entities and selected States as opposed to all types of entities and all States. At a minimum, the Secretary is authorized to collect data in at least 10 States from parenteral and enteral suppliers, end stage renal disease facilities, ambulance services, hospitals, entities providing physical therapy services and entities providing diagnostic imaging services of all types (including but not limited

to magnetic resonance imaging, computerized tomography, mammography, sonography, and cardiac imaging).

The agreement also delays the requirement for issuance of regulations pertaining to physician ownership of clinical laboratories to October 1, 1991.

(d) Clarification of Payment to Hospital Based Nursing Schools.—The Conference agreement includes the House provision.

(e) Case Management Demonstration Project.—The conference agreement includes the Senate amendment, with an amendment to authorize $2 million in each of the fiscal years 1991 and 1992 for administrative costs in carrying out the demonstrations.

(f) Payments for Graduate Medical Education.—See discussion of this issue in Part A and Part B.

(g) HCFA Service Fellows Program.—The Conference agreement does not include this provision.

(h) New Technology IOLs.—The Conference agreement does not include this provision.

(i) Miscellaneous Technical Corrections.—The Conference agreement includes the House provision.

(j) Psychology Services for Inpatients.—The Conference agreement includes the Senate amendment. The Conferees note that this section is not intended to change or override any other provision of Federal law or regulation or State law establishing the scope of practice for clinical psychologists or qualified psychologist services.

(1) Hospital and Physician Obligations with Respect to Emergency Medical Conditions.—The conference agreement changes the standard of liability for civil monetary penalties for physicians from "knowingly violates a requirement" to "negligently violates a requirement." It changes the standard for excluding a physician from Medicare from a "knowing and willfull or negligent" violation of the requirements to a violation of the requirements which "is gross and flagrant or is repeated." The provision applies to actions occurring on or after the first day of the six month after enactment.

The conference agreement also includes section 4103 of the House bill with an amendment to require the consultation of the Secretary with PROs with respect to allegations of violations of the provisions of requirements of section 1867 of the Social Security Act relating to the examination and treatment of emergency medical conditions. The provision requires the Secretary to require the appropriate PRO to review the medical condition of the individual and provide a report concerning its findings. Specifies that the PRO assess whether the individual had an emergency medical condition which had not been stabilized. The provision requires, except in the case in which a delay would jeopardize the health or safety of individuals, that the Secretary request such a review before terminating or suspending the provider from Medicare or imposing civil monetary penalties and to provide for at least 60 days for the review.

(2) Development of Prospective Payment System for Home Health Agencies.—The conference agreement requires the Secretary of HHS to develop for home health care a proposal to modify or replace the current reimbursement methodology with a prospective payment system.

In developing a prospective payment system, the Secretary is required to (1) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program; (2) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness, volume of cases, and the development of new technologies and standards of medical practice; (3) take into consideration the need to increase the payment otherwise made under the new reimbursement system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate; (4) take into consideration the need to increase payments under the system to providers that treat a disproportionate share of low-income patients and providers located in geographic areas with high wages and wage-related costs; and (5) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

The Secretary is further required to submit the research findings upon which the home health prospective payment proposal will be based to the Senate Finance Committee and the House Ways and Means Committee by April 1, 1993. The Secretary would then submit the proposal to the Committee by September 1, 1993, and the Prospective Payment Assessment Commission would submit an analysis of and comments on the Secretary's proposal to the Committees by March 1, 1994.

3. Prohibition of User Fees for Survey and Certification.—The conference agreement provides that notwithstanding any other provision of law, the Secretary is prohibited from imposing, or requiring States to impose, on hospitals, nursing homes, hospices, dialysis facilities or other entities, a fee relating to offsetting the costs of surveys to certify compliance with the conditions of participation under Medicare Part A or Part B. The provision is effective upon enactment.

4. Anti Fraud and Abuse.—The conference agreement provides that the Secretary is authorized to delegate to the Office of the Inspector General enforcement of the anti-fraud and abuse provisions and to impose civil money penalties under specified law.

1. Part B Premium (Sections 12301 and 4201 of House bill; Section 6161 of Senate amendment)

Present law

Part B is a voluntary program financed by premiums paid by aged, disabled and chronic renal disease enrollees and by general revenues of the Federal Government. The premium rate is derived annually based partly upon the projected costs of the program for the coming year. The revised premium rate takes effect on January 1 of each year which coincides with the date for the annual Social Security cash benefit cost-of-living adjustment (COLA).

Ordinarily, the 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 were increased under the COLA provisions of the Social Security program.

From 1984 through 1990, the premium was set at 25 percent of program costs for aged beneficiaries. The remaining 75 percent was covered by general revenues. In CY 1990, the basic Part B premium is $28.60. In CY 1991, the calculation of the Part B premium is slated to revert to the earlier calculation method.

A special provision applies to low-income persons who have their premiums deducted from their social security checks. If there is a social security COLA that is less than the premium increase, the premium increase otherwise applicable is reduced to prevent a reduction in the individual's social security check.

House bill

Section 12301. Establishes the monthly Part B premium as follows:

1991	$29.90
1992	$31.70
1993	$36.50
1994	$41.20
1995	$46.20

Section 4201. Retains, for 1991, the current law provision which provides for the calculation to return to the COLA calculation. An additional $1 is added to this calculation.

Provides that for 1992–1995, the 25 percent rule is reinstated.

Effective date:

Section 12301. Applies to premiums beginning January 1, 1991.

Section 4201. Enactment.

Senate amendment

Retains, for 1991 and 1992 the current law provision which provides for the calculation to return to the COLA calculation.

Provides that for 1993–1995, the 25 percent rule is reinstated.

Effective date: Enactment.

Conference agreement

The conference agreement includes Section 12301 of the House bill with an amendment setting the Part B premium at $29.90 for 1991, $31.80 in 1992, $36.60 in 1993, $41.10 in 1994, and $46.10 in 1995.

2. Part B Deductible (Sections 12302 and 4201 of House bill; Section 6162 of Senate amendment)

Present law

Part B of Medicare pays 80 percent of the reasonable charges (or of reasonable cost) for covered services in excess of an annual deductible of $75. The part B deductible has been set at $75 since 1982.

House bill

Section 12302. Sets the annual Part B deductible at $100 for 1991–1995.

Section 4202. Increases the Part B deductible to $100 beginning in 1991.
Effective date:
Section 12302. January 1, 1991.
Section 4202. Enactment.

Senate amendment

Sets the annual Part B deductible at $150 for 1991–1995.
Effective date: Enactment

Conference agreement

The conference agreement includes Section 4202 of the House bill.

3. Coinsurance for Clinical Lab Services (Section 6163 of Senate amendment)

Present law

Medicare payment for clinical diagnostic laboratory tests, other than tests performed by a hospital or other provider for its inpatients, is made according to fee schedules established by the Secretary. The laboratory or physician providing these tests must accept assignment. Payments are made at 100 percent of the fee schedule, and the deductible and coinsurance are waived.

House bill

No provision.
Effective date: No provision.

Senate amendment

Imposes the 20 percent coinsurance for clinical diagnostic laboratory tests. The beneficiary must first meet the Part B deductible before payment is made by the program for covered clinical laboratory test expenses.
Provides that payment is made at 100 percent of the fee schedule amount for tests required in connection with a mandatory second or third opinion.
Effective date: Applies to clinical diagnostic laboratory tests performed on or after January 1, 1991.

Conference agreement

The conference agreement does not include the Senate amendment.

1. Reimbursement for Prescribed Drugs (Section 4401 of the House bill, section 6201 of the Senate amendment)

Present law

Coverage of prescription drugs is an optional Medicaid service that is provided by all States and the District of Columbia. Federal regulations require that States pay for drug ingredients subject to upper payment limits established by HHS, plus a reasonable professional dispensing fee established by the State. The Health Care Financing Administration of HHS has established upper payment

limits for some multiple source drugs. For some drugs, States have established upper payment limits. States may control utilization of prescribed drugs through various means including prior authorization requirements and denial of coverage for certain drugs or groups of drug products.

House bill

(a) In General.—Denies Federal matching funds for prescription drugs unless rebate agreements are in effect and States implement drug use review by January 1, 1993. Requires drug manufacturers to comply with rebate requirements in all States and the District of Columbia. Provides that, in the case of a manufacturer which has entered into and complies with an agreement, States will cover the manufacturer's covered outpatient drugs which are prescribed on or after April 1, 1991, for a medically accepted indication.

(b) Requirement of Rebate Agreement.—

(1) To ensure availability of payment for the covered drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement with the Secretary on behalf of all the States and the District of Columbia. Such agreement must be entered into by Feb. 1, 1991. If an agreement has not been entered into by that date, any agreement subsequently entered into is not effective until the first day of the first calendar quarter beginning more than 60 days after the agreement date.

(2) In the case of a rebate agreement in effect between a State and a manufacturer on October 1, 1990, such agreement may remain in effect and shall be considered to be in compliance if the State establishes to the satisfaction of the Secretary that the agreement can reasonably be expected to provide rebates at least as large as the rebates under this bill.

(3) Requirements for rebate agreements apply in the District of Columbia, and in the 50 States including any State that is providing medical assistance under a waiver granted under section 1115 of the Social Security Act. The requirements are not applicable in territories and commonwealths.

(4) No provision.

(c) Terms of Rebate Agreement.—(1) Quarterly Rebates. Under the rebate agreement, the manufacturer is required to provide each State Medicaid program with a rebate payment for the manufacturer's outpatient drugs in each calendar quarter. The rebate is to be paid within 30 days after receipt of the necessary information from the State, except that there is a special payment rule for the calendar quarter beginning July 1, 1991. With respect to that quarter, manufacturers' rebates are to be paid to each State by Sept. 30, 1991, based on the amount of the rebate payable for the previous quarter. The amount of the rebate payment for the quarter beginning Oct. 1, 1991, must be adjusted according to the extent that the rebate for the quarter beginning July 1, 1991 differed from the amount otherwise required to be made under the agreement. For purposes of Federal financial participation, the State's expenditures for medical assistance will be reduced by amounts received by a State as rebates.

(2) State Provision of Information.—Within 60 days of the end of each calendar quarter, each State Medicaid agency is required to

report to the Secretary information on the total number of units of each dosage form and strength of each covered outpatient drug of a manufacturer dispensed. Such information must be transmitted promptly to the manufacturer. A manufacturer may audit such data as are necessary to verify information provided by the State. Adjustments to rebates shall be made to the extent that information indicates utilization was more or less than the amount specified. Each State Medicaid agency is required to notify the Secretary within 30 days after receipt of each rebate.

(3) Manufacturer Provision of Price Information.—

(A) In General.—Each manufacturer with a rebate agreement must report, to the Secretary, within 30 days of the close of each calendar quarter (beginning on or after April 1, 1991), the average manufacturer price for covered outpatient drugs. The manufacturer must also report the manufacturer's best price for the quarter for single source drugs and innovator multiple source drugs. The information is to be made available on request to each State agency. The manufacturer is required to report to the Secretary, within 30 days of entering a rebate agreement on the best price in effect September 1, 1990, for each of the manufacturer's covered outpatient drugs. The information is to be made available on request to each State agency.

(B) Verification surveys of average manufacturer price.—When necessary to verify the average manufacturer prices reported, the Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs. If a wholesaler, manufacturer, or direct seller refuses a written request to provide information about charges or prices in connection with a survey, or knowingly provides false information, the Secretary may impose a civil monetary penalty up to $10,000.

(C) Penalties.—Failure by a manufacturer to provide requested price information on a timely basis shall result in a 2 percent increase in the rebate next required to be paid for a calendar quarter. If the information is not provided within 90 days of the imposed deadline, a suspension of the rebate agreement of at least 30 days is imposed. A manufacturer who knowingly provides false information is subject to a civil money penalty of up to $100,000 for each item of false information.

(D) Confidentiality of information.—Information disclosed by manufacturers or wholesalers is confidential and may not be disclosed by the Secretary or a State agency in a form which discloses the specific manufacturer, wholesaler, or product, except as deemed necessary by the Secretary and to permit review by the Comptroller General and the Inspector General.

(4) Length of Agreement.—A rebate agreement is effective for an initial period of 1 year and is automatically renewable for an additional 1 year period unless terminated by either party. The Secretary may terminate an agreement for violation of the requirements, effective 60 days or more after the date of notice of termination. If requested, the Secretary will provide a manufacturer a hearing which will not delay the effective date of termination. A manufacturer may terminate an agreement for any reason; the time from date of notice to effective date is specified by the Secretary. Any termination does not affect rebates due before the effec-

tive date of termination. If an agreement has been terminated, a new agreement may not be entered into with the manufacturer (or successor manufacturer) until one year after the date of termination unless the Secretary finds good cause for earlier reinstatement.

(d) Amount of Rebate.—

(A) In General.—The rebate for single source drugs and innovator multiple source drugs (IMSDs) is the product of:

The amount by which the average manufacturer price during the quarter exceeds the manufacturer's best price for each dosage form and strength of a covered outpatient drug; and

The number of units dispensed to Medicaid beneficiaries in the State during the quarter.

For covered outpatient drugs other than single source drugs and IMSDs, the rebate is the product of:

10 percent of the average manufacturer price to wholesalers during the quarter (after deducting customary prompt payment discounts) for each dosage form and strength; and

The number of units dispensed to Medicaid beneficiaries in the State during the quarter.

(B) Minimum and Maximum Rebates for Single Source Drugs and Innovator Multiple Source Drugs (IMSDs).—Rebates for single source drugs and IMSDs are subject to minimum and maximum limits based on the product of the average manufacturer's price and the number of units dispensed. The minimum is 10 percent. For calendar quarters beginning before April 1, 1995 the maximum is 25 percent (for each quarter during the 8 calendar quarter period beginning April 1, 1991), or 50 percent (for each quarter during the 8 calendar quarter period beginning April 1, 1993).

(C) Best Price Defined.—Best price is the lowest price available for the drug during the calendar quarter (or, if lower, the lowest price in effect September 1, 1990, indexed to the CPI) from the manufacturer to any wholesaler, retailer, provider, non-profit entity, or governmental entity in the U.S. For new drugs, the "best price" is the lower of the lowest price on the market or the initial lowest price, indexed by the CPI.

The lowest price is inclusive of cash discounts, free goods, volume discounts, and rebates and is determined regardless of special packaging labelling or identifiers on the dosage form or product or package. The lowest price does not take into account nominal prices.

(D) Limitations on Coverage of Drugs.—States are required to cover a manufacturer's covered outpatient drugs prescribed for a medically accepted indication when the manufacturer which has entered into and complies with a rebate agreement. States are not required to cover any drug for which the manufacturer or its designee has imposed certain conditions of sale.

(e) Drug Use Review.—(1) In General.—In accordance with guidelines developed by the Agency for Health Care Policy and Research, each State must have a drug use review program in effect by January 1, 1993, for covered outpatient drugs (other than psychopharmacologic drugs dispensed to residents of nursing facilities) in order to assure that prescriptions are appropriate and medically

necessary. Each drug use review program is to comply with the requirements for prospective drug review, retrospective drug review, and education.

(2) Description of Program.—Prospective review involves review of drug therapy before a prescription is filled, typically at the point of sale or distribution. Pharmacists are required to use published compendia as the source of standards for review.

Retrospective review requires the periodic examination of claims data and other records to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care.

The State drug use review program must educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacies, and patients, or associated with specific drugs or groups of drugs. The program is also to identify potential and actual severe adverse reactions to drugs.

(f) Miscellaneous.—(1) States are not prevented from restricting the amount, duration, and scope of coverage of covered outpatient drugs consistent with the need to safeguard against unnecessary utilization.

(2) This bill does not affect or supersede provisions relating to maximum allowable cost limitation for covered outpatient drugs; rebates must be made without regard to whether payments by the State are subject to such limitations.

(3) States are not required to provide Medicaid coverage for covered outpatient drugs of a manufacturer which requires, as a condition for purchase, that the manufacturer be paid for associated services or tests provided only by the manufacturer or its designee.

(g) Definitions.—

Average Manufacturer Price Average manufacturer price is the average price paid to the manufacturer by retail pharmacies or by wholesalers for drugs distributed to the retail pharmacy class of trade.

Covered Outpatient Drug A covered outpatient drug is a prescribed drug which is approved under the Food, Drug and Cosmetic Act; which was commercially used or sold in the U.S. before enactment of the Federal Food, Drug and Cosmetic Act, and which has not been the subject of a final determination by the Secretary that it is a "new drug" under the Food, Drug and Cosmetic Act; for which the Secretary has not issued a notice for an opportunity for hearing because the drug is less than effective; and for which the Secretary has determined there is compelling justification for its medical need. Also included are identical, similar or related drugs.

The term includes a biological product which may only be dispensed by prescription, is licensed, and produced by a licensed establishment. Also included is insulin.

The term excludes any drug, biological product, or insulin provided with inpatient hospital services, hospice services, dental services (except where state plan authorizes direct reimbursement to dispensing dentist), physician office visits, outpatient hospital emergency room visits, and outpatient surgical procedures.

Non-prescription ("over-the-counter") drugs prescribed by a physician, or other authorized prescriber, may be regarded as covered outpatient drugs.

Manufacturer A manufacturer is the entity that both manufactures and distributes the drugs, or if no such entity exists, the entity that distributes the drug. The term does not include a wholesale distributor of drugs or a retail pharmacy.

Medically Accepted Indication A medically accepted indication means any use for a covered outpatient drug which is approved by the FDA or which is accepted by one of the following compendia: American Hospital Formulary Service—Drug Information, American Medical Association Drug Evaluations, and United States Pharmacopeia—Drug Information.

Multiple Source Drug; Innovator Multiple Source Drug; Noninnovator Multiple Source Drug; Single Source Drug.—(A) A multiple source drug is a covered outpatient drug for which there are 2 or more drug products sold or marketed in the State, which the Food and Drug Administration has rated as therapeutically equivalent and has determined are pharmaceutically equivalent and bioequivalent.

(B) Innovator multiple source drug means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

(C) Noninnovator multiple source drug means a multiple source drug that is not an innovator multiple source drug.

(D) Single source drug means a covered outpatient drug which is not multiple source drug.

Drug products are pharmaceutically equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity.

Drug products are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence.

A drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

(h) Funding.—Seventy-five percent Federal matching, over the 1991-1993 period, is available for the costs of the statewide adoption of a drug use review program meeting the requirements of the bill. Seventy-five percent Federal matching is available in FY 1991 for administrative activities related to meeting other requirements.

(i) Denial of Federal Financial Participation in Certain Cases.—No provision.

(j) Pharmacy Reimbursement.—No provision.

(k) Electronic Claims Management.—No provision.

(l) Annual Report.—No provision.

(m) Exemption of Organized Health Care Settings.—No provision.

(n) Demonstration Projects.—No provision.

(o) Studies.—No provision.

Senate amendment

(a) In General.—Similar, but does not include a date after which States must permit coverage of the drugs of a manufacturer which has entered into an agreement.

Prohibits the Secretary or a State from making any changes, prior to April 1, 1993, to the formula used to determine the reimbursement limits in effect as of Aug. 1, 1990, if those changes would result in reductions to the ingredient cost or dispensing fee for covered outpatient drugs.

Requires the Health Care Financing Administration to establish upper limits for all multiple source drugs for which the Food and Drug Administration has rated 3 or more therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such.

(b) Requirement of Rebate Agreement.—

(1) Similar provision, except permits the Secretary to authorize a State to enter directly in agreements with manufacturers, and requires that manufacturers enter into agreements by Jan. 1, 1991.

(2) For a rebate agreement in effect between a State and a manufacturer on the date of enactment of this bill, the agreement is considered to be in compliance for the initial agreement period if the State agrees to report to the Secretary any rebates paid under the agreement. The agreement is considered to be in compliance for renewal periods of the agreement if the State agrees to report any rebates to the Secretary, and the State establishes to the satisfaction of the Secretary that the agreement can reasonably be expected to provide rebates at least as large as the rebates otherwise required under this bill.

(3) No provision.

(4) Payment is authorized for single source drugs or innovator multiple source drugs not covered under rebate agreements if the State has made a determination that the availability of the drug is essential to the health of Medicaid beneficiaries; and the physician has received prior authorization for use of the drug, or the Secretary has approved the State's determination.

(c) Terms of Rebate Agreement.—(1) Quarterly rebates. Similar provision, but provides for periodicity other than quarterly, as specified by the Secretary. Does not include special payment rule.

(2) State Provision of Information.—States are required to report to each manufacturer within the same time period and copy each report to the Secretary. Places no limitations on audits by manufacturers. Otherwise similar provision.

(3) Manufacturer Provision of Price Information.—(A) In General.—Each manufacturer with a rebate agreement in effect is required to report to the Secretary the average manufacturer price within 30 days after each quarter beginning on or after January 1, 1991. The manufacturer's best price for single source drugs and innovator multiple source drugs is to be reported effective for quarters beginning on or after January 1, 1994. Within 30 days of entering into a rebate agreement, each manufacturer must report to the Secretary on the average manufacturer price for each of the manufacturer's drugs as of Oct. 1, 1990.

(B) Verification surveys of average manufacturer price.—Similar, but penalty applies whether request is written or not.

(C) Penalties.—Similar provision, except the rebate is increased by $10,000 for each day information is not provided.

(D) Confidentiality of information.—Similar provision.

(4) Length of Agreement.—Similar provision.

(d) Amount of Rebate.—

(A) In General.—The basic rebate for single source drugs and innovator multiple source drugs (IMSDs) is the product of:

For quarters beginning after Dec. 31, 1990 and before Jan. 1, 1994, 15 percent of the average manufacturer price for each dosage form and strength (after deducting customary prompt payment discounts);

For quarters beginning after Dec. 31, 1993, the greater of

The difference between the average manufacturer price for a drug and 85 percent of the price, or

The difference between the average manufacturer price for a drug and the best price; and

The number of units of such form and dosage dispensed to Medicaid beneficiaries.

The Secretary is required to establish a method for ensuring that a manufacturer's prices, determined on an aggregate weighted average basis, using the average manufacturer price for each drug, do not increase by a percentage greater than the increase in the Consumer Price Index for all urban consumers (CPI-U) from Oct. 1, 1990.

For covered outpatient drugs other than single source drugs and IMSDs, the rebate is the product of:

12 percent of the average manufacturer price for each dosage form and strength (after deducting customary prompt payment discounts) and

The number of units dispensed.

In 1994 and beyond, rebates on single source drugs and IMSDs would be the greater of a 12 percent discount from the average manufacturer's price on Sept. 1, 1990, or the "best price". Rebates on drugs other than single source drugs and IMSDs would be discounts of 12 percent from the current average manufacturer's price.

The 12 percent minimum discount would be indexed annually by the CPI-U. A maximum discount of 20 percent would apply only in fiscal years 1991-1995.

(B) Minimum and Maximum Rebates for Single Source Drugs and Innovator Multiple Source Drugs (IMSDs).—No provision.

(C) Best Price Defined.—Best price is the lowest price available from the manufacturer excluding depot prices of any agency of the Federal Government. There is no provision for the best price of new drugs. Otherwise similar provision.

(D) Limitations on Coverage of Drugs.—Except in the first year following approval of a new drug, States are permitted to subject any covered outpatient drug to prior authorization. States may limit quantities of drugs, provided the limitations are necessary to discourage waste. States may exclude or restrict coverage of a drug if the prescribed use is not for a medically accepted indication, the drug is subject to an agreement between the manufacturer and the

State that is authorized by the Secretary, or the drug is in the list below.

The following drug products are subject to restriction:

Agents used for anorexia or weight gain that are not approved by the FDA;

Agents used to promote fertility;

Agents used for cosmetic purposes or hair growth;

Cough and cold relief agents;

Smoking cessation agents;

Prescription vitamins and minerals, except prenatal preparations;

Nonprescription drugs;

Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

Drugs determined by the Secretary to be less than effective; and

Barbiturates.

By regulation, the Secretary is required to periodically update the list.

Innovator multiple source drugs are to be treated as under otherwise applicable law and regulation.

States are prohibited from imposing prior authorization requirements unless its approval system is available at least 10 hours each weekday and provides for obtaining approval during other times, provides for response within 24 hours of a request, and provides for dispensing at least a 72 hour supply of a covered drug in an emergency situation.

(e) Drug Use Review.—(1) In General.—Similar provision, but requires the assessment of data on drug use against explicit predetermined standards consistent with certain compendia.

(2) Description of Program.—Similar provision specifies that prospective review shall include screening for certain drug therapy problems. Requires that State programs include standards established under State law for counseling of Medicaid recipients or caregivers by pharmacists. Counseling is to include at least a reasonable effort by the pharmacist to provide face-to-face counseling to discuss matters concerning the medication. The pharmacist is required to make a reasonable effort to obtain, record, and maintain certain information about the recipient. The pharmacist is not required to provide consultation when a recipient or caregiver refuses.

Similar provision for retrospective review.

Requires each State to establish a drug use review board (DUR board), either directly or through contract with a private organization, to provide for education outreach programs to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices. Specifies the membership of the board and specifies activities including intervention programs which include the following, as appropriate: information dissemination, reminders containing specific information and suggested changes in practices, discussions between health care professionals and prescribers and pharmacists targeted for educational interven-

tion, and intensified review of selected prescribers or dispensers. The board is required to evaluate interventions periodically.

Annually, each State is required to submit to the Secretary a report prepared by the DUR board. The report must include a description of the board's activities, a summary of the interventions, an assessment of their impact, and an estimate of the cost savings generated by the program.

(f) Miscellaneous.—Provisions similar to (1) and (3). No provision comparable to (2).

(g) Definitions.—Average Manufacturer Price Similar provision.

Covered Outpatient Drug Similar provision.

Manufacturer.—A manufacturer is any entity which is engaged in the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; or in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products. The term does not include a wholesale distributor of drugs or a retail pharmacy.

Medically Accepted Indication.—Similar provision.

Multiple Source Drug; Innovator Multiple Source Drug; Noninnovator Multiple Source Drug; Single Source Drug.—Similar provision.

(h) Funding.—Similar provision.

(i) Denial of Federal Financial Participation in Certain Cases.—Denies Federal matching funds for an innovator multiple source drug dispensed on or after July 1, 1991, if a less expensive noninnovator multiple source drug could have been dispensed under State law.

(j) Pharmacy Reimbursement.—Within 60 days after the end of each fiscal year, beginning FY1991 and ending Sept. 30, 1993, each State Medicaid program is required to make a lump-sum payment, to pharmacies dispensing covered outpatient drugs under Medicaid during the fiscal year. The amount of payment is to bear the same ratio to 5 percent of the total rebates received by the State in the year, as the ratio of the number of prescriptions filled by a pharmacy bear tc the total number of prescriptions filled by all pharmacies in the State in the fiscal year.

(k) Electronic Claims Management.—The Secretary must encourage each State to establish, as its principal means of processing claims for covered outpatient drugs under Medicaid, a point-of-sale electronic claims management system, for the purpose of performing eligibility verifications, capturing claims data, adjudicating claims, and assisting pharmacists to apply for and receive payment. During fiscal years 1991 and 1992, States may receive 90 percent Federal matching funds for the development of a system if the State acquires the most cost-effective services and equipment. The Secretary may permit States to substitute their requests for proposal for such systems in place of advance planning and implementation documents.

(l) Annual Report.—By May 1, of each year, the Secretary is required to submit a report to the appropriate committees of Congress. The report is to include information on ingredient costs paid

under Medicaid, the total value of rebates received and the number of manufacturers providing such rebates; comparison of these rebates with rebates offered to other purchasers; effect of inflation on the value of rebates; and trends in prices paid for drugs by Medicaid.

(m) Exemption of Organized Health Care Settings.—Health maintenance organizations are exempt from these requirements. States are required to exempt hospitals from these requirements provided the hospitals bill Medicaid no more than the hospital's acquisition costs for covered outpatient drugs. Amounts that health maintenance organizations and hospitals pay for covered outpatient drugs may be taken into account to determine the "best price".

(n) Demonstration Projects.—The Secretary is required to establish 10 statewide demonstration projects by January 1, 1992, to evaluate the efficiency and cost-effectiveness of prospective drug utilization review as a component of on-line, real-time electronic point-of-sales claims management. A report is due to Congress by January 1, 1994.

The Secretary is to conduct a demonstration project at no fewer than five sites to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists, whether or not a drug is dispensed, for drug use review services. The Secretary is to report the results of the projects to Congress by January 1, 1995.

(o) Studies.—The Comptroller General is required to conduct a study, and submit a report to the Secretary and to Congress by May 1, 1991, of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the Medicaid program.

The Comptroller General is required to submit an annual report to the Secretary and to Congress by May 1, of each year, on changes in prices charged by manufacturers for prescription drugs sold to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

In consultation with the Comptroller General, the Secretary is required to study prior approval procedures used in State Medicaid programs, including appeals provisions and the effects of the procedures on access to medications. By December 31, 1991, the Secretary and Comptroller General must report the results of the study to Congress and make recommendations as to which procedures are appropriate for Medicaid.

By December 31, 1991, the Secretary is required to report to Congress on the results of a study on the adequacy of current reimbursement rates to pharmacists under each State Medicaid programs, and the extent to which the reimbursement rates affect beneficiary access to covered medications and to pharmacy services.

The Secretary is required to study the relationship between State Medicaid programs and governmental acquisition and reimbursement policies for vaccines, and the accessibility of vaccinations to children. The Secretary is required to report to Congress on the study within one year after the date of enactment of this Act.

The Comptroller General is required to conduct a study examining methods to encourage Medicare providers to negotiate dis-

counts with suppliers of prescription drugs. A report to Congress is due within one year after enactment of this section.

Conference agreement

1. Reimbursement for Prescribed Drugs.—

(a) In General.—The conference agreement includes the House bill with amendments to prohibit the Secretary and the States from reducing drug product reimbursement levels and dispensing fees for pharmacists from the levels in effect August 1, 1990, through March 30, 1995.

(b) Requirement of Rebate Agreement.—The conference agreement includes the House bill with the modification that rebate requirements would not apply to drugs of manufacturers with existing rebate contracts, through the minimum term of the contract, provided the amount of the rebate under the contract totals at least 10 percent of the manufacturer's sales to Medicaid in the State. States are permitted to impose prior authorization controls on all covered drugs, except new drugs within 6 months of FDA approval, and to exclude from coverage certain categories of drugs. States are permitted to cover non-rebated drugs with an FDA "A" rating if the State make a finding that the drug is essential to beneficiaries' health and the Secretary concurs, or if the State requires prior approval.

(c) Terms of Rebate Agreement.—The conference agreement includes the House bill.

(d) Amount of Rebate.—The conference agreement includes the House bill with the following amendments in calculation of the rebate amount for drugs prescribed on or after January 1, 1991. In the first year, the rebate amount is calculated on a drug-by-drug basis and is the greater of the difference between the average manufacturer price (AMP) and a specified percentage of the AMP, or the difference between the AMP and the best price, for sole source and innovator multiple source drugs. The rebate is subject to a maximum. In subsequent years, the rebate is to be calculated on an aggregate basis. The AMP is indexed according to the Consumers Price Index for all urban consumers. Rebates for multiple source (non-innovator) drugs are 10 percent of the AMP in years 1 through 3 and 11 percent in years 4 and 5 and thereafter with no adjustment for inflation. The rebate mechanism does not preclude imposition of current upper payment limits on multiple source drugs. The best price excludes depot prices of certain Federal agencies.

(e) Drug Use Review.—The conference agreement includes the House bill.

(f) Miscellaneous.—The conference agreement includes the House bill.

(g) Definitions.—The conference agreement includes the House bill.

(h) Funding.—The conference agreement includes the House bill with amendments that add 90 percent Federal matching funds in fiscal years 1991 and 1992 for electronic point of sale mechanisms.

(i) Denial of Federal Financial Participation in Certain Cases.—The Senate amendment is not included in the conference agreement.

(j) Pharmacy Reimbursement.—The Senate amendment is not included in the conference agreement.

(k) Electronic Claims Management.—The conference agreement includes the Senate amendment.

The conference agreement does not include provisions on annual report, exemption of organized health care settings, or demonstration projects.

2. Requiring Medicaid Payment of Premiums and Cost-Sharing for Enrollment under Group Health Plans Where Cost-Effective. (Section 4402 of the House Bill, section 6211 of the Senate amendment)

Present law

States may pay health insurance premiums on behalf of beneficiaries instead of providing Medicaid directly, so long as the beneficiaries are covered for the full scope of Medicaid services and retain freedom of choice of providers and the other rights of Medicaid beneficiaries. If a beneficiary is enrolled in a health insurance plan, regardless of whether premiums were paid by Medicaid, Medicaid is a secondary payer for any services covered under that plan.

House bill

Provides that a State (including a State operating a medical assistance program under a Federal demonstration waiver, but not including a commonwealth or territory) must: (a) establish guidelines for the identification of cases in which the enrollment of a beneficiary in a group health is cost-effective; (b) require such beneficiaries (or their parents) to enroll in the plan; and (c) pay any premiums, deductibles, coinsurance, and similar costs under that plan for services covered under Medicaid. Defines cost-effective as meaning that reductions in Medicaid payments are likely to be greater than the cost of paying premiums and cost-sharing.

Requires the State, in developing its guidelines for identifying cases, to take account of limited enrollment periods and cases in which a person not eligible for Medicaid would have to be enrolled to enroll the beneficiary. Provides that a child will not lose eligibility because of a parent's failure to enroll the child. Provides that State payments for premiums and cost-sharing are eligible for Federal matching payments. Permits a State to pay premiums on behalf of a person not eligible for Medicaid if this is necessary to enroll a beneficiary and if total premium payments would still be cost-effective, but prohibits Medicaid payment for cost-sharing for such a person.

Requires a provider treating beneficiaries enrolled under a plan to accept the greater of the plan's reimbursement rate or the Medicaid rate as payment in full, and prohibits a provider from charging the beneficiary or Medicaid an amount that would result in aggregate payment greater than the Medicaid rate. Provides that a beneficiary enrolled in a group health plan retains full eligibility for Medicaid benefits (subject to Medicaid's status as secondary payer), and permits the State to cover services included in the health plan that the State does not ordinarily cover under Medicaid. Provides that a State's failure to comply with requirements re-

lating to group health plans will not be considered in computing erroneous payments for the purpose of the Medicaid quality control system. Permits a State to continue payments on behalf of a beneficiary enrolled in a group health plan for a State-defined period of up to 6 months after enrollment even if the enrollee ceases to be eligible for Medicaid during that period, but only for services covered under the group plan.

Effective date: Applies to payments for quarters beginning on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay permitted where State legislation required to comply.

Senate amendment

Requires States to pay premiums, deductibles, and coinsurance for private health insurance policies when it is cost-effective to do so. Requires the Secretary to promulgate regulations on criteria for determining cost-effectiveness, taking into account the duration of the time period to be considered, whether States should consider individual circumstances and actuarial categories (including diagnostically based categories), and the circumstances under which States should pay premiums for non-Medicaid eligible family members of Medicaid beneficiaries. Requires the State to provide directly any service covered under the State Medicaid and not covered under the private insurance plan. Provides that State payments for premiums and cost-sharing are eligible for Federal matching payments. Permits the State to pay premiums and cost-sharing for services included in the health plan that the State does not ordinarily cover under Medicaid.

Effective date: Applies to payments for quarters beginning on or after January 1, 1991. Delay permitted where State legislation required to comply.

Conference agreement

2. Requiring Medicaid Payment of Premiums and Cost-Sharing for Enrollment under Group Health Plans Where Cost-Effective.— The conference agreement includes the House bill with two modifications: (1) the Secretary is required to establish cost-effectiveness guidelines, and (2) States are required to pay all cost-sharing.

3. Computer Matching and Privacy Provisions. (Section 4403 of the House bill.)

Present law

A Federal or other agency participating in a program for computer matching of data about individuals may not deny, terminate, or reduce an individual's benefits under any Federal program on the basis of data obtained through that program (such as data about income and assets) unless the data have been independently verified and the individual has been notified and given an opportunity to contest the finding.

House bill

Provides that an adverse action may be taken on the basis of data that have not been independently verified when the data

relate to payments made under a Federal benefits program and the agency's Data Integrity Board (or, in the case of a non-Federal agency, the Board of the Federal agency issuing the payment) determines that the information is limited to information about the Federal payments and there is a high degree of confidence that it is accurate. Requires that this determination be made in accordance with guidelines to be published by the Director of the Office of Management and Budget (OMB) within 90 days after enactment. Provides that data supplied by Federal agencies administering the AFDC, Medicaid, and Food Stamp programs is exempt from the requirement that the Board certify to a "high degree of confidence" until the earlier of the date the agency's Board determines that there is not a high degree of confidence or 30 days after the publication of the OMB guidelines.

Effective date: Enactment.

Senate amendment

No provision.

Conference agreement

3. Computer Matching and Privacy Provision.—The conference agreement does not include the House bill.

4. Protection of Low-Income Medicare Beneficiaries. (Section 4411 of the House bill, section 6221 of the Senate amendment.)

Present law

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles, and coinsurance for "qualified Medicare beneficiaries" (QMBs), those whose family incomes are below 100 percent of the Federal poverty level and whose resources are no more than twice the amount allowed under SSI. The requirement is being phased in on a timetable that ends January 1, 1992, or January 1, 1993 in section 209(b) States that use more restrictive income limits for Medicaid than for SSI. For calendar year 1991, States are required to cover individuals up to 95 percent of the poverty level, or 90 percent in the section 209(b) States. States have the option of accelerating coverage of individuals up to 100 percent of the poverty level. OBRA 1986 also gave States the option of providing full Medicaid coverage (not just Medicare cost-sharing) to elderly and disabled persons with incomes up to 100 percent of the poverty level. The Federal contribution to payments for QMBs is made at the standard matching rate, which ranges from 50 to 83 percent depending on the State's per capita income.

(b) Disregard of Cost-of-Living Adjustments.—Whether an individual is determined to be a QMB depends on whether his or her income is less than a specified percentage of the Federal poverty level. Cost-of-living adjustments (COLAs) for cash benefits under Title II of the Social Security Act become effective on January 1 of a calendar year. The Federal poverty levels for a year are not updated until the middle of February of that year. As a result of this lag, an individual with income near (but below) the maximum

income level for QMBs for a year may lose eligibility in the following year until the new poverty levels are issued; new applicants with similar incomes may be denied coverage during the same interval.

House bill

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—Requires all States (including States operating a medical assistance program under a demonstration waiver) to extend QMB coverage to otherwise qualified Medicare beneficiaries with incomes up to 125 percent of the Federal poverty level. Provides for 100 percent Federal matching for additional expenditures resulting from this requirement.

(b) Disregard of Cost-of-Living Adjustments.—Provides that, until the month following the month in which revised poverty guidelines are issued, income attributable to the COLA adjustment is to be excluded in determining eligibility for a QMB, or for an elderly or disabled individual receiving full Medicaid coverage under the OBRA 1986 option.

Effective date: (a) Applies to calendar quarters beginning on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date. (b) Applies to determinations of income for months beginning with January 1, 1991.

Senate amendment

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—Requires States to extend QMB coverage to Medicare beneficiaries with incomes up to 100 percent of the Federal poverty level by January 1, 1991. Requires section 209(b) States to extend coverage to individuals with incomes below 95 percent of the poverty level by January 1, 1991, and below 100 percent by January 1, 1992. Permits States to establish a higher income limit, up to 133 percent of the Federal poverty level.

(b) Disregard of Cost-of-Living Adjustments.—Similar provision, except applies to QMBs only.

Effective date: (a) Applies to calendar quarters beginning on or after January 1, 1991. Delay permitted where State legislation required. (b) Applies to determinations of income for months beginning with January 1, 1991.

Conference agreement

4. Protection of Low-Income Medicare Beneficaries.

(a) Extending Medicaid Payment for Medicare Premiums for Certain Individuals.—The conference agreement includes the Senate amendments with an amendment to require all but 5 specified 209(b) States to accelerate current coverage for Medicare cost-sharing for beneficiaries with incomes up to 100 percent of the Federal poverty level by January 1, 1991. Requires States to pay premiums for qualified Medicare beneficiaries with incomes up to 110 percent of the Federal poverty level by January 1, 1993, and to 120 percent by January 1, 1995.

(b) Disregard of Cost-of-Living Adjustments.—The conference agreement follows the House bill with a modification which provides that income attributable to COLA adjustments is to be ex-

cluded in determining eligibility for QMBs during the first 3 months of a calendar year.

5. Improvements in Child Health (Sections 4421-4426 of the House bill, section 6231 of the Senate amendment.)

Present law

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—States are required to cover children up to age 6 in families with incomes under 133 percent of the Federal poverty level. States are permitted to cover children born after September 30, 1983 up to 7 years old (or 8, at the State's option), in families with incomes below a State-established income level which may be as high as 100 percent of the Federal poverty level. In determining family income for these children, a State must use the same methodology used in its AFDC program, except that it may not deem as available to the applicant income of relatives other than a spouse or parent, and may not subtract from income costs for medical care.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—States are permitted to cover pregnant women and infants up to one year old in families with incomes below a State-established level which may be as high as 185 percent of the Federal poverty level.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—States have the option of continuing coverage for a pregnant woman through the end of the second full month beginning after the end of her pregnancy, even if the woman would otherwise become ineligible during that period. A child born to a woman eligible for and receiving Medicaid on the child's date of birth is deemed eligible for Medicaid and remains eligible so long as the child is a member of the woman's household and the woman remains eligible for Medicaid. During this period, the Medicaid eligibility identification number of the mother serves as the identification number for the child unless the State issues a separate identification number for the child before the end of the period.

(d) Mandatory use of Outreach Locations Other Than Welfare Offices.—States determine the sites at which applications for Medicaid will be accepted. For persons applying for Medicaid only, and not for cash assistance, a State may use the same application form used for the cash assistance programs or may develop a different form.

(e) Presumptive Eligibility.—

(1) Extension of Presumptive Eligibility Period.—States have the option of establishing "presumptive eligibility" for low-income pregnant women. Certain providers may make a preliminary determination that a pregnant woman seeking treatment is potentially eligible for Medicaid. The woman may then receive services related to the pregnancy for up to 45 days, or until the State completes an eligibility review, whichever is earlier. If a woman who has been determined by a provider to be presumptively eligible for Medicaid services fails to apply for Medicaid within 14 days after the determination is made, presumptive eligibility ceases.

(2) Flexibility in Application.—States design their own application forms for Medicaid benefits. In the case of pregnant women, some States may use different forms for the presumptive eligibility determination and the final eligibility determination, while others may use the same form for both. Current law has no provision on this subject.

(f) Role in Paternity Determinations.—Applicants of Medicaid are required, as a condition of eligibility, to cooperate in establishing the paternity of children born out of wedlock, and in obtaining child support unless there is good cause for non-cooperation.

(g) Report and Transition on Errors in Eligibility Determinations.—States are required to maintain a Medicaid quality control system, which identifies Medicaid payments made as a result of erroneous eligibility determinations. If a State's error rate (erroneous Medicaid payments as a percent of total Medicaid payments) exceeds 3 percent, it may be subject to a reduction in Federal matching funds.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—If a State pays for inpatient services on a prospective basis (under which payment rates are established in advance and may not reflect the hospital's actual costs for covered services), the State must provide additional payment to disproportionate share hospitals for patients under 1 year old who are "outliers", that is, who incur exceptionally high costs or have long hospital stays. States may establish reasonable durational limits on coverage of inpatient hospital services, but may not impose these limits on medically necessary services provided to children under 1 year old in hospitals serving a disproportionate number of low-income patients with special needs.

House bill

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—Requires States to cover children born after September 30, 1983, who are over 6 years old but under 13 years old, with family incomes up to 100 percent of the Federal poverty level. Provides that in determining family income, States may use a methodology that is less restrictive than that used for AFDC.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—No provision.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—Requires all States to continue eligibility for pregnant women until the end of the second full month beginning after the end of the pregnancy, except in the case of a woman who has been provided ambulatory care during a presumptive eligibility period and then determined to be ineligible. Provides that an infant born to a woman who is eligible for Medicaid remains eligible until the first birthday, so long as the child remains in the mother's household and the mother remains eligible for Medicaid, or would be eligible if she were pregnant.

(d) Mandatory use of Outreach Locations Other Than Welfare Offices.—Requires States to accept and begin processing applications by pregnant women and children under 18 at locations other than those used for the receipt and processing of applications for AFDC, and using different application forms. Other locations include dis-

proportionate share hospitals and federally qualified health centers.

(e) Presumptive Eligibility.—

(1) Extension of Presumptive Eligibility Period.—Extends the time limit for filing a Medicaid application to the last day of the month following the month in which the provider makes an initial determination of presumptive eligibility, and continues eligibility to that date in the case of a woman who fails to apply.

(2) Flexibility in Application.—Provides that the Medicaid application form to be filed by women who have been determined presumptively eligible may be the form used by the State for applications by women potentially eligible solely because of pregnancy.

(f) Role in Paternity Determinations.—Exempts women qualifying for Medicaid under the special eligibility standards for pregnant women from the requirement that they cooperate in establishing paternity and obtaining child support.

(g) Report and Transition on Errors in Eligibility Determinations.—Requires the Secretary of HHS to report to Congress by July 1, 1991, on error rates by States in determining eligibility of pregnant women and infants whose eligibility is based on income. Provides that the report may include data for medical assistance provided before July 1, 1989. Provides that the calculation of State error rates and financial penalties is to exclude Medicaid payments made on behalf of pregnant women and infants whose eligibility is based on income on or after July 1, 1989, and before the first calendar quarter beginning more than 12 months after the Secretary submits the required report.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—No provision.

Effective date.—(a) applies to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply. Texas is not required to comply with the requirements of (a) until September 1, 1991. (c) applies to infants from on or after January 1, 1991, regardless of whether implementing regulations have been promulgated by that date, and to determinations made on or after January 1, 1991, to terminate the eligibility of women based on change of income, regardless of whether implementing regulations have been promulgated by that date. (d) and (e)(1) apply to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. (e)(2) is effective as if included in the enactment of section 9407(b) of OBRA 86. (f) is effective upon enactment.

Senate amendment

(a) Phased-in Mandatory Coverage of Children up to 100 Percent of Poverty Level.—Similar provision, but would require States to cover children up to age 19. Does not provide for changes in the methodology for determining family income.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—Permits States to phase in coverage of children up to age 19 with family incomes under 185 percent of the Federal poverty level.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—Similar provision also specifies that no new Medicaid application is required for a child if the State has issued a separate identification number before expiration of the deemed period.

(d) Mandatory Use of Outreach Locations Other Than Welfare Offices.—No provision.

(e) Presumptive Eligibility.—No provision.

(f) Role in Paternity Determinations.—No provision.

(g) Report and Transition on Errors in Eligibility Determinations.—No Provision.

(h) Adjustment in Payment for Hospital Services Furnished to Low-Income Children.—Requires States with prospective payment systems to provide for outlier payment adjustments for medically necessary inpatient services involving exceptionally high costs or exceptionally long lengths of stay when such services are provided (a) in disproportionate share hospitals to children over age 1 and under age 19, and (b) to infants under age 1 in any hospital. Prohibits States from imposing durational limits for medically necessary inpatient services provided in disproportionate share hospitals to children under age 19. Prohibits States from imposing durational limits or dollar limits on any inpatient hospital services to an individual who is under age 1 or, if an inpatient on his first birthday, until the individual is discharged. Prohibits the Secretary from waiving these requirements.

Effective Date: (a) and (b) apply to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply. (c) applies to eligibility determinations made on or after July 1, 1991. (h) applies to payments for calendar quarters beginning on or after July 1, 1991, regardless of whether implementing regulations have been promulgated by that date. Delay is permitted where State legislation is required to comply.

Conference agreement

5. Improvements in Child Health.—

(a) Phase-in Mandatory Coverage of Children up to 100 Percent of Proverty Level.—The conference agreement includes the Senate amendment.

(b) Optional Coverage of Children with Income Below 185 Percent of the Poverty Level.—The conference agreement does not include the Senate amendment.

(c) Mandatory Continuation of Benefits Throughout Pregnancy or First Year of Life.—The conference agreement includes the House bill.

(d) Mandatory of Outreach Locations Other than Welfare Offices.—The conference agreement includes the House bill.

(e) Presumptive Eligibility.—The conference agreement includes the House bill.

(f) Paternity determination.—The conference agreement includes the House bill.

(g) Report and Transition on Errors in Eligibility Determinations.—The conference agreement includes the House bill.

(h) Adjustment in Payment for Hospital Services Furnished to Law-Income Children.—The conference agreement includes the Senate amendment, with an amendment to limit the provisions to children under age 6.

6. Nursing Home Reform Provisions (Section 4431 of House bill; section 6251 of Senate amendment)

Present law

(a) Nurse Aide Training.—Effective October 1, 1990, nursing facilities (NFs) participating in Medicaid must use on their staffs as nurse aides only those persons who have completed approved training and competency evaluation programs. Specifically, the law prohibits NFs from using (on a full-time, temporary, per diem, or other basis) persons as nurse aides for more than 4 months, unless the aide (1) has completed a training and/or a competency evaluation program approved by the State; and (2) is competent to provide nursing or nursing-related services. The law also requires States to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse. Nursing homes are required to consult these registries before hiring a person as a nurse aide.

OBRA 87 required the Secretary to establish requirements for State approval of nurse aide training and competency evaluation programs by September 1, 1988, and to specify in these requirements areas to be covered in programs, content of curriculum, minimum hours of initial and ongoing training and retraining, qualification of instructors, and procedures for determining competency. The law prohibits the approval of training and competency evaluation programs offered by a NF, if the facility has been determined to be out of compliance with requirements for provision of services, residents' rights, and administration. In addition, an amendment included in OBRA 89 prohibits the approval of programs that impose charges for training and competency evaluation. In 1989, HCFA issued an interim guidance document, effective May 12, 1989, setting out approval criteria for the States. On March 23, 1990, HCFA published a proposed regulation on approval criteria for nurse aide training and competency evaluation programs.

OBRA 87 authorized enhanced Federal Medicaid matching payments for State activities required in connection with nurse aide training and competency evaluation programs. For the 8 calendar quarters beginning July 1, 1988, States have been authorized to receive for nurse aide training and competency evaluation activities their Federal matching rate, plus 25 percentage points, but not exceeding 90 percent. In subsequent years, the rate becomes 50 percent.

(b) Preadmission Screening and Annual Resident Review.—OBRA 87 requires States to establish preadmission screening and review programs to determine whether mentally ill or mentally retarded persons require the level of services provided by a nursing facility and whether they require active treatment. Effective January 1, 1989, NFs participating in Medicaid must not admit any new resident who is mentally ill or mentally retarded, unless the State has

determined, prior to admission, that the prospective resident requires the level of services provided by the facility, and whether he or she requires active treatment. OBRA also requires States to review, on an annual basis, all residents who are mentally ill or mentally retarded to determine whether their continued placement is appropriate and whether they require active treatment.

The first of these annual reviews was to have been completed April 1, 1990. These preadmission screening and annual resident review requirements are often referred to as PASARR requirements.

The law requires that certain residents be discharged from facilities if their placement is found to be inappropriate. OBRA authorized the Secretary of HHS and States to enter into agreements, prior to April 1, 1989, that specify alternative disposition plans (ADPs) for persons who must be discharged from facilities. ADPs provide additional time for the States to arrange for the disposition of persons who must be discharged.

OBRA required the Secretary to issue by October 1, 1988, minimum criteria for States to use in making determinations as to whether a mentally ill or mentally retarded individual requires the level of services provided by a nursing facility. In May, 1989, HCFA issued interim guidelines (effective May 26) to the States for use in making determinations. On March 23, 1990, HCFA published proposed regulations on requirements for PASARR. HCFA's interpretation of the law has been that PASARR applies to all individuals with mental illness or mental retardation who apply to reside in a Medicaid-certified NF, regardless of the source of payment for the NF services.

(c) Enforcement Process.—OBRA 87 revises and expands the sanctions that States and the Secretary may impose against nursing facilities found to be out of compliance with the requirements for participation. OBRA required States to amend their Medicaid plans by October 1, 1989, to include certain sanctions that they could impose against noncompliant nursing facilities. OBRA also required the Secretary to provide guidance to the States on these sanctions by October 1, 1988, but specified that the failure of the Secretary to provide this guidance did not relieve a State of its responsibility for establishing the sanctions by the statutory deadline. The Secretary has not yet issued regulations or guidelines providing this guidance.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—OBRA 87 requires that the health care of every resident be provided under the supervision of a physician. Current Medicaid law allows States to pay for care provided by licensed practitioners, including nurse practitioners and clinical nurse specialists, within the scope of their practice as defined by State law.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—OBRA 87 requires States to take into account in their payments to nursing facilities the costs of complying with new requirements relating to the provision of services, residents' rights, and administration. OBRA also requires that each State submit to the Secretary a State plan amendment to provide for an appropriate adjustment in payment amounts for nursing facility services.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—OBRA 87 requires that nursing facilities maintain a quality assessment and assurance committee which (1) meets at least quarterly to identify quality assessment and assurance issues, and (2) develops and implements appropriate plans of action to correct identified quality deficiencies.

(3) Period for Resident Assessment.—OBRA 87 requires that nursing facilities conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be performed promptly upon, but no later than 4 days after, admission to the facility.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—OBRA 87 requires nursing facilities to provide nursing and related services and specialized rehabilitative services, medically-related social services, pharmaceutical services, dietary services, an ongoing program of activities, and certain dental services.

(5) Clarification of Extent of State Waiver Authority.—Nursing facilities participating in Medicaid are required to provide 24-hour licensed nursing care sufficient to meet the nursing needs of residents and to use a registered professional nurse at least 8 consecutive hours a day 7 days a week. OBRA 87 authorized States to waive the licensed nurse or registered nurse requirements if (1) the facility demonstrated that it has been unable to recruit appropriate personnel, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities); (2) the State determines that a waiver will not endanger the health or safety of residents; and, (3) a registered nurse or physician is obligated to respond immediately to telephone calls from the facility. These waivers are subject to annual renewal and to review by the Secretary of HHS.

(6) Clarification of Definition of Nurse Aide.—Nurse aides are defined as persons providing nursing or nursing-related services to residents in a nursing facility, but does not include certain licensed health professionals or volunteers providing services without monetary compensation.

(7) Clarification of Requirements for Social Services.—Nursing facilities with more than 120 beds are required to have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—There are circumstances in which, under current law, a State may not actually be making payments to a nursing home on behalf of a resident who is eligible for Medicaid. For example, a nursing home resident may be receiving Veterans' Administration aid and attendance payments. These payments are not taken into account in determining initial eligibility for Medicaid, but are considered, post-eligibility, in determining the amount of an individual's monthly income that is available to be applied to the cost of care. In certain situations, the income of the individual may exceed Medicaid payment levels for nursing home care. Nursing facilities have charged these residents at higher "private pay" rates, even though these residents are Medicaid eligible.

(9) Residents' Rights to Refuse Transfers.—Medicare nursing home residents must occupy a Medicare-certified bed in order for a facility to receive Medicare payment. In order to occupy such a bed, a resident may have to be moved.

(10) Residents' Rights Regarding Advance Directives.—OBRA 87 established in Medicaid statute a wide range of residents' rights that nursing facilities must protect and promote.

(11) Resident Access to Clinical Records.—OBRA 87 requires nursing facilities to assure the confidentiality of a resident's personal and clinical records.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—Among the residents' rights established under OBRA 87 is the requirement that nursing facilities make available to each resident, upon reasonable request, a written statement of rights of the resident in the facility.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—OBRA 87 requires the administrator of a nursing facility to meet standards established by the Secretary.

(14) Clarification of Nurse Aide Registry Requirements.—States are required to establish nurse aide registries of all persons who have satisfactorily completed training and competency evaluation programs and those persons who have been involved in resident neglect and abuse.

(15) Clarification on Findings of Neglect.—States (through their agencies responsible for surveys and certification of nursing facilities) are required to review, investigate, and make findings regarding allegations of resident neglect and abuse and misappropriation of resident property by a nurse aide or another individual used by the facility to provide services.

(16) Timing of Public Disclosure of Survey Results.—OBRA 87 requires States and the Secretary to make available to the public information on all surveys and certifications of nursing facilities, including statements of deficiencies and plans of correction.z

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—Medicaid law specifies conditions under which Federal matching payments will be made available to the States.

(18) Standards for Certain Professional Services.—OBRA 87 requires NFs to provide, directly or under arrangements, various kinds of services, including medically-related social services, dietary services, and an on-going program of activities. Final regulations published by HCFA on February 2, 1989, and effective October 1, 1990, specify qualifications for the persons providing these services. These are often different from regulations in effect prior to October 1.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—States are required to notify State long-term care ombudsman (established under the Older Americans Act) of survey findings of noncompliance with any of the requirements for participation.

House bill

(a) Nurse Aide Training.—Includes a number of amendments to the nurse aide training and competency evaluation requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (and continuing) any actions against a State for its failure to meet the law's requirements for nurse aide training and competency evaluation programs before the effective date of HCFA guidelines for such programs, if the State demonstrates it has made a good faith effort to meet the requirements before the effective date.

(2) Clarification of Grace Period for Nurse Training of Individuals.—Specifies that training and competency evaluation requirements apply to all persons who have worked (on a full-time, temporary, or per diem basis) as nurse aides for 90 days or more in any nursing facility.

(3) Clarification of Nurse Aides Not Subject to Charges.—Clarifies that the prohibition on charging nurse aides for training and competency evaluation would apply to aides who are employed by (or who have entered into an employment agreement with) a facility.

(4) Modification of Nursing Facility Deficiency Standards.—Prohibits approval of training and competency evaluation programs offered by or in a NF which, within the previous 2 years, has had a waiver for the licensed nurse or registered nurse requirements or has been subject to an extended (or partial extended) survey.

(5) Clarification of State Responsibility to Determine Competency.—Prohibits States from using subcontracts or other devices to determine that an aide is competent to provide nursing and nursing-related services.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—No provision.

(7) Nurse Aide Registry.—Requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 or OBRA 89 be added to a State's nurse aide registry. Further prohibits States from imposing any charges on aides for establishing and maintaining the registries. (Also described below in Other Amendments, item (d)(14).)

(8) Retraining of Nurse Aides Not Employed.—No provision.

(b) Preadmission Screening and Annual Resident Review.—Includes a number of amendments to PASARR requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Prohibits the Secretary from taking (and continuing) any actions against a State for its failure to meet the law's requirements for preadmission screening before the effective date of HCFA guidelines, if the State demonstrates that it had made a good faith effort to meet the requirements.

(2) Clarification with respect to Admissions and Readmission from a Hospital.—Provides that preadmission screening requirements do not apply to nursing facility residents who are being readmitted to the nursing facility after a hospital stay. Also provides that preadmission screening requirements do not apply to persons (1) who are admitted to the nursing facility directly from a hospital after receiving acute inpatient care at the hospital; (2) who require nursing facility services for the condition for which the individual received care in the hospital; and (3) whose attending physician has certified, before admission to the facility, that the person is likely to require less than 30 days of nursing facility services.

(3) Delay in Application to Private Pay Residents.—Provides that preadmission screening and annual resident review requirements do not apply to mentally ill or mentally retarded persons who are not eligible for Medicaid until such time as they become entitled to benefits (with preadmission screening required to be done at the end of the day following the date the person becomes eligible). Specifies that this amendment shall not prohibit a State from imposing preadmission screening and annual resident review requirements on persons who are not Medicaid eligible at the time of admission to a nursing facility. Prohibits the Secretary from imposing any sanction on States which have failed to apply the preadmission screening requirements to persons who are not Medicaid eligible at the time of their admission.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Services.—Prohibits Federal matching payments for nursing facility services for persons who do not require the level of services provided by the nursing facility (other than for persons who have resided in the facility for at least 30 months and who are determined not to need such care).

(5) No Delegation of Authority to Conduct Screening and Reviews.—Prohibits State mental health authorities and State mental retardation or developmental disability authorities from delegating (by subcontract or otherwise) their PASARR responsibilities to nursing facilities (or entities that have a direct or indirect affiliation or relationship with these facilities).

(6) Annual Reports.—Requires States to report to the Secretary annually on the number and disposition of residents who are discharged from nursing facilities (1) because they do not require nursing facility care, have resided in the facility for less than 30 months and require active treatment, and (2) because they do not require nursing facility care and do not require active treatment. Also requires the Secretary's annual report on nursing facility compliance with new requirements and enforcement actions to include a summary of information reported by States on the disposition of residents discharged from nursing homes.

(7) Revision of Alternative Disposition Plans.—Authorizes States to revise their agreements for alternative disposition plans before October 1, 1991, subject to the approval of the Secretary, but only if under the revised agreement all residents who do not require nursing facility care are discharged from the facility by not later than April 1, 1994.

(8) Definition of Mentally Ill.—Modifies the definition of mental illness from "a primary or secondary diagnosis of mental disorder (as defined in DSM-III)" to a "serious mental illness as defined by the Secretary."

(9) Substitution of "Specialized Services" for "Active Treatment".—Substitutes the term "specialized services" for the term "active treatment."

(c) Enforcement Process.—Prohibits the Secretary from taking (and continuing) any action against a State for its failure to meet the law's requirements for establishing sanctions before the effective date of guidelines, if the State demonstrates that it has made a good faith effort to meet the requirements.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—Permits nursing facilities to use nurse practitioners or clinical nurse specialists who are not employees of the facility but who are working in collaboration with a physician to supervise the care of residents.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—Requires that States also take into account in their payments to nursing facilities the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for Medicaid. Also requires that State plan amendments include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—Provides that a State or the Secretary may not require disclosure of the records of the quality assessment and assurance committee, except for determining the facility's compliance with the requirement for maintaining the committee.

(3) Period for Resident Assessment.—Extends the time limit for a resident's assessment from 4 days to 14 days after admission.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—Requires that facilities also provide treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

(5) Clarification of Extent of State Waiver Authority.—Clarifies that States may waive the licensed nurse or registered nurse requirements under the conditions specified in law, only to the extent that a facility is unable to meet them.

(6) Clarification of Definition of Nurse Aide.—Clarifies that nurse aides do not include registered dietitians.

(7) Clarification of Requirements for Social Services.—Provides that nursing facilities with more than 120 beds would be required to have one individual employed full-time to provide or assure the provision of social services who (1) is a social worker with at least a bachelor's degree in social work or similar professional qualifications; or (2) is provided with on-going consultation and assistance by a social worker (with the above qualifications) employed by the facility.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—Prohibits nursing facilities from charging residents who are Medicaid eligible, but for whom Medicaid payments are not being made because their income exceeds State payments for this care, more than the Medicaid rate for their nursing facility care.

(9) Residents' Rights to Refuse Transfers.—Adds to residents' rights established under OBRA 87 a new right for residents to refuse a transfer to another room within a facility, if a purpose of the transfer is to relocate the resident from a non-Medicare certified portion of the facility to a Medicare-certified portion of the facility. Provides that a resident's refusal to be transferred will not affect the resident's eligibility for Medicaid or the State's entitlement to Federal matching payments for the resident's care.

(10) Residents' Rights Regarding Advance Directives.—Adds to residents' rights the right to compliance by the facility with the provisions of an advance directive. Defines "advance directive" as a written instruction, such as a living will or durable power of attorney for health care, recognized under State law and relating to the provision of care when the individual is incapacitated.

(11) Resident Access to Clinical Records.—Adds to this requirement the right of the resident to have access to current clinical records promptly upon request.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—Requires facilities to include in the written statement of rights that they are currently required to provide residents, a copy of the State notice of the rights and obligations of residents (and spouses of residents) under Medicaid.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—Repeals other requirements in Medicaid law pertaining to State programs for the licensing of nursing home administrators.

(14) Clarification of Nurse Aide Registry Requirements.—Requires that nurse aides deemed to have met nurse aide training and competency evaluation requirements under OBRA 87 or OBRA 89 be added to a State's nurse aide registry. Also prohibits States from imposing any charges on aides for establishing and maintaining the registries.

(15) Clarification on Findings of Neglect.—Provides that a State can not make a finding of neglect by an individual, if the individual demonstrates that neglect was caused by factors beyond the control of the individual.

(16) Timing of Public Disclosure of Survey Results.—Requires that survey and certification information be made available to the public within 14 calendar days after this information is made available to the facilities.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—Specifies that Federal matching payments will not be made for reimbursing (or otherwise compensating) a nursing facility for legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for such action.

(18) Standards for Certain Professional Services.—No provision.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—No provision.

Effective date: (a) effective as if included in OBRA 87; (b) effective as if included in OBRA 87, except that (c)(3), (5), (7), and (9) effective enactment, without regard to whether or not regulations to implement the amendments have been promulgated; (c) effective enactment; (d) effective with respect to services furnished on or after October 1, 1990, without regard to whether or not final regulations to implement the amendments have been promulgated; and (e) effective as if included in OBRA 87, except that (e)(8) effective enactment, without regard to whether or not regulations to implement the amendments have been promulgated, and (d)(13) effective October 1, 1990.

Senate amendment

(a) Nurse Aide Training.—Includes a number of amendments to the nurse aide training and competency evaluation requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Identical provision, except prohibits actions against a State before the effective date of final regulations.

(2) Clarification of Grace Period for Nurse Training of Individuals.—Provides that NFs may not use individuals as nurse aides on a temporary, per diem, or any other basis on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(3) Clarification of Nurse Aides Not Subject to Charges.—Permits accredited nonfacility-based nurse aide training and competency evaluation programs to impose charges on individuals who are not presently employed by a nursing facility or who have not yet had an offer for future employment at a facility. Further requires, for individuals employed or under contract for employment as a nurse aide within 12 months after successful completion of a nonfacility-based, State-approved nurse aide training and competency evaluation program, that the State ensure that the costs they incurred for these programs are reimbursed to them.

(4) Modification of Nursing Facility Deficiency Standards.—Provides that a NF would be ineligible to offer a training and competency evaluation program (1) if at any time on or after October 1, 1988, the facility has been terminated from participation in Medicaid or Medicare, until after the end of a period of at least 2 years during which no survey or investigation finds any deficiencies warranting termination and at least one standard survey has been conducted; or (2) the facility received a notice of termination at any time during the one year period ending September 30, 1990, until after the completion of a subsequent standard survey which finds no deficiencies warranting the notice; or (3) is found in a standard survey or investigation to have deficiencies resulting in a civil monetary penalty in excess of $5,000, denial of payment, or appointment of temporary management, until after the completion of a subsequent standard survey which finds no deficiencies warranting these sanctions.

(5) Clarification of State Responsibility to Determine Competency.—Identical provision.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—Extends enhanced Federal matching for nurse aide training and competency evaluation through September 30, 1990.

(7) Nurse Aide Registry.—Requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry. Further requires NFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. (8) Retraining of Nurse Aides Not Employed.—Requires those nurse aides who have not provided services for 24 consecutive months to complete either a nurse aide training

and competency evaluation program or a new competency evaluation program.

(b) Preadmission Screening and Annual Resident Review.—Includes a number of amendments to the PASARR requirements:

(1) No Compliance Actions Before Effective Date of Guidelines.—Identical provision, except prohibits actions against the States before the effective date of final regulations.

(2) Clarification with Respect to Admissions and Readmission from a Hospital.—Identical provision.

(3) Delay in Application to Private Pay Residents.—No provision.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Services.—No provision.

(5) No Delegation of Authority to Conduct Screening and Reviews.—Identical provision.

(6) Annual Reports.—Identical provision.

(7) Revision of Alternative Disposition Plans.—Identical provision, except allows revision of alternative disposition plans before April 1, 1991.

(8) Definition of Mentally Ill.—Modifies the definition of mental illness to a "serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)." Retains the existing exclusion from PASARR for persons with a primary diagnosis of dementia (including Alzheimer's disease or related disorder) and also excludes persons with a nonprimary diagnosis of dementia and a primary diagnosis that is not a serious mental illness.

(9) Substitution of "Specialized Services" for "Active Treatment".—Identical provision.

(c) Enforcement Process.—Delays until April 1, 1991, the requirement that States establish in their Medicaid plans certain sanctions to be imposed against noncompliant nursing facilities.

(d) Supervision by Nurse Practitioners and Clinical Nurse Specialists.—No provision.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—No provision.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—No provision.

(3) Period for Resident Assessment.—Identical provision.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—No provision.

(5) Clarification of Extent of State Waiver Authority.—Requires the State agency granting a waiver of nurse staffing requirements to provide notice of the waiver to the appropriate State and substate long-term care ombudsman, to the protection and advocacy system and other appropriate State and private agencies. Further requires a nursing facility that is granted a waiver make reasonable efforts to notify present and prospective residents of the facility (or a guardian or legal representative of residents) of the waiver.

Further requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for NFs. Requires that if the Secretary determines that the establishment of minimum ratios is advisable, the report must specify appropriate ratios or standards.

(6) Clarification of Definition of Nurse Aide.—No provision.

(7) Clarification of Requirements for Social Services.—No provision.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—No provision.

(9) Residents' Rights to Refuse Transfers.—No provision.

(10) Residents' Rights Regarding Advance Directives.—No provision.

(11) Resident Access to Clinical Records.—Similar provision, except provides access as well to the resident's legal representative and specifies promptly upon reasonable request (as defined by the Secretary).

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—No provision.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—No provision.

(14) Clarification of Nurse Aide Registry Requirements.—Requires that aides deemed under OBRA 89 to have met the law's training and competency evaluation requirements and those aides for whom the State may waive the competency evaluation requirements under OBRA 89 be added to a State's nurse aide registry. Further requires NFs, that have reason to believe that a nurse aide they are considering employing is from a State other than the State in which the facility is located, to consult the nurse aide registry of the State where the facility believes the aide resided. (Also described above under Nurse Aide Training, item (a)(7).)

(15) Clarification on Findings of Neglect.—No provision.

(16) Timing of Public Disclosure of Survey Results.—No provision.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—No provision.

(18) Standards for Certain Professional Services.—Requires the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dietitians, activities professionals, and medical records practitioners, and report to Congress by January 1, 1993, on whether facilities have on their staffs persons with significantly different credentials as a result of new regulations that became effective October 1, 1990, and the impact of staff composition on quality of care.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—Requires that State survey agencies enter into a written agreement with the Office of the State Long-Term Care Ombudsman (as defined by the Older Americans Act) to provide for information exchange, case referral, and prompt notification of the office of any adverse action to be taken against a nursing facility.

Effective date: Effective April 1, 1991; except that (a)(1), (a)(4), (a)(6), (b)(1), (b)(2), (b)(7), (c), (d)(3), (d), (d)(18) effective as if included in OBRA 87.

Conference agreement

6. Nursing Home Reform Provisions.—

The managers note that the amendments included below make minor and technical changes to the nursing home reform statute as originally enacted in 1987. The managers are aware that the Secre-

tary will soon issue regulations implementing portions of the original law. The managers do not intend that the amendments below result in any further delay of forthcoming regulations.

(a) Nurse Aide Training.—

(1) No Compliance Actions Before Effective Date of Guidelines.—The conference agreement includes the House bill.

(2) Clarification of Grace Period for Nurse Training of Individuals.—The conference agreement includes the Senate amendment, with a modification to provide that NFs may not use individuals as nurse aides on a temporary, per diem, leased, or any other basis other than as a permanent employee, on or after January 1, 1991, unless the individual meets the training and competency evaluation requirements that apply to full-time aides.

(3) Clarification of Nurse Aides Not Subject to Charges.—The conference agreement includes the House bill, with a modification to specify that the prohibition on charging aides would apply to aides who are employed by or who have received an offer of employment from a facility. The conference agreement also includes an amendment requiring States to provide for the reimbursement of the costs incurred by persons in completing nurse aide training and competency evaluation programs, if they are not employed by or have not received an offer of employment from a facility. These costs would be reimbursed for aides employed within 12 months after completing a program and would be prorated during the period the aide is employed by the facility.

(4) Modification of Nursing Facility Deficiency Standards.—The conference agreement includes the House bill, with an amendment. The agreement prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which, within the previous 2 years—(a) has had a waiver of the licensed nurse or registered nurse requirements for a period in excess of 48 hours during the week; (b) has been subject to an extended (or partial extended) survey under Medicare or Medicaid; or (c) has been subject to sanctions that may be imposed under Medicare or Medicaid law, including a civil money penalty of not less than $5,000, denial of payment, appointment of temporary management, closing the facility or transferring residents, or termination. For the 2-year period beginning October 1, 1988, the conference agreement also prohibits the approval of nurse aide training and competency evaluation programs offered by or in a nursing facility which (a) has been terminated from participation in Medicare or Medicaid; or (b) has been subject to sanctions that may be imposed under Medicaid or Medicare or applicable State law, including denial of payment, a civil money penalty of not less than $5,000, appointment of temporary management, or closing the facility or transferring residents.

(5) Clarification of State Responsibility to Determine Competency.—The conference agreement includes the Senate amendment.

(6) Extension of Enhanced Match Rate Until October 1, 1990.—The conference agreement includes the Senate amendment.

(7) Nurse Aide Registry.—The conference agreement includes the House bill, with an amendment to include on a State's nurse aide registry aides for whom the State may waive the competency evaluation requirements under OBRA 89. The conference agreement

also includes an amendment requiring facilities to consult any State nurse aide registry that the facility believes will include information about an aide.

(8) Retraining of Nurse Aides Not Employed.—The conference agreement includes the Senate amendment.

(b) Preadmission Screening and Annual Resident Review.—

(1) No Compliance Actions Before Effective Date of Guidlines.—The conference agreement includes the House bill.

(2) Clarification with respect to Admissions and Readmission from a Hospital.—The conference agreement includes the Senate amendment.

(3) Delay in Application to Private Pay Residents.—The conference agreement does not include the House bill.

(4) Denial of Payments for Certain Residents Not Requiring Nursing Facility Servies.—The conference agreement includes the House bill.

(5) No Delegation of Authority to Conduct Screening and Reviews.—The conference includes the Senate amendment.

(6) Annual Reports.—The conference agreement includes the Senate amendment.

(7) Revision of Alternative Disposition Plans.—The conference agreement includes the House bill.

(8) Definition of Mentally Ill.—The conference agreement includes the Senate amendment.

(9) Substitution of "Specialized Services" for "Active Treatment".—The conference agreement includes the Senate amendment.

(c) Enforcement Process.—The conference agreement includes the House bill.

(d) Supervision of Health Care of Residents of Nursing Facilities by Nurse Practitioners and Clinical Nurse Specialists Acting in Collaboration with Physicians.—The conference agreement includes the House bill, with an amendment to include physician assistants, together with nurse practitioners and clinical nurse specialists, as health professionals permitted to supervise the medical care of residents.

(e) Other Amendments.—

(1) Assurance of Appropriate Payment Amounts.—The conference agreement includes the House bill.

(2) Disclosure of Information of Quality Assessment and Assurance Committees.—The conference agreement includes the House bill.

(3) Period for Resident Assessment.—The conference agreement includes the Senate amendment.

(4) Clarification of Responsibility for Services for Mentally Ill and Mentally Retarded Residents.—The conference agreement includes the House bill.

(5) Clarification of Extent of State Waiver Authority.—The conference agreement includes the House bill, with an amendment. The conference agreement requires the State agency granting a waiver to provide notice of the waiver to the State long-term care ombudsman and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and further requires the facility to notify residents (or, where appropriate, the

guardians or legal representatives of residents) and members of their immediate families of the waiver. The conference agreement also requires the Secretary to conduct a study and report to Congress by January 1, 1992, on the appropriateness of establishing minimium caregiver to resident ratios and minimum supervisor to caregiver ratios for SNFs and NFs, and to include recommendations for appropriate minimum ratios.

(6) Clarification of Definition of Nurse Aide.—The conference agreement includes the House bill.

(7) Clarification of Requirements for Social Services.—The conference agreement does not include the House bill.

(8) Charges Applicable in Cases of Certain Medicaid-Eligible Individuals.—The conference includes the House bill.

(9) Residents' Rights to Refuse Transfers.—The conference agreement includes the House bill.

(10) Residents' Rights Regarding Advance Directives.—The conference agreement does not include the House bill.

(11) Resident Access to Clinical Records.—The conference agreement includes the House bill, with a modification requiring that access to records be provided within 24 hours (excluding hours during a week-end or holiday) after a request. The conference agreement also includes an amendment requiring that access be provided to the resident's legal representative.

(12) Inclusion of State Notice of Rights in Facility Notice of Rights.—The conference agreement includes the House bill.

(13) Removal of Duplicative Qualifications of Nursing Home Administrators.—The conference agreement includes the House bill, with an amendment that current law requirements would not be repealed until the date upon which the Secretary issues standards specifying qualifications for nursing facility administrators.

(14) Clarification of Nurse Aide Registry Requirements.—The conference agreement includes the House bill, with an amendment to include on a State's nurse aide registry aides for whom the State may waive the competency evaluation requirements under OBRA 89. The conference agreement also includes an amendment requiring facilities to consult any State nurse aide registry that the facility believes will include information about an aide.

(15) Clarification of Findings of Neglect.—The conference agreement includes the House bill.

(16) Timing of Public Disclosure of Survey Results.—The conference agreement includes the House bill.

(17) Denial of Payment of Legal Fees for Frivolous Litigation.—The conference agreement includes the House bill.

(18) Standards for Certain Professional Services.—The conference agreement includes the Senate amendment, with an amendment to require that any regulations promulgated by the Secretary on medically-related social services, dietary services, and an on-going program of activities include requirements that are at least as strict as those applicable to providers of these services prior to the enactment of OBRA 87. The agreement also deletes the requirement for the Secretary to conduct a study on the hiring and dismissal practices of nursing facilities with respect to social workers, dieticians, activities professionals, and medical records practitioners.

(19) Ombudsman Program Coordination with State Medicaid and Survey and Certification Agencies.—The conference agreement includes the Senate amendment, with an amendment to require State survey agencies to notify the Office of the State Long-Term Care Ombudsman of any adverse action taken against a facility under the enforcement section of nursing home reform law.

7. Home and Community-Based Care Services (Section 6241 of Senate amendment)

Present law

Under special waiver authorities (sections 1915(c) and 1915(d) of Medicaid law), States may cover a variety of home and community-based long-term care services for elderly persons who would otherwise require institutional care whose cost could be reimbursed by Medicaid. States define the services they wish to cover for a targeted population from a broad range of medical and nonmedical social services that are specified in law. These include case management, homemaker/home health aide services, personal care, adult day health, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based setting. States may provide such services, however, only after they have demonstrated to the Secretary of HHS that coverage of these services would be budget neutral.

House bill

No provision.

Senate amendment

(a) Home and Community Care as an Optional, Statewide Service.—Establishes "home and community care for functionally disabled elderly individuals" as a new optional service that States may cover under their Medicaid plans without demonstrating budget neutrality.

(b) Home and Community Care Defined.—Defines "home and community care" as one or more of the following services furnished, according to an individual community care plan, to an individual who has been determined, after an assessment, to be a functionally disabled elderly individual: (1) homemaker/home health aide services; (2) chore services; (3) personal care services; (4) nursing care services provided by, or under the supervision of, a registered nurse; (5) respite care; (6) training for family members in managing the individual; (7) adult day health services; (8) in the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility); (9) such other home and community-based services (other than room and board) as the Secretary may approve.

(c) Functionally Disabled Elderly Individual Defined.—Defines an eligible "functionally disabled elderly individual" as a person who (1) is 65 years of age or older; (2) is determined to be functionally disabled; and (3) is eligible for Medicaid in the community because of low income and resources or, at the option of the State,

because of large medical expenses (that result in a person "spending down" to qualify as "medically needy"). Provides that States may use a 6-month period for projecting medical expenses and income, in determining eligibility of medically needy persons for optional home and community care services.

In the event that a State discontinues a 1915(c) or 1915(d) waiver, specifies that States would be able to continue to cover under the optional home and community care benefit those elderly persons who received home and community-based services under these waivers, so long as they would be eligible for home and community care benefits, except for the income and resources standards used in the State for determining eligibility for persons living in the community. Allows Texas, which is providing personal care services to functionally disabled persons under a special demonstration project waiver authority (section 1115 of the Social Security Act), to extend home and community care services to aged and disabled persons who meet the waiver's test of functional disability and who meet the State's higher institutional income standard.

(d) Functional Disability Defined.—Defines as "functionally disabled" persons who (1) are unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living (ADLs): toileting, transferring, and eating; or (2) have a primary or secondary diagnosis of Alzheimer's disease and are (a) unable to perform without substantial human assistance (including verbal reminding or physical cuing) or supervision at least 2 of the following 5 ADLs: bathing, dressing, toileting, transferring, and eating; or (b) cognitively impaired so as to require substantial supervision from another individual because the individual engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(e) Assessments of Functional Disability.—Requires States, upon the request of an elderly person eligible for Medicaid (or another person on the individual's behalf), to provide for a comprehensive functional assessment to determine whether or not an individual is functionally disabled. Requires that the assessment be based on a uniform minimum data set specified by the Secretary and be conducted using an instrument specified by the State and developed or approved by the Secretary. Provides that no fee may be charged for the assessment.

(1) Specification of Assessment Data Set and Instruments.—By July 1, 1991, requires the Secretary to specify a minimum data set of core elements and common definitions for use in conducting assessments and to establish guidelines for use of the data set. Also requires the Secretary, by July 1, 1991, to designate one or more instruments for use by a State in conducting comprehensive functional assessments. Requires that States use one of the instruments designated by the Secretary or an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines.

(2) Periodic Review.—Requires that individuals qualifying for home and community care services have their assessments periodically reviewed and revised not less often than once every 12 months.

(3) Conduct of Assessment by Interdisciplinary Teams.—Requires that assessments and reviews be conducted by an interdisciplinary team designated by the State. Requires that the Secretary permit a State to provide for assessments and reviews through teams under contracts with public organizations or with nonpublic organizations which do not provide home and community care or nursing facilities and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides community care or nursing services.

Requires that interdisciplinary teams (1) identify functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system, and (2) determine, on the basis of the assessment or review, whether the individual is (or continues to be) functionally disabled. Requires that the results of an assessment or review be used in establishing, reviewing, and revising the individual's community care plan.

(4) Appeals Procedures.—Requires that each State electing to cover home and community care services as an optional benefit have in effect an appeals process for individuals adversely affected by eligibility determinations of the interdisciplinary team.

(f) Individual Community Care Plan (ICCP).—Requires that home and community care be provided according to an individual community care plan (ICCP). Defines an "ICCP" as a written plan which (1) is established and periodically reviewed and revised by a qualified case manager after a face-to-face interview with the individual or primary caregiver and is based on the most recent comprehensive functional assessment of the individual; (2) specifies the home and community care to be provided, within any amount, duration, and scope limitations imposed on care covered under the State Medicaid plan, and indicates the individual's preferences for the types and providers of services; and (3) may specify other services required by the individual. Specifies that an ICCP may also designate the specific providers (qualified to provide home and community care) which will provide care described in the plan.

(1) Qualified Case Management Entity Defined.—Defines a "qualified case manager entity" as a nonprofit or public agency or organization which (a) has experience or has been trained in establishing, periodically reviewing, and revising ICCPs and in providing case management services to the elderly; (b) is responsible for assuring that home and community care covered under the State plan and specified in the ICCP is being provided, for visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and for informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to provide services properly or other similar problems occur; (c) in the case of a nonpublic agency, does not provide home and community care or nursing facility services, and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services; (d) has procedures for assuring the quality of case management services that includes a peer review process; (e) completes the ICCP in a timely manner and reviews and discusses new

and revised ICCPs with elderly individuals or primary caregivers; and meets other standards established by the Secretary to assure that the case manager is competent to perform case management functions and that individuals whose care they manage are not at risk of financial exploitation due to the manager; and (f) meets other standards established by the State.

(2) Appeals Process.—Requires States to have in effect an appeals process for individuals who disagree with their ICCP.

(g) Ceiling on Payment Amounts and Maintenance of Effort.—

(1) Ceiling on Payment Amounts.—Specifies that Federal Medicaid matching payments to a State for home and community care provided in any calendar quarter could not exceed 50 percent of the product of the following: (1) the average number of individuals receiving care in the quarter, (2) the average per diem rate of payment for Medicare skilled nursing facility care in that State for the quarter, and (3) the number of days in the quarter.

(2) Maintenance of Effort.—Requires States covering home and community care to report to the Secretary, in a format developed or approved by the Secretary, the amount of funds obligated by the State (including its localities) for the provision of home and community care to functionally disabled elderly individuals in each Federal fiscal year (beginning with FY 1990). If the amount spent by a State in any future fiscal year is less than the amount spent in 1989 requires the Secretary to reduce Federal matching payments to the State by the difference between the amounts.

(h) Minimum Requirements for Home and Community Care.—Requires that home and community care meet requirements for individuals' rights and quality published or developed by the Secretary, including (1) a requirement that individuals providing community care are competent to provide care; (2) specification of individuals' rights. Rights include the following: (1) the right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except for an individual determined incompetent) to participate in planning care or changes in care; (2) the right to voice grievances about services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State or local authorities; (3) the right to confidentiality of personal and clinical records; (4) the right to privacy and to have one's property treated with respect; (5) the right to refuse all or part of any care and to be informed of the likely consequences of such refusal; (6) the right to education or training for oneself and for members of one's family or household on the management of care; (7) the right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP; (8) the right to be fully informed orally and in writing of the individual's rights; and (9) any other rights established by the Secretary.

(i) Minimum Requirements for Small Community Care Settings.—Requires that small community care settings in which home and community care is provided meet certain requirements.

(1) Small Community Care Settings Defined.—Defines "small community care setting" as (a) a nonresidential setting that serves

more than 2 and less than 8 individuals, or (b) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided.

(2) Minimum Requirements.—Provides that a small community care setting in which home and community care is provided must meet certain requirements, including requirements (1) published or developed by the Secretary as provided below; (2) relating to individuals' rights as specified in Medicaid law for nursing facility residents, to the extent applicable to the setting; (3) for informing individuals, orally and in writing, of their legal rights; (4) for meeting any applicable State or local requirements regarding certification or licensure; (5) for meeting any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and (6) for being designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(j) Minimum Requirements for Large Community Care Settings.—Requires that large community care settings in which home and community care is provided meet certain requirements.

(1) Large Community Care Setting Defined.—Defines "large community care setting" as (a) a nonresidential setting in which more than 8 individuals are served; (b) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided.

(2) Minimum Requirements.—Provides that a large community care setting in which home and community care is provided must meet certain requirements, including requirements (1) published or developed by the Secretary as provided below; (2) relating to individuals' rights as specified in Medicaid law for nursing facility residents, to the extent applicable to the setting; (3) for informing individuals, orally and in writing, of their legal rights; and (4) for meeting certain requirements in Medicaid law relating to administration and other matters for nursing facilities, except that the Secretary must provide for the application of life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of Ownership and Control Interests and Exclusion of Repeated Violators.—Requires that community care settings disclose persons with an ownership or control interest in the setting. Prohibits a community care setting from having as a person with an ownership or control interest any one who has been excluded from participation in Medicaid or who has had an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the minimum requirements for settings specified in this section.

(k) Survey and Certification Process.—

(1) Certifications.—Requires that States be responsible for certifying the compliance of providers of home and community care and community care settings with the minimum requirements. Provides that the failure of the Secretary to issue regulations for States to carry out these certification requirements shall not relieve a State of its responsibility to do so. Requires the Secretary to be responsible for certifying the compliance of State providers of home and community care and State community care settings with

these same requirements. Requires that certification of providers and settings occur no less frequently than once every 12 months.

(2) Reviews of Providers.—Requires that certification of a provider of home and community care be based on a periodic review of the provider's performance in providing care according to the requirements specified in law. Provides that if the Secretary has reason to question the compliance of a provider of home and community care with the requirements, the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets the requirements.

(3) Surveys of Community Care Settings.—Requires that certification of community care settings be based on a survey conducted without prior notice. Authorizes a civil money penalty of up to $2,000 for persons who notify a community care setting of the time or date of the survey and requires the Secretary to review each State's procedures for avoiding giving notice of surveys. Requires that surveys be based on a protocol developed by the Secretary. Prohibits the use on survey teams of persons who are serving (or have served within the previous 2 years) as members of the staff of, or as consultants to, the community care setting being surveyed (or the persons responsible for the setting), or who have a personal or familial financial interest in the setting. Provides that if the Secretary has reason to question the compliance of a setting with the certification requirements, the Secretary may conduct a survey of the setting, and on the basis of the survey, make independent and binding determinations about the extent to which the setting meets the requirements.

(4) Investigation of Complaints and Monitoring of Providers and Settings.—Requires the States and the Secretary to maintain procedures and adequate staff to investigate complaints of violations of certification requirements for providers of community care and community care settings.

(5) Investigation of Allegations of Individual Neglect and Abuse and Misappropriation of Individual Property.—Requires States to provide for a process for receiving, reviewing, and investigating allegations of individual neglect and abuse (including injuries of unknown source) and misappropriation of individual property. Requires States to provide for documentation of findings relating to these allegations, for including any brief statement of the individual disputing the findings, and for including in any disclosure of findings the brief statement (or a clear and accurate summary thereof).

(6) Disclosure of Results of Inspections and Activities.—Requires the States and the Secretary to make available to the public information on all surveys, reviews, and certifications, including statements of deficiencies; copies of cost reports (if any) of providers and settings; copies of statements of ownership, and information about owners and other persons convicted of certain offenses. Requires the State make a reasonable effort to notify promptly an individual receiving care and an immediate family member of a finding of substandard care. Requires States to provide its Medicaid fraud and abuse control unit with access to information of the State agency responsible for surveys, reviews, and certifications.

(l) Enforcement Process for Providers of Community Care.—
(1) State Authority.—Provides that if a State finds that a provider of home or community care no longer meets the requirements of law, the State may terminate the provider's participation in Medicaid and may provide, in addition, for a civil money penalty. Provides that if the State finds that a provider meets the requirements but, as of a previous period, did not meet them, the State may provide for a civil money penalty for the period during which the provider was not in compliance. Specifies that these provisions shall not restrict the remedies available to a State to remedy a provider's deficiencies.

Requires States to establish by law (whether statute or regulation) at least a civil money penalty remedy, assessed and collected with interest for each day the provider is out of compliance with the requirements of law. Provides that the funds collected by a State as a result of imposition of the penalty may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements. Requires States to specify criteria as to when and how this remedy is to be applied and the amounts of any penalties. Requires that these criteria be designed to minimize the time between the identification of violations and final imposition of the penalties and provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies. Requires that States electing to provide home and community care establish the above civil money penalty remedy. Requires the Secretary to provide, through regulations or otherwise, by not later than July 1, 1990, guidance to the States for establishing this remedy, but the failure of the Secretary to provide this guidance would not relieve a State of its responsibility for establishing the remedy.

(2) Secretarial Authority.—Provides the Secretary with the authority and duties of a State with regard to a State provider of home or community care, except for different specifications for civil money penalties described below. For any other provider of home or community care in a State, provides that if the Secretary finds that a provider no longer meets a certification requirement, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty described below. Further provides that if the Secretary finds that a provider meets the requirements but, as of a previous period, did not meet them, the Secretary may provide for a civil money penalty for the period during which the provider was not in compliance.

Requires the Secretary to impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance with the requirements. Requires the Secretary to specify criteria as to when and how this remedy is to be applied and the amounts of any penalties. Requires that these criteria be designed to minimize the time between the identification of violations and final imposition of the penalties and provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(m) Secretarial Responsibilities.—Requires the Secretary to publish by December 1, 1991, a proposed regulation that sets forth requirements for home and community care and for community care settings, including regulations for functional assessments, qualifica-

tions for case managers, minimum requirements for home and community care, minimum requirements for small and large community care settings, and survey protocols. Requires the Secretary to develop final requirements, and survey protocols and methods for evaluating and assuring the quality of community care settings, by October 1, 1992. Provides that interim and final requirements assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings. Provides that the Secretary may, from time to time, revise the requirements, protocols, and methods. Requires that the Secretary's authority not be delegated to the States. Specifies that States could impose requirements that are more stringent than the requirements published or developed by the Secretary.

(n) Deeming and Waiver.—Provides that area agencies on aging as defined in the Older Americans Act (P.L. 100-175) are considered public agencies for purposes of these amendments. Authorizes States to waive the requirement that a nonpublic agency not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides community care or nursing facility services for nonprofit agencies located in areas that are not urbanized areas (as defined by the Bureau of the Census). Also authorizes States to waive the Medicaid statewideness requirement for a program of home and community care provided under this section.

(o) Limitation on Amount of Expenditures as Medical Assistance.—Limits funds that may be expended as medical assistance for home and community care as an optional service to $10 million for FY91, $20 million for FY92, $40 million for FY93, $70 million for FY94, and such sums as provided by Congress for fiscal years thereafter. Provides that these funds be allocated to each State in the proportion of the amount of Federal expenditures made available to the State for FY89 (as reported on line 6 of the four quarterly form HCFA-64 expenditure reports) to the sum of Federal expenditures for all States, excluding the territories.

(p) Payment for Home and Community Care.—Requires States to pay for home and community care at rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards. Amends Medicaid law (clarification of flexibility for State payments of inpatient hospital services) to specify that the Secretary could not limit the amount of payment that may be made for home and community care.

Prohibits Federal Medicaid matching payments from being used to pay for the costs of a civil money penalty or for the legal expenses in defense of a civil money penalty or for exclusion from the program, if there is no reasonable legal ground for the provider's case.

(q) Conforming Amendments.—Makes a number of conforming amendments in Medicaid law to accommodate the new home and community care optional benefit.

Effective date: Applies to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations have been promulgated by that date. Amendments pertaining to payments for home and community care apply to home and community care furnished on or after July 1, 1991, or 30 days after the date of publication of interim regulations of the Secretary setting forth minimum requirements for home and community care providers and for community care settings. Amendment prohibiting Federal matching payments for civil money penalties and legal expenses for these penalties, effective for penalties imposed after the date of enactment. Waives the application of the Paperwork Reduction Act and Executive order 12291 to regulations required for implementing home and community care as an optional service.

Conference agreement

7. Home and Community-Based Care Services.—The conference agreement includes the Senate amendment, with an amendment to increase the cap on expenditures to $580 million over 5 years ($40 in FY91, $70 in FY92, $130 in FY93, $160 in FY94, and $180 in FY95).

8. Community Supported Living Arrangements Services (Section 6242 of the Senate bill)

Present law

(a) Provision as Optional Service.—Medicaid law provides only limited coverage for home and community-based care for persons with mental retardation or related conditions: (1) under the 1915(c) waiver, States may cover habilitation and other community-based services, on a budget neutral basis, to persons at risk of institutionalization; (2) under the case management option, States may target case management services in designated areas; (3) some States use certain optional services, such as "other rehabilitative services" and "personal care services" as a means of offering certain home and community-based services to this population.

(b) Community Supported Living Arrangements Services.—There is no current law definition comparable to "community supported living arrangements services." However, the Medicaid 1915(c) waiver defines "habilitation services" as services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings, and includes prevocational, educational, and supported employment services. The term "habilitation services" does not include special education and related services and vocational rehabilitation services otherwise available under other Federal programs.

(c) Developmentally Disabled Individual.—Persons with mental retardation qualify for Medicaid on the basis of being disabled under the Federal Supplemental Security Income program (except in certain States using more restrictive standards), and meeting Medicaid income and resource eligibility standards. Persons with

conditions related to mental retardation are defined in regulation as individuals who have a severe, chronic disability that is attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation. The condition must result in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation and must require treatment or services similar to those needed by such persons. The condition must be manifest prior to age 22, be likely to continue indefinitely, and result in substantial functional limitations.

(d) Integrated Living Environment.—No provision.

(e) Participating States.—No provision.

(f) Quality Assurance.—Under their 1915(c) waivers, States must provide assurances that necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services. For other noninstitutional providers of Medicaid covered services, States generally follow their own procedures for certifying that providers deliver quality care. Ordinarily the State Medicaid agency relies on findings of the applicable licensing agency or board for the particular provider.

(g) Maintenance of Effort.—No provision.

(h) Waiver of Requirements.—A waiver granted under section 1915(c) may include a waiver of comparability of amount, duration, and scope of services; statewideness; and income and resource rules.

(i) Treatment of Funds.—No provision.

(j) Limitations on Expenditures.—No provision.

House bill

No provision.

Senate amendment

(a) Provision as Optional Service.—Establishes "community supported living arrangements services" as a new optional service that from 4 to 8 participating States may cover under their Medicaid plans on a limited basis for the first 5 years of the program. The service is limited to developmentally disabled individuals without regard to whether such individuals are at risk of institutionalization.

(b) Community Supported Living Arrangements Services.—Defines "community supported living arrangements services" to mean one or more of the following services designed to assist an individual in activities of daily living necessary to permit such individual to live in an integrated living environment. Services may include personal assistance; training and habilitation services (necessary to assist the individual in achieving increased integration, independence, and productivity); 24-hour emergency assistance; assistive technology; adaptive equipment; and other nonexcluded services as approved by the Secretary. Excluded services are room and board, and the cost of prevocational, vocational, and supported employment services.

(c) Developmentally Disabled Individual.—The term "developmentally disabled individual" means an individual defined by the

Secretary within the term "mental retardation and related conditions" as defined in regulations in effect on July 1, 1990. In addition, the individual must be residing with the individual's family or legal guardian or in an integrated living environment in which no more than 3 other recipients of services under this section are residing, without regard to whether the individual is at risk of institutionalization.

(d) Integrated Living Environment.—Defines the term "integrated living environment" to mean an environment located in a neighborhood which is representative of residential neighborhoods in the community and is populated primarily by individuals other than developmentally disabled individuals.

(e) Participating States.—Requires the Secretary to develop criteria for the review of applications from States requesting funds to provide community supported living arrangements services. Requires that during the first 5 years of the provision of services, no less than 4 and no more than 8 States are allowed to participate in this program.

(f) Quality Assurance.—Requires participating States to establish and maintain a quality assurance program under which providers of service are certified and surveyed using standards that include minimum qualifications and training requirements for staff, financial operating standards, and a consumer grievance process. Requires States to establish monitoring boards consisting of providers, family members, consumers, and neighbors, and to establish reporting procedures to make information available to the public. Requires States to provide for public hearings on the quality assurance plan prior to its adoption and implementation.

(g) Maintenance of Effort.—Requires States providing community supported living arrangements services to maintain current levels of spending for such services to be eligible for participation.

(h) Waiver of Requirements.—Allows the Secretary to waive comparability of amount, duration, and scope of services; statewideness; freedom of choice of providers; and other Medicaid requirements as needed to carry out the provisions of this section.

(i) Treatment of Funds.—Requires that funds expended under this section be in addition to funds expended for any existing Medicaid service, including any waiver services, for which the individual receiving services under this programs is already eligible.

(j) Limitations on Expenditures.—Limits the amount of funds that may be expended to carry out the purposes of this section to $5,000,000 for FY 1991; $10,000,000 for FY 1992; $20,000,000 for FY 1993; $35,000,000 for FY 1994; and such sums as provided by Congress for fiscal years thereafter.

Effective Date: July 1, 1991, regardless of whether final regulations have been promulgated by such date. Requires the Secretary to provide that the required applications are received from the States and approved prior to the effective date.

Conference agreement

8. Community Supported Living Arrangements Services.—The conference agreement includes the Senate amendment, with an amendment that caps expenditures at $100 million, provides that the applicable number of residents who are recipients of this serv-

ice shall be 3 or fewer, requires that a State amendment must be reviewed by the State Planning Council and the Protection and Advocacy System established under section 124 and section 142, respectively, of the Developmental Disabilities Assistance and Bill of Rights Act, and specifies that payment for quality assurance functions shall be eligible for Federal matching funds. The agreement also provides for an Individual Support Plan that outlines individual needs and the activities necessary to assist the individual, and clarifies that the prohibition on payments for room and board excludes the portion of costs for rent and food attributable to an unrelated caregiver residing in the household.

9. Miscellaneous Provisions Relating to Payments (Sections 4441-4448 of the House bill, sections 6122(b), 6268, 6274, and 6275 of the Senate amendment)

Present law

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—States must contribute from 17 to 50 percent of the costs of providing Medicaid benefits; the State share rises in proportion to the State's per capita income. (A portion of this responsibility may be passed on to localities.) Some States finance part of the State share of Medicaid costs through voluntary donations of funds by hospitals participating in the program. Other States have used dedicated taxes imposed on hospital revenues. The Administration contested some of these State actions in administrative proceedings and indicated its intention to modify Medicaid regulations to change the treatment of voluntary contributions or provider-paid taxes used by States to claim Federal matching funds. The Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) prohibited the Secretary from issuing final regulations in this matter before May 1, 1989. OBRA 89 (P.L. 101-239) extended the moratorium to December 31, 1990. In February, 1990, the Administration published proposed regulations that would restrict Federal matching funds for portions of the State share that result from provider donations or taxes applied uniquely to providers.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—States are required to make additional payments for inpatient services to hospitals serving a disproportionate number of low-income patients with special needs. A hospital may qualify for the payment adjustments if its Medicaid inpatient utilization rate is at least one standard deviation above the mean rate for all Medicaid-participating hospitals in the State; the rate is calculated as Medicaid inpatient days divided by total inpatient days. (A hospital may instead qualify on the basis of its "low-income utilization rate"; see item (3) below.)

(2) Federal Financial Participation for Medicaid Capital Payments.—The Secretary is prohibited from limiting the amount of payment adjustments made by States to disproportionate share hospitals.

(3) Disproportionate Share Formula.—The statute currently specifies two ways that a State can compute the amount of additional

payment to be made to disproportionate share hospitals, one which follows the comparable calculation under Medicare, and one that increases payments proportionately to the amount by which a hospital's Medicaid utilization rate exceeds one standard deviation above the mean Medicaid utilization rate for participating hospitals in the State. In an initial instruction to States, the Secretary allowed States to use some other method (such as one that varied payment adjustments by type of hospital) if aggregate payment adjustments would be at least as much as would have been made under one of the statutory options. This third option would be eliminated under proposed regulations published by the Secretary on March 19, 1990.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—OBRA 1987, as amended by MCCA, provided that, for the three years beginning July 1, 1988, a State using a health insuring organization (HIO) to administer part of its program on a statewide basis could use an alternate system for classifying hospitals as disproportionate share hospitals and computing payment adjustments, so long as the aggregate adjustments were at least equal to what would otherwise have been payable under Medicaid law, and provided that disproportionate share hospitals assured the availability of Medicaid-participating obstetricians at rural as well as urban hospitals.

(5) Minimum Payment Adjustment for Certain Hospitals.—No provision.

(6) Payment on the Basis of Low-Income Utilization Rate.—A hospital may qualify as a disproportionate share hospital if its low-income utilization rate exceeds 25 percent. (The calculation of the low-income utilization rate takes into account a hospital's dependence on Medicaid and State and local indigent care funding and the amount of charity care it furnishes.) The amount of payment adjustment for such a hospital is computed in the same way as the adjustment for a hospital qualifying on the basis of Medicaid utilization alone.

(c) Federally Qualified Health Centers.—OBRA 1989 requires States to include in their Medicaid benefit packages services furnished by federally qualified health centers, and to pay the centers 100 percent of their reasonable costs. "Federally qualified health center" means a facility which is receiving a grant under section 329, 330, or 340 of the Public Health Service Act, or is determined to meet the requirements for such a grant.

(d) Hospice Payments.—States may cover under their Medicaid programs hospice care as an optional benefit for terminally ill individuals who voluntarily elect to receive hospice care in lieu of certain other benefits. OBRA 89 required States to pay hospices for Medicaid eligible nursing home residents electing hospice an additional amount (to take into account the room and board furnished by the facility) equal to at least 95 percent of the rate that would have been paid by the State to that facility for the Medicaid beneficiary.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—In order for psychiatric inpatient care of individuals under age 21 to be covered under Medicaid, a team of physicians and other qualified personnel must certify that the patient

requires inpatient care at the time of admission (or at the time the patient qualifies for Medicaid benefits, if this occurs after admission) and that the services can reasonably be expected to improve the patient's condition to the point at which inpatient care will no longer be necessary. The Secretary has the authority to disallow Federal matching payments to a State for cases in which these certification of need requirements are not met.

(f) Treatment of Interest on Indiana Disallowance.—When the Secretary issues a notice of disallowance of Federal Medicaid funds, the State may choose to pay the amount in dispute at once or wait until all appeals have been exhausted. If the State defers payment and the disallowance is affirmed, the State must pay interest on the amount owed to the Federal Government.

(g) Billing for Services of Substitute Physician.—States are generally prohibited from issuing Medicaid payment to anyone other than the provider of a service, the provider's employer, or the facility in which the provider furnished the service pursuant to a contractual agreement. There are exceptions for assignment to government agencies, court-ordered assignments, and assignments to collection agents not paid on a contingent or percentage basis.

House bill

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—Permits States to use hospital donations to finance up to 10 percent of the State's share of Medicaid costs in a fiscal year, provided the funds are subject to the unrestricted control of the State and the funds donated by or on behalf of a particular hospital account for no more than 10 percent of the hospital's gross revenues in a year (not counting revenues from Medicare, Medicaid, or the Maternal and Child Health block grant). Provides that a transfer of funds from a hospital to a State may be regarded as a donation even if the hospital benefits from it, unless the benefit is directly related to the transfer in timing and amount. Prohibits the Secretary from limiting payments to a State on the grounds that State spending was financed by taxes on provider services.

Effective date: The provision relating to donated funds applies to funds donated on or after January 1, 1991; the provision relating to taxes takes effect on January 1, 1991.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—Provides that the computation of the Medicaid inpatient utilization rate shall include days spent by patients (including newborns) in specialized wards or while waiting for placement outside the hospital.

(2) Federal Financial Participation for Medicaid Capital Payments.—Provides that the prohibition against limitation by the Secretary of payment adjustments to disproportionate share hospitals also applies to pass-through payments for those hospitals' capital costs.

(3) Disproportionate Share Formula.—Provides that a State may use an alternative formula that takes into account the characteristics of patients in different categories of disproportionate share hospitals in the State.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—Makes permanent the special rule for a State using an HIO.

(5) Minimum Payment Adjustment for Certain Hospitals.—Provides for a special minimum disproportionate share payment adjustment for a hospital with a Medicaid inpatient utilization rate of at least 45 percent and in which no more than 8 percent of inpatient days are covered by private insurance, if the hospital is in a health manpower shortage area in a State that has a freedom-of-choice waiver to permit selective contracting for inpatient hospital services. Requires that the additional payment for such a hospital be at least half of the amount paid under the State plan for inpatient operating costs, provided that aggregate Medicaid payments do not exceed the hospital's reasonable costs for providing inpatient and outpatient care to Medicaid beneficiaries.

(6) Payment on the Basis of Low-Income Utilization Rate.—No provision.

Effective date: (1) is effective July 1, 1990. (2) is effective as if included in the enactment of OBRA 1981. (3) and (4) are effective as if included in the enactment of OBRA 1987. (5) applies to calendar quarters beginning on or after January 1, 1991, and before October 1, 1993, without regard to whether implementing regulations have been promulgated.

(c). Federally Qualified Health Centers.—Requires States to use Medicare payment methodology to reimburse federally qualified health centers (FQHC). Requires State prepaid risk contracts with health maintenance organizationbe an entity rather than a facility, and to include an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (P.L. 93-638) among entities that are FQHCs.

Effective date: Effective as if included in the enactment of OBRA 1989.

(d) Hospice Payments.—Clarifies that the additional amount be paid for dually eligible nursing facility residents electing hospice under Medicare. Makes conforming changes to reflect the elimination of the distinction in Medicaid law between SNFs and ICFs.

Effective date: Effective as if included in OBRA 1989.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—Applies restrictions to disallowances for failure to comply with certification of need requirements, in cases in which the DHHS Inspector General has initiated or completed review by October 11, 1990, and the disallowance or deferral action has not taken at the time of enactment or has not been the subject of a final judicial determination or administrative decision not subject to judicial review. Limits the time period of a disallowance for any patient to the period between admission and the date on which the facility has developed a plan of care or documented the need for inpatient care. Further limits the disallowance period to three years before the date of the audit that uncovers a violation, and limits the disallowance amount to 25 percent of the Federal payment made for the period of noncompliance.

Effective date: Enactment.

(f) Treatment of Interest on Indiana Disallowance.—Provides that, with respect to any disallowance of payments for skilled nurs-

ing or intermediate care facilities (ICFs) or ICFs for the mentally retarded on the grounds that the facilities were not properly certified during the period June 1, 1982, through September 30, 1984, Indiana may defer payment without interest penalty until all appeals have been exhausted.

Effective date: Enactment.

(g) Billing for Services of Substitute Physician.—No provision.

Senate amendment

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—Continues the moratorium on regulations pertaining to voluntary contributions and provider-specific taxes until September 1, 1991.

Effective date: Enactment.

(b) Disproportionate Share Hospitals.—

(1) Clarification of Calculation of Adjustment for Disproportionate Share Hospitals.—No provision.

(2) Federal Financial Participation for Medicaid Capital Payments.—No provision.

(3) Disproportionate Share Formula.—Allows States to use criteria other than those set forth in the statute for determining whether a facility qualifies as a disproportionate share hospital, if the criteria were included in a State plan amendment approved by the Secretary before May 1, 1989. Permits States to continue using current methods for computing payment adjustments, provided the amount of each adjustment is reasonably related to services provided to Medicaid or low-income patients and either (A) the amount of each adjustment is at least as great as the amount specified in law or (B) in the case of a State plan approved before December 22, 1987, the aggregate payment adjustments are at least as much as would have been made under one of the statutory options.

(4) Clarification of Special Rule for State Using Health Insuring Organization.—No provision.

(5) Minimum Payment Adjustment for Certain Hospitals.—No provision.

(6) Payment on the Basis of Low-Income Utilization Rate.—Requires that the payment adjustment for a hospital qualifying on the basis of its low-income utilization rate increase in proportion to the amount by which that rate exceeds 25 percent.

Effective date: Enactment.

Federally Qualified Health Centers.—No provision.

(d) Hospice Payments.—No provision.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—Similar provision, except limits the disallowance period to three fiscal years before the fiscal year in which a determination by the Secretary of noncompliance is made.

Effective date: Applies to disallowance actions that are pending or for which there has not been a final judicial decision as of the date of enactment.

(f) Treatment of Interest on Indiana Disallowance.—No provision.

(g) Billing for Services of Substitute Physician.—Provides that, when one physician's patients are treated by a second physician under an informal reciprocal arrangement (lasting no more than 14 days) or under an arrangement involving per diem or fee-for-

time compensation (for a period of up to 90 days, or longer if provided by the Secretary), payment may be made to the first physician, so long as the claim identifies the physician who actually furnished the service.

Effective date: Applies to services furnished on or after the date of enactment.

Conference agreement

9. Miscellaneous Provisions Relating to Payments.—

(a) State Medicaid Matching Payments through Voluntary Contributions and State Taxes.—The conference agreement on voluntary contributions includes the Senate amendment with an amendment to extend the moratorium on final regulations re voluntary contributions to December 31, 1991. The conference agreement on provider-specific taxes includes the House bill with an amendment to exclude taxes from a provider's cost base for purposes of Medicaid reimbursement.

(b) Disproportionate Share Hospitals.—The conference agreement includes item (1), (3), and (4) of the House bill, and item (6) of the Senate amendment, with amendments.

(c) Federally Qualified Health Centers.—The conference agreement includes the House bill with technical amendments.

(d) Hospice Payments.—The conference agreement includes the House bill.

(e) Limitations on Disallowance of Certain Inpatient Psychiatric Hospital Services.—The conference agreement includes the Senate amendment.

(f) Treatment of Interest on Indiana Disallowance.—The conference agreement includes the House bill.

(g) Billing for Services of Substitute Physician.—The conference agreement includes the Senate amendment with an amendment to follow Medicare policy.

10. Miscellaneous Provisions Relating to Eligibility and Coverage (Sections 4451-4458 of the House bill, sections 6243, 6265, 6266, 6267, and 6271 of the Senate amendment)

Present law

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA, P.L. 99-272), provided that an employer with 20 or more employees that offered a group health plan must offer employees the opportunity to continue coverage under that plan after certain "qualifying events," such as termination of employment, that would ordinarily end the coverage. For most qualifying events, coverage can continue for 18 months, with the employee responsible for the premium (up to 102 percent of the premium otherwise applicable). OBRA 89 allowed an extension of coverage up to 29 months for persons with a disability at the time they terminated employment. For months after the 18th month, the employee's maximum premium is 150 percent of the premium otherwise applicable.

State Medicaid programs are permitted to pay health insurance premiums on behalf of beneficiaries, but only if the beneficiaries meet the financial and other standards for Medicaid eligibility.

(b) Provisions Relating to Spousal Impoverishment.—The Medicare Catastrophic Coverage Act included provisions that made major changes in Medicaid's treatment of income and resources of a couple when one member of the couple is in a nursing home and eligible for Medicaid. These provisions addressed "spousal impoverishment" issues and permit the spouse remaining in the community to retain more resources and income than previously had been allowed.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—No provision.

(d) Amendments Relating to Medicaid Transition Provision.—States are required to continue Medicaid for 6 months after a family loses AFDC benefits because of increased earnings or hours of employment, if the family received AFDC benefits in 3 of the 6 months preceding the termination. The State must offer an additional 6 months of coverage when the initial period ends, subject to an optional premium and other limitations. In order to retain eligibility, the family must report on earnings and child care costs by the 21st day of the 4th, 7th, and 10th months of the extended coverage. The transition coverage provisions, established by the Family Support Act of 1988, expire September 30, 1998.

(e) Clarifying Effect of Hospice Election.—Medicaid law requires terminally ill beneficiaries electing hospice to waive payment for services that are determined by the Secretary to be related to the treatment of the individual's terminally ill condition or that are duplicative of hospice care. Medicaid also specifies that election procedures must be consistent with those under Medicare. Medicare does not cover certain non-skilled services that States may cover under their Medicaid programs, e.g., personal care services.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) States may not provide Medicaid to persons with a countable family income greater than 133⅓ percent of the State's maximum AFDC payment for a family of the same size. This restriction does not apply to target groups of pregnant women and children, qualified Medicare beneficiaries, persons receiving or eligible for cash assistance (or who would be eligible if they were not in an institution), and persons in an institution meeting an income standard no higher than 300 percent of the maximum SSI benefit. Although the 133⅓ percent limit has been understood as applying only to the "medically needy", Congress has added a number of additional mandatory or optional Medicaid coverage groups without specifying whether the limit was intended to apply to them.

(2) In determining eligibility for the aged, blind, and disabled, section 209(b) States may use more restrictive income and resource standards that those used for SSI. MCCA (P.L. 100–360) provided that 209(b) States may not use more restrictive methodologies in determining income and resources than those used under SSI, but did not modify a conflicting existing provision of law.

(3) The income limitation for a medically needy family is 133⅓ percent of the highest amount which would ordinarily be paid under the State's AFDC plan to a family of the same size without any income or resources. In the case of a one person family, the "highest amount which would ordinarily be paid" is the amount determined by the State (on the basis of reasonable relationship to the amounts payable under AFDC to families of two or more persons) to be payable to a family consisting of one person, without any income or resources, if the State's plan provided for aid to such a family. OBRA 89 prohibits the Secretary from issuing, before December 31, 1990, a final regulation implementing the proposed regulation published on September 26, 1989 (54 Federal Register 39421) insofar as it changes in any way the methods for establishing the medically needy income level for single individuals currently used by any State.

(g) Codification of Coverage of Rehabilitation Services.—Rehabilitative services are among the optional Medicaid benefits States are permitted to offer. Medicaid regulations define these as medical or remedial services recommended by a physician or other licensed practitioner and designed to reduce physical or mental disability and restore an individual to the best possible functional level.

(h) Personal Care Services.—Some State Medicaid programs cover personal care services, such as assisting with administration of medications and basic personal hygiene, eating, grooming, and toileting, which can help persons who would otherwise require institutional care to remain at home. Although personal care services are not among the optional Medicaid services included in statute, the Secretary has authorized coverage of personal care services in a beneficiary's home under a general authority to approve the inclusion of additional medical or remedial services in a State Medicaid plan. The services are defined in Medicaid regulations as those provided in a recipient's home provided by a qualified person who is supervised by a registered nurse and who is not a member of the individual's family, pursuant to a plan of treatment prescribed by a physician.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—There is no explicit statutory provision for treatment of alcoholism or drug dependency under Medicaid, although some treatment such as detoxification or methadone maintenance may be provided under physician's, inpatient hospital, clinic, or other covered services. States are permitted to provide Medicaid coverage to individuals under age 21 in psychiatric hospitals, or to individuals over age 65 in institutions for mental diseases (IMDs). However, current law does not allow States to cover individuals who are over age 21 and under age 65 in IMDs.

(j) Medicaid Spenddown Option.—States are permitted to provide Medicaid coverage to "medically needy" individuals—persons who fall into one of the categories covered by the State, and whose income and resources are above categorically needy standards but below the medically needy standards established by the State. Many persons become medically needy only after they have incurred medical expenses sufficient to reduce their incomes and/or resources to medically needy levels. This process is known as

spenddown. Individuals may incur regular expenses that make them newly eligible periodically.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—A State may choose to contract with the Social Security Administration (SSA) for determinations of eligibility for SSI disability benefits. (Such agreements are authorized by section 1634 of the Social Security Act, and States entering into them are known as section 1634 States.) The State agency may retain the responsibility for determining eligibility for persons who apply only for medical assistance on the basis of disability. A final rule published by the Secretary on December 11, 1989, provides that a section 1634 State cannot make its own determination of disability for Medicaid purposes for an individual whose SSI application is still in process at SSA (unless the period for determining Medicaid eligibility has expired or the individual cites different grounds for disability) or for an individual determined by SSA not to be disabled within the 12-month period before the Medicaid application.

House bill

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—Allows a State Medicaid program the option of paying COBRA continuation premiums for individuals who are eligible for COBRA coverage, whose family income is no more than 100 percent of the Federal poverty level, and whose resources are no more than twice the limit applicable for SSI in the State, if the State determines that resulting savings in Medicaid costs are likely to exceed the cost of the premiums. Provides that income and resources are to be determined according to the State's methodology for SSI, except that incurred costs for medical or remedial are not to be taken into account.

Effective date: Applies to medical assistance furnished on or after January 1, 1991.

(b) Provisions Relating to Spousal Impoverishment.—Includes clarifying amendments to spousal impoverishment provisions of Medicaid law: Provides that the assessment and allocation of a couple's resources is to occur only at the beginning of the first continuous period of institutionalization beginning after September 30, 1989. Provides clarifications with regard to the non-application of State community property laws and transfer of resources to the community spouse.

Effective date: Effective as if included in the Medicare Catastrophic Coverage Act of 1988.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—Provides that reparation payments made by the Federal Republic of Germany shall be disregarded in determining the income of individuals who are already eligible for Medicaid and who are institutionalized or receiving services under a home and community-based services program.

Effective date: Applies to treatment of income for months beginning more than 30 days after enactment.

(d) Amendments Relating to Medicaid Transition Provision.—Makes the transition coverage provisions permanent. Prohibits a State from requiring reports other than at the specified intervals and allows a State to continue coverage for a family that fails to report if the family establishes to the State's satisfaction that there was good cause for the failure. Provides that a termination for failure to report may not effect until 10 days after notice is mailed.

Effective date: Effective as if included in the enactment of the Family Support Act of 1988.

(e) Clarifying Effect of Hospice Election.—Adds to Medicaid law a clarification that, in electing hospice care, a Medicaid beneficiary waives payment for services for which payment may otherwise be made under Medicare.

Effective date: Enactment.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) Clarifies that the income limit applies only to the "medically needy" (and not to a variety of other optional or mandatory coverage groups not explicitly exempt from the limit under current law).

(2) Modifies the conflicting provision to clarify that methodologies used by section 209(b) States in determining income and resources for the aged, blind, and disabled may be less restrictive, but not more restrictive, that those used under SSI.

(3) Permits a State to base medically needy eligibility for single persons on an AFDC payment standard for a family of two, if the State plan provided for such policy as of June 1, 1989.

Effective date: (1) and (2) Effective as included in the enactment of OBRA 1986. (3) Enactment.

(g) Codification of Coverage of Rehabilitation Services.—Incorporates the regulatory definition in the statute, with minor changes.

Effective date:—Enactment.

(h) Personal Care Services.—Requires that Federal matching payments for Minnesota include payments for personal care, defined as services (1) prescribed by a physician for an individual in accordance with a plan of treatment, (2) provided by a person who is qualified to provide such services who is not a member of the individual's family, (3) supervised by a registered nurse, and (4) furnished in a home or other location; but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

Effective date:—Enactment and also applies to personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—No provision.

(j) Medicaid Spenddown Option.—No provision.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—No provision.

Senate amendment

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—

(b) Provisions Relating to Spousal Impoverishment.—No provision.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—No provision.

(d) Amendments Relating to Medicaid Transition Provision.—No provision.

(e) Clarifying Effect of Hospice Election.—No provision.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—

(1) No provision.

(2) No provision.

(3) Similar provision.

Effective date:—Enactment.

(g) Codification of Coverage of Rehabilitation Services.—No provision.

(h) Personal Care Services.—Includes in Medicaid's definition of home health services personal care services (1) prescribed by a physician for an individual in accordance with a plan of treatment, (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (3) supervised by a registered nurse, and (4) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility, such as adult day care settings or congregate living arrangements.

Effective date: Effective for home health services provided January 1, 1991, through December 31, 1993.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—Clarifies current policy by amending section 1905(a) of the Social Security Act to prohibit exclusion of a service (including counseling) solely because it is provided as a treatment service for alcoholism or drug dependency.

Effective date: Enactment.

(j) Medicaid Spenddown Option.—Permits States to apply an alternative methodology for establishing medically needy eligibility. Medicaid applicants would have the option of establishing eligibility after paying the anticipated amount of regularly incurred expenses to the State, instead of becoming eligible only after incurring expenses. Federal financial participation would be available only for State expenditures in excess of the amount paid in.

Effective date: Enactment.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—Provides that a State may furnish Medicaid to an otherwise eligible person on the basis of the State's own determination of disability or blindness during the period before SSA makes a final determination of disability or blindness, provided that the State uses the criteria set forth in SSI law. Requires the General Accounting Office to study the appropriateness of using SSI disability and blindness criteria, including durational requirements, for Medicaid eligibility purposes. Requires that a report on the study and any recommendations be submitted to Congress and to the Secretary by January 1, 1992.

Effective date: Enactment.

Conference agreement

10. Miscellaneous Provisions Relating to Eligibility and Coverage.—

(a) Providing Medical Assistance for Payments for Premiums for COBRA Continuation Coverage Where Cost Effective.—The conference agreement includes the House bill, with an amendment limiting application of the provision to employers with 75 or more employees.

(b) Provisions Relating to Spousal Impoverishment.—The conference agreement includes the House bill.

(c) Disregarding German Reparation Payments from Post-Eligibility Treatment of Income under the Medicaid Program.—The conference agreement includes the House bill.

(d) Amendments Relating to Medicaid Transition Provision.—The conference agreement does not include the House bill.

(e) Clarifying Effect of Hospice Election.—The conference agreement includes the House bill.

(f) Clarification of 133 Percent Limit and Clarification of Medically Needy Income Levels.—The conference agreement includes item (3) of the House bill.

(g) Codification of Coverage of Rehabilitation Services.—The conference agreement includes the House bill.

(h) Personal Care Services.—The conference agreement includes the House bill in fiscal years 1991 through 1994, and the Senate amendment in fiscal year 1995.

(i) Medicaid Coverage of Alcoholism and Drug Dependency Treatment Services.—The conference agreement includes the Senate amendment.

(j) Medicaid Spenddown Option.—The conference agreement includes the Senate amendment.

(k) Optional State Medicaid Disability Determinations Independent of the Social Security Administration.—The conference agreement includes the Senate amendment.

11. Miscellaneous Provisions Relating to Health Maintenance Organizations. (Section 4461 of the House bill, section 6273 of the Senate amendment)

Present law

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—No provision.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—An HMO or similar organization with a risk-sharing contract must generally have an enrolled population of which no more than 75 percent are Medicare or Medicaid beneficiaries; there are exceptions for certain federally funded centers, pre-1970 contractors, and other specified organizations. Organizations that are not federally qualified HMOs (HMOs determined by the Secretary to meet standards set forth in Title XIII of the Public Health Service Act) must also provide adequate assurances against the risk of insolvency and must report to the State on transactions with related entities.

(3) Prohibition Against Physician Incentive Payments.—OBRA 1986 prohibited hospitals and health maintenance organizations (HMOs) or similar entities with a risk contract under Medicare or Medicaid from making payments to a physician, directly or indirectly, as an inducement to reduce or limit services provided to beneficiaries or enrollees. For HMOs, the effective date has been delayed until April 1, 1991.

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—States may generally enter into Medicaid risk contracts only with HMOs or similar organizations no more than 75 percent of whose enrollment consists of Medicare or Medicaid beneficiaries. The requirement may be modified or waived for an HMO that is a public entity if the Secretary determines that special circumstances warrant the modification and the HMO is making reasonable efforts to enroll persons other than Medicare/Medicaid beneficiaries.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—Medicaid beneficiaries enrolling in federally qualified HMOs (those determined by the Secretary to meet the requirements of Title XIII of the Public Health Service Act) or certain organizations receiving Federal grant funds may be required to remain enrolled for a period of up to 6 months; the State may agree to continue payment to the HMO on behalf of an enrollee for up to 6 months even if the enrollee loses Medicaid eligibility (these provisions are known as "lock-in" and "guaranteed enrollment period," respectively).

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—A Medicaid beneficiary may lose eligibility for a short interval and then be determined eligible again. In some States, if such an individual was enrolled under a Medicaid HMO contract at the time eligibility was terminated, the State will automatically reenroll the individual in the same HMO when eligibility is reestablished. This practice is not explicitly authorized by law.

(4) Elimination of Provisional Qualification for HMOs.—Before 1981, States could contract with an HMO only if the HMO was federally qualified or "provisionally qualified," having applied for Federal qualification and awaiting final determination. OBRA 1981 permitted States to make their own determinations that an HMO was eligible for a contract, rendering the "provisionally qualified" category obsolete.

(5) Medicaid Enrollment Waiver.—No provision.

Effective date: Enactment.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—

(1) Extends the waiver through June 30, 1996, and permits expansion of the project to other counties if the expansion will not result in greater Medicaid expenditures than would otherwise have been made.

(2) No provision.

Effective date: Enactment.

(d) Treatment of Dayton Area Health Plan.—Exempts the Dayton Area Health Plan from the 75 percent Medicare/Medicaid enrollment maximum for the 5-year period beginning on the date the

Secretary granted the plan a Medicaid waiver under section 2175 of OBRA 1981.

Effective date: Enactment.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—Exempts up to three county-operated HMOs that became operational on or after January 1, 1986, and that are designated by the State of California from statutory requirements for Medicaid HMO contracts. The HIOs must be subject to California's own regulatory system for prepaid plans, must enroll all the Medicaid beneficiaries in the county (except qualified Medicare beneficiaries), must assure a reasonable choice of providers, must comply with the requirements for payment adjustments for disproportionate share hospitals, and must pay for children's hospital services for children with special health care needs at rates established by the California Medical Assistance Commission. The exemption applies only if the HIOs enroll no more than 10 percent of all Medicaid beneficiaries in California (not counting qualified Medicare beneficiaries).

House bill

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—Requires that an HMO or similar organization with a Medicaid risk-sharing contract have a minimum of 5,000 enrollees; permits the Secretary to make payment for an organization with fewer members if it serves primarily members residing in a rural area.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—Provides that, if a Medicaid risk-sharing contractor enters into an arrangement under which another entity provides services on a prepaid or other risk basis, the subcontractor must meet the 75 percent requirement, the 5,000 enrollee requirement added by section (1), and the solvency and reporting requirements. Exceptions from all requirements are provided for federally funded health centers and pre-1970 contractors, and exceptions from the financial and reporting requirements are provided for federally qualified HMOs.

(3) Prohibition Against Physician Incentive Payments.—Postpones the effective date for Medicaid only to April 1, 1992.

Effective date: (1) and (2) apply to contract years beginning on or after January 1, 1991. (3) Enactment.

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—Deletes the requirement that the Secretary determine that special circumstances warrant a modification before modifying the 75 percent rule for a public entity.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—Extends the lock-in and guaranteed enrollment period options to "competitive medical plans," organizations which are not federally qualified HMOs but which have entered into a risk-sharing contract with the Medicare program. Lock-in for such an organization is permissible if it complies with the 75 percent Medicare/Medicaid enrollment maximum.

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—Authorizes automatic HMO reenrollment for individuals

whose period of ineligibility is no longer than 2 months, provided that the organization still has a contract.

(4) Elimination of Provisional Qualification for HMOs.—Eliminates provisions relating to provisionally qualified HMOs.

(5) Medicaid Enrollment Waiver.—No provision.

Effective date: Enactment.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—

(1) Extends the waiver through June 30, 1996.

(2) Authorizes the Secretary to treat an undertaking by the Minnesota Medicaid agency in the same way as the New Jersey undertaking.

Effective date: Enactment.

(d) Treatment of Dayton Area Health Plan.—No provision.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—No provision.

Effective date: Enactment.

Senate amendment

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—

(1) HMO Minimum Membership Requirements.—No provision.

(2) Application of Minimum Enrollment, Patient Mix, and Financial Solvency Requirements.—No provision.

(3) Prohibition Against Physician Incentive Payments.—(Section 6153 of the Senate amendment repeals the prohibition for both Medicare and Medicaid HMOs and substitutes a system of regulation of physician incentive plans in Medicare HMOs by the Secretary. See section xxxxxxxxxx.) Provides for a civil money penalty of $25,000 in cases in which an HMO with a Medicaid contract knowingly makes a direct and specific individual payment to a physician as an inducement to withhold or limit a specific medically necessary service to an identifiable patient. Subjects Medicaid HMOs to the new rules established for Medicare HMOs.

Effective date:

(b) Special Rules and Medicaid Enrollment Waiver.—

(1) Waiver of 75 Percent Rule for Public Entities.—No provision.

(2) Extending Special Treatment to Medicare Competitive Medical Plans.—No provision.

(3) Automatic 1-month Reenrollment for Short Periods of Ineligibility.—No provision.

(4) Elimination of Provisional Qualification for HMOs.—No provision.

(5) Medicaid Enrollment Waiver.—Requires the Secretary to approve waivers of the 75 percent Medicare/Medicaid enrollment maximum after: (a) conducting a study of situations in which the limit is impractical or other means of assuring quality and fiscal soundness could be used; (b) publishing by April 1, 1991, for review and comment a set of minimum standards for waiver eligibility; and (c) publishing a final notice of revised standards. Provides that waivers shall initially be approved for 3 years, with renewals as established by the Secretary.

Conference agreement

11. Miscellaneous Provisions Relating to Health Maintenance Organizations.—

(a) Requirements for Risk-Sharing Health Maintenance Organizations Under Medicaid.—The conference agreement does not include the House bill.

(b) Special Rules nd Medicaid Enrollment Waiver.—The conference agreement includes the House bill.

(c) Extension and Expansion of Minnesota Prepaid Medicaid Demonstration Project.—The conference agreement includes the House bill.

(d) Treatment of Dayton Area Health Plan.—The conference agreement does not include the House bill.

(e) Treatment of Certain County-Operated Health Insuring Organizations.—The conference agreement includes the House bill.

12. Miscellaneous Provisions Relating to Demonstration Projects and Home and Community-Based Waivers (Sections 4471-4474 of the House bill; sections 6261-6263, 6270, 6272, and 6276 of the Senate amendment)

Present law

(a) Medicaid Long-Term Care Insurance Demonstration Project.—In most States, Medicaid will cover the cost of long-term care for low-income elderly individuals who are entitled to benefits under the Supplemental Security Income (SSI) program. In order to qualify for SSI, a person must have resources and income below certain levels.

A state may also cover long-term care for elderly individuals with incomes exceeding SSI eligibility levels in several ways. First, a State may establish higher income standards for elderly individuals in nursing facilities. The income levels for these individuals may not exceed 300 percent of the SSI benefit level for an individual. Second, a State may elect to cover under its Medicaid program elderly persons with income below 100 percent of poverty. Third, a State may establish a "medically needy" program under which an individual with income exceeding Medicaid eligibility levels becomes eligible for long-term care by incurring expenses for medical care that reduce his or her income to a level specified by the State. This process is known as "spending down."

Once an individual with income exceeding SSI levels becomes eligible for Medicaid, this person is required to contribute to the cost of care all income in excess of amounts that are disregarded for personal needs and other purposes. This is known as the "post-eligibility treatment of income."

Medicaid law has other provisions requiring States to prohibit the transfer of assets for less than fair market value in order to gain Medicaid coverage for needed care. Medicaid also allows States to place liens on the property of certain Medicaid beneficiaries and permits States to defray the cost of Medicaid assistance paid on behalf of nursing home residents through estate recovery.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—Section 2175 of OBRA 81 permitted a State to obtain a waiver of certain Medicaid requirements, including the beneficiary's right to choose a provider of services, in order to establish a system of selective contracting with providers. Medicaid law includes requirements that States pay health care practitioners, such as physicians, on a timely basis, but makes no such provision for other types of providers, such as hospitals.

(2) Reasonable and Adequate Payment.—States must reimburse hospitals at rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities in providing quality care.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Section 2176 of OBRA 81 permitted States to obtain waivers of certain Medicaid requirements in order to establish a home and community-based service program for a defined population (such as the aged or the mentally retarded) of persons who would otherwise require long-term institutional care. Costs for room and board are excluded from those which a State may include as Medicaid costs under a waiver.

(2) Treatment of Persons with Mental Retardation or a Related Condition in a Decertified Facility.—In order to obtain a section 2176 waiver, the State must demonstrate that average per capita Medicaid costs for waiver participants are no greater than would have been incurred in the absence of the waiver.

(3) Scope of Respite Care.—One of the services that may be furnished under a home and community-based services waiver is respite care, services that allow family or other voluntary caregivers to take time away from their responsibility for a patient's care.

(4) Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—OBRA 1987 established requirements for screening of mentally retarded or mentally ill patients before admission to a nursing facility, to determine whether alternative treatment is more appropriate. The requirements apply to all persons admitted on or after January 1, 1989.

(5) Waiver Baseline Under Section 1915(d) Waiver.—OBRA 1987 established a "section 1915(d)" waiver option, under which a State could provide home and community-based services if it agreed to accept a cap on its total expenditures for long-term care for the elderly, including those served under the waiver and those in nursing homes. The cap is updated annually to reflect increases in the State's elderly population and in a "market basket" index of the prices of long-term care related goods and services. There is no provision for adjustment of the cap to reflect changes in nursing home costs resulting from changes in Medicaid law, such as the nursing home reform provisions of OBRA 1987.

(6) Freedom of Choice of Case Managers.—Waivers to provide home and community-based services may not include a waiver of the requirement that beneficiaries must be permitted to obtain covered services from any qualified provider of their choice.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—OBRA 86 required the Secretary to grant waivers of certain Medicare and Medicaid requirements to not more than 10 public or nonprofit private community-based organizations to pro-

vide health care on a capitated basis to the frail elderly at risk of institutionalization. The terms and conditions of the waivers were to be substantially the same as those for On Lok, a project in San Francisco that has provided services to frail elderly at risk of institutionalization.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—No provision.

(f) Demonstration: Respite Care.—Medicaid does not cover respite care services except where provided under a home and community-based services waiver approved by the Secretary under section 1915(c) of Medicaid law. OBRA 86 established a Medicaid respite care demonstration project in the State of New Jersey. This project is intended to determine the extent to which respite services will delay or avert the need for institutional care and how such services can enhance and sustain the role of the family in providing long-term care services for elderly and disabled individuals at risk of institutionalization. The project was to be conducted for a maximum of 4 years (FY 1987 through FY 1990), plus an additional period of up to 6 months for final evaluation and reporting. Federal payments for the project were limited to $1 million for FY 1987 and $2 million for each of the following years. The start-up of the project was delayed for a number of reasons.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to Be at Risk of Contracting the HIV Virus.—No provision.

(h) Mental Health Facility Certification Demonstration Project.—A hospital may be deemed to meet Medicaid and Medicare participation standards if it is accredited by the Joint Commission on Accreditation of Healthcare Facilities (JCAHO). All other types of institutional providers are subject to direct review by State certification agencies.

House bill

(a) Medicaid Long-Term Care Insurance Demonstration Project.—Authorizes the Secretary of HHS to approve State demonstration projects under which persons who are 65 years of age or older and who have exhausted benefits under qualified private long-term care insurance policies to become eligible for Medicaid coverage of their long-term care costs under special eligibility rules pertaining to income and assets as described below.

(1) Special Eligibility Provisions.—Provides that in determining initial eligibility for Medicaid assistance for long-term care that (a) the income of the beneficiary who is 65 years of age or older and who has exhausted benefits under the qualified long-term care insurance policy be disregarded; and (b) the valuation of assets of the beneficiary be reduced by the amount of protection provided under the long-term care insurance policy or $75,000 (indexed from December 1991 for inflation, as measured by the Consumer Price Index for all urban consumers), whichever is less. For purposes of post-eligibility treatment of income and assets, provides that the amount the beneficiary would be required to contribute toward the cost of long-term care services would be the same as for other persons entitled to Medicaid assistance for these services under the

State plan, except for the assets that can be protected as specified above. Provides that a State Medicaid plan may not discriminate in services covered or otherwise, against any individual based on whether or not the individual participates in a demonstration project.

(2) Definitions.—Defines the following terms:

"Covered long-term care beneficiary" means an individual who at any time purchases benefits under a qualified long-term care insurance policy, and who voluntarily elects, at the time of purchase of the policy, to participate in the project.

"Long-term care services" means medical assistance for the following items and services, to the extent the State Medicaid plan otherwise covers such services: (a) nursing facility services; (b) home health services (described in Medicaid law); (c) private duty nursing services; (d) case management services; (e) homemaker/home health aide services; (f) personal care services; (g) adult day health services; (h) respite care.

"State Medicaid plan" means the plan of medical assistance of a State approved under title XIX of the Social Security Act.

"Qualified long-term care insurance policy" means a long-term care insurance policy that meets the requirements specified below.

(3) Terms of Projects.—Establishes terms of the projects:

(A) General.—Prohibits the Secretary from approving any project unless it meets the following requirements: (1) The terms of the project are disclosed to each individual before the individual is enrolled; and (2) the qualified long-term care insurance made available in connection with the project cannot, or otherwise limit, payment under the policy in any manner because the insured is eligible for, or payment may be made, for services under any public program (including the Medicare or Medicaid programs).

(B) Limit on Number of Lives Insured under All Projects.—Requires that the Secretary approve projects in a manner that assures that there are never more than 25,000 covered long-term care beneficiaries under all the projects. Provides that the Secretary may require that a project of a State must permit enrollment of a minimum number of covered long-term care beneficiaries.

(C) Waiver of Certain Requirements.—Provides that the Secretary may waive the following requirements for covered long-term care beneficiaries to the extent required to carry out the project: sections 1901, 1902(a)(1), 1902(a)(10), 1902(a)(17), and 1903(f), relating to required eligibility and benefits; and sections 1902(a)(14) and 1916(b), relating to premiums and cost-sharing.

(4) Limitation on Payments.—Provides that Federal matching payments may not be made for long-term care services for persons 65 years of age or older during a year in which the project is in effect to the extent that expenditures exceed the projected amount (determined by the Secretary at the time of approval of the project) that the State would have spent for these services during the year, if the project had not been in effect.

(5) State Assurances.—Prohibits the Secretary from approving State applications for a project unless the State provides satisfactory assurance that—

(a) aggregate expenditures under the plan for long-term care services for individuals 65 years of age or older in any fiscal year

under the project will not exceed the aggregate expenditures for such services for these individuals in the fiscal year in the absence of the project;

(b) there will be no reduction or limitation of benefits to any individual eligible for medical assistance under the State Medicaid plan as a result of operation of the project;

(c) the State will continue to make long-term care services available under its Medicaid plan, at least to the extent these services are made available under its plan before the date of approval and could continue to be provided consistent with law;

(d) the State will not permit the sale of any qualified long-term care insurance policy under the project unless the State has determined that the policy meets requirements specified below and meets standards at least as stringent as those set forth in the NAIC Long-Term Care Insurance Model Act, as of June 1989 (to the extent not inconsistent with the requirements specified below);

(e) in the sale of long-term care insurance policies not covered under the project, the State will require, at or before the time of sale of a policy, that there be a disclosure of the fact that purchase of the policy will not provide potential benefits under Medicaid;

(f) the State will guarantee the payment of benefits under qualified long-term care insurance policies sold under the project (Federal matching payments would not be available with respect to a State's performance of the guarantee);

(g) the State covers under its Medicaid plan pregnant women and children under the age of one with income up to 185 percent of poverty;

(h) the State is in compliance with various requirements for nursing facilities participating in Medicaid;

(i) nursing facilities participating in Medicaid establish and maintain identical policies and practices regarding admission for all individuals regardless of whether or not the individuals are participating in the project;

(j) the State has actuarial guidelines regarding, and actuaries capable of evaluating, actuarial submissions of companies seeking to offer qualified long-term care insurance policies under the project; and

(k) the State has provided for a program of counseling residents of the State on the purchase of long-term care insurance policies and alternative financial option for protection of assets.

(6) Requirements for Qualified Long-Term Care Insurance Policies.—Provides that qualified long-term care insurance policies meet the following requirements:

(a) Standard Format and Disclosure.—Each policy, and application for policy, must be written in simple, easily understood English in a standard format (established by the State) providing standardized terms and disclosure. Marketing materials must be written or otherwise state in simple, easily understood English. No policy may be sold (or offered for sale) unless there is disclosed in writing, no later than the time of sale of the policy, (1) the proportion of premiums collected (and interest and other revenues derived therefrom) which will be applied to payment of benefits, and (2) the potential Medicaid benefits associated with the demonstration project with purchase of a policy.

(b) Minimum Loss-Ratio.—The policy must guarantee over time, using generally accepted actuarial standards, that at least 70 percent of the amount of the premiums (and interest and other revenues derived therefrom) will be paid on benefits under the policy.

(c) Standard Minimum Benefits.—Each policy must cover at least nursing facility services and home and community-based care (personal care services including home health aide and homemaker services, home health services, and respite) up to the maximum dollar level of benefits provided under the plan. The policy may not impose any limits on the duration of the period of services under the policy, other than the maximum dollar level of benefits (which shall apply uniformly to all services). The payment levels established for services under the plan must be adjusted at least annually to reflect the percentage increase in the Consumer Price Index for All Urban Consumers.

(d) Specification of Maximum Dollar Level of Benefits.—Each policy must specify a maximum dollar level of benefits. This maximum must be increased, in each year after the year following the year of its issuance, by the percentage increase in the Consumer Price Index for All Urban Consumers.

(e) Determination of Benefit Eligibility.—Each policy must use a standard formula, set by the State and based on a uniform assessment instrument specified by the State, to determine the level of care appropriate for each case. The formula must be applied by the State or a case-management agency which is independent of the issuer of the policy. A policy may not condition or limit eligibility for noninstitutional benefits to the need for or receipt of institutional services; for home care services to the need for or receipt of nursing care; or for any benefits on the medical necessity for such benefits. Each policy must provide for and specify procedures (meeting reasonable standards specified by the State) for the appeal of determinations of level of care.

(f) Limitation Based on Pre-Existing Condition.—A policy may not limit or delay an individual's eligibility for benefits based on a pre-existing condition, except that it may deny payments during the first 6 months of coverage for treatment for any condition that existed during the 6 months before the date of the purchase of the policy.

(g) No Post-Claims Conditioning and Guaranteed Renewable.—After a policy has been issued, the issuer may not deny claims under the policy under any grounds other than fraud or a knowing misrepresentation in the application for the policy or deny renewal of coverage other than on such grounds or the failure to make timely payment of premiums.

(h) Medical Underwriting, Premiums, and Cost-Sharing.—

(1) No Medical Underwriting.—An individual may not be discriminated against in the offering, renewal, or benefits under a policy based on the individual's medical condition, except that the issuer of a policy may deny initial issuance to an individual receiving long-term care services at the time of the application for a policy. The prohibition on medical underwriting would not prevent the issuer of a policy from varying the premiums based on the age classification of persons at the time of the issuance of the policy.

(2) Level Premiums.—Each policy must have periodic premiums that are the same for all individuals in the same age group who purchased the policy when they were in the same age group. The premium rates must be guaranteed for the duration of the policy and must be suspended during any period in which benefits are payable under the policy.

(3) Nonduplication of Medicare Benefits.—Each policy must provide that, to the extent required under Medicare secondary payer provisions, benefits are not payable under the policy for services for which payment may be made under Medicare.

(4) Reduced Paid-Up Provision.—Each policy must have a provision under which, if the policy lapses after 5 or more years of coverage, the policy will provide, without payment of any additional premiums, benefits equal to at least 30 percent of the maximum dollar level of benefits available at term, and, after subsequent periods of coverage, the policy will provide, without payment of any additional premium, benefits equal to at least an increased percentage established by the Secretary) of the maximum dollar level of benefits available at term.

(5) Additional Consumer Protections.—Each policy must meet such standards relating to compensation arrangements, advertising, marketing, and appropriateness of purchase which the Secretary finds are equal to or more stringent than the requirements specified in sections 12, 15, 16, and 17 of Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Act, as adopted by the National Association of Insurance Commissioners as of December 7, 1989.

(i) Access to Information.—The issuer of the policy will make available to the State and the Secretary (upon request) information on the utilization of benefits and payments under the policy, the health status of individuals purchasing the policies, and such other information as the Secretary may require, including information on lapse rates, rescissions, application denials, payment denials, and complaints received.

(7) Prohibited Sales Practices.—Provides that each individual selling or offering for sale a long-term care insurance policy under the demonstration project has a duty of good faith and fair dealing to the purchaser or potential purchaser of a policy. Specifies that the individual selling or offering for sale a policy may not complete the medical history portion of an application; may not knowingly sell a policy to provide benefits to a person who is eligible for Medicaid; and may not sell a policy knowing that the policy provides coverage that duplicates coverage already provided and may not sell a policy unless the individual (or representative of the individual) provides a written statement to the effect that the coverage does not duplicate other coverage in effect. Provides that any person who sells a policy under the demonstration in violation of State requirements for qualified policies or who violates the above requirements will be subject to a civil money penalty of not to exceed $25,000 for each violation. Specifies that the provisions of sections 1128A of the Social Security Act (civil money penalties) will apply, with certain exceptions, to these penalties.

(8) Application, Duration, and Eligibility.—Provides that an application for approval of a demonstration project will be deemed

granted unless the Secretary, within 90 days after the date of its submission, either denies the application in writing or informs the State in writing of any additional information which is needed in order to make a final determination on the application. Specifies that after the date the Secretary receives the additional information, the application will be deemed granted unless the Secretary, within 90 days, denies the application. Provides that any termination of a project shall not affect covered long-term care beneficiaries who purchased qualified long-term care insurance policies before the termination date.

(9) Annual State Reports.—Requires the States to report annually (during the project) to the Secretary on—

(a) the number of individuals enrolled in the demonstration project in the State;

(b) the number of enrollees actually receiving long-term care services under the demonstration (whether through long-term care insurance or Medicaid);

(c) the number of enrollees actually receiving long-term care in the form of medical assistance;

(d) the average income, age, and assets of each enrollee; and

(e) the number and characteristics of private insurers with policies approved by the State under the demonstration.

(10) Secretary's Reports.—Requires the Secretary to submit to Congress reports on the demonstration projects. Requires that the first report be submitted in 1997 and subsequent reports be submitted each 6th year thereafter until 2021. Requires that each report summarize and analyze information reported by the State (as specified above) and that it evaluate the cost effectiveness of the projects.

Effective date: Enactment.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—Extends prompt payment requirements to any type of provider participating under a selective contracting waiver.

(2) Reasonable and Adequate Payment.—No provision.

Effective date: (1) is effective as of the first calendar quarter beginning more than 30 days after enactment.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Provides that the "room and board" exclusion does not apply to the share of rent and food costs attributable to an unrelated caregiver who is residing with a waiver participant and without whom the participant would require institutional care.

(2) Treatment of Persons with Mental Retardation or a Related Condition in a Decertified Facility.—Provides that, in estimating per capita costs in the absence of a waiver for persons with mental retardation or a related condition who are residents of an ICF-MR whose Medicaid participation has been terminated, the State may use the costs that would have been incurred if the facility had not been terminated.

(3) Scope of Respite Care.—Provides that, so long as a State meets the cost-effectiveness test for a waiver, the Secretary may not limit the hours or days of respite care that may be provided.

(4) Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—Provides that, in the case of a waiver program for the mentally retarded, a State may revise its per capita cost estimates to take into account increases in ICF–MR or habilitation facility costs resulting from implementation of the pre-admission screening requirement.

(5) Waiver Baseline Under Section 1915(d) Waiver.—No provision.

(6) Freedom of Choice of Case Managers.—No provision.

Effective date: (1) applies to services furnished on or after the date of enactment. (2) applies as if included in the enactment of OBRA 1981, but applies only to facilities whose Medicaid participation is terminated after enactment. (3) applies as if included in the enactment of OBRA 1981. (4) Enactment.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—Expands the number of frail elderly demonstrations eligible for waivers from 10 to 15 and prohibits the Secretary from requiring an organization receiving an initial waiver on or after October 1, 1990, to provide services under Medicare on a capitated or other risk basis during the first 2 years of the waiver. Also applies spousal impoverishment protections to persons receiving services under the frail elderly demonstration.

Effective date: Enactment.

(e) Demonstration Projects to Study the Effects of Allowing States to Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified to Receive Medicaid Benefits.—No provision.

(f) Demonstration: Respite Care.—No provision.

(g) Demonstration Project to Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to Be at Risk of Contracting the HIV Virus.—No provision.

(h) Mental Health Facility Certification Demonstration Project.—No provision.

Senate amendment

(a) Medicaid Long-Term Care Insurance Demonstration Project.—Requires the Secretary of HHS to provide for a demonstration project in the States of Indiana, Illinois, Wisconsin, Oregon, California, Connecticut, Massachusetts, Missouri, New York, and New Jersey to cover under Medicaid the long-term care expenses of persons with income and resources above Medicaid eligibility levels, if the individual purchases a State approved long-term care insurance policy covering long-term care for a period preceding the individual's eligibility for Medicaid.

(1) Special Eligibility Provisions.—No provision.

(2) Definitions.—No provision.

(3) Terms of Projects.—

(A) General.—No provision.

(B) Limit on Number of Lives Insured under All Projects.—No provision.

(C) Waiver of Certain Requirements.—Provides that the Secretary may waive the following requirements for the project: sections 1901, 1902(a)(10) (A) and (C), 1903(a)(1), and 1903(f), relating to categorical and income eligibility limits; sections 1902(a)(10) (A) and (D), relating to amount, duration, and scope of services; and to diagnosis, type of illness, or condition; section 1902(a)(10)(E), relating to

qualified Medicaid beneficiaries; section 1902(a)(23), relating to freedom of choice; section 1902(a)(1), relating to statewideness; sections 1902(a)(10), matter following (E) and 1902(a)(17), relating to comparability; section 1902(a)(14), relating to premiums; section 1902(a)(18), relating to liens and recovery of assets; sections 1902 (50) and (51), relating to personal needs allowance, protection of community spouse, and transfer of assets.

(4) Limitation on Payments.—No provision.

(5) State Assurances.—Requires that States conducting demonstration projects provide assurances to the Secretary that—

(a) the estimated average per capita and aggregate expenditures for long-term care services for individuals under the waiver will not exceed estimated average per capita and aggregate Medicaid expenditures for such services for these individuals in the absence of the waiver;

(b) it will continue to make long-term care services available under its Medicaid plan to any individual who would be entitled to long-term care services before the waiver (except to the extent that subsequent Federal legislation specifically requires changes in eligibility for these services);

(c) it will not approve a long-term care insurance policy unless it meets standards at least as stringent as those set forth in the National Association of Insurance Commissioners (NAIC) Long-Term Care Insurance Model Act as of June 1989; and

(d) expenditures for long-term care services provided to individuals participating in the projects after the expiration of the projects shall be shared by State and Federal Governments in accordance with Medicaid formulae in force at the time.

(6) Requirements for Qualified Long-Term Care Insurance Policies.—No provision.

(7) Prohibited Sales Practices.—No provision.

(8) Application, Duration, and Eligibility.—Requires the Secretary to enter into an agreement with the States for conducting the demonstration projects and to award the demonstrations in a budget neutral way. Requires the Secretary to either approve or disapprove the State's application within 90 days of receipt. If the Secretary disapproves an application, requires the Secretary within 30 days of disapproval to notify the State of the reasons for the disapproval and to allow the State to correct any deficiencies and allow the State to resubmit a corrected application which the Secretary must approve if it meets the requirements for the demonstration. Specifies that the demonstration would be for an initial period of 5 years and provides for renewal for an additional 5 years. Provides that an individual who participates in a demonstration will remain eligible for long-term care services under the State Medicaid plan after the expiration of the project.

(9) Annual State Reports.—Similar provisions for items (a) through (c), with a fourth item: the number and type (commercial, not for profit, and HMO) characteristics of private insurers with policies approved by the States under the demonstrations.

(10) Secretary's Reports.—Requires the Secretary to report to Congress on the demonstration not later than 4 years after the date of enactment. Requires that the report summarize and analyze infor-

mation reported by the State (as specified above) and that it evaluate the cost effectiveness of the project and make recommendations on the desirability and appropriateness of authorizing any State to make long-term care services available on a similar basis.

Effective date: Enactment.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—

(1) Timely Payment.—No provision.

(2) Reasonable and Adequate Payment.—Prohibits the Secretary from waiving the statutory requirement relating to adequacy of hospital reimbursement rates as part of a section 2175 selective contracting waiver.

Effective date: (2) is effective for calendar quarters beginning on or after January 1, 1991.

(c) Home and Community-Based Services Waivers.—

(1) Clarifying Definition of Room and Board.—Similar provision.

(2) Treatment of Persons With Mental Retardation or a Related Condition in a Decertified Facility.—Similar provision.

(3) Scope of Respite Care.—No provision.

(4) Permitting Adjustment in Estimates To Take into Account Preadmission Screening Requirement.—No provision.

(5) Waiver Baseline Under Section 1915(d) Waiver.—Requires that the base for the expenditure cap under a section 1915(d) waiver be adjusted to reflect changes in cost resulting from legislation.

(6) Freedom of Choice of Case Managers.—Allows the State to restrict the choice of providers of case management services under a waiver program to those employed or trained by the State, provided that the State furnishes assurances to the Secretary that the restriction will not substantially limit beneficiaries' access to waiver services.

Effective date: Enactment.

(d) Provisions Relating to Frail Elderly Demonstration Project Waivers.—No provision.

Effective date: No provision.

(e) Demonstration Projects To Study the Effects of Allowing States To Extend Medicaid Coverage to Certain Low-Income Families Not Otherwise Qualified to Receive Medicaid Benefits.—Requires the Secretary to enter into agreements with at least 3 and no more than 4 States to conduct demonstrations to study the effect on access to and costs of health care for uninsured individuals in families with incomes below 150 percent of the official poverty line. At least 1, but not more than 2, of the projects shall be conducted on a sub-State basis in an area that contains a high percentage of racial or ethnic minorities. The Secretary may not enter into an agreement with a State unless that State has elected to offer Medicaid coverage to all pregnant women, infants, and children at the highest income standards without application of a resource standard; this requirement, and some other Medicaid requirements, may be waived for projects conducted in sub-State areas. If the Secretary determines it is cost-effective to do so, a project may use employer coverage, requiring an employer contribution and using Medicaid benefits to the extent they are not available under the employer coverage. Permits application of an asset test consistent with the State's tests for AFDC. Does not provide

for eligibility to begin before the month in which eligibility is established.

Except in the sub-State projects, prohibits projects from providing nursing facility, community-based long-term care, or pregnancy-related services. Permits a State to limit eligibility, or services other that early and periodic screening, diagnosis and treatment for children under age 18.

No premiums or cost-sharing may be required of individuals with family incomes below the poverty line. For those with incomes above 100 percent of the poverty line, the monthly average amount of premiums, coinsurance, and other cost-sharing must not exceed 3 percent of the family's average gross monthly earnings. Income determinations must be according to the methodology used under Medicaid for AFDC beneficiaries.

Provides that demonstrations are to begin by July 1, 1991, and continue for 3 years unless the Secretary finds the State noncompliant with program requirements. Limits expenditures for the projects to $12,000,000 in each of fiscal years 1991–1993, and to $4,000,000 in fiscal year 1994. Requires the Secretary to submit an interim report to Congress by January 1, 1993, and a final report by January 1, 1995.

Effective date: Enactment.

(f) Demonstration: Respite Care.—Extends the demonstration until September 30, 1992, and requires that for the period October 1, 1990 through September 30, 1992, Federal payments for the project not exceed amounts expended under the project in the preceding fiscal year.

Effective date: Enactment.

(g) Demonstration Project To Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined To Be at Risk of Contracting the HIV Virus.—Requires the Secretary, within 3 months after enactment, to provide for 2 State Medicaid demonstration projects providing Medicaid coverage and specified additional services to: (a) persons testing positive for infection with the human immunodeficiency virus (HIV) who meet the State's maximum income and resource standards for disabled persons, or (b) pregnant women under age 19 who have multiple medical and psychosocial needs and who are determined to be at risk of HIV infection because of substance abuse. Services to be furnished include (to the extent not otherwise covered under the State plan) general and preventive medical care, prescription drugs, counseling and social services, substance abuse treatment, home care, case management, health education, respite care, and dental services. Requires demonstration States to enter into agreements with hospitals within 12 months under which the hospitals will be paid on a monthly per capita basis for services to project enrollees. Limits enrollment in each project to 200 persons. Provides that projects are to begin within 9 months after enactment and continue for 3 years. Provides for Federal matching at the applicable Federal medical assistance percentage, and authorizes the Secretary to waive requirements of the Social Security Act as necessary to carry out the projects.

Effective date: Enactment.

(h) Mental Health Facility Certification Demonstration Project.—Requires the Secretary to conduct a 5-State, 3-year demonstration program under which outpatient mental health and substance abuse facilities or residential or day treatment services for children may be deemed to meet Medicaid standards on the basis of approval by accrediting bodies. The demonstration is to be developed in consultation with JCAHO and other national accrediting bodies, the National Governors' Association and other associations of State officials, consumer organizations, and other parties. The Secretary must develop criteria for accrediting bodies' activities, assuring that inspections are unannounced, the public and the State have access to findings of inspections, deficiencies are documented and promptly reported to the State, complaints by recipients of service or advocates are investigated, and the State conducts periodic validation inspections to assess the accrediting bodies' work. Criteria, which must also address standards, reporting requirements, and duration of accreditation, are to be published in the Federal Register within 9 months after enactment; the Secretary must allow 90 days for public comment. Within 180 days after termination of the project, the Secretary is required to submit an evaluation to the Senate Committee on Finance, including the extent of accrediting bodies' participation, provider compliance, impact on access and quality, and ability of accrediting bodies and States to work together to resolve problems and complaints, along with such recommendations as the Secretary deems appropriate.

Effective date: Enactment.

Conference agreement

12. Miscellaneous Provisions Relating to Demonstration Projects and Home and Community-Based Waivers.—

(a) Medicaid Long-Term Care Insurance Demonstration Project.—The conference agreement does not include the provision.

(b) Payment Under Waivers of Freedom of Choice of Hospital Services.—The conference agreement includes item (1) of the House bill.

(c) Home and Community-Based Services Waivers—The conference agreement includes items (2), (3), and (4) of the House bill and items (1), (5), and (6) of the Senate amendment, with an amendment to item (6).

(d) Provision Relating to Frail Elderly Demonstration Project Waivers.—The conference agreement includes the House bill with an amendment which clarifies that, for these projects, application of spousal impoverishment protections is at the option of the State.

(e) Demonstration Projects To Study the Effects of Allowing States To Extend Medicaid Coverage to Certain Low-Income Families not Otherwise Qualified To Receive Medicaid Benefits.—The conference includes the Senate amendment with amendments to (1) delete references to racial/ethnic targetting, and (2) clarify the provision is applicable only to uninsured individuals who are not otherwise eligible to receive Medicaid benefits.

(f) Demonstration: Respite Care.—The conference agreement includes the Senate amendment.

(g) Demonstration Project To Provide Medicaid Coverage for HIV-Positive Individuals and Certain Pregnant Women Determined to be

at Risk of Contracting the HIV Virus.—The conference agreement includes the Senate amendment, with amendments to the specifications for patients, services, and grantees under the projects, and for the scope of the demonstrations projects. The agreement limits expenditures for the projects to $30 million.

(h) Mental Health Facility Certification Demonstration Project.—The conference agreement includes the Senate amendment, with an amendment.

13. Other Miscellaneous Provisions (Sections 4481 through 4485 of the House bill)

Present law

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—No provision.

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—No provision.

(3) Public Education Demonstration Project.—No provision.

(b) Improvement in Quality of Physician Services.—

(1) Use of Unique Physician Identifiers.—COBRA required the Secretary to establish a system of unique identifiers for physicians providing services under Medicare. No such provision applies to physicians providing services under Medicaid. However, each Medicaid program must have a mechanized claims processing and information retrieval system approved by the Secretary (the requirement may be waived for commonwealths and territories and for certain States with a small population and low Medicaid expenditures in 1976.) One of the Secretary's criteria for approval of State systems is the use of unique identifiers for physicians and the inclusion of such identifiers on all paid claims.

(2) Foreign Medical Graduate Certification.—States must generally allow any licensed physician to participate in Medicaid.

(3) Minimum Qualifications for Billing for Physicians' Services to Children and Pregnant Women.—No provision.

(4) Reporting of Misconduct or Substandard Care.—The Health Care Quality Improvement Act of 1986 (P.L. 99-660) required the Secretary to establish a central clearinghouse for certain information on providers, including sanctions taken against them and malpractice actions. A State participating in Medicaid must have a system for reporting by State or local licensing authorities of cases in which a provider's license is revoked or suspended (or surrendered while a formal proceeding is pending) or other disciplinary action is taken.

(c) Clarification of Authority of Inspector General.—The Secretary has the authority to exclude individuals and entities from Medicare and Medicaid participation and to impose civil monetary penalties for specified infractions.

(d) Notice to State Medical Board When Adverse Actions Taken.—A State Medicaid agency must promptly notify the Secretary of HHS when a provider or other person is terminated, suspended, or otherwise sanctioned or prohibited from participating in Medicaid.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—

(A) States may cover inpatient psychiatric hospital services as an optional Medicaid benefit for beneficiaries under age 21. The Deficit Reduction Act of 1984 (DEFRA, P.L. 98-369) provided that a State may cover such services only if the facility (or part of a facility) meets the Medicare definition of a psychiatric hospital.

(B) Current law provides for intermediate sanctions to be imposed on nursing facilities and intermediate care facilities for the mentally retarded (ICFs-MR), but has no such provisions for inpatient psychiatric hospitals.

(2) State Utilization Review Systems.—OBRA 86 prohibited the Secretary from promulgating regulations requiring States to establish mandatory second surgical opinion programs or inpatient hospital preadmission review until 180 days after the Secretary submitted to the Congress a report on the extent to which such programs impede access to care and a variety of related issues concerning Medicaid beneficiaries' access to high volume or high cost procedures. The report was submitted in June 1989. The Administration's FY 1990 budget proposal indicated that the Administration plans to proceed with requirements that States implement second opinion and preadmission review programs, and also plans to require that States implement two additional utilization control approaches. The first would require substitution of ambulatory and same-day surgery for inpatient surgery. The second would require that medical tests ordinarily performed at the start of an inpatient hospital admission be performed on an outpatient basis before the admission.

(3) Additional Miscellaneous Provisions.—

(A) If a State covers under Medicaid services in institutions for medical diseases and/or intermediate care facilities for the mentally retarded, it must also cover a specified minimum set of basic health services.

(B) The Federal Food, Drug, and Cosmetic Act prohibits the unauthorized disclosure of a method or process entitled to protection as a trade secret, except to DHHS or to the courts.

(C) No provision.

House bill

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—Provides that States must require hospitals, nursing facilities, home health or personal care providers, hospices, and HMOs receiving Medicaid funds to comply with requirements relating to patient advance directives, including living wills and other instructions recognized under State law relating to care when an individual is incapacitated. Requires that providers have written policies and procedures to (a) inform all adult patients at the time treatment is initiated (or on enrollment, in the case of an HMO) of their right to execute an advance directive and of the hospital's policies on implementation of that right, (b) document in medical records whether or not an individual has executed an advance directive, (c) not condition treatment or otherwise discrimi-

nate on the basis of whether a patient has executed an advance directive, (d) comply with State laws on advance directives, and (e) provide education for staff and the community on advance directives.

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—Requires the Secretary to enter into an agreement with the Institute of Medicine (IOM) to conduct a study of the context in which decisions on advance directives are made and carried out, including the incidence of process of decisions on life-sustaining treatments made with and without directives. Requires the Secretary to contract with IOM within 28 days after receiving an acceptable application. If IOM does not submit an acceptable application, requires the Secretary to select another contractor. Requires that the contractor report on the study to the Secretary and the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance within 4 years after enactment, including recommendations for such legislation as may be appropriate to carry out the purposes of this section.

(3) Public Education Demonstration Project.—Requires the Secretary, within 6 months after enactment, to develop and implement in selected States a demonstration project to inform the public of the option to execute advance directives and the patient's right to participate in and direct health care decisions. Requires the Secretary to report to the House Committees on Ways and Means and Energy and Commerce and the Senate Committee on Finance on the results of the project and whether it should be extended.

Effective date: (1) Applies to services furnished on or after the first day of the first month beginning more than 1 year after enactment. (2) and (3) Enactment.

(b) Improvement in Quality of Physician Services.—

(1) Use of Unique Physician Identifiers.—Requires the Secretary to establish a system, for implementation by July 1, 1991, for unique identifiers for physicians providing services for which payment may be made under Medicaid; the system may be the same as or different from the system for Medicare. Provides that, beginning with services furnished on or after the first day of the first quarter beginning more than 60 days after establishment of the system, Federal funding will be available for Medicaid physician services only when the unique identifier appears on the claim for the services. Requires that Medicaid contracts with HMOs require that the HMO maintain data on patient encounters sufficient to identify the physician who treated the patients. Requires that the State maintain a list, updated monthly, of the identifiers of physicians certified to participate under Medicaid.

(2) Foreign Medical Graduate Certification.—Provides that no unique identifier may be issued (and hence no Medicaid payment may be made to) a foreign medical graduate who has not passed the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) or previously received certification from or passed the examination of, the Educational Commission for Foreign Medical Graduates.

(3) Minimum Qualifications for Billing for Physicians' Services to Children and Pregnant Women.—Prohibits Medicaid payment for

physician services to pregnant women or children under 21 furnished on or after January 1, 1992, unless the physician is board-certified in family practice or pediatrics or obstetrics (as appropriate), is employed by or affiliated with a federally qualified health center, has admitting privileges at a Medicaid-participating hospital, is a member of the National Health Service Corps, or has a documented consulting relationship with a family practitioner, pediatrician, or obstetrician for purposes of specialized treatment and hospital admission.

(4) Reporting of Misconduct or Substandard Care.—Requires that a State's system also provide for reporting by peer review organizations and private accreditation entities, and include reporting of any negative action taken by such organizations or entities or by licensing agencies.

Effective date: (1) Enactment, except that HMO recordkeeping requirements are effective for contract years beginning after the date of the establishment of the system of unique physician identifiers; the requirement that States maintain updated lists of identifiers applies to Medicaid payments for quarters beginning more than 60 days after establishment of the system. (2) applies with respect to the issuance of an identifier applicable to services furnished on or after January 1, 1992. (3) Enactment. (4) applies to State information systems as of January 1, 1992, regardless of whether implementing regulations have been promulgated.

(c) Clarification of Authority of Inspector General.—Clarifies that the Secretary may delegate this authority to the Inspector General of the Department of Health and Human Services.

Effective date: Enactment.

(d) Notice to State Medical Board When Adverse Actions Taken.—Provides that the Medicaid agency must also notify the State medical licensing board when the adverse action is taken against a physician, regardless of ordinary requirements relating to patient confidentiality.

Effective date: Applies to sanctions effected more than 60 days after enactment.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—

(A) Allows the Secretary to specify in regulations alternative settings in which inpatient psychiatric services may be covered

(B) Establishes sanction provisions for inpatient psychiatric hospitals, as follows:

(i) If a State finds that a psychiatric hospital fails to meet certification requirements then, if the deficiencies immediately jeopardize the health and safety of patients, the State must terminate hospital's Medicaid participation. If there is no such immediate jeopardy, the State may choose to terminate participation, deny payment for individuals admitted after the date of the finding, or both.

(ii) If non-compliance continues for 3 months, the State must deny payment for new admissions; if it continues for 6 months, Federal funding for services in the hospital is denied until the hospital achieves compliance. Federal funding may be continued during the 6-month period if the State has an approved plan for corrective action, provided the State agrees to repay the funds if the plan is not complied with.

(2) State Utilization Review Systems.—Makes permanent that prohibition against requiring States to establish mandatory second surgical opinion or preadmission screening programs. Prohibits the Secretary from promulgating regulations requiring States to establish programs for ambulatory or same-day surgery or preadmission testing until 180 days after the Secretary has reported to Congress, for a representative sample of States, an analysis of procedures for which ambulatory or same-day surgery or preadmission testing are appropriate for Medicaid patients, and the effects of such programs on access, quality, and costs. Requires that the sample include some States that include such programs. Requires the Secretary to submit the report by January 1, 1993.

(3) Additional Miscellaneous Provisions.—

(A) Adds the services of pediatric or family nurse practitioners to the list of minimum required services, effective July 1, 1990.

(B) Provides, effective as if included in OBRA 1989, that the prohibition does not authorize withholding of information from Congress or congressional committees.

(C) Makes a technical change in the law relating to the Maternal and Child Health Block Grant.

Effective date: Enactment.

Senate amendment

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(1) In General.—

(2) Study to Assess Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—

(3) Public Education Demonstration Project.—

Effective date:

(b) Improvement in Quality of Physician Services.—No provision.

(c) Clarification of Authority of Inspector General.—No provision.

(d) Notice to State Medical Board When Adverse Actions Taken.—No provision.

(e) Miscellaneous Provisions.—

(1) Psychiatric Hospitals.—No provision.

(2) State Utilization Review Systems.—No provision.

(3) Additional Miscellaneous Provisions.—No provision.

Conference agreement

13. Other Miscellaneous Provisions.—

(a) Medicaid State Plans Assuring the Implementation of a Patient's Right to Participate in and Direct Health Care Decisions Affecting the Patient.—The conference agreement includes the House bill, with amendments that exclude a study by the Institute of Medicine, and provide that the public education projects shall be national in scope, rather than a demonstration project.

(b) Improvement in Quality of Physician Services.—The conference agreement includes the House bill with amendments.

(c) Clarification of Authority of Inspector General.—The conference agreement includes the House bill.

(d) Notice to State Medical Board When Adverse Actions Taken.—The conference agreement includes the House bill.

(e) Miscellaneous Provisions.—The conference agreement includes items (1), (2), and (3) of the House bill.

TITLE V—INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

I. SUBTITLE A—HUMAN RESOURCE AND FAMILY POLICY AMENDMENTS

A. Chapter I—Child Support Enforcement

1. EXTENSION OF IRS INTERCEPT FOR NON-AFDC FAMILIES

(Section 5011 of the Conference Agreement)

Present law

States may collect child support arrearages of at least $500 owed to non-AFDC families through the Federal income tax refund offset mechanism. This provision expires at the end of 1990. A similar mechanism is authorized permanently for AFDC families, but the limit on arrearages is set at $150 by regulations. The arrearages must be owed to a "minor child." Spousal support is excluded from the definition of support that can be collected through this offset.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6001 of Senate amendment)

The provision permanently extends the present law provision that allows States to ask the IRS to collect child support arrearages of at least $500 out of income tax refunds otherwise due to non-custodial parents. The minor child restriction would be eliminated for adults with a current support order who are disabled, as defined under OASDI or SSI. In addition, the offset could be used for spousal support when spousal and child support are included in the same support order.

The provision would take effect on January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

2. EXTENSION OF INTERSTATE CHILD SUPPORT COMMISSION

(Section 5012 of the Conference Agreement)

Present law

The Family Support Act of 1988 established the Interstate Child Support Commission to report to Congress no later than May 1, 1991 on recommendations for improvements in the child support enforcement system and the Uniform Reciprocal Enforcement of Support Act. The Commission expires on July 1, 1991.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6002 of Senate amendment)

The provision would extend the life of the Commission to July 1, 1992 and would require it to submit its report no later than May 1, 1992. Also, the provision would authorize the Commission to hire its own staff.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

3. CHILD SUPPORT DEMONSTRATION

(Section 5013 of the Conference Agreement)

Present law

The Federal Government matches approved child support expenditures by States at a rate of 66 percent of total costs. The law requires each State to obtain an application for services from each family before this Federal matching can be received. By regulation, HHS has interpreted this requirement to mean a written application. The Secretary has disallowed Federal matching in some States if a written application has not been obtained.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes an amendment that would grant the State of Texas a waiver to continue an ongoing project in Bexar County on delinquency monitoring for child support enforcement. The State agency would be allowed to accept clients for the enforcement of court-established child support obligations without a written application and without collection of an application fee. The following conditions for granting this waiver would be established:

(1) The State agency must permit custodial parents to decline receiving child support services in writing before any services are provided;

(2) The State agency must ensure that the custodial and noncustodial parents are informed fully in writing about their rights and about the services and responsibilities of the agency during delinquency monitoring;

(3) The time frame for establishing a case record would start at the time that the option to decline services is offered and the time frame for the enforcement of support obligations would begin at the time the delinquency occurs; and

(4) The absence of a written application for the enforcement of a child support obligation could not be construed to eliminate the requirements for: (a) an application for requests for other services; and (b) compliance by the State agency to the time frames corresponding to those services.

As a condition of the granting of the waiver, the State agency would be required to perform a study on the cost-effectiveness of delinquency monitoring and submit it by December 31, 1991 to the Secretary of Health and Human Services and Congress. The study should use an experimental design with random assignment between experimental and control groups and must be performed with State funds only.

The cost of the project shall not exceed the lesser of $500,000; and 66 percent of expenditures used to carry out the project.

The waiver would be effective January 1, 1991 through September 30, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, modified to require that the evaluation of the demonstration project must be conducted in accordance with such criteria as the Secretary may establish, in consultation with one or more representatives of organizations representing child support administrators, the General Accounting Office, the State of Texas, and such other individuals and organizations with experience in the evaluation of child support programs as the Secretary may designate. The Secretary must establish the criteria no later than February 1, 1991. The cost of the evaluation would be shared by the Federal government at the 66 percent child support matching rate. The waiver may be extended for a period of up to two years.

B. Chapter 2—Unemployment Compensation

1. EXTENSION AND MODIFICATION OF THE "REED ACT"

(Section 5021 of the Conference Agreement)

Present law

The "Reed Act", named after the Honorable Daniel A. Reed (R., N.Y.), Chairman of the Committee on Ways and Means when the law was passed in 1954, allows excess Federal unemployment taxes, which occur when the three Federal acccunts of the Unemployment Trust Fund overflow, to be used for administrative purposes or benefits by the States. It begins to expire over a three-year period beginning July 1, 1991.

Since the "Reed Act" was enacted in 1954, overflows have occurred only in 1956, 1957 and 1958. These additional funds were available to be appropriated by State legislatures and could be used for administration or benefits. Although much of these funds have been spent for benefits, $52.3 million remained in the accounts of 35 States at the beginning of 1990. Under the Administration's projections, another overflow would probably not occur until 1997.

Under present law, any future excess Federal unemployment taxes would be distributed to the State accounts in proportion to the State shares of total wages subject to State unemployment taxes. States with relatively high State taxable wage bases and tax

rates would tend to receive proportionately more than States with relatively low taxable wage bases and tax rates.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, contains a provision which would make the "Reed Act" permanent. This would give States the authority to use funds that eventually overflow the Federal accounts of the unemployment trust fund for administrative purposes or benefits. In addition, it would modify the distribution formula so that any overflow would be distributed to the State accounts in the unemployment trust fund in proportion to each State's share of wages subject to Federal unemployment taxes paid in the prior calendar year instead of State taxable wages. States would be required to account for the "Reed Act" funds in accordance with standards set by the Secretary of Labor.

The provision would take effect on the date of enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

2. PROHIBITION ON COLLATERAL ESTOPPEL

Present law

Currently, 14 States prohibit courts from using quasi-judicial decisions reached in unemployment compensation hearings to stop lawsuits on related employment issues, such as wrongful discharge from a job. This judicial doctrine is called "collateral estoppel". Federal law has no provision. In the remaining 39 jurisdictions, courts may use this doctrine to stop lawsuits on other employment issues.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which would require State unemployment compensation laws to prohibit courts from stopping lawsuit on related employment issues based on a decision made in an unemployment compensation hearing.

The provision would take effect on October 1, 1991, except in the case of a State the legislature of which has not been in session for at least 30 calendar days (whether or not successive) between the date of the enactment of this Act and October 1, 1991, such amendments shall take effect 30 calendar days after the first day on which such legislature is in session on or after October 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

C. Chapter 3—Supplemental Security Income

1. TREATMENT OF VICTIMS' COMPENSATION PAYMENTS

(Section 5031 of the Conference Agreement)

Present law

Under present law, amounts received from victims' assistance funds are included as income or assets for purposes of determining eligibility and benefits for SSI.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that excludes from income for purposes of determining SSI eligibility and benefits any payment received from a State-administered victims' compensation fund.

In addition, any amount received from a State victims' compensation fund, to the extent that it represents compensation for expenses incurred or losses suffered as a result of a crime, shall be excluded from resources for the 9-month period beginning after the month in which it was received.

No person awarded victims' compensation, who was otherwise eligible for SSI and who refused to accept such compensation, would be considered ineligible for SSI as a result of such refusal.

The provision would take effect in the month beginning 6 months after the date of enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

2. ELIMINATE THE AGE LIMIT ON SECTION 1619 ELIGIBILITY

(Section 5032 of the Conference Agreement)

Present law

To be eligible for the Medicaid-only benefit under the section 1619 work incentive provisions an individual must be under 65 years old.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6010 of the Senate amendment)

The provision would eliminate this age limit and would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective with respect to benefits for months beginning on or after the first day of the sixth calendar month following the month of enactment.

3. TREATMENT OF IMPAIRMENT-RELATED WORK EXPENSES

(Section 5033 of the Conference Agreement)

Present law

Impairment-related work expenses (IRWE) are excluded from a disabled individual's earnings for determinations of: (1) whether earnings constitute "substantial gainful activity;" (2) the benefit amount of an eligible disabled individual; and (3) continuing eligibility on the basis of income.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6011 of the Senate amendment)

The proposal would exclude impairment-related work expenses from income in determining initial eligibility and reeligibility for SSI benefits, and in determining State supplementary payments.

The provision would take effect four months following the month of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. TREAT CERTAIN ROYALTIES AND HONORARIA AS EARNED INCOME

(Section 5034 of the Conference Agreement)

Present law

Under present law, royalties received are considered unearned income under the SSI program unless they are from self-employment in a royalty-related trade or business. Honoraria are also considered unearned income. After the first $20 of unearned income in a month is disregarded, this results in a dollar-for-dollar loss of SSI benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6012 of the Senate amendment)

Any royalty which is earned in connection with the publication of an individual's work, or any honorarium which is received for services rendered would be treated as earned income for purposes of SSI eligibility and benefit determination. This would mean that

income from these sources would be disregarded to the same extent that income from other types of earnings is disregarded (i.e., the first $65 of monthly earnings plus 50 percent of additional earnings).

The effective date for the provision would be the eighteenth month beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective the thirteenth month beginning after the date of enactment.

5. STATE RELOCATION ASSISTANCE NOT COUNTED AS INCOME OR RESOURCES

(Section 5034 of the Conference Agreement)

Present law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 excludes from income and resources any relocation assistance provided under the Act to individuals receiving Federal assistance, including SSI. Relocation assistance is paid when individuals are required to move by the Government. For example, the Government might need their land for a public building or highway or they might need to move because toxic wastes were discovered on the site. Under SSI, relocation assistance from any other source is considered income in the month received, and resources thereafter.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision to exclude from income and resources State relocation assistance.

The provision would take effect in the month beginning 6 months after the date of enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, modified to provide that State relocation assistance payments will be excluded from resources for no more than 9 months. In addition, the provision would be in effect for only three years.

6. EVALUATION OF CHILD'S DISABILITY BY PEDIATRICIANS

(Section 5036 of the Conference Agreement)

Present law

Present law does not require that a pediatrician or other qualified specialist be involved in the evaluation of a child's disability case.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6013 of Senate amendment)

The provision would require the Secretary of Health and Human Services to make reasonable efforts to ensure that a qualified pediatrician or other specialist in a field of medicine appropriate to the disability of the child evaluate the child's disability for purposes of determining eligibility for SSI.

The provision would take effect in the sixth month beginning after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

7. REIMBURSEMENT FOR VOCATIONAL REHABILITATION SERVICES

(Section 5037 of the Conference Agreement)

Present law

The Secretary of HHS is required to refer blind and disabled individuals who are receiving SSI benefits to State vocational rehabilitation agencies and is authorized to reimburse these agencies for the reasonable and necessary costs of the vocational rehabilitation services that are provided to recipients under certain specified conditions. Reimbursement is not allowable with respect to services provided in months for which individuals were not receiving cash benefits but were eligible for Medicaid because they were in "special status" under 1619(b), were in suspended benefit status, or were receiving Federally administered State supplementary payments but not Federal SSI benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6015 of Senate amendment)

The provision would implement a recommendation of the Disability Advisory Council to authorize reimbursement for vocational rehabilitation services provided in months for which individuals were in "special status" under section 1619(b), were in suspended benefit status, or were receiving Federally administered State supplementary payments.

The provision would take effect on the date of enactment and would apply to claims for reimbursement pending on or after the date of enactment.

Conference agreement .

The conference agreement follows the Senate amendment.

8. PRESUMPTIVE ELIGIBILITY TIME PERIOD

(Section 5038 of the Conference Agreement)

Present law

The Social Security Administration can presume eligibility for up to 3 months while processing applications for SSI on the basis of disability or blindness. If the process takes longer than 3 months, those ultimately eligible for benefits after three months receive back payments. In 1989, the Social Security Administration estimates that the final decision on eligibility took longer than 3 months in 31 percent of the cases where presumptive eligibility had been granted. Those who are determined to be ineligible are not required to repay the benefits they received while SSA presumed their eligibility.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision to extend the period of presumptive eligibility from 3 to 6 months.

The provision is effective upon enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, effective in the month beginning six months after enactment.

9. CONTINUING DISABILITY AND BLINDNESS REVIEWS

(Section 5039 of the Conference Agreement)

Present law

SSI recipients can participate in the work incentive provisions of section 1619 by earning amounts up to the level at which benefits cease ($857 per month for single persons). Even if they are no longer eligible for cash benefits, they can continue to receive Medicaid.

Participants in the work incentive provision are subject to continuing disability or blindness review at certain times: (1) within 12 months of initial eligibility for the work incentive provisions; (2) promptly when an individual's earnings alone would have made him ineligible for cash assistance or Medicaid for the prior 12 months under section 1619 and he has become eligible again for either Medicaid or cash assistance.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which permits continuing disability reviews no more than once every 12 months. The provision is effective upon enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

10. CONCURRENT APPLICATIONS FOR SSI AND FOOD STAMPS

(Section 5040 of the Conference Agreement)

Present law

Public law 99-570, the Anti-Drug Abuse Act of 1986, amended the Social Security Act to require the Secretaries of HHS and Agriculture to develop a procedure to allow institutionalized individuals who are about to be released to make a single application for both SSI and food stamp benefits.

House bill

No provision.

Senate amendment (Section 6014 of Senate amendment)

Under this provision, the Secretary of HHS could either: (1) use a single application form for the food stamp and SSI programs; or (2) take concurrent applications for the SSI and food stamp programs. The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. DISREGARD OF TRUST CONTRIBUTIONS

(Section 5041 of the Conference Agreement)

Present law

The term "trust" is not defined in either SSI law or regulations. SSI policy, as expressed in the program's operating manual, is to treat a trust as a resource when an individual owns the assets in the trust and, acting on his own behalf or through an agent (such as a representative payee for SSI benefits), has the legal right to use them for his own food, clothing, or shelter. If, however, the individual does not have the legal authority to access trust assets for his own food, clothing, or shelter (e.g., there is an intervening trustee), the trust is not considered a resource.

Cash payments made to an individual, including those from a trust (regardless of whether the trust is considered a resource), are considered income in the month received. Noncash payments for food, clothing, or shelter are also considered income. However, there are special rules under which noncash payments are presumed to have a maximum value of one-third of the Federal SSI monthly benefit amount, plus a $20-a-month income exclusion. If a person can show that any in-kind support and maintenance provided is less than the "presumed value," the lesser amount is considered income. Thus, any cash or noncash payment for food, clothing,

or shelter affects SSI benefits and eligibility status. However, under SSA policy, a payment for certain social, medical, educational, transportation, or other services does not count as income, and does not affect SSI benefits or eligibility status.

House bill

No provision.

Senate amendment (Sections 6016–6018 of Senate amendment)

The SSI statute would be amended to specify that a trust established for an SSI recipient to which the recipient does not have legal access would not be counted as a resource, and certain noncash contributions to a recipient would not be counted as income. In addition, the Secretary of HHS would be required to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley of the implications of such payments for SSI eligibility, that the family may be able to place the payment in a trust for the benefit of the child, and that legal assistance may be available. This information need not be provided in the form of a separate notice, but may be included in the notice of award of the retroactive payment.

Conference agreement

The conference agreement includes the Senate amendment requiring the Secretary to inform the family of a child who is awarded a retroactive payment as the result of the decision of the Supreme Court in Sullivan v. Zebley that the family may be able to place the payment in a trust for the benefit of the child.

The conference agreement does not include the Senate amendment with respect to the establishment of trusts. However, the managers recognize that it is important for SSI applicants and recipients to understand how different forms of income and resources are treated under the program, in order that they and their families can plan accordingly. They therefore intend that hearings be held during the 102nd Congress to address such issues as: whether statutory language should be enacted to specify the conditions under which funds placed in a trust may be excluded from countable income and resources; whether any limits should be placed on the amounts that can be placed in trust; and the purposes for which trust funds may be expended without affecting SSI eligibility and benefits. The omission of the Senate provision from the conference agreement is not intended in any way to change current SSA policy with respect to trusts.

D. Chapter 4—Aid to Families With Dependent Children

1. STATE OPTION TO REQUIRE MONTHLY REPORTING AND RETROSPECTIVE BUDGETING

(Section 5051 of the Conference Agreement)

Present law

Under section 402(a)(14) of the Social Security Act, States must require families with earned income or a recent work history to

provide a monthly report on: (1) income and family composition during the prior month; and (2) estimates of the income and resources anticipated in the current or future months. With the approval of the Secretary, a State may select categories of these families to report at less frequent intervals, if monthly reporting is not cost effective.

AFDC eligibility and benefits are determined monthly. Generally, a family's eligibility for and amount of aid for a month are based on the family's income, composition and resources in that month. However, under section 402(a)(13) of the Social Security Act, for families who are subject to monthly reporting requirements, States are required to calculate benefits based upon retrospective budgeting. Under retrospective budgeting, although eligibility is based on the family's circumstances in the current month, payment amounts are based on the family's income in the first or second month preceding the current month.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6020 of Senate amendment)

The provision would give States the option of specifying from which categories of families, if any, monthly reports will be required. If the State exercises the option, it must describe in its State plan the categories subject to the reporting requirement. Further, the State may choose to apply the retrospective budgeting technique to any one or more of the categories to whom the reporting requirement applies.

The provision would take effect with respect to reports pertaining to, or aid payable for, months after September 1990.

Conference agreement

The conference agreement follows the Senate amendment.

2. TREATMENT OF FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE

(Section 5052 of the Conference Agreement)

Present law

Prior to October 1, 1984, a child receiving State or Federal foster care maintenance payments or adoption assistance did not have to be included in the AFDC family unit, and the income and resources of the child did not count as the income and resources of the AFDC family. A family unit rule implemented as part of the Deficit Reduction Act of 1984, however, required that any parent or sibling of a dependent child be included in the AFDC unit. This rule applied to any sibling receiving foster care or adoption assistance.

The Tax Reform Act of 1986 amended AFDC law retroactively to October 1, 1984 to provide that, in determining a family's eligibility for or amount of AFDC benefits, a child receiving foster care maintenance payments under title IV-E would not be regarded as a

member of the family, and the income and resources of the child would not be counted as the income and resources of the family (section 478 of the Social Security Act).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6021 of Senate amendment)

A child receiving State and/or local foster care maintenance payments would not be regarded as a member of an AFDC family for purposes of determining a family's eligibility for or amount of AFDC benefits, and the child's income and resources would not be counted as the income and resources of the family.

Further, a child receiving adoption assistance payments under title IV-E, or State and/or local adoption assistance payments, would not be regarded as a member of an AFDC family for purposes of determining a family's eligibility for or amount of AFDC benefits, and the child's income and resources would not be counted as the income and resources of the family, unless this would result in lower benefits for the family.

The provision would also move the section 478 provision, as amended, from title IV-E of the Social Security Act to title IV-A.

The provision would take effect in the month beginning six months after the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

3. ELIMINATING THE USE OF THE TERM "LEGAL GUARDIAN"

(Section 5053 of the Conference Agreement)

Present law

Section 402(a)(39) of the Social Security Act requires that, in determining AFDC benefits for a dependent child whose parent or legal guardian is under the age of 18, the State agency must include the income of the minor parent's own parents or legal guardians who are living in the same home.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6022 of Senate amendment)

The provision would delete all references to legal guardians.

Legal guardianship is not relevant to eligibility determination or the deeming of income under the AFDC program. For example, the use of the term "legal guardian" in the first instance is irrelevant since, even if such a guardian were appointed, the child would not be eligible for AFDC unless living with a relative specified in section 406 of the Social Security Act.

The use of the term "legal guardian" in the second instance is also inappropriate in the context of the AFDC statute. Unlike the parent-child relationship, legal guardianship has not been a basis for attributing income to AFDC beneficiaries. Using legal guardianship as a source of attributed income in three-generation families creates unequal treatment under the program. For example, if a minor child is living with an aunt who is her legal guardian, the aunt's income is not automatically attributed to the AFDC beneficiary; however, if the minor has a child, the guardian's income is included in the AFDC determination for the minor and her child.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

4. REPORTING OF CHILD ABUSE AND NEGLECT

(Section 5054 of the Conference Agreement)

Present law

Under current law, both the title IV-A (AFDC) and title IV-E (foster care and adoption assistance) State plan requirements stipulate that State agencies must report to appropriate court or law enforcement agencies instances of a child receiving program aid who is residing in a home that is unsuitable because the child is subject to abuse, neglect or exploitation (sections 402(a)(16) and 471(a)(9) of the Social Security Act).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6023 of Senate amendment)

The provision would amend the AFDC, foster care and adoption assistance State plan requirements to require that each State agency report, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving program aid. This would include instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened. The State agency would also be required to provide such information with respect to the situation as it may have.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective for months beginning six months after enactment.

5. PERMISSIBLE USES OF AFDC INFORMATION

(Section 5055 of the Conference Agreement)

Present law

Section 402(a)(9) of the Social Security Act restricts the use or disclosure of information about AFDC applicants and recipients to purposes directly connected with: (1) the administration of the AFDC program or several other specified Social Security Act programs; (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with such programs; (3) the administration of any other Federal or Federally-assisted program providing assistance or services to individuals on the basis of need; and (4) any audit of such programs.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6024 of Senate amendment)

The provision would add an explicit reference to title IV-E, the foster care and adoption assistance programs, to the list of programs for which information about AFDC applicants and recipients may be made available.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

6. REPATRIATION

(Section 5056 of the Conference Agreement)

Present law

Section 1113 of the Social Security Act authorizes the Secretary to provide temporary assistance to U.S. citizens and their dependents if they: (1) have returned or been brought from a foreign country to the U.S. because of destitution or illness, or war, threat of war, invasion or similar crisis; and (2) are without resources.

Prior to June, 1990, the maximum amount of temporary assistance that could be provided in one fiscal year equaled $300,000. In June, 1990, the Secretary requested that the $300,000 limit be increased to $1 million, to accommodate the repatriation of several hundred Americans from Liberia. This increase was enacted in P.L. 101-382. According to the Secretary, the subsequent Iraqi invasion of Kuwait has placed new and unpredictable demands on the repatriation program. The Secretary expects the resulting program costs to exceed $1 million.

House bill

No provision. (H.R. 5828, as reported by the Ways and Means Committee, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6025 of Senate amendment)

The provision temporarily repeals the $1 million spending cap for the repatriation program for fiscal years 1990 and 1991, and permits HHS to receive gifts from those wishing to contribute assistance to repatriated Americans through the repatriation program.

The provision would take effect for fiscal years beginning after September 30, 1989.

Conference Agreement

The conference agreement follows the Senate amendment.

7. CHILDREN'S COMMISSION REPORTING DATE

(Section 5057 of the Conference Agreement)

Present law

The National Commission on Children is directed to study and recommend to the President and the Congress ways to improve the well-being of children. P.L. 101-239 included an amendment to the original legislation that was intended to establish a final reporting date for the Commission of March 31, 1991. The amendment as enacted, however, includes a technical error.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6029 of Senate amendment)

The statute would be corrected to clarify that the final reporting date for the Commission is March 31, 1991.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

8. MORATORIUM ON FINAL REGULATIONS FOR EMERGENCY ASSISTANCE

(Section 5058 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239) included a provision stating that any final regulation which would change any policy in effect immediately before the date of the enactment of that Act with respect to the use of emergency assistance or special needs funds under the AFDC program could not take effect before October 1, 1990. In addition, the Secretary could not otherwise modify any policy with respect to the use of emergency assistance or special needs funds before October 1, 1990.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6032 of Senate amendment)

The date on prohibition of issuance of final regulations would be extended to October 1, 1991.

Conference agreement

The conference agreement would extend the prohibition of issuance of final regulations, and the prohibition on modifying current policy, to October 1, 1991.

9. MINNESOTA FAMILY INVESTMENT PLAN

(Section 5059 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 permits the State of Minnesota to conduct a demonstration of the effectiveness of the Minnesota Family Investment Plan (MFIP). Under the demonstration, the State of Minnesota plans to determine whether its Family Investment Plan helps families to care for their children more effectively than do the AFDC and JOBS programs, as currently structured.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision which makes a series of technical changes that are necessary for the State to implement its Family Investment Plan.

The provision would take effect on the date of enactment.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

10. TECHNICAL AMENDMENT TO ALLOW GOOD CAUSE EXCEPTION

(Section 5060 of the Conference Agreement)

Present law

Under current law, as a condition of eligibility for AFDC, a parent must cooperate with the child support enforcement (IV-D) agency in establishing paternity, and in obtaining and enforcing a support order unless there is "good cause" for refusal. "Good cause" includes such factors as reasonable belief that cooperation could result in physical or emotional harm to the child or caretaker relative, and other factors established by regulation. The Family Support Act of 1988 established a similar requirement for cooperation with the IV-D agency in order for a family to be eligible to receive child care transition benefits. However, the "good cause" exception was omitted.

House bill

No provision.

Senate amendment (Section 6026 of Senate amendment)

The good cause exception from cooperating with the IV-D agency would be made applicable to transitional child care benefits to make it consistent with the exception that applies to AFDC cash benefits.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. JOBS TECHNICAL CORRECTION REGARDING PENALTY FOR FAILURE TO PARTICIPATE

(Section 5061 of the Conference Agreement)

Present law

The Family Support Act of 1988 added a penalty provision to the AFDC statute (section 402(a)(19)(G)) that provides that if the principal earner (in the case of a family eligible on the basis of the unemployment of the principal earner (AFDC-UP)) fails without good cause to participate in the JOBS program as required, the needs of that individual will not be taken into account in determining the amount of the family's AFDC benefit. If the spouse is not participating, the needs of the spouse will also not be taken into account. The penalty does not apply to benefits on behalf of any child in the family. When this new penalty language was added, however, the language contained in section 407 imposing a penalty for any child in the family if the principal earner fails to participate in the JOBS program was not repealed.

House bill

No provision.

Senate amendment (Section 6027 of Senate amendment)

The statute would be clarified by repealing the penalty language in section 407 that requires a reduction in AFDC benefits on behalf of a child in an AFDC-UP family if the principal earner fails to participate in the JOBS program.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment, effective at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 take effect.

12. TECHNICAL CORRECTION REGARDING AFDC–UP ELIGIBILITY REQUIREMENTS

(Section 5062 of the Conference Agreement)

Present law

Prior to October 1, 1990, participation in the Work Incentive (WIN) and Community Work Experience (CWEP) programs counted in the definition of "quarter of work" for purposes of qualifying a family for AFDC–UP. Title IV of the Family Support Act of 1988 amended the definition of "quarter of work" to include participation in JOBS, but deleted references to WIN and CWEP. The result is that beginning October 1, 1990, prior participation in WIN or CWEP will not count toward the "quarter of work" requirement for purposes of establishing eligibility for AFDC–UP.

House bill

No provision.

Senate amendment (Section 6028 of Senate amendment)

Section 407(d) would be amended to allow participation in WIN and CWEP prior to October 1990 to count toward the "quarter of work" requirement for purposes of AFDC–UP eligibility.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

13. COMMUNITY DEVELOPMENT DEMONSTRATION TECHNICAL CORRECTION

(Section 5063 of the Conference Agreement)

Present law

The Family Support Act of 1988 authorized the Secretary of HHS to enter into agreements with up to 10 nonprofit organizations (including community development corporations) for the purpose of conducting demonstration projects to create employment opportunities for certain low income individuals. The authorization for the demonstrations is $6.5 million for each of fiscal years 1990, 1991, and 1992.

House bill

No provision.

Senate Amendment (Section 6030 of Senate amendment)

The statute would be clarified to specify that the Secretary could enter into agreements with up to 10 nonprofit organizations each year. There would be no increase in the authorization.

Conference agreement

The conference agreement follows the Senate amendment.

14. GAO STUDY OF JOBS FUNDING FOR INDIAN TRIBES

(Section 5064 of the Conference Agreement)

Present law

Under the Family Support Act of 1988, Indian tribes (or Alaska Native organizations) may apply to operate JOBS programs. The statute requires that, in order to be considered by the Secretary, an application for Federal funding must be made within six months after enactment of the Family Support Act.

If an application is approved, the Secretary may grant funds to the tribe or Alaska Native organization (without a non-Federal matching requirement) to operate a JOBS program. The amount of funds is based on the ratio of adult AFDC recipients in the tribe relative to the adult AFDC recipients in the State. (The State's cap is appropriately reduced.) Requirements of the JOBS program may be waived if the Secretary determines that they are inappropriate.

House bill

No provision.

Senate amendment (Section 6031 of Senate amendment)

The bill would direct the General Accounting Office to conduct a study of how the provisions with respect to Indian tribes and Alaska Native organizations have been implemented by the Secretary and by such tribes and organizations, to describe any problems that may have been experienced in implementing the provisions, to determine to the extent possible the effectiveness of JOBS programs that are being operated by Indian tribes and Alaska Native organizations, and to make recommendations as to any legislative or administrative changes that could be made to improve the effectiveness of such programs.

Conference agreement

The conference agreement follows the Senate amendment.

E. Chapter 5—Child Welfare and Foster Care

I. ACCOUNTING FOR ADMINISTRATIVE COSTS

(Section 5071 of the Conference Agreement)

Present law

States are entitled to Federal reimbursement at a rate of 50 percent for expenditures made for the proper and efficient administration of the State title IV-E plan.

Under current law and regulation, Federal matching for administrative costs includes matching for activities that involve placement of the child in foster care, as well as what are ordinarily considered administrative "overhead" costs. These include activities related to child protections mandated by the Child Welfare and Adoption Assistance Amendments of 1980, such as: referral to services at time of intake; preparation for, and participation in, judicial determinations; development of a case plan for the child; periodic

reviews of the child's case plan; and case management and supervision.

Although there are no official program data showing what portion of administrative costs go for child placement activities as opposed to ordinary administrative overhead, the Inspector General has estimated that only about 20 percent of foster care administrative costs represent what are traditionally considered administrative overhead expenses.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment.)

Senate amendment (Section 6040 of Senate amendment)

Title IV-E would be amended to specifically add "child placement services" as activities for which States are entitled to receive Federal reimbursement. This is not intended in any way to change the type of activities for which States are currently allowed to claim Federal reimbursement as an administrative cost under title IV-E. In order to provide the Congress with more specific information on how these child placement and administrative matching funds are being spent, the Congress expects that the Secretary will develop and establish uniform definitions for the activities reimbursable as child placement services and administration, and will require the States to account for expenditures according to these activities.

The provision would take effect on the date of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. SECTION 427 TRIENNIAL REVIEWS

(Section 5072 of the Conference Agreement)

Present law

Public Law 96-272, the Adoption Assistance and Child Welfare Amendments of 1980, was designed to provide financial incentives to the States to implement and operate a set of services and procedures to prevent the unnecessary removal of children from their home, prevent extended stays in foster care, and ensure that efforts are made to reunify children with their families or place them for adoption. The services and procedures are outlined in section 427 of the Social Security Act.

According to the HHS Section 427 Review Handbook, to verify compliance with section 427 requirements, HHS conducts a two-stage review. The first stage is an administrative review which determines whether States have developed policy and procedures to implement the section 427 requirements for all children in foster care under the responsibility of the State. The second stage of the review is the case record survey which confirms that the policies are being implemented throughout the State.

An initial review is conducted for the fiscal year in which the State first certifies its eligibility. If a State meets the initial review,

a subsequent review is conducted for the following fiscal year. States that meet the requirements of this subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted, and every third year thereafter. This is known as the triennial review. The case record survey must confirm that the section 427 foster care protections are provided for at least 66% of the children in the initial review, 80% in the subsequent review, and 90% in the triennial review. If a State does not meet the established standards for the year under review, the review is conducted each succeeding year until eligibility is established.

The Omnibus Budget Reconciliation Act of 1989 included a provision which prohibited the Secretary from, before October 1, 1990, reducing payments to, seeking repayment from, or withholding any payments from any State as a result of a disallowance determination made in connection with a triennial review of State compliance with the section 427 foster care protections, for any fiscal year preceding fiscal year 1991.

HHS has convened a department-wide task force to review and revise the current section 427 review process. Draft regulations are expected during calendar year 1991.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6041 of Senate amendment)

The provision would extend the current prohibition on reducing payments to, seeking repayment from, or withholding payments from States to October 1, 1991, to apply to any determinations made in connection with a triennial review for any Federal fiscal year preceding fiscal year 1992.

The provision would take effect on October 1, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

3. INDEPENDENT LIVING TO AGE 21 AT STATE OPTION

(Section 5073 of the Conference Agreement)

Present law

The Independent Living Program is a State entitlement program under title IV-E designed to help ease the transition of foster children age 16 and older to independent living. Independent living services may include school and vocational training, living skills training, housing location and career planning assistance, counseling, service coordination, outreach, and the development of plans for independent living as part of the case plan.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6042 of Senate amendment)

The statute would be amended to allow States to include youths who have been "discharged" from the foster care system in services provided under the independent living program, up to age 21.

The provision would take effect on October 1, 1990.

Conference agreement

The conference agreement follows the Senate amendment.

F. Chapter 6—Grants to States for Child Care

1. GRANTS TO STATES FOR CHILD CARE

(Section 5081 of the Conference Agreement)

Present law

Federal matching is available to States on an entitlement basis to provide child care for AFDC parents who are participating in the JOBS program, and to provide child care for a period of 12 months after the family loses eligibility for AFDC as a result of increased hours of, or increased income from, employment.

House bill

No provision.

Senate amendment (Section 6043 of Senate amendment)

Funding for the existing title IV child care program would be increased to provide $65 million for each of fiscal years 1991–1995 to enable States to provide child care to low income non-AFDC families that the State determines: (1) need such care in order to work; and (2) would otherwise be at risk of becoming dependent upon AFDC.

Capped entitlement funds would be allocated on the basis of child population. Rules relating to Federal matching rates, reimbursement, standards, and fee schedules would remain the same as in current law. States would be required to report annually to the Secretary on child care activities carried out with funds under this entitlement.

In addition, the authorization for grants (enacted in the Family Support Act of 1988) to enable States to improve their child care licensing and registration requirements and procedures, and to monitor child care provided to children receiving AFDC, would be extended to provide $35 million for each of fiscal years 1992, 1993, and 1994 for these purposes.

Conference agreement

The conference agreement follows the Senate amendment, modified to provide $300 million for each of fiscal years 1991 through 1995. In addition, the conference agreement provides that all child

care providers that receive funds under this provision must be licensed, regulated, or registered. As in the Senate amendment, all child care paid for with these funds must meet applicable standards of State and local law. However, there would be no requirement that individuals who provide care solely to members of their family be licensed, regulated, or registered.

It is the intent of the conferees that States will have maximum flexibility in determining how these new grant funds are used.

The $35 million currently authorized for grants to improve licensing and registration requirements and procedures, and to monitor child care provided to children of AFDC recipients, is increased to $50 million, beginning in fiscal year 1992 and extending through fiscal year 1994. One-half of these funds are earmarked for training child care providers. The remainder must be used for improving licensing and registration requirements and procedures, and for enforcement. Activities under the grant would apply to all children receiving services under title IV-A, not just those receiving AFDC.

2. CHILD CARE AND DEVELOPMENT BLOCK GRANT

(Section 5082 of the Conference Agreement)

The Conference report includes the Child Care and Development Block Grant Act of 1990. The purpose of this block grant program is to increase the availability, affordability, and quality of child care. The provision provides financial assistance to low-income, working families to help them find and afford quality child care services for their children. It also contains provisions to enhance the quality and increase the supply of child care available to all parents, including those who receive no financial assistance under the block grant program.

More specifically, the purpose of this block grant program is to give parents a variety of options in addressing family child care needs. Additionally, this provision is intended to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by the lack of available programs or financial resources to place a child in an unsafe or unhealthy child care arrangement; to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services; to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care; to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services; and to provide assistance to states and Indian tribes to improve the quality of, and coordination among, child care programs and early childhood development programs.

The Conference agreement authorizes $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994 and 1995. Block grant funds are provided to states in accordance with a formula based on numbers of young children and of school lunch recipients.

Use of block grant funds for child care services

Each state shall use 75 percent of block grant funds for direct assistance to parents for child care services and to increase the supply and to improve the quality of child care. Block grant funds may only be used by the states for child care services and for activities which directly improve the availability and quality of care for families assisted under the Act. Quality activities eligible for funds under section 658E(c)(3)(B)(ii) should be the same type of quality activities specified in the quality reservation in section 658G. It is the conferees' intent that a preponderance of the block grant funds be spent specifically on child care services and a minimum amount on other authorized activities.

The managers believe that parents should have the greatest choice possible in selecting child care for their children. Thus, parents assisted under section 658(c)(3)(B) would have complete discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, family providers, centers, schools, and employers. All such providers may be paid through grants or contracts or through certificates provided to the parent. A parent assisted under section 658E(c)(3)(B) must be given the option of receiving a certificate.

Use of 25 percent reserve of funds

Each state shall reserve 25 percent of block grant funds for grants and contracts to providers of early childhood development or before- and after-school services, or both, and for activities to improve the quality of child care. Of the 25 percent reserve, not less than seventy-five percent of this reserve shall be allocated to early childhood development and before- and after-school care activities; not less than twenty percent for quality activities with the remaining five percent to be used for either purpose. A state may assign responsibility for the administration of early childhood development and latchkey programs to an agency other than the lead agency, such as an agency that has experience in the administration of existing education or preschool programs. Eligible quality activities include establishing or expanding resource and referral programs; making grants or loans to providers to assist them in meeting state and local child care standards; improving the monitoring of compliance with, and enforcement of, state standards and licensing and regulatory requirements; providing training and technical assistance; and improving salaries and other compensation paid to child care staff.

General provisions

Families eligible for assistance for child care are those who earn less than 75 percent of the state median income and who have children under age 13. The amount of assistance would be based on a sliding fee scale established by the state. Nothing in this subchapter is intended to prohibit the provision of services at no cost to families whose income is at or below the poverty level. Providers would receive payment at rates which would ensure equal access to services comparable to those provided to children whose care is not publicly subsidized.

Parental choice and involvement are further enhanced through provisions for unlimited parental access to children during the day and within the care setting, for parental complaint procedures and access to records of substantiated parental complaints, and for consumer education.

The managers intend that the determination whether any financial assistance provided under this subchapter, including a loan, grant or child care certificate, constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), all as amended, and the regulations issued thereunder, shall be made in accordance with those provisions. bb

To receive funds, a state shall submit a plan that includes: designation of a lead agency; local consultation regarding development of the plan; coordination with existing programs; use of funds for child care services, including early childhood education and before-and-after school care, and for activities related to quality and availability; supplement not supplant language; priority for very low income children and children with special needs; and use of a sliding fee scale. The managers intend that, to the maximum extent practicable, the lead agency be a state entity in existence on or before the date of enactment of this subchapter with experience in the administration of appropriate child care programs.

All eligible providers shall be licensed, regulated, or registered prior to payment and must comply with applicable state and local licensing and regulatory requirements. The state plan shall describe minimum health and safety requirements established by the state for all providers funded under this subchapter and ensure that such providers demonstrate compliance with these requirements. These health and safety requirements include the prevention and control of infectious diseases, building and physical premises safety, and a minimum health and safety training requirement appropriate to the provider setting. The state shall conduct a one-time review of state licensing and regulatory requirements and policies, unless the state has done so within three years prior to the date of enactment.

The state shall report to the Secretary of Health and Human Services annually on the use of funds under this subchapter; data on caregivers and children in care; activities to encourage public-private partnerships which promote business involvement in meeting child care needs; results of any review of state licensing and regulatory requirements; a rationale for any state actions to reduce the levels of state standards; state actions to improve the quality of care; and a description of standards in the state.

The Secretary will report to Congress annually on use of all Child Care and Development Block Grant Act funds in the states. The report will include a summary and analysis of the above data provided by the States to the Secretary and any recommendations to Congress on further steps necessary to improve access to quality and affordable child care.

II. Subtitle B—Old-Age, Survivors, and Disability Insurance

1. MAKE PERMANENT THE CONTINUATION OF DISABILITY BENEFITS DURING APPEAL

(Section 5102 of the Conference Agreement)

Present law

A disability insurance (DI) beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within the Social Security Administration (SSA): a reconsideration, usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA administrative law judge (ALJ); and a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is made in good faith, benefit recovery may be waived.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

The Disability Reform Amendments of 1984 (P.L. 98-460) provided benefits through the hearing stage on a temporary basis. This provision was subsequently extended, most recently by the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239). That Act extends the provision to appeals of termination decisions made on or before December 31, 1990. Under this latest extension, payments may continue through June 30, 1991 (i.e., through the July 1991 check).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6050 of Senate amendment)

The Senate amendment would make the temporary provision permanent. Thus, on a permanent basis, beneficiaries would have the option of having their DI and medicare benefits continued through the hearing stage of appeal. As under current law, DI benefits would be subject to recovery where the ALJ upheld the earlier unfavorable decision, while medicare benefits would not be subject to subsequent recovery.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

2. IMPROVEMENT OF THE DEFINITION OF DISABILITY APPLIED TO DISABLED WIDOW(ER)S

(Section 5103 of the Conference Agreement)

Present law

A widow(er) or surviving divorced spouse of a worker may be entitled to widow(er)'s benefits if he or she is age 60, or at any age if he or she is caring for the worker's child who is under age 16. A widow(er) or surviving divorced spouse with no child in care and who is under age 60 but is at least age 50 may be eligible for widow(er)'s benefits as a disabled widow(er).

Generally, disability is defined as an inability to engage in any substantial gainful activity (defined in regulations as earnings of more than $500 per month, effective January 1, 1990) by reason of a physical or mental impairment. The impairment must be medically determinable and expected to last for not less than 12 months or to result in death. A person (other than a disabled widow(er)) may be determined to be disabled only if, due to this impairment, he or she is unable to engage in any kind of substantial gainful work, considering his or her age, education and work experience, which exists in the national economy.

The definition of disability which is applied to widow(er)s, however, is stricter than that which is applied to workers and to Supplemental Security Income (SSI) disability applicants. First, a widow(er) must have a disability severe enough to prevent him or her from engaging in "any gainful activity" (little or no earnings at all) rather than substantial gainful activity (ordinarily, earnings of more than $500 per month). Second, for a disabled widow(er) the three vocational factors used in determining a worker's disability—age, education, and work experience—are not considered. Therefore, the disability must be established based on medical evidence alone.

Once SSA determines that an individual is disabled, there is a five-month waiting period before disability benefits are payable. Once disability benefits begin, there is a 24-month waiting period for entitlement to medicare benefits.

The stricter test of disability for disabled widow(er)s was established in the Social Security Amendments of 1967, which created this new entitlement to benefits. In explaining the reasons for the more restrictive rules, Ways and Means Committee Chairman Wilbur Mills stated on the House floor, "We wrote this provision of the bill very narrowly, because it represents a step into an unexplored area where cost potentials are an important consideration."

House bill

No provision. (H. R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6051 of Senate amendment)

Providing benefits to widow(er)s on the basis of disability has been found not to be a significant cost to the trust fund. Therefore, the provision would repeal the stricter definition of disability that

must be met by a disabled widow(er) age 50–59 in order to qualify for widow(er)'s benefits and instead apply the definition of disability used for workers. Widow(er)s who had been receiving SSI disability benefits prior to becoming eligible for disabled widow(er)'s benefits would be able to count the months beginning with the month they first received these benefits toward satisfying the five-month waiting period for social security disability benefits and the 24-month waiting period for medicare benefits. In addition, widow(er)s who receive SSI disability benefits prior to becoming entitled to disabled widow(er)'s benefits would not lose medicaid eligibility as a result of receiving a higher social security benefit, but only for so long as they are not entitled to medicare benefits.

The provision would be effective for benefits payable for months after December, 1990, but only on the basis of applications filed or pending on or after January 1, 1991. The Secretary would not be required to make a new determination of disability for widow(er)s receiving SSI or disabled worker's benefits prior to becoming entitled to disabled widow(er)'s benefits. SSA would be required, to the extent possible, to notify such individuals of their eligibility for disabled widow(er)'s benefits.

Conference agreement

The conference agreement follows the Senate amendment.

3. PAYMENT OF BENEFITS TO A CHILD ADOPTED BY A SURVIVING SPOUSE

(Section 5104 of the Conference Agreement)

Present law

A child adopted by the surviving spouse of a deceased worker must meet two tests in order to be entitled to benefits as a surviving child. First, adoption proceedings must have been initiated prior to the worker's death, or the adoption must have been completed within two years of the worker's death. Second, the child must have been living in the worker's home and cannot have been receiving support from any source other than the worker or the spouse (e.g., a foster care program) in the year prior to the worker's death.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6052 of Senate amendment)

A child adopted by the surviving spouse of a deceased worker would be entitled to survivor's benefits if the child either lived with the worker or received one-half support from the worker in the year prior to death. The requirements relating to the timing of the adoption would not be changed.

The provision would be effective with respect to benefits payable for months after December 1990, but only on the basis of applications filed on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

4. IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SYSTEM

(Section 5105 of the Conference Agreement)

Present law

Under current law, the Secretary of Health and Human Services may appoint a relative or some other person (known as a "representative payee") to receive social security or SSI benefit payments on behalf of a beneficiary whenever it appears to the Secretary that the appointment of a representative payee would be in the best interest of the beneficiary.

The Secretary is required to investigate each individual applying to be a representative payee either prior to, or within 45 days after, the Secretary certifies payment of benefits to that individual. Present law does not specify what shall be included in the investigation.

The Secretary is required to maintain a system of accountability monitoring under which each representative payee is required to report not less than annually regarding the use of the payments. The Secretary is required to review the reports and identify instances where payments are not being properly used.

Any individual convicted of a felony under section 208 or section 1632 of the Social Security Act may not be certified as a representative payee.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment, with minor and technical differences).

Senate amendment (Section 6053 of Senate amendment)

a. Investigations of representative payee applicants

During the investigation of the representative payee applicant, the Secretary would be required to: 1) require the representative payee applicant to submit documented proof of identity; 2) conduct a face-to-face interview with the representative payee applicant when practicable; 3) verify the social security account number or employer identification number of the representative payee applicant; 4) determine whether the representative payee applicant has been convicted of a social security felony under section 208 or section 1632 of the Social Security Act; and 5) determine whether the representative payee applicant had ever been dismissed as a representative payee for misuse of a beneficiary's funds. An individual who had been convicted of a felony under section 208 or section 1632, or dismissed as a representative payee for misuse of the benefit payment, would not be permitted to be certified as a representative payee on or after January 1, 1991. The Secretary would be permitted to issue regulations under which an exemption from the prohibition against certification in the case of misuse would be granted on a case-by-case basis, if the exemption would be in the

best interest of the beneficiary. The conferees intend that the exemption would be granted only in rare instances.

The Secretary would be required to: (1) terminate payments to a representative payee where the Secretary or court of law found that the representative payee had misused the benefit payments; (2) maintain a list of those terminated for misuse on or after January 1, 1991; and (3) provide such a list to local field offices. If the computer program necessary to maintain such a list is not developed by January 1, 1991, the list should be maintained manually. Under current SSA policy, misuse is defined as converting benefit payments for personal use, or otherwise diverting the payments in bad faith with a reckless indifference to the welfare and interests of the beneficiary. The conferees expect the Secretary to apply this definition under this provision.

The Secretary would be required to maintain a centralized, current file readily retrievable by all local SSA offices of: 1) the address and social security account number (or employer identification number) of each representative payee; and 2) the address and social security account number of each beneficiary for whom each representative payee is providing services as representative payee. In addition, local service offices would be required to maintain a list of all public agencies and community-based non-profit social service agencies qualified to serve as a representative payee in the area served by such office.

Current law prohibits any individual convicted of a felony under section 208 or section 1632 of the Social Security Act from serving as representative payee. The provision would require SSA to maintain a list of those convicted and make it readily available to local field offices.

b. Withholding of benefits

In cases where the Secretary is unable to find a representative payee, and the Secretary determines that it would cause the social security beneficiary or SSI recipient substantial harm to make direct payment, the Secretary would be permitted to withhold payment for up to one month. Not later than the expiration of the one month period, the Secretary would be required to begin direct payment to the beneficiary starting with the current month's benefit unless the beneficiary had been declared legally incompetent or was under age 15. Retroactive benefits would be withheld until a representative payee had been appointed or the Secretary determines a suitable representative payee could not be found. Retroactive benefits would be paid over such period as the Secretary determines is in the best interest of the beneficiary.

It is not the intention of the conferees to encourage SSA to withhold benefits from a beneficiary whom the Secretary has determined to need a representative payee. The beneficiary should be paid directly if at all possible, especially if the beneficiary had been using the benefit payment to meet immediate needs such as shelter, food and clothing.

The conferees do not wish SSA to view the one month withholding period as a routinely acceptable length of time in which to find a representative payee. The conferees expect SSA to make every

effort to find a qualified representative payee for an individual as quickly as possible.

The conferees recognize that in some cases (such as an unreported change of address) SSA may not be officially notified of the need to change a representative payee. The conferees intend that the 1-month period of suspension shall be measured from the point the Secretary first becomes aware that a representative payee issue exists, and shall consider the objective of this provision met so long as the Secretary takes prompt action to minimize interruption of benefits.

c. Limitations on the appointment of representative payee

An individual who is a creditor providing goods and services to an OASDI or SSI beneficiary for consideration would be precluded from serving as the beneficiary's representative payee with certain exceptions. The exceptions would include: (1) a relative who resides in the same household as the beneficiary; (2) a legal guardian or representative; (3) a facility licensed or certified under State or local law; (4) an administrator, owner, or employee of such facility if the beneficiary resides in the facility and the local social security office has made a good faith effort to locate an alternate representative payee; and (5) an individual whom the Secretary determines to be acceptable based on a written finding reached under established rules that require the individual to show to the satisfaction of the Secretary that he or she poses no risk to the beneficiary, that the individual's financial relationship with the beneficiary poses no substantial conflict of interest, and no other more suitable representative payee exists.

d. Appeal rights and notices

The beneficiary would have the right to: 1) appeal the Secretary's determination of the need for a representative payee; and 2) appeal the designation of a particular person to serve as representative payee. In appealing either the determination or the designation, the beneficiary (or the applicant in cases of initial entitlement) would have a right to review the evidence upon which the determination was based and to submit additional evidence to support the appeal.

The Secretary would be required to send a written notice of the determination of the need for a representative payee to the beneficiary (other than a child under age 18 living with his parents), and each person authorized to act on behalf of an individual who is legally incompetent or is a minor.

The provision would require that the notices be provided in advance of any benefits being paid to a representative payee. In addition, the notice must be clearly written and explain the beneficiary's rights in an easily understandable manner.

e. High-risk representative payees

The Secretary would be required to study and provide recommendations as to the feasibility and desirability of formulating stricter accounting requirements for all high-risk representative payees and providing for more stringent review of all accounting from such representative payees. The Secretary would be required to

define as high-risk representative payees: 1) non-relative representative payees who do not live with the beneficiary; 2) those who serve as a representative payee for five or more beneficiaries (under title II, title XVI or a combination thereof) and who are not related to them; 3) creditors of the beneficiary; and 4) any other group determined by the Secretary to be high-risk.

The purpose of the provision is to identify groups or individuals serving as representative payees who may be likely to misuse or improperly use benefit payments. At a minimum, the conferees expect SSA to examine board and care operators, nursing homes, and individuals who are not related to nor living with the beneficiary. The proposal does not apply to Federal or State governmental institutions.

f. Restitution of benefits

In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misused benefits, the Secretary would be required to make repayment to the beneficiary. In addition, the Secretary would be required to make a good faith effort to obtain restitution of any misused funds.

g. Fee for representative payee services

Community-based non-profit social service agencies, in existence on October 1, 1988, which are bonded or licensed by their states and regularly serve as representative payees for five or more beneficiaries would be allowed to collect a monthly fee for representative payee services. The fee would be collected from the beneficiary's social security or SSI payment not to exceed the lesser of ten percent of the monthly benefit due or $25.

The provision would sunset after three years. The Secretary would be required to keep track of the number and type of groups who participated under this provision and report back to the Committee on Ways and Means and the Committee on Finance at the end of two years.

In general, the provision would prohibit an agency which is a creditor of the beneficiary from serving as a representative payee but would require the Secretary to develop regulations whereby exceptions would be granted on a case by case basis if the exception is in the best interest of the beneficiary.

The term "community-based, non-profit, social service agencies" means non-profit social service agencies which are representative of communities or significant segments of communities and that regularly provide services for those in need. Guardian, Inc., of Calhoun County, Michigan, is an example of a non-profit organization which regularly provides representative payee services. The Salvation Army, Catholic Charities, and Lutheran Social Services are examples of agencies providing social services to the needy.

Qualified organizations which charge or collect, or make arrangements to charge or collect, a fee in excess of the maximum fee would be subject to a fine of not more than $10,000.

Currently, SSA permits an individual serving as a representative payee to be reimbursed from the beneficiary's check for actual out-of-pocket expenses incurred on behalf of the beneficiary. These expenses include items such as stamps, envelopes, cab fare, or long-

distance phone calls. It is the intention of the conferees that such individual representative payees would continue to be reimbursed in this manner. The conferees do not intend these representative payees to receive any additional fee for services.

The General Accounting Office would be directed to conduct a study of the advantages and disadvantages of allowing qualified organizations that charge fees to serve as representative payees to individuals who receive social security and SSI benefits, and to report its finding to the Finance and Ways and Means Committees by January 1, 1993.

h. Studies and demonstration projects

(i) The Secretary would be required to enter into demonstration arrangements with not fewer than two states under which the Secretary would make readily available to such states a list of all addresses where OASDI and SSI benefit payments are received by five or more unrelated beneficiaries. The Secretary would be required to make the information available to the state agencies primarily responsible for regulating care facilities or for providing adult or child protective services in the participating states.

The purpose of this demonstration project is to determine whether providing such information to the state protective service agencies would be useful in locating unlicensed board and care homes.

(ii) The Secretary would be required to study the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payee.

The information obtained from this study would assist the Ways and Means and Finance Committees in determining whether there are circumstances under which an individual with a conviction should be permitted to serve as a representative payee.

(iii) The Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Attorney General, would be required to study the feasibility of establishing and maintaining a list of the names and social security account numbers of those who have been convicted of social security or SSI check fraud violations under section 495 of title 18 of the U.S. Code. As part of the study, the Secretary would be required to consider the feasibility of providing such a list to social security field offices in order to assist claims representatives in the investigation of representative payee applicants. The Secretary would be required to report the results of the study, together with any recommendations, to the Committee on Ways and Means and the Committee on Finance no later than July 1, 1992.

Law enforcement agencies do not report violations under section 495 of title 18 of the U.S. Code to either SSA or the Department of Health and Human Services Inspector General. As a result, SSA is often unaware of arrests and convictions of individuals for violations under this section and therefore fails to

obtain restitution or to prevent those convicted of such violations from serving as representative payee.

(iv) The Secretary would be required to conduct a study with the Department of Veterans' Affairs of the feasibility of designating the Department of Veterans' Affairs as the lead agency for administering a representative payee program for dual recipients of Old Age Survivors and Disability Insurance or Supplemental Security Income benefits and veterans' benefits. The Secretary would be required to report to Congress on the feasibility of this arrangement within six months after enactment.

In general, the provision would be effective July 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment with minor and technical changes.

5. STREAMLINING OF THE ATTORNEY FEE PAYMENT PROCESS

(Section 5106 of the Conference Agreement)

Present law

Attorneys and other persons who represent claimants before the Social Security Administration (SSA) are permitted to collect fees for their services, subject to approval and limits set by SSA. By regulation, the representative must submit a fee petition detailing the number of hours spent on the case and requesting a specific fee. The Administrative Law Judge (ALJ) who heard the case is required to review the fee petition. If the fee requested is less than $4,000, the ALJ has authority to approve or modify it. If the amount requested exceeds $4,000, it must be reviewed and approved or modified by the regional Chief ALJ. Where the claimant is represented by an attorney and a favorable determination is made, SSA by statute withholds up to 25 percent of the claimant's past-due social security benefits and pays the attorney directly. In cases where the claimant is concurrently entitled to both past-due social security and Supplemental Security Income (SSI) benefits and the SSI benefits are paid first, the amount of past-due social security benefits payable is reduced by the amount of SSI benefits that would not have been paid if the social security benefits had been paid monthly when due rather than retroactively. In many such cases, this leaves little or no past-due social security benefits out of which to pay the attorney the approved fee.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment with minor and technical differences.)

Senate amendment (Section 6054 of Senate amendment)

The provision would generally replace the fee petition process with a streamlined process in which SSA would approve any fee agreement jointly submitted in writing and signed by the representative and the claimant if the Secretary's determination with respect to a claim for past-due benefits was favorable and if the

agreed-upon fee did not exceed a limit of 25 percent of the claimant's past-due benefits up to $4,000. The $4,000 limit could be increased periodically for inflation at the Secretary's discretion. If a fee was requested for a claim which did not meet the conditions for the streamlined approval process, it would be reviewed under the regular fee petition process.

A representative who is an attorney would be paid the approved fee out of the claimant's past-due social security benefits, prior to any reduction for previously-paid SSI benefits. However, if the attorney were awarded a fee in excess of 25 percent of the claimant's past-due social security benefits, the amount payable to the attorney out of the past-due social security benefits could not exceed 25 percent of these benefits.

The representative, the claimant, or the ALJ that heard the case would have the right to protest the approved fee. However, the ALJ could protest the approved fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest, or on the basis of evidence that the fee is clearly excessive for the services rendered. SSA would review any protested fee and approve, modify, or disallow it. If the ALJ that heard the case filed the protest, a different ALJ would review the fee.

It is not the conferees' intent that this process be used to establish regular review of fees at the ALJ level. The Committee wishes to emphasize that the protest of a fee amount by an ALJ is to be made only in cases where there is prima facie evidence that the fee is clearly excessive in light of the services rendered.

In addition, with respect to reimbursement for travel expenses of individuals who represent claimants, such reimbursement could not exceed the maximum amount that would be payable for travel to the site of the reconsideration interview or proceeding before an ALJ from a point within the geographical area served by the office having jurisdiction over the interview or proceeding.

With the exception of the provisions relating to direct payment of an attorney's fee out of past-due benefits, conforming changes would be made with respect to representation of SSI applicants.

The provision would be effective for determinations made on or after July 1, 1991, and reimbursement for travel costs incurred on or after April 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

6. RES JUDICATA: APPEAL VERSUS REAPPLICATION

(Section 5107 of the Conference Agreement)

Present law

If a claimant for social security disability benefits successfully appeals an adverse determination by the Secretary, benefits can be paid retroactively for up to 12 months prior to the date of the original application.

If, however, instead of appealing, the claimant reapplies and is subsequently found to be disabled as of the date originally alleged,

there are circumstances where retroactive benefits would be limited to 12 months prior to the date of the subsequent application (rather than prior to the date of the first application). This occurs when SSA's "reopening rules" do not permit the original application to be reopened. (SSA's administrative policy permits a case to be reopened within 12 months of an initial determination for any reason; and within four years if there is new and material evidence or the original evidence clearly shows on its face that an error was made in the original decision.)

A reapplication, in lieu of an appeal, also could result in an outright denial of social security or Supplemental Security Income (SSI) benefits without consideration of an individual's medical condition. This occurs in the case of social security when: (i) the claimant's insured status runs out before the date of the original denial; and (ii) there is no new and material evidence and no facts or issues that were not considered in making the prior decision. In the case of SSI, this occurs when (ii) applies. In these situations, SSA applies the legal principle of res judicata to deny the subsequent claim. Under this principle—the use of which is prescribed by SSA regulations—SSA will not consider the same claim again and again.

Prior to May 1989, SSA's standard denial notice informed claimants that they could reapply at any time but did not explain the potential adverse consequences of reapplying versus appealing a denial. A May 1989 modification of this notice informs claimants that reapplying may result in a loss of benefits but does not mention the second problem described above, i.e., an outright denial of eligibility without further consideration of the evidence.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is identical to the Senate amendment.)

Senate amendment

When a claimant for social security or SSI benefits can demonstrate that he or she failed to appeal an adverse decision because of reliance on incorrect, incomplete, or misleading information provided by SSA, his or her failure to appeal could not serve as the basis for denial by the Secretary of a second application for any payment under title II or title XVI. This protection would apply to both initial denials and reconsiderations by the Secretary. The Secretary also would be required to include in all notices of denial a clear, simple description of the effect on possible entitlement to benefits of reapplying rather than filing an appeal.

The provision would apply to adverse determinations made on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment, with an effective date of July 1, 1991.

7. SSA TELEPHONE ACCOUNTABILITY DEMONSTRATION PROJECTS

(Section 5108 of the Conference Agreement)

Present law

The Social Security Act is silent regarding telephone service provided by SSA. In practice, SSA currently operates 37 teleservice centers (TSCs) that respond to inquiries from the public. In addition to providing general program information, these TSCs can schedule appointments at local offices and provide individual service, including discussing a person's eligibility and taking specific actions regarding his or her benefits. In October 1988, the TSCs were integrated into a toll-free telephone network that covered 60 percent of the population. In October 1989, toll-free service was extended via the TSCs and four new mega-TSCs to the entire country. At the same time, direct telephone access to SSA's local field offices was terminated, so that the public can no longer call most of these offices directly.

Since October 1989, there have been many complaints from the public about SSA's telephone service. These complaints focus on high 800 number busy rates, on problems with the accuracy and completeness of information provided to callers, and on difficulties caused by the elimination of telephone access to local offices.

House bill

No provision.

Senate amendment (Sections 6055–6056 of Senate amendment)

The Secretary would be required to carry out demonstration projects testing a set of accountability procedures in at least three teleservice centers. These procedures are intended to assure that individuals who conduct business with the agency via telephone concerning title II, title XVI, or title XVIII benefits are not disadvantaged, either as a result of receiving incorrect information or from their inability to document their own actions and requests. Under these procedures, callers who provide adequate identifying information would be given a written confirmation of the date and nature of their telephone communication with the agency. This confirmation would include the name of the SSA employee with whom the caller spoke, a description of any action that the employee said would be taken in response to the call, and any advice that the caller was given. SSA would be required to maintain a copy of this confirmation for a minimum of five years following the termination of the demonstration projects.

Routine telephone communication would be excluded from these requirements. Thus, callers making inquiries that do not relate to potential or current entitlement or eligibility for title II, title XVI or title XVIII benefits—i.e., questions about the location or hours of operation of local offices—would not be subject to the accountability procedures described above.

The Secretary would be required to issue a report to the Committee on Ways and Means and the Committee on Finance on the demonstration projects. This report would:

(i) Assess the costs and benefits of the accountability procedures;

(ii) Identify any major difficulties encountered in implementing the demonstration projects; and

(iii) Assess the feasibility of implementing the accountability procedures nationally.

The telephone demonstration projects would be required to be initiated within six months of the enactment of this Act, and would continue for one to three years. The report would be submitted 90 days after the termination of the projects.

Conference agreement

The conference agreement follows the Senate amendment.

8. NOTICE REQUIREMENTS

(Section 5109 of the Conference Agreement)

Present law

The Secretary must use understandable language in notifying individuals of a denial of disability benefits. The law is silent regarding the language of other notices.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, provides that, in issuing notices regarding title II and title XVI benefits, the Secretary would be required to:

(i) Use clear and simple language;

(ii) Include the local office telephone number and address in notices generated by SSA local offices;

(iii) Include the address of the local office which serves the recipient of the notice and a telephone number through which that office can be reached in notices generated by SSA central offices.

The provision would apply to notices issued on or after January 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828, effective with respect to notices issued on or after July 1, 1991.

9. RESTORATION OF TELEPHONE ACCESS TO THE LOCAL OFFICES OF THE SOCIAL SECURITY ADMINISTRATION

(Section 5110 of the Conference Agreement)

Present law

The Social Security Act is silent regarding telephone service provided by the Social Security Administration (SSA). In practice, SSA currently operates 37 teleservice centers (TSCs) that respond to inquiries from the public. In addition to providing general program

information, these TSCs can schedule appointments at local offices and provide individual service, including discussing a person's eligibility and taking specific actions regarding his or her benefits. In October 1988, the TSCs were integrated into a toll-free telephone network that covered 60 percent of the population. In October 1989, toll-free service was extended via the TSCs and four new mega-TSCs to the entire country. At the same time, direct telephone access to SSA's local field offices was terminated, so that the public can no longer call most of these offices directly.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that is similar to the Senate amendment, but requires restoration of SSA's local telephone service as soon as possible, but not later than 180 days following the date of enactment.)

Senate amendment (Section 6057 of Senate amendment)

The Senate amendment contains a provision that would require the Secretary to reestablish telephone access to local SSA offices at the level generally available on September 30, 1989 (the date just prior to the cut-off of direct telephone access to most local offices). The Secretary would also be required to re-list these local office numbers in local telephone directories (as well as in the directories used by public telephone operators in providing callers with information). The required telephone listings could include a brief instruction to the public to call SSA's 800 number for general information.

In addition, by January 1, 1993, the Secretary would be required to submit to the Committee on Finance and the Committee on Ways and Means a report which: (i) assesses the impact of the requirements established by this provision on SSA's allocation of resources, workload levels, and service to the public, and (ii) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices. If the Secretary's plan provides for maintaining or enhancing public access to local offices by individuals in need of assistance from a local SSA representative, it is the Conferees' intent to reconsider the need for a statutory requirement governing telephone access.

The provision would be effective April 1, 1991.

Not later than 90 days after enactment, the General Accounting Office would be required to report to the Committee on Finance and the Committee on Ways and Means on the level of public telephone access to the local offices of the Social Security Administration.

Conference agreement

The conference agreement generally follows the Senate amendment, but includes the effective date and GAO reporting deadlines contained in H.R. 5828.

10. IMPROVEMENT IN EARNINGS AND BENEFIT STATEMENTS

(Section 5111 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1989 required the Social Security Administration to establish a program under which covered workers receive periodic statements concerning their earnings and the potential benefits payable on the basis of those earnings. Under that legislation, these statements are to be provided on a biennial basis starting October 1, 1999.

House bill

No provision.

Senate amendment (Section 6058 of Senate amendment)

The requirement that earnings and benefit statements be provided biennially starting in 1999 would be modified to require annual statements beginning at that time. In addition, the Secretary of the Treasury would be authorized to disclose to the Commissioner of Social Security the mailing address of any taxpayer who is entitled to receive an earnings and benefit statement.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

11. PROVIDE A ROLLING FIVE-YEAR TRIAL WORK PERIOD FOR ALL DISABLED BENEFICIARIES

(Section 5112 of the Conference Agreement)

Present law

Under present law, disability beneficiaries who are still disabled but who want to return to work despite their disabling condition are entitled to a nine-month trial work period. (The months need not be consecutive.) During this period, disabled beneficiaries may test their ability to work without affecting their entitlement to disability benefits. Any work and earnings are disregarded in determining whether the beneficiary's disability has ceased. At the end of this period, the beneficiary's work and earnings are evaluated to determine whether he is able to engage in Substantial Gainful Activity (SGA), which is currently defined by regulation as earnings of more than $500 per month. If so, his benefits are terminated two months later.

Only one trial work period is allowed in any one period of disability. In addition, an individual who is entitled to disabled worker's benefits for which he has qualified without serving a waiting period (i.e., the worker was previously entitled to disabled worker's benefits within five years before the month he again becomes disabled) is not entitled to a trial work period.

House bill

No provision.

Senate amendment (Section 6059 of Senate amendment)

All beneficiaries would be given an opportunity to test their capacity to engage in substantial gainful activity over a sustained period of time before their benefits would be stopped by providing that a disabled beneficiary would exhaust his nine-month trial work period only if he performed services in any nine months within a rolling 60-month period (that is, within any period of 60 consecutive months) and repealing the provision which precludes a reentitled disabled worker from being eligible for a trial work period.

The provision would be effective January 1, 1992.

Conference agreement

The conference agreement follows the Senate amendment.

12. CONTINUATION OF BENEFITS ON ACCOUNT OF PARTICIPATION IN A NON-STATE VOCATIONAL REHABILITATION PROGRAM

(Section 5113 of the Conference Agreement)

Present law

Social Security disability insurance (DI) benefits or Supplemental Security Income (SSI) benefits based on disability that are paid to a beneficiary who has medically recovered may not be terminated or suspended because the disability has ceased if: (1) the individual is participating in an approved State vocational rehabilitation program, and (2) the Commissioner of Social Security determines that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the benefit rolls. The 1988 Disability Advisory Council recommended that the same benefit continuation provisions be extended to beneficiaries who medically recover while participating in other approved vocational rehabilitation programs.

House bill

No provision.

Senate amendment (Section 6060 of Senate amendment)

The provision would extend to those DI or SSI beneficiaries who medically recover while participating in a non-State vocational rehabilitation program approved by the Secretary the same benefit continuation rights as those who medically recover while participating in a State vocational rehabilitation program.

The provision would be effective with respect to benefits payable for months after the eleventh month following the month of enactment and would apply with respect to individuals whose disability has or may have ceased after such eleventh month.

Conference agreement

The conference agreement follows the Senate amendment.

13. LIMITATION ON NEW ENTITLEMENT TO SPECIAL AGE-72 PAYMENTS

(Section 5114 of the Conference Agreement)

Present law

Special age-72 benefits (so-called "Prouty benefits" after Senator Winston Prouty of Vermont) were enacted in 1966 to provide some payment to individuals who, when the social security program began or when coverage was extended to their jobs, were too old to earn enough quarters of coverage to become fully insured for regular retirement benefits.

When the benefits were created in 1966, it was expected that new entitlement under this provision would not be possible for anyone reaching age 72 after 1971. This is because individuals age 72 after 1971 who met the quarters-of-coverage requirements for Prouty benefits would also have enough quarters of coverage to be fully insured and thus eligible for the minimum benefit. Because the amount of the Prouty benefits was less than the amount of the minimum benefit payable at age 62, new entitlement to Prouty benefits would not occur. However, due to subsequent changes in the law, it is now theoretically possible for certain people who will reach age 72 after 1990 and who receive the frozen minimum benefit (due to a change in the law in 1977) or who receive less than the minimum benefit (due to its elimination in 1982) to become newly eligible for Prouty benefits. In 1990, the Prouty benefit amount is $159 per month.

House bill

No provision.

Senate amendment (Section 6061 of Senate amendment)

The provision would preclude the unintended payment of Prouty benefits (due to the interaction of the Prouty benefit provision with subsequent changes in the law affecting the minimum benefit) by providing that Prouty benefits would not be payable to any individual reaching age 72 after 1971. This change would not affect any current Prouty beneficiaries.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

14. ELIMINATION OF ADVANCE TAX TRANSFER

(Section 5115 of the Conference Agreement)

Present law

Because of the threatened insolvency of the social security trust funds, the Social Security Amendments of 1983 changed the rules for crediting the trust funds with social security tax receipts. Prior to 1983, the trust funds were credited with the receipts as they were collected throughout each month. Under the 1983 amendments, the trust funds are credited at the start of each month with the full amount of social security tax receipts which are expected

to be collected throughout the month. These receipts are invested in interest bearing Treasury securities; however, an interest adjustment is made later to leave the trust funds with the same interest earnings that they would have had if the taxes had been credited on an "as received basis." The present crediting rules may present Treasury with a situation in which trust fund assets cannot be invested when the debt limit has been reached.

House bill

No provision.

Senate amendment (Section 6062 of Senate amendment)

The advance tax transfer provisions would be repealed, returning to the prior procedure of crediting the trust funds as tax receipts are received. However, the advanced tax transfer mechanism would be retained as a contingency to be exercised only to the extent that the Secretary of the Treasury determines is necessary to assure sufficient funds to meet current benefit obligations. This would give the social security program the same level of protection that it enjoys under present law without continuing the routine use of the advance transfer mechanism.

The provision would be effective after December 1990.

Conference agreement

The conference agreement follows the Senate amendment, effective the first day of the month following the month of enactment.

15. REPEAL OF RETROACTIVE BENEFITS FOR CERTAIN CATEGORIES OF INDIVIDUALS

(Section 5116 of the Conference Agreement)

Present law

Social security retirement and survivor benefits can be paid for up to six months prior to the month of application if the applicant were otherwise eligible for benefits during that period.

In general, retroactive benefits cannot be paid if doing so would cause a reduction in future monthly benefits (i.e., it would effectively mean that an individual would be filing for "early retirement," in which case an actuarial reduction in benefits is required). For example, if a retroactive application for retirement benefits were to cause a retiree's initial entitlement month to fall before the individual reached age 65, no retroactive benefits could be paid for the months prior to age 65. However, there are four exceptions to this rule which permit payment of retroactive benefits even though it causes an actuarial reduction in benefits.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6063 of Senate amendment)

The provision would eliminate eligibility for retroactive benefits for two categories of individuals eligible for actuarially reduced benefits: (1) individuals who have dependents who would be entitled to unreduced benefits during the retroactive period (e.g., a retiree under age 65 who has a spouse age 65 or over); and (2) individuals who have pre-retirement earnings over the amount allowed under the social security retirement test that could be charged off against benefits for months prior to the month of application, thus permitting an early retiree to receive benefits for months prior to actual retirement.

The provision would be effective with respect to applications for benefits filed on or after January 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment.

16. CONSOLIDATION OF OLD COMPUTATION METHODS

(Section 5117 of the Conference Agreement)

Present law

A number of old, rarely-used benefit computation methods remain in the Social Security Act. They apply primarily to claims in which the worker filed for benefits or died before 1967 and are used only if they provide a higher benefit than newer computation methods.

Such computations must be done manually. The Social Security Administration (SSA) estimates it would be costly to develop computer programs for these rarely-used benefit computation methods.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6064 of Senate amendment)

The provision would eliminate all old computation methods which require manual intervention. It would substitute newer computation methods which may be fully processed by computer.

The provision would apply only to new claims for benefits, virtually all of which are for survivor's benefits, and to recomputations for certain retired workers now on the rolls who have recent earnings. However, it is unlikely that there are many individuals who are over 85 and are working at a wage high enough to result in an increase in benefits after a recomputation using a computation method to be eliminated under this provision. No benefits paid to individuals already on the rolls would be reduced.

The provision would be effective 18 months after the month of enactment.

Conference agreement

The conference agreement follows the Senate amendment.

17. SUSPENSION OF DEPENDENT'S BENEFITS WHEN A DISABLED WORKER IS IN AN EXTENDED PERIOD OF ELIGIBILITY

(Section 5118 of the Conference Agreement)

Present law

A disability insurance beneficiary who successfully completes a nine-month trial work period has an extended period of eligibility during which he or she continues to receive medicare benefits and is eligible to receive disability benefits if earnings fall below $500 a month. The law is silent regarding the payment of benefits to dependents during this extended period. However, current Social Security Administration (SSA) policy provides that dependent's benefits are suspended during this period if the disabled worker's benefits are suspended.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment (Section 6065 of Senate amendment)

The Senate amendment contains a provision that would codify current SSA policy which links the disabled worker's entitlement to monthly benefits and the dependent's entitlement to benefits for the same month. Thus, a dependent could receive benefits for a month only if the disabled worker received benefits for that month.

The proposal would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

18. PAYMENT OF BENEFITS TO DEEMED SPOUSE AND LEGAL SPOUSE

(Section 5119 of the Conference Agreement)

Present law

A spouse or widow(er) whose marriage is found to be invalid (i.e., the husband or wife failed to obtain a legal divorce from a previous spouse, or there was some defect in the marriage ceremony) is eligible for benefits as a "deemed" spouse or widow(er) if he or she is living with the worker (or was at the time of the worker's death) and there is no legal spouse who is currently entitled or had previously been entitled to benefits on the worker's record. In cases where a deemed spouse is paid benefits and a legal spouse later files for benefits, the deemed spouse's benefits are terminated when the legal spouse becomes entitled. The deemed spouse may again receive benefits if the legal spouse and the worker legally divorce, or if the legal spouse dies.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would pay benefits to both the legal spouse and the deemed spouse (or to both the legal widow

and the deemed widow). That is, the existence of a legal spouse would no longer prevent a deemed spouse from receiving benefits on the worker's record or terminate the benefits of a deemed spouse who was already receiving benefits on the worker's record.

A deemed spouse or deemed widow(er) would be entitled to benefits on the worker's record on the same basis as if he or she were a legal spouse and would be paid within the family maximum. The legal spouse would also be entitled to benefits and would be paid outside the family maximum once the deemed spouse became entitled to benefits.

In order to qualify as a deemed spouse, the individual would be required to be living with the worker at the time of filing for benefits (or at the time of the worker's death, in the case of deemed widow(er)'s benefits). A deemed spouse who divorced the worker would be eligible for benefits on the same basis as if he or she were a divorced legal spouse.

The provision would be effective with respect to benefits payable for months after December 1990. With respect to deemed spouses or deemed widow(er)'s whose benefits have been terminated prior to December 1990, the provision would be effective for applications filed on or after January 1, 1991.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

19. VOCATIONAL REHABILITATION DEMONSTRATION PROJECT

(Section 5120 of the Conference Agreement)

Present law

Since the establishment of the Disability Insurance (DI) cash benefits program in 1956, the Social Security Administration (SSA) has been required to refer disabled beneficiaries and applicants to State vocational rehabilitation agencies so that the maximum number of them may be rehabilitated and return to work. When the services provided by a State agency result in a beneficiary engaging in substantial gainful activity for at least nine months, SSA reimburses the agency for the cost of these services from the DI trust fund (or, in the case of disabled widow(er)s and disabled adult children, from the OASI trust fund).

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, requires SSA to develop and carry out demonstration projects assessing the advantages and disadvantages of permitting disabled beneficiaries to select a qualified rehabilitation agency, public or private, to provide them with services aimed at enabling them to engage in substantial gainful activity and leave the disability rolls. Those eligible to participate in the demonstration projects would include disability insurance beneficiaries, disabled

widow(er)s, and disabled adult children. The project would be implemented in at least three sites in three separate states. They would include a sufficient number of beneficiaries and be of sufficient scope to permit an evaluation of:

The extent to which disabled beneficiaries will participate in the provider selection process (including an identification of their reasons for participating or not participating);

The characteristics (including impairments) of beneficiaries by the type of provider selected;

The rehabilitation needs of beneficiaries by the type of provider selected;

The extent to which non-State vocational rehabilitation firms accept referrals of disabled beneficiaries on the basis of current law reimbursement provisions and of the most effective mechanisms for reimbursing such providers within the framework of current law;

The extent to which providers participating in the demonstration projects contract out services and the types of services that are contracted out;

Whether beneficiaries who select their own vocational rehabilitation provider are more likely to work and leave the disability rolls than those who do not;

The cost effectiveness of permitting beneficiaries to select their vocational rehabilitation provider and of different types of providers; and

The feasibility of enacting the arrangement being tested on a national basis and the additional procedural safeguards, if any, needed to assure its effectiveness if made part of permanent law.

In selecting beneficiaries to participate in the project, the Secretary must choose those for whom there is a reasonable likelihood that the rehabilitation services provided will result in their performance of substantial gainful activity for a continuous period of nine months prior to the completion of the project.

Project participants would be permitted to select a qualified provider to furnish them with rehabilitation services. After seeking recommendations from disabled individuals and organizations representing them, the Secretary would designate a number of qualified providers in the geographic areas of each of the three demonstration sites. In addition, the Secretary would have authority to approve rehabilitation services provided outside these areas on a case-by-case basis.

Providers that participate in the project would be reimbursed in accordance with current law (section 222(d) of the Social Security Act), except that the Secretary would be permitted to contract with qualified providers on a fee-for-service basis to: (1) conduct vocational evaluations aimed at identifying those participants who have a reasonable potential for engaging in substantial gainful activity and being removed from the disability rolls if provided with vocational rehabilitation services; and (2) develop jointly with those participants an individualized written rehabilitation program.

This program would include, but not be limited to: (1) a statement of the individual's rehabilitation goal; (2) a statement of the specific rehabilitation services to be provided and the rehabilitation

provider from which those services will be obtained; (3) the projected date for the initiation of such services and their anticipated duration; and (4) objective criteria and an evaluation procedure and schedule for determining whether the goals are being achieved.

The demonstration project would run for three years. By April 1, 1992, the Secretary would be required to submit a report on the progress of the projects to the Committee on Ways and Means and the Committee on Finance. A final report to these Committees would be due six months after completion of the projects, or by April 1, 1994.

Authority for this demonstration project is provided as an amendment to section 505 of the Social Security Disability Amendments of 1980. To allow for completion of these projects, the Secretary's general authority under section 505 would be extended by approximately three months, from June 10, 1993, to October 1, 1993.

The provision would be effective upon enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

20. USE OF SOCIAL SECURITY NUMBER BY CERTAIN LEGALIZED ALIENS

(Section 5121 of the Conference Agreement)

Present law

The use of a false social security number or social security card or the misreporting of social security covered earnings, with intent to deceive, is a felony under section 208 of the Social Security Act, punishable by a maximum penalty of up to $250,000 or up to 5 years imprisonment. The Immigration Reform and Control Act of 1986 (IRCA) extended amnesty and the opportunity to obtain legal status to certain illegal aliens who had been resident and working in the United States for a substantial period of time. However, persons legalized under IRCA are still subject to prosecution for use of a false social security number or card under section 208 of the Social Security Act. As a result, alien workers who are granted temporary or permanent legal resident status under IRCA, and who apply for a correct social security number or attempt to correct their earnings records with the Social Security Administration, may be subject to prosecution as a result of their previous use of a false number or card.

House bill

No provision. (H.R. 2858 includes a provision that would amend the Social Security Act to provide that aliens who, under IRCA or section 902 of the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989, applied for and were granted legal status would not be prosecuted under certain of the criminal provisions in section 208, by virtue of having used a false social security number

or card or having misreported earnings with intent to deceive, during the period prior to, or within 60 days after enactment of this provision. The exemption would not apply to those who sold social security cards, possessed social security cards with intent to sell, possessed counterfeit social security cards with intent to sell or counterfeited social security cards with intent to sell.

The purpose of IRCA is to give most illegal aliens who had been long established in the United States (generally present since January 1, 1982) and who are contributing members of the society an opportunity to become legal residents and lead normal lives. The use of false social security numbers was a common practice among illegal aliens attempting to work in the United States.

When this population was given amnesty from prosecution for violation of the immigration laws, the fact that they could still be prosecuted for previously using a false social security number or card, even after obtaining temporary or permanent resident status, was not addressed. As a result, most of the legalized population is still technically subject to prosecution and loss of legal status as soon as they attempt to correct their earnings records. Many aliens who have applied for, or have been granted, amnesty have not yet corrected their social security earnings record for fear of prosecution under section 208.

The Conferees intend that this exemption apply only to those individuals who use a false social security number to engage in otherwise lawful conduct. For example, an alien who used a false social security number in order to obtain employment which results in eligibility for social security benefits or the receipt of wage credits would be considered exempt from prosecution. However, an alien who used a false social security number for otherwise illegal activity such as bank fraud or drug trafficking would not be exempt from prosecution under this provision.

The provision would make the Social Security Act consistent with the amnesty provisions of IRCA. The Conferees believe that individuals who are provided exemption from prosecution under this proposal should not be considered to have exhibited moral turpitude with respect to the exempted acts for purposes of determinations made by the Immigration and Naturalization Service.

The exemption would apply to all individuals who received amnesty regardless of when they were granted status.

The provision would be effective for fraudulent use which occurred prior to, or within 60 days after, enactment by any person who is ultimately granted legal status under IRCA or section 902 of the Foreign Relations Authorization Act for fiscal years 1988 and 1989.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828 with minor changes.

21. REDUCTION IN WAGES NEEDED FOR A YEAR OF COVERAGE TOWARD THE SPECIAL MINIMUM BENEFIT

(Section 5122 of the Conference Agreement)

Present law

A "special minimum" social security benefit is available to workers who have many years of work at modest wages. The amount of this benefit is determined by an alternative benefit computation that calculates the benefit based on the number of years of significant earnings, rather than on average lifetime earnings. It applies in cases where this computation results in a higher benefit than that which would be derived under the regular social security benefit computation rules.

The special minimum benefit is computed by multiplying the number of years of special minimum coverage by a base amount. However, only those years in excess of 10 and up to 30 can be multiplied by the base amount (e.g., if an individual has 30 years of coverage toward the special minimum, only 20 of these years can be multiplied by the base amount to determine the benefit amount). In 1990, the base amount is $21.90. A worker with 30 years of coverage under the special minimum would receive a benefit of $437.

For 1951–1978, the individual earns a year of coverage for each year in which he or she has wages or self-employment income of at least 25 percent of the social security contribution and benefit base for that year and, for years after 1978, at least 25 percent of the old-law contribution and benefit base for that year.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would reduce the amount of wages or self-employment income required to earn a year of coverage from 25 percent of the old-law contribution and benefit base (projected by the Congressional Budget Office to be $10,125 in 1991) to 15 percent of the old-law contribution and benefit base (projected to be $6,075 in 1991).

Because the minimum wage was not increased from 1981 through 1989, while the social security contribution and benefit base has been indexed to wage increases, the level of wages required to earn a year of coverage under the special minimum benefit provision has exceeded the minimum wage in every year since 1983. The provision would make it possible once again for a minimum-wage earner to earn years of coverage toward the special minimum. (In 1991, a full-time minimum wage worker would earn $8,606.)

The provision would be effective for years of coverage earned after 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

22. CHARGING OF EARNINGS OF CORPORATE DIRECTORS

(Section 5123 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1987 required that, for purposes of both social security taxation and the retirement test, corporate directors' earnings be treated as received in the year that the services to which they are attributable were performed. Prior to OBRA, because corporate directors' earnings were taxed when received, directors were able to avoid benefit reductions from the retirement test by deferring receipt of earnings until reaching age 70.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, would repeal the provision that treats directors' earnings as taxable in the year that the services to which they are attributable were performed. Thus, directors' earnings would be treated as received in the year that the relevant services are performed only for purposes of the social security retirement test.

The provision would be effective with respect to services performed in taxable years beginning after December 31, 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828 with technical drafting changes.

23. COLLECTION OF EMPLOYEE SOCIAL SECURITY TAX ON GROUP-TERM LIFE INSURANCE

(Section 5124 of the Conference Agreement)

Present law

The Omnibus Budget Reconciliation Act of 1987 required the cost of employer-provided group-term life insurance to be included in wages for FICA tax purposes if it is includible for income tax purposes. Under current law, it is includible for income tax purposes to the extent that coverage exceeds $50,000.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, provides that in cases where an employer continues to provide taxable group-term life insurance to an individual who has left his employment, the former employee would be required to pay the employee portion of the FICA tax directly. To enable him to do this, the employer would be required to list separately on the

former employee's W-2 each year the amount of the payment for group-term life insurance and the amount of the employee FICA tax imposed on it. Instructions on form 1040 would then direct the employee to add this amount to his total tax liability. This procedure follows an existing procedure by which employees with income from tips pay the employee share of the FICA tax directly when their wages are not sufficient to enable their employer to withhold it.

A conforming change would be made in the Railroad Retirement Tax Act.

The proposal would apply to group-term life insurance coverage provided after December 31, 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

24. CROSS-REFERENCING OF RAILROAD RETIREMENT TIER 1 TAX RATE TO THE FEDERAL INSURANCE CONTRIBUTIONS ACT

(Section 5125 of the Conference Agreement)

Present law

The railroad retirement Tier 1 tax rate is equivalent to the combined OASDI and HI tax rates of the Federal Insurance Contributions Act (FICA). The Tier 1 rate is described numerically in the Railroad Retirement Tax Act.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision identical to the Senate amendment.)

Senate amendment

The Senate amendment would amend the Railroad Retirement Tax Act to provide that the Tier 1 tax rate would be determined by cross-reference to the FICA tax rate.

The provision would be effective upon enactment.

Conference agreement

The conference agreement follows the Senate amendment.

25. TWO-YEAR EXTENSION OF GENERAL FUND TRANSFER TO RAILROAD RETIREMENT TIER 2 FUND

(Section 5126 of the Conference Agreement)

Present law

The proceeds from the income taxation of railroad retirement Tier 2 benefits are transferred from the general fund of the Treasury in the Railroad Retirement Account. This transfer applies only to proceeds from the taxation of benefits which have been received

prior to October 1, 1990. Proceeds from the taxation of benefits received after this date will remain in the general fund.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision similar to the Senate amendment but providing for a two-year rather than a one-year extension of the transfer provision.)

Senate amendment

The Senate amendment would provide for extending the transfer of proceeds from the income taxation of Tier 2 benefits for an additional year, that is, with respect to benefits received prior to October 1, 1991. The continuation of this transfer is estimated to result in an additional deposit into the Railroad Retirement Account of $190 million.

The provision would be effective with respect to benefits received after September 30, 1990 and before October 1, 1991.

Conference agreement

The conference agreement follows the Senate amendment with a modification under which the transfer would be extended for two years rather than one. This two-year extension is estimated to result in an additional deposit into the Railroad Retirement Account of $385 million.

The provision would be effective with respect to benefits received after September 30, 1990 and before October 1, 1992.

26. WAIVER OF THE TWO-YEAR WAITING PERIOD FOR CERTAIN DIVORCED SPOUSES

(Section 5127 of the Conference Agreement)

Present law

A divorced spouse is entitled to benefits on the record of a worker to whom he or she was previously married so long as three conditions are met: 1) both the worker and the divorced spouse are eligible for social security retirement benefits (i.e., are age 62 or older); 2) the marriage lasted 10 years; and 3) the worker is receiving benefits.

If the worker is eligible for benefits but is not receiving them (because the worker has not filed for benefits or because benefits have been suspended due to the retirement test), the divorced spouse may nevertheless be paid benefits on the worker's record, but only when the divorce has been final for two years. The purpose of this two-year waiting period is to prevent couples from obtaining a divorce solely to avoid suspension of spousal benefits under the retirement test. The waiting period is imposed on any divorced spouse whose former spouse does not receive benefits, regardless of whether the divorced spouse was receiving benefits prior to the divorce. Some people argue that the waiting period imposes a hardship on a spouse who had been receiving benefits prior to the divorce, but who loses these benefits because the former spouse returned to work after the divorce.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would waive the two-year waiting period for independent entitlement to divorced spouse's benefits if the worker was entitled to benefits prior to the divorce. In this way, a spouse whose divorce took place after the couple had begun to receive retirement benefits, and whose former spouse (the worker) returned to work after the divorce thus causing the suspension of benefits, would not lose benefits on which he or she had come to depend.

The provision would be effective for benefits payable for months after December, 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

27. PREEFFECTUATION REVIEW OF FAVORABLE DECISIONS BY THE SOCIAL SECURITY ADMINISTRATION

(Section 5128 of the Conference Agreement)

Present law

The Social Security Disability Amendments of 1980 require the Secretary of Health and Human Services (HHS) to review 65 percent of favorable title II decisions made by State Disability Determination Services (DDSs) each year prior to their effectuation. The review applies to favorable decisions on initial claims, on reconsiderations, and on continuing disability reviews. At Social Security Administration's (SSA's) current volume of applications and appeals, the agency is required to conduct about 450,000 preeffectuation reviews annually.

The Committee on Ways and Means approved the 65 percent requirement in 1980 as a means of promoting uniformity and accuracy in favorable disability decisions. At that time, the Committee noted that: ". . . in some instances reviewing this percentage of cases may not be cost effective—a lower or higher percentage may be prudent. If the Secretary finds this to be the case, we would expect him to report his findings to [the] Committee in an expeditious manner." (H. Rept. 96-100, p. 10)

Since 1981, SSA improved its capacity to identify the general types of approvals and continuances that are most likely to be incorrect. These improvements were documented in a March 1990 report by the General Accounting Office, which suggests that SSA can maintain current levels of accuracy, and possibly even improve upon them, by targeting preeffectuation reviews on error-prone cases.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, would reduce the percentage of favorable state agency

decisions that the Secretary must review from 65 percent across-the-board to 50 percent of allowances. The 50 percent requirement would apply to both initial allowances and allowances upon reconsideration. The Secretary would also be required to review a sufficient number of continuances to assure a high level of accuracy in such decisions. To the extent feasible, the reviews would focus on allowances and continuances that are likely to be incorrect.

SSA would be required to submit annual written reports to the Committee on Ways and Means and the Committee on Finance which (i) state the number of preeffectuation reviews conducted the previous year and, (ii) based on these reviews, assess the accuracy of DDS decisions.

The provision would apply to reviews of state agency determinations made after fiscal year 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement includes the provision contained in H.R. 5828.

28. INCREASE IN THE RETIREMENT TEST FOR WORKERS AGE 65–69

Present law

In 1990, individuals age 65–69 may earn up to $9,360 in annual wages or self-employment income and still be treated as retired; that is, they will have no reduction in their social security benefit as a result of earnings at or below this exempt amount. The exempt amount is automatically adjusted each year to reflect the change in average wages in the economy. The retirement test for those age 65–69 will rise to $9,720 in 1991 and is projected by the Congressional Budget Office to be $10,560 in 1992, $11,160 in 1993, $11,760 in 1994, and $12,480 in 1995. The retirement test for those under age 65 is currently $6,840 and will rise to $7,080 in 1991.

For earnings in excess of these amounts, beneficiaries age 65–69 lose $1 in benefits for every $3 in earnings. Beneficiaries under age 65 lose $1 in benefits for every $2 in earnings in excess of the limit. Persons age 70 years and older are not subject to the retirement test.

House bill

No provision. (H.R. 5828, as reported by the Committee on Ways and Means, includes a provision that would increase the retirement test applied to those age 65–69 by $1,800 in 1993 and $2,640 in 1994 above the level which would occur under the automatic procedure. The resulting exempt amount is projected to be $12,960 in 1993 and $14,400 in 1994. These ad hoc increases would be included permanently in the exempt amount so that automatic increases in future years would be calculated based on an inclusion of these ad hoc increases.

The provision would be effective for taxable years ending after 1990.)

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

29. ELIMINATION OF BENEFIT RECOMPUTATIONS FOR EARNINGS AFTER AGE 69

Present law

The amount of a worker's monthly social security retirement benefit is established at age 62. It is based on an average of the worker's lifetime earnings, using the 35 years with the highest earnings to compute the average. (For workers reaching age 62 in 1989 or earlier, fewer years are used in computing average lifetime earnings.) Earnings from years prior to the year the worker reached age 61 are indexed to reflect wage growth. A worker who does not have 35 years of earnings has a zero averaged into his or her average lifetime earnings for each year in which he or she had no wages or self-employment income.

If a worker continues to have earnings after age 61, and these earnings are higher than indexed earnings in one of the 35 years used to compute average lifetime earnings, the higher-earning year is substituted for a lower-earning year or a year with no earnings. This raises the worker's average lifetime earnings and the monthly benefit is recomputed to produce a higher benefit amount.

House bill

No provision. (H.R. 5828 includes a provision that would eliminate recomputations of benefits for beneficiaries with earnings in the year they reach age 70 or later years, except for beneficiaries with one or more "zero years" averaged into their average lifetime earnings.

The provision would be effective for recomputations of benefits on the basis of wages or self-employment income for years after 1990.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the Senate amendment, i.e., no provision.

30. RECOVERY OF OVERPAYMENTS FROM FORMER SOCIAL SECURITY BENEFICIARIES THROUGH TAX REFUND OFFSET

(Section 5129 of the Conference Agreement)

Present law

A Federal agency that is owed a past-due, legally enforceable debt, other than a title II overpayment, can collect it by having the Internal Revenue Service (IRS) withhold or reduce the debtor's

income tax refund. To obtain repayment via a tax refund offset, the agency to which the debt is owed must:

(i) Notify the individual of its intention to recover the debt through the tax system;

(ii) Provide the individual with at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(iii) Consider any evidence presented by the individual and make a final determination that the debt is in fact owed and legally enforceable.

After the agency notifies the IRS of its final determination, the IRS reduces the amount of the individual's income tax refund, if any; pays this amount to the agency; and notifies the individual of the amount by which his tax refund has been reduced to repay his debt.

House bill

Social security overpayments to former beneficiaries would be recovered by withholding the amount due from Federal income tax refunds. This recovery method would be used only when benefit adjustments or direct payments by the overpaid individual have not been successful.

Specifically, the prohibition against recovering title II overpayments via a tax refund offset would be eliminated for former beneficiaries. (Current beneficiaries would continue to be exempt from the tax refund offset program.)

After being informed by the Social Security Administration (SSA) of its intention to recover an overpayment via a tax refund offset, former beneficiaries who are eligible to apply for a waiver of the overpayment would be given the opportunity to do so. In addition, the IRS would be required to establish a procedure by which a spouse could prevent his or her share of a joint tax refund from being withheld in an overpayment recovery action. The IRS would also be required to notify individuals who file joint returns of this procedure when it informs them that it is withholding their tax refund.

The proposal would take effect January 1, 1991, and would remain in effect as long as the existing Government-wide offset remains in effect (currently, until January 10, 1994).

Senate amendment

No provision.

Conference agreement

The conference agreement includes the House provision.

31. TECHNICAL AMENDMENTS

(Section 5130 of the Conference Agreement)

The provision would correct several technical errors contained in the Social Security Act.

CHILD CARE STATEMENT OF MANAGERS

The Conference report includes the Child Care and Development Block Grant Act of 1990. The purpose of this block grant program is to increase the availability, affordability, and quality of child care. The provision provides financial assistance to low-income, working families to help them find and afford quality child care services for their children. It also contains provisions to enhance the quality and increase the supply of child care available to all parents, including those who receive no financial assistance under the block grant program.

More specifically, the purpose of this block grant program is to give parents a variety of options in addressing family child care needs. Additionally, this provision is intended to build on and to strengthen the role of the family by seeking to ensure that parents are not forced by the lack of available programs or financial resources to place a child in an unsafe or unhealthy child care arrangement; to promote the availability and diversity of quality child care services to expand child care options available to all families who need such services; to provide assistance to families whose financial resources are not sufficient to enable such families to pay the full cost of necessary child care; to improve the productivity of parents in the labor force by lessening the stresses related to the absence of adequate child care services; and to provide assistance to states and Indian tribes to improve the quality of, and coordination among, child care programs and early childhood development programs.

The Conference agreement authorizes $750,000,000 for fiscal year 1991, $825,000,000 for fiscal year 1992, $925,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal years 1994 and 1995. Block grant funds are provided to states in accordance with a formula based on numbers of young children and of school lunch recipients.

Use of block grant funds for child care services

Each state shall use 75 percent of block grant funds for direct assistance to parents for child care services and to increase the supply and to improve the quality of child care. Block grant funds may only be used by the states for child care services and for activities which directly improve the availability and quality of care for families assisted under the Act. Quality activities eligible for funds under section 658E(c)(3)(B)(ii) should be the same type of quality activities specified in the quality reservation in section 658G. It is the conferees' intent that a preponderance of the block grant funds be spent specifically on child care services and a minimum amount on other authorized activities.

The managers believe that parents should have the greatest choice possible in selecting child care for their children. Thus, parents assisted under section 658E(c)(3)(B) would have complete discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, family providers, centers, schools, and employers. All such providers may be paid through grants or contracts or through certificates provided to the

parent. A parent assisted under section 658E(c)(3)(B) must be given the option of receiving a certificate.

Use of 25 percent reserve of funds

Each state shall reserve 25 percent of block grant funds for grants and contracts to providers of early childhood development or before- and after-school services, or both, and for activities to improve the quality of child care. Of the 25 percent reserve, not less than seventy-five percent of this reserve shall be allocated to early childhood development and before- and after-school care activities; not less than twenty percent for quality activities, with the remaining five percent to be used for either purpose. A state may assign responsibility for the administration of early childhood development and latchkey programs to an agency other than the lead agency, such as an agency that has experience in the administration of existing education or preschool programs. Eligible quality activities include establishing or expanding resource and referral programs; making grants or loans to providers to assist them in meeting state and local child care standards; improving the monitoring of compliance with, and enforcement of, state standards and licensing and regulatory requirements; providing training and technical assistance; and improving salaries and other compensation paid to child care staff.

General provisions

Families eligible for assistance for child care are those who earn less than 75 percent of the state median income and who have children under age 13. The amount of assistance would be based on a sliding fee scale established by the state. Nothing in this subchapter is intended to prohibit the provision of services at no cost to families whose income is at or below the poverty level. Providers would receive payment at rates which would ensure equal access to services comparable to those provided to children whose care is not publicly subsidized.

Parental choice and involvement are further enhanced through provisions for unlimited parental access to children during the day and within the care setting, for parental complaint procedures and access to records of substantiated parental complaints, and for consumer education.

The managers intend that the determination whether any financial assistance provided under this subchapter, including a loan, grant or child care certificate, constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 794 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), all as amended, and the regulations issued thereunder, shall be made in accordance with those provisions.

To receive funds, a state shall submit a plan that includes: designation of a lead agency; local consultation regarding development of the plan; coordination with existing programs; use of funds for child care services, including early childhood education and before-and-after school care, and for activities related to quality and availability; supplement not supplant language; priority for very low

income childen and children with special needs; and use of a sliding fee scale. The managers intend that, to the maximum extent practicable, the lead agency be a state entity in existence on or before the date of enactment of this subchapter with experience in the administration of appropriate child care programs.

All eligible providers shall be licensed, regulated, or registered prior to payment and must comply with applicable state and local licensing and regulatory requirements. The state plan shall describe minimum health and safety requirements established by the state for all providers funded under this subchapter and ensure that such providers demonstrate compliance with these requirements. These health and safety requirements include the prevention and control of infectious diseases, building and physical premises safety, and a minimum health and safety training requirement appropriate to the provider setting. The state shall conduct a one-time review of state licensing and regulatory requirements and policies, unless the state has done so within three years prior to the date of enactment.

The state shall report to the Secretary of Health and Human Services annually on the use of funds under this subchapter; data on caregivers and children in care; activities to encourage public-private partnerships which promote business involvement in meeting child care needs; results of any review of state licensing and regulatory requirements; a rationale for any station actions to reduce the levels of state standards; state actions to improve the quality of care; and a description of standards in the state.

The Secretary will report to Congress annually on use of all Child Care and Development Block Grant Act funds in the states. The report will include a summary and analysis of the above data provided by the States to the Secretary and any recommendations to Congress on further steps necessary to improve access to quality and affordable child care.

TITLE VI—ENERGY AND ENVIRONMENTAL PROGRAMS

SUBTITLE —NRC USER FEES

SEC. . NRC USER FEES AND ANNUAL CHARGES

Present law

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) requires the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees. The amount of the charges:

(1) when added to other amounts collected by the NRC (i.e., fees under the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701), may not exceed 33 percent of the NRC's costs; and

(2) must reasonably be related to the regulatory service provided by the NRC and fairly reflect the cost to the NRC of providing the service.

Section 5601 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) amended the 1985 law by increasing the

amount of the NRC's costs recovered by fees and annual charges from 33 to 45 percent for two years, fiscal years 1988 and 1989.

Section 3201 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) amended the 1985 law by maintaining the amount of the NRC's costs recovered by fees and annual charges at 45 percent for a third year, fiscal year 1990, Without new legislation, the amount of the fees and annual charges will revert to 33 percent in fiscal year 1991.

House bill

Sections 4502 and 5101 of the House bill would repeal section 7601 of the 1985 law and replace it with new, permanent authority. Both House provisions would require the NRC to collect annual charges in an amount to recover 100 percent of its budget authority (including budget authority for both Salaries and Expenses of the NRC and the Office of the Inspector General), less amounts appropriated to the NRC from the Nuclear Waste Fund established by 42 U.S.C. 10222(c) and fees collected under the Independent Offices Appropriation Act. Although all NRC licensees would be subject to fees under the Independent Offices Appropriation Act, only persons licensed to operate nuclear power plants would be assessed annual charges. The amount of the annual charges would be determined by the NRC by rule and would have to bear a reasonable relationship to the NRC's cost of providing regulatory services to the licensee.

Senate bill

Section 2 of Title V of the Senate bill, like the House bill, would repeal section 7601 of the 1985 law and would require the NRC to recover 100 percent of its costs. It differs from the House provisions, however, in three respects. First, the Senate provision would authorize the NRC to impose annual charges for only five years, fiscal years 1991-1995. Second, it would permit (but would not require) the NRC to assess annual charges against any person who holds an NRC license, not just utilities operating nuclear power plants. Third, it would recover 100 percent of the Salaries and Expenses of the NRC and but not of the expenses of the NRC's Office of the Inspector General.

Conference agreement

In general.—The conference agreement follows the Senate bill with three changes. First, the Senate bill would have codified the annual charge authority in the Atomic Energy Act of 1954; the conference agreement does not. Second, the Senate bill would have recovered 100 percent of the NRC's Salaries and Expenses only; the conference agreement recovers 100 percent of both the NRC's Salaries and Expenses and the NRC's Office of Inspector General. Third, the Senate bill would have repealed section 7601 of the 1985 law; the conference agreement amends it to provide a "floor" on fees and annual charges equal to 33 percent of the NRC's budget authority. This floor would govern assessment of fees and annual charges after fiscal year 1995 unless Congress enacts new authority.

Duration of authority.—The conference agreement provides authority to collect fees and annual charges equal to 100 percent of the NRC's budget for only five years, fiscal years 1991 through 1995. The NRC's permanent authority to collect fees and annual charges equal to 33 percent of the NRC's budget authority will continue in force after fiscal year 1995.

Licensees subject to annual charges.—The conference agreement preserves the discretion the NRC has under present law to assess annual charges against all of its licensees. The conferees reaffirm the statement of the managers on the present authority. *See* 132 Cong. Rec. H879 (daily ed. March 6, 1986); 132 Cong. Rec. S2725 (daily ed. March 4, 1986).

The conferees note that in the NRC's report on the existing annual charge system requested by section 7601(a) of the 1985 law, the Commission found that "the large number of small licensees, the relatively small fees which would be collected, and the costs of administering such a collection program," make imposition of an annual charge on all of the NRC's approximately 8,000 non-power-reactor licensees impracticable. The conferees also understand that the direct cost of regulating non-power-reactor licensees amounts to approximately three percent of the NRC's costs and that a substantial percentage of the cost of providing regulatory services to non-power-reactor licensees are in fact recovered through fees assessed under the Independent Offices Appropriation Act. Finally, the conferees note that the U.S. Court of Appeals for the District of Columbia Circuit has concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees." *Florida Power & Light Co.* v. *NRC,* 846, F.2d 765, 770 (D.C. Cir. 1988), *cert. denied* 109 S.Ct. 1952 (1989).

The conference agreement preserves the NRC's discretion to impose annual charges on one or more classes of non-power-reactor licensees if the Commission believes it can fairly, equitably, and practicably do so.

As described below, increasing the amount of recovery to 100 percent of the NRC's budget authority will result in the imposition of fees upon certain licensees for costs that cannot be attributed to those licensees or classes of licensees. The Commission should assess the charge for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible.

Calculation of the annual charge.—The conferees recognize that, in directing the NRC to collect annual charges, "Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties" and that Congress must provide the agency "intelligible guidelines" for making these assessments. *See Skinner* v. *Mid-America Pipeline Co.,* 109 S.Ct. 1726, 1734 (1989) (upholding the law directing the Secretary of Transportation to collect user fees totalling 105 percent of the cost of administering the pipeline safety program). The conferees believe the conference agreement meets these requirements.

First, the conference agreement makes it clear that appropriations received by the NRC from the Nuclear Waste Fund estab-

lished under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) for licensing the Department of Energy's nuclear waste management program are not to be recovered by the annual charges. The Nuclear Waste Fund consists of money paid by NRC-licensed nuclear power reactors to the Department of Energy to site, construct, and develop high-level nuclear waste management facilities. Since nuclear utilities are paying for the cost of the NRC's high-level waste licensing activities through their payments to the Nuclear Waste Fund, recovery of Nuclear Waste Fund appropriations through the annual charge would constitute double payment by the utilities.

Second, the conference agreement provides that the amount recovered through annual charges is to be reduced further by the amount the NRC receives through fees assessed on licensees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701), through Part 170 of the NRC's rules (10 C.F.R. Part 170). These fees are intended to recover the costs to the NRC of providing individually identifiable services to applicants and holders of NRC licensees, though not the cost of generic activities that benefit licensees generally. The Committee expects the NRC to continue to assess fees under the Independent Offices Appropriation Act to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives.

Finally, the conference agreement provides that the balance of the NRC's annual budget authority after subtraction of amounts received from the Nuclear Waste Fund and the Independent Offices Appropriation Act fees is to be recovered from the NRC's licensees through the annual charges. The conference agreement does not require that the total amount intended to be recovered through annual charges be divided among the power-reactor licensees equally, as was the case under the NRC's original rule implementing Public Law 99-272. Instead, the conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual charge. Thus, the conference agreement provides that the NRC shall establish, by rule, a schedule of charges "fairly and equitably" allocating the total amount of charges to be recovered among its licensees, and that "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services" to the licensees.

The conferees understand that a substantial portion of the NRC's annual expenses, while not attributable to individual licensees and thus not recoverable under the Independent Offices Appropriation Act, are attributable to classes of licensees. The conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class.

In addition, however, the conferees recognize that there are expenses that cannot be attributed either to an individual licensee or a class of licensees. Examples of these expenses may include costs associated with certain generic research and rulemaking proceedings and the operating expenses of various NRC offices, including those of the Commissioners, the General Counsel, the Inspector

General, and Governmental and Public Affairs. The conferees intend the NRC to fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees. These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Treatment of fines, penalties, and receipts of certain programs.—Under its existing rules, the NRC does not offset amounts paid by licensees as fines and penalties (including interest penalties) against the amount of annual charges to be collected. Conversely, the NRC does not seek to recover through the annual charge amounts received from participants in the cooperative nuclear safety research program, the material and information access authorization programs (including criminal history checks under section 149 of the Atomic Energy Act of 1954, 42 U.S.C. 2169), or amounts received for services rendered to foreign governments and international organizations. The conferees note that the NRC's current treatment of these fines, penalties, and receipts has been upheld in court. *Florida Power & Light Co.* v. *NRC,* 846 F.2d 765, 771 (D.C. Cir. 1988), *cert denied* 109 S.Ct. 1952 (1989).

The conference agreement does not change these policies. Fines and penalties are assessed because of a failure of a licensee to comply with NRC standards and requirements. The purpose of the fine or penalty would be defeated if their assessment would result in a lowering of the offender's obligation to pay annual charges. Receipts from cooperative, international, and access authorization programs are collected from the entities benefiting from the particular program and are retained and used by the NRC for such program. Inclusion of the amount of these funds in the total amount recovered through the annual charge would result in double payment.

Subsection-by-subsection summary

Subsection (a)(1) requires the NRC to collect fees and annual charges.

Subsection (a)(2) provides that the first assessment made under this authority shall be made no later than September 30, 1991.

Subsection (a)(3) provides that the last assessment of annual charges made under this authority shall be made no later than September 30, 1995.

Subsection (b) provides that the NRC shall continue to collect fees under the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701). These fees are intended to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC.

Subsection (c) requires the NRC to collect, in addition to the Independent Offices Appropriation Act fees under subsection (b), an annual charge.

Subsection (c)(1) authorizes the NRC to impose an annual charge on any licensee of the NRC.

Subsection (c)(2) provides that the aggregate amount of annual charges shall, when added to the Independent Offices Appropriation Act fees collected under subsection (b), equal approximately

100 percent of the NRC's total budget authority for each fiscal year, less any amount appropriated to the NRC from the Nuclear Waste Fund.

Subsection (c)(3) directs the NRC to establish a schedule of annual charges that fairly and equitably allocates the aggregate amount of charges among licensees and, to the maximum extent practicable, reasonably reflects the cost of providing services to such licensees or classes of licensees. The schedule may assess different annual charges for different licensees or classes of licensees based on the allocation of the NRC's resources among licensees or classes of licensees, so that the licensees who require the greatest expenditures of the NRC's resources will pay the greatest annual charge.

Subsection (d) defines the Nuclear Waste Fund established by section 302(c) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(c).

Subsection (e) amends section 7601 of the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) to preserve existing authority for the NRC to collect user fees approximating 33 percent of the agency's budget. Following fiscal year 1995, annual charges will be assessed under section 7601 of the 1985 act instead of subsection (c) of the conference agreement.

STATEMENT OF MANAGERS

TONGASS TIMBER REFORM

House bill

Subtitle B of Title V of the House bill contains the Tongass Timber Reform Act of 1990 as passed the House.

Senate bill

Subtitle A of Title IV of the Senate bill contains provisions of the Tongass Timber Reform Act of 1990 as passed the Senate.

Conference agreement

Both the House and the Senate passed measures reforming the management of the Tongass National Forest. While the two bills differed in their approach to the various issues related to Tongass Timber Reform, each achieved savings through repeal of section 705(a) of the Alaska National Interest Lands Conservation Act (ANILCA) which provided for a direct appropriation for certain timber management activities on the forest. In lieu of reconciling the two approaches on Budget Reconciliation, both the House and Senate passed a separate agreement in the form of the conference report on H.R. 987. Accordingly, the respective House and Senate Committees have been credited with appropriate savings on Budget Reconciliation.

STATEMENT OF MANAGERS

SUBTITLE B—ABANDONED MINE RECLAMATION FUND

The House reconciliation bill contained the text of H.R. 2095 as passed by the House. The Senate bill contained no comparable pro-

visions. The conferees accepted the text of the House bill with several substantive modifications described below.

1. Reauthorization of reclamation fees

The House bill authorized the collection of reclamation fees through September 30, 2007.

The conference agreement authorizes the collection of reclamation fees through September 30, 1995.

2. Modification of reclamation fees

The House bill provided for the modification of fees in certain instances after 1992 where the Governor of a State, or the head of a governing body of an Indian tribe, with an approved abandoned mine reclamation program certifies to the Secretary, and the Secretary concurs, that all priorities stated in section 403(a) for eligible land and waters pursuant to section 404 have been achieved.

The conference agreement eliminates the provision relating to the modification of fees.

3. Emergency program provisions

The House bill contained modifications to current authority relating to the emergency program.

The conference agreement deletes the provisions.

4. Objectives of the fund

The House bill contained provisions amending section 403 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), limiting the use of funds to priority 1, 2 and 3 reclamation projects and eliminating the lower priority projects.

The conference agreement deletes these provisions and maintains the current priority listing.

5. Environmental standards

The House bill contained provisions requiring the Secretary to establish by regulation standards for abandoned coal mine reclamation projects.

The conference agreement deletes the provision.

6. Funding for activities and construction related to the coal or minerals industry

The conference agreement added a provision stating that where the Governor, or head of a governing body of an Indian tribe determines, with the concurrence of the Secretary, that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in the State, then the State or Indian tribe may use annual grants made available under section 402(g)(1) to carry out such activities or construction. This provision is applicable only where states or Indian tribes have made certification under section 411(a) with the concurrence of the Secretary.

7. Abandoned minerals and mineral materials mine reclamation fund

The House bill contained a section creating a new abandoned minerals and mineral materials mine reclamation fund.

The conference agreement deletes the section.

OIL SHALE CLAIMS REFORM

House bill

Subtitle C of Title V of the House bill provides certain requirements for oil shale claims located pursuant to the mining laws of the United States.

Senate bill

The Senate bill has no comparable provision.

Conference agreement

The House recedes to the Senate position without prejudice to the House position.

NUCLEAR WASTE FUND

Present law

Section 302(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(a), requires civilian nuclear waste generators to pay fees to the Secretary of Energy for the disposal of their nuclear waste. These fees are deposited in a separate account in the Treasury known as the Nuclear Waste Fund, which can only be used to pay for nuclear waste disposal activities authorized by the Act.

Section 302(a) (2) and (3) set the amount of these fees at one mill (one tenth of one cent) per kilowatt-hour of electricity associated with the waste. Section 302(a)(4) requires the Secretary of Energy to review annually the amount of fees being collected and to propose an increase or decrease in the amount of the fees if he finds too little or too much is being collected for full cost recovery.

House bill

The House bill would have imposed a surcharge on the fees to increase the amount collected in an amount that:

(1) "reflects the fair market value" of the Secretary's waste disposal activities;

(2) collects at least $5 million annually in fiscal years 1991 through 1995; and

(3) collects not more than:

(A) $6 million in fiscal year 1992;

(B) $7 million in fiscal year 1993;

(C) $8 million in fiscal year 1994; and

(D) $9 million in fiscal year 1995.

Senate bill

The Senate bill contains no comparable provision.

Conference agreement

The conference agreement does not include the House provision.

URANIUM ENRICHMENT ACT

Senate bill

Subtitle B of Title IV of the Senate bill includes a uranium enrichment provision which is a modification of S. 83, the Uranium Enrichment Act of 1989. The Act has been modified to provide for the following: (1) preclusion of payments in lieu of taxes by the Uranimum Enrichment Corporation until fiscal year 1996; (2) restrictions on the expenditures of the Corporation and requirements to pay dividends during fiscal years 1991–1995; and (3) establishment of a fee of two-tenths of a mill per kilowatt-hour on net generation of electricity by each civilian nuclear power reactor during fiscal years 1991–1995.

House bill

The House bill contains no comparable provision.

Conference agreement

The conference agreement does not include the Senate provision on uranium enrichment.

The conferees recognize that the Federal uranium enrichment enterprise faces increasing competitive challenges. The conferees agree that priority should be given in the next session of Congress to legislation that allows the enterprise to operate, as a commercial enterprise, on a profitable and efficient basis in order to maximize the long term economic value of the enterprise to the United States Government. The legislation should also recognize the importance of maintaining a reliable and economical domestic supply of enrichment, of ensuring that the Nation's common defense and security objectives are achieved, and of conducting the enterprise's activities in a manner consistent with the health and safety of the public including the fair and equitable sharing of the costs of timely decontamination and decommissioning of the enrichment facilities.

EPA FEES

House bill

Sections 4521, 4522, 7103, and 9301 of the House bill include reference to, or provisions for, the asssessment and collection of fees by the Environmental Protection Agency through the programs it administers.

Senate bill

Section 5001 of the Senate bill requires the Environmental Protection Agency to assess and collect $22,000,000 for the fiscal year 1991, and $33,000,000 in each fiscal year 1992, 1993, 1994, and 1995 for services and activities under the statutes it administers. A provision requires that the funds be deposited in a special United States Treasury fund, and authorizes appropriation to carry out the Agency's activities for which the fee or charge is made.

Conference substitute

The substitute provision requires the Environmental Protection Agency to assess and collect $28,000,000 in fiscal year 1991, and $38,000,000 in each fiscal years 1992, 1993, 1994, and 1995 above the amount of fees collected under current law.

Of these sums, not more than $10,000,000, in any of the fiscal years 1991 to 1995, is to be collected for services and activities under the Federal Water Pollution Control Act. Further, no fees and charges may be derived form EPA programs within the jurisdiction of the House Committee on Energy and Commerce except as specifically authorized by the Clean Air Act Amendments of 1990, and fees collected pursuant to Sections 26(b) and 305(e)(2) of the Toxic Substances Control Act in effect on the date of enactment.

The funds are to be deposited in a special account for environmental services in the U.S. Treasury, and to be available subject to appropriation for activities for which the fees are collected. A provision clarifies that the authorities of the Administrator under the Independent Offices Appropriations Act are not increased or diminished by the provisions in this section.

SUBTITLE D—COASTAL ZONE ACT REAUTHORIZATION AMENDMENTS OF 1990

Subtitle B of Title VII of the House bill contained the text of H.R. 4450, as passed by the House of Representatives on September 26, 1990. The Senate bill contained no similar provision.

The managers on the part of the Senate recede to the House with an amendment.

The conference agreement, subtitle D of Title VI, contains the Coastal Zone Act Reauthorization Amendments of 1990.

SUMMARY OF THE PROVISIONS

The "Coastal Zone Act Reauthorization Amendments of 1990" makes the following major changes to the Coastal Zone Management Act of 1972:

(1) amends the "federal consistency" provisions to overturn the Supreme Court's 1984 decision in *Secretary of the Interior* v. *California*. This would clarify that all federal agency activities, whether in or outside of the coastal zone, are subject to the consistency requirements of section 307(c)(1) of the CZMA if they affect natural resources, land uses, or water uses in the coastal zone;

(2) establishes a "Coastal Zone Management Fund" consisting of CEIP loan repayments from which the Secretary shall pay for the federal administrative costs of the program and fund special projects, emergency state assistance, and other discretionary coastal zone management activities;

(3) reinstates program development grants by authorizing the Secretary to provide assistance to a state for development of a CZM program;

(4) encourages each coastal state, under a Coastal Zone Enhancement Grants Program, to continually improve its CZM program in one or more of eight identified areas: coastal wet-

lands management and protection; natural hazards management (including potential sea and Great Lake level rise); public access improvements; reduction of marine debris; assessment of cumulative and secondary impacts of coastal growth and development; special area management planning; ocean resource planning; and siting of coastal energy and government facilities;

(5) authorizes the Secretary to make annual "Walter B. Jones" achievement awards to recognize individuals, local governments, and graduate students for outstanding accomplishments in the field of coastal zone management; and

(6) authorizes appropriations for five years at increased levels.

In addition, the subtitle establishes a Coastal Nonpoint Pollution Control Program. This program will require each coastal state to develop a program, to be implemented through the Coastal Zone Management Act and Section 319 of the Clean Water Act, to protect coastal waters from nonpoint pollution from adjacent coastal land uses.

SECTION-BY-SECTION ANALYSIS

Section 6201. Short title

Coastal Zone Act Reauthorization Amendments of 1990.

Section 6202. Findings and purpose of this subtitle

This section enumerates the findings which underlie the subtitle, emphasizing the ever increasing pressures on coastal zone resources and the need to improve state management programs to meet these challenges.

Section 6203. Findings and policy of Coastal Zone Management Act of 1972

This section amends the findings and policies of the Coastal Zone Management Act (CZMA) of 1972. Changes in the findings emphasize the importance of proper management of the territorial sea and ocean waters, of controlling land use activities which result in nonpoint pollution of coastal waters, and of anticipating sea level rise.

Section 6204. Definitions

This section amends the definitions of the terms "coastal zone," and "water use," and adds a definition for the term "enforceable policy."

The term "coastal zone" is amended to expressly limit the seaward coastal zone boundary to the extent of state ownership and title (in most cases, three nautical miles). This amendment is necessary to clarify uncertainties raised by Presidential Proclamation 5928 (December 27, 1988).

The new term "enforceable policy" is defined in accordance with NOAA's existing regulations. This definition is intended to endorse existing NOAA and state practice.

Section 6205. Management program development grants

Much of the existing law relating to "program development" is transferred to section 306 or repealed. Discretionary program development assistance is authorized for fiscal years 1991, 1992, and 1993. A state may receive up to $200,000 in federal assistance for two successive years.

Section 6206. Administrative grants

This section amends section 306 of the CZMA substantially. Since section 306 governs approval and administration of state management programs, concern has been expressed that enactment of these provisions may create the implication that existing programs must be reapproved pursuant to the amended section 306. The conferees unequivocally reject this view. These amendments neither require nor authorize the reapproval of state management programs, and existing state programs shall remain eligible for grants after enactment. To the extent that new requirements have been added, the conference report contains deadlines, sanctions, or incentives for compliance which are the exclusive mechanisms through which the Secretary is authorized to act.

Section 6207. Resource management improvement grants

This section is amended to specifically authorize grants under this section to restore and enhance shellfish production from publicly owned lands.

Section 6208. Coordination and cooperation

This section amends the "federal consistency" provisions of the CZMA. The conferees' principal objective in amending this section is to overturn the decision of the Supreme Court in *Secretary of the Interior* v. *California,* 464 U.S. 312 (1984) and to make clear that outer Continental Shelf oil and gas lease sales are subject to the requirements of section 307(c)(1).

The amended provision establishes a generally applicable rule of law that *any* federal agency activity (regardless of its location) is subject to the CZMA requirement for consistency if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

Whether a specific federal agency activity will be subject to the consistency requirement is a determination of fact based on an assessment of whether the activity affects natural resources, land uses, or water uses in the coastal zone of a state with an approved management program. This must be decided on a case-by-case basis by the federal agency conducting the activity.

The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place,

and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

The conference report does not include the statutory language from section 7207 (federal Agency Consistency) of the House bill. This language provided:

> The consistency requirements of section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) shall apply to federal agency activities or federally permitted activities under title I of the Marine, Protection, Research, and Sanctuaries Act of 1972, if the federal activity or permitted activity affects land uses, water uses, or natural resources of the coastal zone.

This amendment provided specific clarification that federal agency activities and federal permits under the Ocean Dumping Act, including ocean dumping site designations, and operation and maintenance dredging, are subject to the requirements of section 307. The conferees agreed that this statutory provision is unnecessary because the amendments to section 307(c)(1) leave no doubt that all federal agency activities and all federal permits are subject to the CZMA's consistency requirements. The conferees support and endorse the intent of the House provision, but agreed that a statutory "listing" of activities should be avoided to prevent any implication that unlisted activities are not covered.

Finally, the conferees are aware of the argument that the application of federal consistency to activities under the Ocean Dumping Act amounts to state regulations of ocean dumping for purposes of section 106(d) of that Act. The conferees reject this argument.

A new section 307(c)(2) is added to the CZMA which authorizes the President to exempt a specific federal agency activity if the President determines that the activity is in the paramount interest of the United States. The provision is based on similar exemption provisions in other environmental statutes, including section 313(a) of the Clean Water Act, section 118(b) of the Clean Air Act, section 4(b) of the Noise Control Act, section 6001 of the Solid Waste Disposal Act, the Medical Waste Tracking Act of 1988, the Safe Drinking Water Act, and section 403 of the Powerplant and Industrial Fuel Use Act of 1978. The exemption authorized in subsection (c)(2) is not applicable to a class of federal agency activities but only to a specific activity.

This exemption provision reinforces the conferees' position that no federal agency activities are categorically excluded from the consistency provisions of section 307. Section 307(c)(2) is the only exemption authorized or intended for section 307(c)(1) activities.

Section 6208(c)(1)(C) clarifies the requirement that each federal agency carrying out an activity which affects the coastal zone must provide a consistency determination to the appropriate state agency. This determination must be provided at the earliest possible time but not later than 90 days prior to final approval of the activity. This new statutory provision codifies an existing CZMA regulation (15 CFR 930.34(b)).

Section 6208(b) makes technical and conforming changes to the other existing federal consistency provisions of sections 307(c)(3) (A)

and (B), and (d). These provisions govern the consistency of private activities for which federal licenses or permits are required, and for state and local applications for federal financial assistance. The conference report does not alter the statutory requirements as currently enforced under sections 307(c)(3) (A) and (B), and (d) of the CZMA. These requirements are outlined in the NOAA regulations (15 CFR 930.50-930.66) and the conferees endorse this status quo.

The conferees want to make it clear that the changes made by section 6208(b) are technical modifications. None of the amendments made by this section are intended to change the existing implementation of these consistency provisions. For example, none of the changes made to section 307(c)(3) (A) and (B), and (d) change existing law to allow a state to expand the scope of its consistency review authority. Specifically, these changes do not affect or modify existing law or enlarge the scope of consistency review authority under section (c)(3) (A) and (B), and (d) with respect to the proposed project to divert water from Lake Gaston to the City of Virginia Beach, Virginia, for municipal water supply purposes. These technical changes are necessary to, and are made solely for the purpose of, conforming these existing provisions with the changes to section 307(c)(1) of the CZMA which are needed to overturn the *Watt* v. *California* Supreme Court decision.

Finally, section 6208(b) provides that federal agencies and applicants are required to be consistent with the "enforceable policies" of a state CZM program. They shall give adequate consideration to program provisions which are in the nature of recommendations. Again, this provision codifies the existing regulatory practice [15 CFR 930.39(c) and 930.58(a)(4)]. Federal agencies and applicants mut be consistent with those policies which are enforceable under state law.

It is not the intent of the conferees that this subsection be construed to overturn, in whole or in part, the judicial decision in *American Petroleum Institute* v. *Knecht.* Federal agencies and applicants are assured that they will not be subjected to policies which are not enforceable under state law. However, this provision is not intended as a guarantee that the provisions of a coastal program will be so specific that users of the coastal zone must be able to rely on its provisions as predictive devices for determining the fate of projects without interaction with the relevant state agencies. Individual projects must be reviewed on a case-specific basis and states may identify mitigation and other management measures which are not specifically detailed in the management program but which, if implemented, would allow the state to find projects consistent with the enforceable policies of the program.

Finally, subsection 3208(c) adds a new subsection 307(i) to the CZMA. This new subsection authorizes federal fees to recover costs associated with the administration of consistency appeals under subsections 307(c)(3) (A) and (B), and (d). Fees charged must represent the reasonable costs of administering these provisions. Fees will be assessed against "applicants" for required licenses and permits.

Section 6209. Coastal Zone Management fund

The existing section 308 (Coastal Energy Impact Program) is repealed. The new section establishes a Coastal Zone Management (CZM) Fund which will be used to fund administration of this Act.

Section 308(a)(1) establishes that obligations to repay outstanding loans made under the Coastal Energy Impact Program (CEIP) are not affected by this legislation. Approximately $87.5 million in CEIP loans are still outstanding.

Section 308(a)(2) requires that CEIP loan repayments be retained by the Secretary as offsetting collections and deposited into the Coastal Zone Management Fund established pursuant to subsection (b). In recent years, annual loan repayments have ranged from a low of $4 million to a high of $15 million, with an annual average of some $6–$8 million.

Section 308(b) directs the Secretary to establish and maintain a CZM fund, which shall consist of loan repayments collected and retained under section 308(a). Therefore, the conferees anticipate an annual expenditure of between $6 million and $8 million through the CZM Fund, subject to appropriation.

Section 308(b)(2) authorizes the Secretary to expend amounts in the Fund for administration of the coastal zone management program and for specified discretionary activities: regional and interstate projects (formerly section 309); demonstration projects; emergency assistance; awards pursuant to section 314; program development grants pursuant to section 305; and to assist states in applying the public trust doctrine in the implementation of their CZM programs. The first use of amounts in the Fund is program administration and the conferees expect a vigorous federal program to assist the states in coastal zone management. The Secretary is then authorized to expend remaining amounts for the other specified activities.

Section 6210. Coastal Zone enhancement grants

Subsection (a) establishes a program, beginning in fiscal year 1991, to encourage continual improvements in state management programs in eight identified areas. The program is to include specific, measurable goals and milestones for improving the state management programs.

Subsection (a)(7) specifies that planning for the use of ocean resources is an area in which states may apply for assistance. In particular, the conferees intend that assistance be provided to Pacific Island States, recognizing that the Pacific Islands, given their longstanding and encompassing relationships with the ocean, may have a stronger interest in ocean resources beyond their coastal zone. This provision is intended to recognize this special relationship.

Grants under this section will be made from a set aside of at least 10 percent, but no more than 20 percent of funds appropriated under sections 306 and 306A. The conferees intend that the Secretary set aside the full 20 percent, unless because of lower than anticipated federal appropriations, such a withholding would significantly impair administration of the state management programs as a whole. Funds to administer this section are to be set

aside *en bloc,* prior to allocation of state awards pursuant to section 306(c).

Section 6211. Technical assistance

This section adds a new section 310 to the CZM to require the Secretary to provide technical assistance and management-oriented research to support development and implementation of State coastal management programs.

Section 6212. Coastal Zone Management review

Subsection (a) mandates public participation in the evaluation of state programs and requries written response to all written comments recived.

Subsection (b) provides new authority for the Secretary to impose "interim sanctions" on a state program for not more than three years if the state is failing to adhere to its program. The conferees understand that disapproval of a management program under section 312(d) is an extraordinary step and has not been a useful tool for NOAA in correcting mild or moderate problems in state program administration.

Section 6213. Walter B. Jones Excellence in Coastal Management Awards

This section requires the Secretary to use amounts in the CZM Fund (section 308) to identify and appropriately acknowledge accomplishment in the field of coastal zone management by individuals (other than federal employees), local governments, and graduate students.

Section 6214. National Estuarine Research Reserve System

This section increases the financial assistance for land or water acquisition for any one estuarine research reserve from $4 million to $5 million, or 50 percent of the total costs, whichever amount is less. The section also increases the federal share of the costs from 50 percent to 70 percent for managing a reserve and constructing facilities, and for conducting educational or interpretive activities. However, activities which benefit the entire Reserve System may be federally funded up to 100 percent.

Section 6215. Authorization of appropriations

Appropriations are authorized for fiscal years 1991–1995 for sections 305, 306 and 306A, 310 and 315.

Section 6216. Conforming amendments

This section makes several technical and conforming changes.

Section 6217. Protecting coastal waters

Subsection (a) requires each state with a federally approved CZM program to develop a "Coastal Nonpoint Pollution Control Protection Program" to implement coastal land use management measures for controlling nonpoint source pollution. A maximum of four years is provided for each coastal state to comply with this requirement.

The provision reinforces existing requirements for effective land use control, and affirms that state programs under the CZMA and under section 319 of the Clean Water Act should be more effectively organized and coordinated in developing and implementing coastal land use management measures that will control nonpoint pollution of coastal waters. The states are provided maximum flexibility in establishing the state and local institutional arrangements to accomplish this formidable task. However the conference report requires that state programs under this section be developed and implemented in conformity with national guidelines regarding management measures.

LEGISLATIVE HISTORY

These provisions are derived from H.R. 4450 and S. 2782.

H.R. 4450 was introduced on April 3, 1990, by Congressman Dennis Hertel. It was reproted from the House Committee on Merchant Marine and Fisheries on June 11, 1990, (H.Rpt. 101-535) and was passed by the House of Representatives (391-32) with a substitute amendment on September 26, 1990. The Congressional Record from September 26 contains a detailed statement of explanation (pages H8068-79).

S. 2782 was introduced on June 26, 1990, by Senator John Kerry. It was reported from the Senate Committee on Commerce, Science and Transportation on June 27, 1990 (S.Rpt. 101-445).

POLLUTION PREVENTION

House bill

No comparable provision.

Senate bill

No comparable provision.

Conference provision

This section contains a pollution prevention initiative. This section is designed as a first step to maximize voluntary reduction of hazardous wastes and other pollutants created during the manufacturing process by improving the quality of information available to industry, states, and local and Federal officials.

TITLE VII—CIVIL SERVICE AND POSTAL SERVICE PROGRAMS

STATEMENT OF MANAGERS

Title VII—Civil Service and Postal Service Programs

"LUMP-SUM" RETIREMENT BENEFIT

House bill

Section 8001 of the House bill would *suspend* the lump-sum benefit for five years. Individuals retiring on or before October 31, 1990, or after September 30, 1995, would not be affected. Section 8001 also continues the 50/50 lump-sum benefit for employees 65 years or older who retire with 30 or more years of service. it also ensures

that those entitled to the so-called 50/50 lump-sum payments will receive those payments in two calendar years (for tax purposes), and protects those individuals who have received prior refunds of retirement contributions, either as a result of retirement or separation, and who, but for the suspension of the lump-sum benefit, would not be required to redeposit those refunds in order to receive service credit for retirement purposes.

Senate amendment

Section 8001 of the Senate amendment would eliminate the lump-sum retirement benefit. The lump-sum benefit would be eliminated on November 1, 1990.

Conference agreement

The conference agreement adopts the House provision with the following changes: (1) the provision continuing the 50/50 lump-sum arrangement for employees retiring at age 65 or older with at least 30 years of service is deleted; (2) a provision continuing the exception in existing law for employees involuntarily separated is added (such employees may continue to elect a 50/50 lump-sum benefit); (3) a provision continuing the exception in existing law for critically-ill employees is added (such employees may elect a 100 percent lump-sum benefit); and (4) a provision is added to provide an additional year to elect the lump-sum benefit for employees mobilized in connection with the Desert Shield operation. Finally, individuals retiring on or before November 30, 1990, would not be affected by the suspension of the lump-sum benefit.

REFORMS IN THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

House bill

Section 8002 of the House bill requires that FEHBP carriers implement cost-containment measures; mandates cash management controls in administering payments from the Employees Health Benefits Fund; exempts the FEHBP from state premium taxes; and requires improved coordination between the Office of Personnel Management and the Department of Health and Human Services in order to ensure that Medicare's payments and limits can be correctly applied when the FEHBP carriers make a secondary payment.

Senate amendment

Section 8003 of the Senate amendment is similar to section 8002 of the House bill, except that it contains no provision relating to cash management controls.

Section 8005 of the Senate amendment applies Medicare part A hospital payment limits to payments to providers of services to FEHBP annuitant enrollees who are age 65 and older but not eligible for Medicare.

Conference agreement

The conference agreement includes the House and Senate provisions: requiring that FEHBP carriers implement cost-containment measures; exempting the FEHBP from state premium taxes; and

requiring improved coordination between the Office of Personnel Management and the Department of Health and Human Services in order to ensure that Medicare's payments and limits can be correctly applied when the FEHBP carriers make a secondary payment. It includes the House provision which mandates cash management controls in administering payments from the Employees Health Benefits Fund and the Senate provision which applies Medicare hospital payment limits to payments to providers of services to FEHBP annuitant enrollees who are age 65 and older but not eligible for Medicare. The provision concerning Medicare hospital payment limits is effective January 1, 1992.

DISTRICT OF COLUMBIA FEHBP LIABILITY

Senate amendment

Section 8002 of the Senate amendment requires the Government of the District of Columbia to pay to the Employees Health Benefits Fund, annually, an amount equal to the cost of the employer's share of FEHBP premiums for retirees (and survivors) of the D.C. Government.

House bill

The House bill contains no similar provision.

Conference agreement

The Senate recedes to the House.

POSTAL SERVICE FEHBP LIABILITY

House bill

Section 8102 of the House bill requires the Postal Service to pay the employer FEHBP *premiums* for those postal employees (and survivors) who retired after June 30, 1971 (postal reorganization), but prorates the Postal liability to reflect only that portion of total service performed as an employee of the Postal Service.

Senate amendment

Section 8002 of the Senate amendment is the same as the House provision except that the liability of the Postal Service is not prorated.

Conference agreement

The Senate recedes to the House.

POSTAL SERVICE CSRS LIABILITY

House bill

Section 8103 of the House bill requires the Postal Service to fund Civil Service Retirement Systems (CSRS) cost-of-living adjustments for postal retirees (and survivors) who retire after postal reorganization. The Postal Service's liability is prorated to reflect only that portion of total service performed as an employee of the Postal Service.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The Senate recedes to the House.

USPS PAYMENTS FOR PRE-1987 LIABILITIES

House bill

Section 8103 of the House bill requires the Postal Service to make payments to the Civil Service Retirement and Disability Fund and the Employees Health Benefits Fund. The required payments are calculated to satisfy the liabilities which the Service would have incurred had sections 8348(m) and 8996(g)(2) of title 5, United States Code, as amended by section 8101 and 8102, been in continuous effect from July 1, 1971 (postal reorganization) through September 30, 1986. Section 8103 requires the Postal Service to discharge those liabilities by payments spread over fiscal years 1991 through 1995. The payments include interest accruing from October 1, 1990.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement adopts the House provisions, but reduces the amounts required to be paid for past liabilities to reflect credits for payments required to be made by the Postal Service to the Civil Service Retirement and Disability Fund ($350 million) and the Employees Health Benefits Fund ($430 million) by the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203). The conferees note the total costs imposed on the Postal Service by the conference agreement are generally equivalent to those imposed by the Senate amendment.

COMPUTER MATCHING

Senate amendment

The Senate amendment includes the text of H.R. 5450, the Computer Matching and Privacy Protection Act Amendments of 1990, which passed the House on October 1, 1990. The Senate amendment makes two changes to the Computer Matching and Privacy Protection Act of 1988. First, the bill changes the period of time required by law to notify recipients of Federal benefit programs about the results of a computer match prior to taking adverse action against individuals. Second, the Senate amendment creates an alternative to independent verification requirements set up by the 1988 law in limited circumstances.

House bill

The House bill contains no comparable provision.

Conference agreement

The House recedes to the Senate.

PORTABILITY OF BENEFITS FOR NONAPPROPRIATED FUND EMPLOYEES

Senate amendment

The Senate amendment includes the text of H.R. 3139, the Portability of Benefits for Department of Defense Nonappropriated Fund Employees Act of 1989, which passed the House on October 1, 1990. The Department of Defense (DoD) has nearly 200,000 nonappropriated fund (NAF) employees who work in the military morale, welfare, and recreation work force. The FY 1989 Defense Authorization Act required DoD to reorganize the nonappropriated fund work force, which would cause up to 6,000 NAF employees to be converted to the civil service and up to 2,000 civil service employees to be converted to nonappropriated fund status.

The Senate amendment will allow the affected employees to make these changes without a loss in pay or benefits, such as retirement, leave, and health and life insurance. The Senate amendment allows service as a NAF employee to be creditable as Federal service for purposes of determining the order or retention during a reduction-in-force; computing the period of service used for determining eligibility for a periodic step increase; and determining the number of years of service applicable for accrual of annual leave.

The Senate amendment allows all annual leave, sick leave, and home leave of a NAF employee who moves to a civil service position to be transferred without limit. Likewise, all annual leave, sick leave, and home leave of a civil service employee who moves to a NAF position will be transferred without limit.

House bill

The House bill contains no comparable provision.

Conference agreement

The House recedes to the Senate.

TERMINATION OF CONTRIBUTION REQUIREMENTS

House bill

Section 8104 of the House bill provides that payments required from the Postal Service for unfunded liabilities created by certain Civil Service Retirement Systems COLAs shall cease to be required at the close of the fiscal year ending on September 30, 1995. Section 8104 further provides payments required from the Postal Service for health insurance premiums for retired postal employees (and survivors), shall not be required for any period beginning after September 30, 1995.

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The House recedes to the Senate.

TREATMENT OF CONTRIBUTION REQUIREMENTS FOR POSTAL RATEMAKING

House bill

Section 8105 of the House bill sets forth the rules which, for purposes of postal ratemaking, will ensure that the costs imposed on the Postal Service pursuant to the Budget Summit Agreement will be passed through to the postal ratepayers. Under section 8105, postal rates established pursuant to docket number R90-1 (*Postal Rate and Fee Changes, 1990*), or any other general rate case which occurs during the five-year period covered by the Budget Summit Agreement shall be increased, over the levels of rates which would otherwise be applicable, by an amount sufficient to enable the Postal Service to recover the costs imposed pursuant to the Budget Summit Agreement.

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The House recedes to the Senate.

The conferees note that the new payments required of the Postal Service by the conference agreement will be considered in postal rate making, just as payments imposed by past budget reconciliation acts have been considered during previous rate cases. The new payments required by this round of budget negotiations will be recouped over time.

The conferees understand that these new payments will, consistent with the requirements of the Postal Reorganization Act of 1970, legal precedent, and Postal Rate Commission regulation and practice, be considered by the Postal Rate Commission during the pendency of the rate case (Docket No. R90-1), as will other factors which have come to the attention of the Commission during its consideration of that rate case.

TITLE VIII—VETERANS' PROGRAMS

SUBTITLE A—COMPENSATION, DIC, AND PENSION

Compensation Benefits for Certain Incompetent Veterans

Current law

Section 3203(b) of title 38, United States Code, provides for the suspension of compensation and pension payments to an incompetent veteran with no spouse or child if the veteran is being furnished inpatient or domiciliary care at government expense and the value of the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside there) exceeds $1,500. Payments resume when the estate is reduced to $500. If the veteran regains competence for more than six months, the withheld amount must be paid to a veteran in a lump-sum. There are no restrictions on the amount of funds derived from disability compensation which may accumulate

in the estates of noninstitutionalized incompetent veterans with no dependents.

House bill

Section 11001 would provide that (a) in the case of an incompetent veteran who has neither spouse, child, nor dependent parent and whose estate (excluding the value of the veteran's home) exceeds $25,000, compensation payments would be suspended until the estate is reduce to $10,000, and (b) if the veteran regains competence for more than six months, the withheld money would be paid in a lump-sum payment. This section would apply with respect to payments of compensation for months after October 1990 and would be effective through September 30, 1992.

Senate amendment

Section 11001 is substantively identical except that (a) the term "veteran's estate" would be specifically defined to include the market value (exclusive of the value of any mortgages) of all real and personal property owned by a veteran other than a principal residence and other personal effects suitable for such veteran's reasonable mode of living; (b) the lump-sum payment of withheld compensation would be made once the veteran has regained competence for 90 days; (c) the provision has no expiration date; and (d) the costs of administering this provision would be paid for from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

Conference agreement

Section 8001 follows the House bill, except that lump-sum payments of withheld benefits are to be made when the veteran has regained competence for more than 90 days and the costs of administration are to be paid from amounts available for the payment of compensation and pension.

The conferees note that current VA regulations (38 CFR 13.109) establish standards for determining the value of an estate for the purposes of section 3203(b) so as to exclude certain personal property. The conferees intend that this regulation be applied to the valuation of the veteran's estate (other than the veteran's home) for the purposes of the provision in the conference agreement.

According to CBO, the enactment of section 8001 would result in savings of $125 million in outlays in FY 1991 and total savings of $291 million in outlays in FYs 1991–1995.

Elimination of Presumption of Total Disability in Determination of Pension for Certain Veterans

Current law

Under section 502(a) of title 38, a veteran who is 65 years of age or older, or who becomes unemployable after age 65, is considered permanently and totally disabled for purposes of needs-based pension payable to wartime veterans. VA regulations (38 C.F.R. 4.17) relating to disability ratings for pension establish disability percentage requirements for ages below 65 that take into account the veteran's age, as well as his or her actual disabilities. When a vet-

eran reaches age 55, a 60-percent rating for one or most disabilities is considered permanently and totally disabling. Veterans age 60 to 64 are considered permanently and totally disabled if they have disabilities rated at 50 percent.

House bill

Section 11002 would eliminate the presumptions of permanent and total disability for veterans who are 65 or older or who become unemployable after age 65. Section 11002 would be effective for pension claims filed after October 31, 1990.

Senate amendment

Section 11002 would eliminate the presumption of permanent and total disability for veterans who are age 65 or older, but would not affect the presumption for veterans who become unemployable after age 65. The section would apply to veterans who are not receiving pension on November 1, 1990.

Conference agreement

Section 8002 would eliminate the presumption of permanent and total disability for veterans who are age 65 or older and would eliminate the reference to age in the presumption for veterans who become unemployable. Section 11002 would amend section 502(a) of title 38 to provide that a veteran who, at any age, becomes unemployable as a result of disability reasonably certain to continue throughout his or her life would be considered permanently and totally disabled for purposes of pension eligibility. VA regulations already incorporate the unemployability standard for veterans of any age and the conferees do not intend to require any substantive change in the regulations as a result of the enactment of this provision.

The conferees note their expectation that, upon enactment of this provision, VA will extend to veterans age 65 or over its regulation (38 C.F.R. 4.17) providing for ratings of permanently and totally disabled for older veterans with disabilities that are by themselves rated at less than 100 percent disabling.

According to CBO, enactment of section 8002 would result in savings of $17 million in outlays in FY 1991 and total savings of $313 million in outlays in FYs 1991–1995.

Reduction in Pension for Veterans Receiving Medicaid-Covered Nursing Home Care

Current law

Under section 3203 of title 38, the pension of a veteran in a nursing home at VA expense who has no dependents is reduced to a maximum of $90 a month after the third month of care. Veterans in nursing homes under Medicaid do not have their pension benefits reduced, but are required to apply their VA pension toward the cost of their nursing home care.

House bill

Section 11003 would limit monthly pension payments to $90 for Medicaid-eligible recipients of a VA pension who have no depend-

ents and who are in nursing homes participating in Medicaid—except in the cases of veterans who are in State veterans homes. The provision also would prohibit any part of that $90 payment from being applied to the cost of the veteran's nursing-home care. A veteran would not be liable for any payment of pension that is in excess of what this provision would allow and is paid before VA learns of the veteran's admission to a Medicaid nursing home. The costs of administering this provision would be paid from amounts available to the VA for the payment of compensation and pension.

This provision would take effect with respect to months after the month of enactment and expire on September 30, 1992.

Senate amendment

Section 11003 is substantively identical to the House bill except that (a) the veteran would be relieved of liability for overpayments except for those that are the result of the veteran's willful concealment of information needed to make the pension reduction; and (b) this provision would take effect on November 1, 1990, and has no expiration date.

Conference agreement

Section 8003 contains this provision and follows the Senate amendment relating to relief from liability for overpayments and the House bill with respect to the effective date and expiration date.

According to CBO, the enactment of section 8003 would result in savings of $22 million in outlays in FY 1991 and total savings of $124 million in outlays in FYs 1991–1995.

Ineligibility of Remarried Surviving Spouses or Married Children for Reinstatement of Benefits Eligibility

Current law

Under Section 101(3) of title 38, if the surviving spouse of a veteran who died from a service-connected condition remarries or if the needy surviving spouse of a wartime veteran who died from a non-service-connected cause remarries, the spouse no longer qualifies as a "surviving spouse" of the veteran and thus is ineligible for dependency and indemnity compensation (DIC) or VA needs-based pension. Under section 103(d) of title 38, the spouse becomes eligible again when the remarriage is void, annulled, or terminated by death or divorce. The same rules apply, under section 103(e) of title 38, to restore benefits eligibility to a veteran's child whose marriage is void, annulled, or terminated by death or divorce while the child still meets the age requirements for the benefits.

A surviving spouse who lives with another person and holds himself or herself out openly as the third person's spouse (apparent remarriage) is barred from receiving DIC or pension while living with the other person. Upon termination of that arrangement, the surviving spouse regains eligibility.

House bill

Section 11004 would prohibit reinstatement of eligibility for (a) remarried surviving spouses or married children whose disqualify-

ing marriages are void, annulled, or terminated by death or divorce, or (b) surviving spouses upon termination of an apparent remarriage. The provision would take effect on November 1, 1990.

Senate amendment

Section 11004 would prohibit reinstatement of eligibility for remarried surviving spouses whose marriages terminate by death or divorce and also would prohibit reinstatement upon termination of an apparent remarriage. The provision would apply to claims for reinstated benefits filed on or after November 1, 1990.

Conference agreement

Section 8004 would repeal sections 103(d)(2), (d)(3), and (e)(2) to prohibit reinstatement of eligibility for remarried surviving spouses or married children whose disqualifying marriages terminate by death or divorce and to prohibit reinstatement for remarried surviving spouses upon termination of an apparent remarriage. The repeals would take effect on November 1, 1990. The repeals would not reduce or terminate benefits to any individual whose benefits were predicated on the repealed provisions before November 1, 1990.

According to CBO, section 8004 would result in savings of $19 million in outlays in FY 1991 and total savings of $374 million in outlays in FYs 1991–1995.

Policy Regarding Cost-of-Living Increases in Compensation Rates

Current law

Under chapter 11 of title 38, VA pays monthly cash benefits to veterans who have service-connected disabilities. The basic amounts of compensation paid are based on percentage-of-disability ratings—which are in multiples of 10 percentage points—assigned to the veteran. Special monthly rates are payable to totally disabled veterans with certain specific, severe disabilities and combinations of disabilities, and a veteran whose disability is rated 30 percent or more also receives additional compensation for a spouse, children, and dependent parents.

Under chapter 13 of title 38, VA pays DIC to survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service. Surviving spouses receive DIC at rates based on (1) the pay grade (service rank) of the deceased veteran, (2) whether the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance, and (3) the number of surviving children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

Section 11005 would establish a point of order against any compensation/DIC COLA legislation which includes any authority to round the amounts of the monthly disability compensation in any manner other than to the next lower dollar amount or does not include an effective date for such increase of January 1, 1991, or later. Section 11005 would provide for the payment of additional amounts of compensation or DIC benefits during FY 1992 in order

to repay the COLA withheld from compensation and DIC recipients for the month of December 1990. The additional amount would be effective January 1, 1992, and would appear in the recipient's February 1992 checks.

Separate legislation, section 106(b) of H.R. 5326 as passed by the House on October 15, 1990, would provide for repaying in January 1992 the amount of the COLA for December 1990 that is being withheld.

Senate amendment

Section 11005 would state that the FY 1991 compensation and DIC COLA will be no more than 4.5 percent, that all increases will be rounded down to the next lower amount, and that increase for disabilities rated at 10 percent and at 20 percent be $1 less than the amount equal to 4.5-percent increase.

Conference agreement

Section 8005 (1) states that (a) the FY 1991 compensation and DIC COLA will be no more than 5.4 percent, (b) all increases will be rounded down to the next lower dollar amount, and (c) the increases will become effective on January 1, 1991; and (2) provides that the increase that otherwise would have been paid for the month of December 1990 will be paid at the same time that the compensation and DIC payments for January 1992 are paid.

The compensation and DIC COLA is based on the COLA for Social Security benefits, which CBO estimated this summer to be 4.5 percent. After the Senate and the House reported their respective reconciliation bills, the actual Social Security COLA was calculated to be 5.4 percent. Section 8005 reflects this updated percentage.

According to CBO, the enactment of section 8005 would result in savings of $49 million in outlays in FY 1991 and total savings of $44 in outlays in FYs 1991–1995.

SUBTITLE B—HEALTH-CARE BENEFITS

Medical-Care Cost Recovery

VETERANS COVERED

Current law

Section 629(a) of title 38, United States Code, authorizes the Department of Veterans Affairs to collect from a third-party payer the reasonable cost of medical care VA furnishes for care and treatment of the non-service-connected disabilities of (a) any veteran covered under (1) a workers' compensation law, (2) a State law concerning no-fault automobile insurance, or (3) a State or local program of compensation for victims of a crime of personal violence; and (b) a veteran who has no service-connected disabilities and who has coverage under a health-plan contract (typically a health-insurance plan).

House bill

Section 11011(a) would amend section 629(a)(2) of title 38 to authorize VA, during the period ending on October 1, 1992, to collect from a third-party payer under a health-plan contract the reasonable cost of medical care VA furnishes for the treatment of a nonservice-connected disability to a veteran who has a service-connected disability and who is entitled to care (or payment of the expenses of care) under the health-plan contract.

Senate amendment

Section 11011(a) of the Senate amendment is substantively identical except that the authority to make such collections would have no expiration date.

Conference agreement

The conference agreement follows the House bill except that the authority to make such collections would expire on October 1, 1993.

MAXIMUM AMOUNT RECOVERABLE

Current law

Section 629(c)(2)(B) of title 38 U.S.C. requires that regulations prescribed by the Secretary to implement third-party collections provide that the reasonable cost of care sought to be recovered from a third party liable under a health-plan contract not exceed the amount that the third party demonstrates to the satisfaction of the Secretary it would pay for care in accordance with the prevailing rates at which the third party makes payments under comparable health-plan contracts with non-Federal facilities in the same geographic area.

House bill

Section 11011(b) would make a clarifying change deleting the reference to prevailing rates and thus requiring that the regulations provide simply that the reasonable cost of care to be recovered or collected not exceed the amount that the third party would pay for care if provided by non-Federal facilities in the same geographic area.

Senate amendment

Section 11011(b) contains a substantively identical provision.

Conference agreement

Section 8011(b) contains this provision.

ESTABLISHMENT OF MEDICAL RECOVERIES FUND

Current law

Section 629(g) of title 38 requires that amounts collected or recovered from third parties be deposited into the Treasury as miscellaneous receipts.

House bill

Section 11011(c) would (a) establish in the Treasury a fund to be known as the Department of Veterans Affairs Third-Party Medical Recoveries Fund; (b) require that amounts recovered or collected under section 629 of title 38 be credited to this Fund; (c) require that sums in the Fund be available to the Secretary for necessary direct and indirect expenses for the identification, billing, and collection of the cost of care furnished under section 629, and costs related to the administration of the Fund and the collection of copayments for health care furnished under chapter 17 of title 38; and (d) require that, not later than January 1 of each year, an amount equal to the unobligated balance in the Fund at the close of business on September 30 of the preceding year be deposited into the Treasury as miscellaneous receipts.

Senate amendment

Section 11011(c), which would refer to the new fund as the "Medical-Care Cost Recovery Fund", is substantively identical to the House provision, except that it would require that the amount annually deposited into the Treasury as miscellaneous receipts be equivalent to the amount of the unobligated balance at the close of business on September 30 of the preceding year minus any part of the Fund balance that the Secretary determines is necessary to defray, during the fiscal year in which the deposit is made, the expenses, payments, and costs incurred in administering the program of medical-cost recovery.

Conference agreement

Section 8011(c) follows the Senate amendment.

TRANSFER TO FUND

Current law

No existing provision.

House bill

Section 11011(d) would (a) require the Secretary of the Treasury to transfer $25 million from the Department of Veterans Affairs Loan Guaranty Revolving Fund to the new fund; (b) provide that $25 million be available until September 30, 1991, for the support of the equivalent of 800 full-time employees and other administrative expenses; and (c) require that, notwithstanding section 629(g) of title 38 as proposed to be amended by section 11011(c), the first $25 million recovered or collected by VA during fiscal year 1991 as a result of third-party medical recovery activities be credited to the Loan Guaranty Revolving Fund.

Senate amendment

Section 11011(d) is substantively identical to the House provision.

Conference agreement

Section 8011(d) contains this provision.

DEFINITION OF HEALTH-PLAN CONTRACT

Current law

Section 629(i)(1)(A) of title 38 defines the term "health-plan contract" as an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar agreement under which health services for individuals are provided or the expenses of such services are paid.

House bill

Section 11011(e) would provide that a "health-plan contract" may also include a Medicare supplemental insurance policy and that, with respect to such a policy, VA medical facilities and personnel shall be deemed to be Medicare-participating providers and medical services covered by such a policy and furnished by VA shall be deemed to be Medicare-covered services.

Senate amendment

No provision.

Conference agreement

No provision.

EFFECTIVE DATE

House bill

Section 11011(f) would provide that the third-party recovery amendments take effect as of October 1, 1990.

Senate amendment

Section 11011(e) is substantially identical to the House provision.

Conference agreement

Section 8011(e) contains this provision.

According to CBO, the enactment of section 8011 would result in savings of $113 million in outlays in fiscal year 1991 and a total savings of $826 million in outlays in fiscal years 1991 to 1995.

COPAYMENT FOR MEDICATIONS

Current law

Current law contains no provision for copayment for medications provided by the Department of Veterans Affairs.

House bill

Section 11012 would add to chapter 17 of title 38 a new section 622A which would (a) prohibit the Secretary from furnishing a drug on an outpatient basis for the treatment of any non-service-connected disability or condition of a veteran (other than a veteran with a service-connected disability rated 50 percent or more) unless the veteran pays $2 for each 30-day supply of the drug; (b) prohibit the amount of the charge from being reduced if the initial amount of the drug supplied is less than a 30-day supply; (c) require that amounts so collected be credited to VA's new Third-Party Medical

Recoveries Fund (which would be established by new subsection (g) of section 629 as proposed to be added by section 11011); and (d) require that new section 622A of title 38, United States Code, take effect with respect to drugs furnished to a veteran after the later of October 31, 1990, or the date of enactment, whichever is later, and expire on September 30, 1991.

Senate amendment

Section 11012 would add to chapter 17 a new section 622A which would (a) require the Secretary to require a veteran (other than a veteran with a service-connected disability rated 50 percent or more) to pay $2 for each 30-day supply of a medication furnished on an outpatient basis; (b) prohibit the amount of the charge from being reduced if the initial amount of medication is less than a 30-day supply; (c) require that amounts so collected be credited to VA's new Medical-Care Cost Recovery Fund (which would be established by new subsection (g) of section 629 of title 38 as proposed to be added by section 11011); and (d) provide for new section 622A to take effect with respect to medications furnished after October 31, 1990.

Conference agreement

Section 8012 follows the Senate provision, except that (a) the Secretary would be prohibited from requiring a veteran to pay any amount in excess of the cost to the Secretary for medications, and (b) the provision would apply to medications furnished during the period from October 31, 1990, until September 30, 1991.

The Committees note that Section 8012 would not require copayments for medical supplies.

According to CBO, the enactment of section 8012 would result in savings of $66 million in outlays in FY 1991 and total savings of $85 million in outlays in fiscal years 1991 to 1995.

Modification of Health-Care Categories and Copayments

CATEGORIES OF VETERANS

Current law

Section 610(a) of title 38 establishes, for the purposes of determining a veteran's elgibility for hospital care and nursing home care, the following three categories of veterans:

(1) Category A veterans, who are veterans described in section 610(a)(1), which generally includes veterans who have service-connected disabilities, are former prisoners of war, were exposed to certain environmental hazards, are veterans of World War I, or have incomes below specified levels, which currently are (A) in the case of a veteran with no dependents, less than $17,214, or (B) in the case of a veteran with one dependent, less than 20,689, plus $1,150 for each additional dependent. VA must furnish necessary hospital care, and may furnish necessary nursing home care, to these veterans.

(2) Category B veterans, who are veterans not entitled to hospital care under section 610(a)(1) and who have incomes within specified ranges, which currently are (A) in the case of a veteran with no

dependents, greater than $17,214 but less than $22,986, or (B) in the case of a veteran with one dependent, greater than $20,689 but less than $28,733, plus $1,150 added to each amount for each additional dependent. VA may furnish necessary hospital and nursing home care to these veterans on a space and resources available basis.

(3) Category C veterans, who are veterans not entitled to hospital care under section 610(a)(1) and who have incomes above specified levels, which currently are (A) in the case of a veteran with no dependents, greater than $22,986, or (B) in the case of a veteran with one dependent, greater than $28,733, plus $1,150 for each additional dependent. VA may furnish hospital and nursing home care to these veterans, on a space and resources available basis, only if they agree to pay a copayment for such services as specified in section 610(f).

(The income levels noted above are increased each January 1 by the same percentage as the Social Security cost-of-living adjustment granted as of the preceding December 1.)

House bill

Section 11013 eliminates the distinction between Category B and C veterans for purposes of paying copayments for inpatient, nursing home, and outpatient care. This section would establish two categories (instead of the current three categories) of veterans:

(a) Veterans described in section 610(a)(1), to whom VA must furnish necessary hospital care and may furnish nursing home care, without requiring any copayment for these services.

(b) Veterans who are not entitled to hospital care under section 610(a)(1) and who have income levels (adjusted annually by the same percentage as the Social Security COLA) which are (1) in the case of a veteran with no dependents, greater than $17,124, and (2) in the case of a veteran with one dependent, $20,689, plus $1,150 for each additional dependent, to whom VA may furnish necessary hospital and nursing home care, on a space and resource available basis, only if the veteran agrees to pay a copayment for such services as specified in section 610(f) (as proposed to be amended, as discussed below).

Senate amendment

Section 11013(a) contains a substantively identical provision.

Conference agreement

Section 8013(a) contains this provision.

REQUIREMENT TO MAKE COPAYMENT

Current law

Under sections 610(f) and 612(f) of title 38, the copayment requirements for a Category C veteran are as follows:

(a) For hospital care: (1) for the first 90 days of care during any 365-day period, an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible (currently $592), and (2) for each 90-day period after the first 90 days of care within a 365-day period, an amount equal to

the lesser of (A) the cost of care, and (B) an amount equal to one-half of the Medicare deductible.

(b) For nursing home care: an amount equal to the lesser of (A) the cost of furnishing such care, and (B) the amount of the inpatient Medicare deductible for each 90 days of such care (or fraction thereof) during each 365-day period.

(c) For outpatient care: an amount equal to 20 percent (currently $26) of the estimate average cost of an outpatient visit in a VA facility during the calendar year in which services are furnished.

House bill

Section 11013 would require that all veterans not entitled to care pay the current copayments for inpatient and nursing home care. In addition, copayments for care furnished to these veterans (formerly Category B and C veterans) would be:

(a) $10 per day for hospital care starting on the first day of care.

(b) $5 per day for nursing home care starting on the first day of care.

(c) The existing copayment for an outpatient visit, which is an amount equal to 20 percent of the estimated cost of a VA outpatient visit during the calendar year in which the visit occurs.

Senate amendment

Section 11013 is substantively identical to the House provision, except that it would also link the new copayments to Consumer Price Index increases.

Conference agreement

Section 8013 follows the House bill.

Annual Caps on Copayments

Current law

Section 612(f) establishes an overall cap on the total amount a veteran may be required to pay for hospital, nursing home, and outpatient care (a) during any 90-day period, at an amount equal to the inpatient Medicare deductible, and (b) during any 365-day period, at an amount equal to four times the amount of the inpatient Medicare deductible. Section 612(f) also provides that a veteran may not be required to make any copayment for any days of care in excess of 360 days of care during any 365-calendar-day period.

House bill

Section 11013(b) would delete the caps on copayments. This section would require the current copayments to be paid by nonentitled veterans (formerly Category B and C veterans) in addition to the copayments per day of care. There would be no cap on the per day copayment charges.

Senate amendment

Section 11013(b) is substantively identical to the House provision.

Conference agreement

Section 8013(b) contains this provision.

Effective Date

House bill

Section 11013 would provide that amendments made by section 11013 apply with respect to hospital care and medical services received after the later of October 31, 1990, or the date of enactment, and expire on September 30, 1991.

Senate amendment

Section 11013 would require that amendments made by section 11013 apply with respect to hospital care and medical services received after October 31, 1990.

Conference agreement

Section 8013 follows the House bill.

According to CBO, enactment of section 8013 would result in savings of $35 million in outlays in fiscal year 1991 and total savings of $45 million in outlays in fiscal years 1991 to 1995.

SUBTITLE C—EDUCATION AND EMPLOYMENT

Limitation of Rehabilitation Program Entitlement to Service-Disabled Veterans Rated at 20 Percent or More

Current law

Section 1502 of title 38, United States Code, provides that all veterans with service-connected disabilities rated at 10-percent-or-more disabling who have an employment handicap are entitled to vocational rehabilitation services and assistance.

House bill

Section 11021 would (a) limit eligibility for vocational rehabilitation benefits to veterans with service-connected disabilities rated at 20 percent or more; (b) specify that eligibility for certain employment-assistance services currently available to those who have completed a VA vocational rehabilitation program would also be limited to veterans with service-connected disabilities rated at 20 percent or more; and (c) apply only to veterans originally applying for benefits on or after November 1, 1990.

Senate amendment

Section 11022 would (a) limit eligibility for vocational rehabilitation benefits to veterans with service-connected disabilities rated at 30 percent or more; and (b) take effect on the date of enactment, but would not affect the eligibility of persons who are participating in vocational rehabilitation at that time so long as there is no break in participation.

Conference agreement

Section 8021 would (a) limit the vocational-rehabilitation eligibility to veterans with service-connected disabilities rated at 20 per-

cent or more; and (b) apply only to veterans originally applying for benefits on or after November 1, 1990.

According to CBO, the enactment of section 8021 would result in savings of $20 million in outlays in FY 1991 and total savings of $180 million in outlays in FYs 1991–1995.

Subtitle D—Housing and Loan Guaranty Assistance

Election of Claim Under Guaranty of Manufactured Home Loans

Current law

Under section 1812(c)(3) of title 38, when a VA-guaranteed loan on a manufactured home terminates in default, VA may pay a claim against the guaranty only after the property is sold. VA then may satisfy the guaranty by paying the lender the difference between the veteran's debt and the resale price of the manufactured home, up to the maximum amount of the guaranty.

House bill

Section 11031 would amend section 1812 of title 38 to allow the lender to choose between the claim procedure under current law and submitting the lender's claim for guaranty of a loan on a manufactured home as soon as VA notifies the lender of VA's estimate of the value of the home. The lender then would bear any loss or profit on the actual resale.

Senate amendment

Section 11031 is substantively identical to the House bill.

Conference agreement

Section 8031 contains this provision.

According to CBO, the enactment of section 8031 would result in savings of $4 million in outlays in FY 1991 and total savings of $14 million in outlays in FYs 1991–1995.

Loan Fees

Current law

Section 1829 of title 38 establishes fees payable to VA for a VA-guaranteed home loan. The basic fee is 1.25 percent of the loan amount. The fee is reduced to 0.75 percent when a borrower makes a downpayment of at least 5 percent and to 0.5 percent when a borrower makes a downpayment of at least 10 percent. Veterans with a service-connected disability and survivors of veterans who died from a service-connected disability are exempt from paying the fee.

House bill

Section 11032 would increase fees for loans closed during the period beginning November 1, 1990, and ending September 30, 1991, by 0.5 percent. The basic fee would increase from 1.25 percent of the total loan amount to 1.75 percent, while the fees for loans with 5-percent or 10-percent downpayments would increase to 1.25 percent of the total loan amount to 1.75 percent, while the fees for 1 percent, respectively. The fee for assumptions of VA-guaranteed

loans for which commitments are made on or after March 1, 1988, would increase from 0.5 percent to 1 percent.

Senate amendment

Section 11032, effective with respect to loans closed after October 31, 1990, permanently would increase the fees by 0.75 percent. The basic fee would increase to 2 percent and the fee for loans with 5-percent and 10-percent downpayments would increase to 1.5 percent and 1.25 percent, respectively.

Conference agreement

Section 8032 follows the House bill, except that the increase would be 0.625 percent for loans closed between November 1, 1990, and September 30, 1991. Thus, the basic fee would increase from 1.25 percent to 1.875 percent. The fees for loans with 5-percent and 10-percent downpayments would increase to 1.375 percent and 1.125 percent, respectively. The assumption fee would remain unchanged.

According to CBO, enactment of section 8032 would result in savings of $79 million in outlays in FY 1991 and total savings of $79 million in outlays in FYs 1991–1995.

Subtitle E—Burial and Grave Marker Benefits

Headstone or Marker Allowance

Current law

Section 906(d) of title 38 provides, in lieu of a VA-provided headstone or grave marker, for reimbursement for the cost of a headstone or gravemarker for a veteran who is eligible to be, but is not, buried in a national cemetery. The amount of reimbursement may not exceed VA's current annual average actual cost for headstones and markers, which is currently $87.

House bill

Section 11041 would eliminate the headstone allowance with respect to deaths occurring on or after November 1, 1990.

Senate amendment

Section 11042 is substantively identical to the House provision.

Conference agreement

Section 8041 contains this provision.

According to CBO, the enactment of section 8041 would result in savings of $3 million in outlays in FY 1991 and total savings of $19 million in outlays in FYs 1991–1995.

Plot Allowance Eligibility

Current law

Section 903(b) of title 38, United States Code, provides for the payment of a $150 plot allowance for a veteran not buried in a national cemetery—

(a) who was discharged or released from active military, naval, or air service for a disability incurred in the line of duty; or
(b) who was a veteran of any war; or
(c) by reference to section 902—
(1) who at the time of death was in receipt of either VA service-connected disability compensation (or but for the receipt of military retirement pay would have been entitled to compensation) or VA needs-based pension; or
(2) who either was a veteran of any war or was discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State), and with respect to whom the Secretary determines (A) that there is no next of kin or other person claiming the body of the deceased veteran and (B) that there are not available sufficient resources to cover burial and funeral expenses.

Under section 903(b)(1), if an eligible veteran is buried (without charge for the cost of a plot or interment) in a State veterans cemetery which has similar criteria for burial as a national cemetery, VA pays the $150 plot allowance directly to the State.

House bill

Section 11042 would eliminate the plot allowance for those whose eligibility is based solely on the status of veteran of any war (as described in item (b), above), but not those war veterans with eligibility through the reference to section 902 based on their not having sufficient resources to cover burial and funeral expenses and having no one claiming their remains. The plot allowance would continue to be payable for all veterans who meet current eligibility standards and are buried in State veterans cemeteries, and to all veterans discharged from service due to line-of-duty disabilities. The change would take effect with respect to deaths occurring on or after November 1, 1990.

Senate amendment

Section 11041 is substantively identical to the House provision.

Conference agreement

Section 8042 contains this provision.

According to CBO, the enactment of section 8042 would result in savings of $27 million in outlays in FY 1991 and total savings of $147 million in outlays in FYs 1991–1995.

SUBTITLE F—MISCELLANEOUS

Use of Internal Revenue Service and Social Security Administration data for income verification

Current law

Section 6103(l)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)) authorizes disclosure by the Internal Revenue Service of certain third-party and self-employment tax information (from the Commissioner of Social Security or the Secretary of the Treasury) to certain Federal, State, and local entities administering certain

programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program for purposes of income verification, but does not authorize such access to VA for verifying the eligibility of recipients of needs-based, veterans' benefits.

House bill

Section 11051 would amend paragraph (7) of section 6103(l) of the Internal Revenue Code of 1986 so as to require disclosure to VA of (a) such third-party and self-employment tax information for purposes of determining eligibility for VA needs-based pension and parents' dependency and indemnity compensation and VA health-care services based on income status, and (b) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid (pursuant to section 4.16 of title 38, Code of Federal Regulations) at the total-disability-rating level based on an individual determination of unemployability.

To the extent that VA's general operating expenses (GOE) account appropriations are insufficient to fund administrative costs to implement the program, the Secretary would be required to pay the expenses from amounts available to the Department for the payment of compensation and pension.

This provision would expire on September 30, 1992.

Senate amendment

Section 11051 is substantively identical to the House bill except that (a) the requirement to pay implementation expenses from amounts available for the payment of VA compensation and pension would not be contingent on the insufficiency of GOE funds, and (b) there would be no expiration date.

Conference agreement

Section 8051 follows the Senate amendment with respect to implementation costs and follows the House bill with respect to the expiration date.

According to CBO, the enactment of section 8051 would result in savings of $28 million in outlays in FY 1991 and total savings of $743 million in outlays in FYs 1991–1995.

Line of Duty

Current law

Under section 105(a) of title 38, direct, or primary, effects of willful misconduct are not considered to have been incurred or aggravated in the line of duty. As a result, the disabilities involved are not considered service connected for purposes of VA benefits eligibility. However, section 3.301 of title 38, Code of Federal Regulations, provides for the service-connection of disabilities that are a secondary result of actions that constitute willful misconduct, which VA defines to include the chronic use of alcohol or abuse of drugs. Also, section 105(a) prohibits VA from presuming that venereal disease was due to willful misconduct, provided the veteran

complied with the applicable reporting and treatment regulations of the appropriate service department.

Sections 310, 331, and 521 of title 38 similarly prohibit payment of wartime disability compensation, peacetime disability compensation, and non-service-connected disability pension, respectively, when the veteran's disability is the result of willful misconduct.

House bill

Section 11052 would (1) amend section 105(a) of title 38 to repeal the prohibition against VA presuming that venereal disease resulted from willfull misconduct; and (2) amend sections 105(a), 310, 331, and 521 of title 38 to preclude payment of compensation or pension for the secondary effect of willful misconduct. The provision would apply to claims filed after October 31, 1990.

Senate amendment

Section 11052 would provide that injuries or diseases incurred during service as a result of willful misconduct or the abuse of alcohol or drugs will not be considered incurred in the line of duty and thus would not be compensated by VA as a service-connected disability. The provision would apply to line-of-duty determinations made on or after November 1, 1990.

Conference agreement

Section 8052 follows the Senate amendment except that the provisions would take effect with respect to claims filed after October 31, 1990.

The conferees intend the amendments to also preclude payment of compensation for certain secondary effects arising from willful misconduct. For example, payment would be precluded for a back disability or a cardiovascular disability arising as a secondary effect of a foot amputation due to a deliberately self-inflicted wound.

According to CBO, the enactment of section 8052 would result in savings of $10 million in outlays in FY 1991 and total savings of $334 million in outlays in FYs 1991–1995.

Requirement for Claimants to Report Social Security Numbers; Uses Of Death Information by the Department of Veterans Affairs

Current law

Section 7(a) of the Privacy Act of 1974 (Public Law No. 93–579), prohibits any Federal agency from denying to any individual a right, benefit, or privilege provided by law because of the individual's refusal to disclose his or her Social Security number. This prohibition does not apply to any disclosure required by Federal statute.

Several statutory provisions allow VA to require disclosure of Social Security numbers (SSNs) by applicants for certain needs-based benefits or for loans made or guaranteed by VA. These provisions are implemented by section 1.575 of title 38, Code of Federal Regulations.

House bill

Section 11053 would require, upon the request of the Secretary, the disclosure of the SSNs of compensation and pension claimants and recipients and their dependents in connection with all claims for these benefits. Benefits would not be paid to an applicant or recipient who fails to provide a requested number, but no person may be required to furnish an SSN of a person who does not have one. Also, under this provision, VA would be required to compare its records regarding recipients of VA compensation or pension benefits with records of the Department of Health and Human Services in order to determine whether any recipient of these benefits is deceased.

Senate amendment

Section 11053 is substantively identical to the House bill except that it also provides that the costs of administering the program of comparing records shall be paid from the VA Compensation and Pension account.

Conference agreement

Section 8053 follows the House bill, except that the costs of administering the program would be paid from funds available for payment of compensation and pension.

According to CBO, enactment of section 8053 would result in savings of $4 million in outlays in FY 1991 and total savings of $47 million in outlays for FYs 1991–1995.

TITLE IX—TRANSPORTATION

Statement of Managers

House bill

Section 9001 of the House bill provided that it is the sense of the House of Representatives that, if any Senate amendment to H.R. 5835 provides for any increase in motor fuel excise taxes or aviation taxes that would be deposited in the Highway Trust Fund or Aviation Trust Fund, respectively, then the managers on the part of the House for the conference on the reconciliation bill should consider provisions which ensure that an amount equal to the estimated tax payments from any such increases enacted shall be made available in the fiscal year collected for highway and aviation purposes, respectively. Such provisions may include provisions similar to those included in the reconciliation submission of the Committee on Public Works and Transportation dated October 12, 1990, to the Committee on the Budget.

Senate bill

No comparable provision.

Conference agreement

Senate receded to the House with an amendment.

TITLE IX—AVIATION PROVISIONS

Statement of Managers

1. AUTHORIZATION OF AIRPORT IMPROVEMENT PROGRAM

House bill

$1.8 billion for FY 1991.
$1.9 billion for FY 1992.

Senate amendment

Same.

Conference substitute

House bill.

2. AUTHORIZATION OF FAA FACILITIES AND EQUIPMENT PROGRAM

House bill

$2.5 billion for FY 1991.
$3.0 billion for FY 1992.

Senate amendment

$3.0 billion for FY 1991.
$3.0 billion for FY 1992.

Conference substitute

House bill.

3. AUTHORIZATION OF FAA OPERATIONS

House bill

$4.088 billion for FY 1991.
$4,412,600,000 for FY 1992.

Senate amendment

Same.

Conference substitute

House bill

4. ELIMINATION OF "PENALTY CLAUSE" ON FAA OPERATIONS FROM THE TRUST FUND

House bill

Eliminates Penalty Clause which reduces authorization for FAA operations from the Trust Fund if Trust Fund capital programs are not fully funded.

Senate amendment

No change in current law. Penalty clause in effect for FY 1991 and 1992.

Conference substitute

House bill.

5. FUNDING OF FAA OPERATIONS FROM THE TRUST FUND

House bill

Funded at a level which allows 75% of the FAA's budget to come from Trust Fund.

Senate amendment

No change in current law.

Conference substitute

House bill.

6. TRUST FUND FUNDING OF SERVICES RECEIVED BY FAA FROM NOAA

House bill

$34.5 million for FY 1991.
$35.4 million for FY 1992.

Senate amendment

$30 billion for FY 1991 and for FY 1992.

Conference substitute

House bill.

7. MILITARY AIRPORT PROGRAM

(a) Funding

House bill

(a) Funding for FY 1991 and 1992 of not less than 1.5% of AIP program for conversion of former or current military airports to civilian commercial service or reliever airports.

Senate amendment

(a) Not less than 0.5% of AIP program.

Conference substitute

House bill.

(b) Number of Airports

House bill

(b) Not more than 8 airports designated for program. Two must be designated within 6 months of enactment and remainder by September 30, 1992.

Senate amendment

(b) Not more than 5 airports with the same time limits.

Conference substitute

House bill.

(c) Additional Funding

House bill

(c) Up to $5 million per airport may be used for construction of terminals, including gates.

Senate amendment

(c) Up to $3 million per airport may be used for the same purpose.

Conference substitute

House bill.

8. EXPANDED EAST COAST PLAN

House bill

Requires Environmental Impact Statement and safety studies for the FAA's Expanded East Coast Plan for air traffic routings.

Senate amendment

Same.

Conference substitute

House bill.

9. POLICY STATEMENT PROHIBITING AIRPORT DISCRIMINATION AGAINST SMALL AIRCRAFT

House bill

Prohibits discrimination between classes of aircraft.

Senate amendment

Same.

Conference substitute

House bill.

10. AUXILIARY FLIGHT SERVICE STATION PROGRAM

House bill

FAA required to develop a system of auxiliary flight service stations.

Senate amendment

Same.

Conference substitute

House bill. It is the content of the Conferees that the legislative history contained in House Report 101–581 controls for purposes of implementing this section.

11. STATE BLOCK GRANT PROGRAM

House bill

Extends program for 1 year.

Senate amendment

No similar provision.

Conference substitute

House bill.

12. VIRGIN ISLANDS

House bill

Requires study of Miami and Caribbean air traffic control; prohibits the FAA from contracting for air traffic control in St. Thomas and St. Croix until study completed; requires replacement of St. Thomas radar.

Senate amendment.

No similar provision.

Conference substitute.

House bill.

13. ENGINE CONDITION MONITORING SYSTEMS

House bill.

Requires study of potential use of engine condition monitoring system.

Senate amendment

No similar provision.

Conference substitute

House bill.

14. FAA PROCUREMENT REFORM

House bill

Authorizes FAA to enter into multi-year lease of property; designates FAA Administrator as the official authorized to make certain non-competitive procurement awards; authorizes the FAA to undertake certain multi-year procurements of up to 5 years.

Senate amendment

No similar provision.

Conference substitute

House bill.

15. FIREFIGHTING TRAINING FACILITIES

House bill

Makes firefighting training facilities, on and off airport, eligible for AIP funding.

Senate amendment

No similar provision.

Conference substitute

House bill.

16. TRANSFER OF GEODETIC NAVIGATION INFORMATION

House bill

Requires the FAA and NOAA to upgrade geodetic coordinate navigation information.

Senate amendment

No similar provision.

Conference substitute

House bill.

17. BUY AMERICAN AND RELATED PROVISIONS

House bill

Requires FAA to utilize products made in America, subject to exceptions; provides that persons using fraudulent made-in-America labels shall be ineligible for FAA contracts for 3–5 years; prohibits FAA contracts with foreign companies whose government is found by the President to be engaging in procurement practices which discriminate against U.S. companies.

Senate amendment

No similar provision.

Conference substitute

House bill.

18. ATLANTIC CITY AIRPORT

House bill

No similar provision.

Senate amendment

Repeals provision requiring Atlantic City to form an entity meeting specified requirements to manage the airport as a prerequisites to receiving grants under the AIP program.

Conference substitute

Senate amendment.

19. DISASTER AREA REGULATIONS

House bill

No similar provision.

Senate amendment

Requires FAA to prohibit or restrict, for safety and humanitarian reasons, flights over inhabited areas which have been declared disaster areas in the State of Hawaii.

Conference substitute

Senate amendment.

20. PASSENGER FACILITY CHARGES

(a) Amount

House bill

(a) $1, $2, or $3.

Senate amendment

(a) Similar.

Conference substitute

House bill.

(b) Type of passenger who can be charged a PFC.

House bill

(b) Enplaned passengers. PFCs limited to two enplanements per trip. PFC may not be imposed on passengers traveling to or from cities receiving subsidized essential air service.

Senate amendment

(b) Passenger originating or terminating at the airport.

Conference substitute

House bill.

(c) Types of development funded by PFCs

House bill

(c) Projects which are AIP eligible, noise program—eligible, or gates.

Senate amendment

Same.

Conference substitute

House bill.

(d) Use of funds for projects at other airports

House bill

(d) PFCs may be used for eligible projects at other airports controlled by the same agency.

Senate amendment

(d) No provision.

Conference substitute

House bill.

(e) Use of proceeds to pay debt service.

House bill

(e) Authorizes use of PFC proceeds to pay debt service on bonds for eligible projects.

Senate amendment

(e) No provision.

Conference substitute

House bill.

(f) Prior approval required

House bill

(f) Prior approval required for all PFCs.

Senate amendment

(f) Prior approval required for all PFCs, but approval automatic if there is no disagreement with a proposed PFC from airport users or the general public.

Conference substitute

House bill.

(g) Criteria for approval

House bill

(g) Before approving a PFC, DOT must find that the projected revenues are needed for specific approved projects, and that these projects will enhance the safety, capacity or security of the national air transportation system, or reduce noise or enhance competition.

Senate amendment

(g) PFC must be found to be necessary to pay for specific projects. Approval is automatic if there is no objection (Sec. (f) above). In cases in which there is an objection, if the application involves projects eligible for federal funding, the PFC must be approved unless Secretary finds by substantial evidence that the proposed projects would not significantly benefit security, safety, noise mitigation or capacity. To approve a PFC for gates, the Secretary must find, by substantial evidence, that the proposed project is needed to increase capacity.

Conference substitute

House bill.

(h) Application process

House bill

(h) Before submitting a PFC application, the airport must give notice and an opportunity for consultation by air carriers. After ap-

plication is submitted, DOT must give notice and an opportunity for comment. DOT must make a final decision in 120 days.

Senate amendment

(h) Before submitting a PFC application airport operator must give 75 days advance notice, and opportunities for interested persons to attend a meeting. Operator must solicit view from airport users and the general public. DOT shall establish procedures for appeals if there is opposition to a PFC.

Conference substitute

House bill with Senate provisions on consultation with airport users.

(i) General conditions on PFC program

House bill

(i) No new fees after September 30, 1992 if AIP funding for FY 1991 and 1992 is less than $3.7 billion or if EAS funding is less than $26.6 million in FY 1991 or $38.6 million in FY 1992.

Senate amendment

(i) No PFC's until a national aviation noise policy has been adopted and the unobligated balance in the Trust Fund has been reduced below $5 billion. No new PFCs may be imposed if appropriations are less than 90% of authorized funding for the AIP and EAS programs or if funds are spent from Trust Fund except as authorized by this Act. No PFCs may be charged by an airport which has not completed a Part 150 Noise Study. No PFC may be imposed by an airport with noise or access restrictions not in compliance with this law.

Conference substitute

House bill. No existing PFC shall be terminated if the funding conditions in the House bill are not met. No PFC's may be imposed until Secretary of Transportation has issued a final rule establishing procedures for airports to submit proposed airport restrictions on aircraft, and a Notice of Proposed Rulemaking on slot allocation.

(j) Relationship to air carrier contracts

House bill

(j) PFC revenues are not to be treated as airport revenues for purposes of air carrier-airport contracts.

Senate amendment

(j) Similar provision.

Conference substitute

House bill.

Senate provisions. Under the conference substitute, revenues derived from a PFC may not be treated as airport revenues for the purpose of establishing rates, fees and charges pursuant to a con-

tract between an airport and an air carrier. The intent of this provision is that PFC revenues shall not directly or indirectly reduce the amounts charged air carriers under their contracts with the public agency that collects a PFC.

(k) Preemption

House bill

State and local governments may not regulate the collection of PFCs or the use of PFC revenues.

Senate amendment

No preemption of state action.

Conference substitute

House bill.

(l) Existing contracts

House bill

Contracts between air carriers and airports may not limit the airport's ability to collect PFCs or spend the revenues produced.

Senate amendment

Except as otherwise provided, this Act does not modify any existing contracts in place at the airport.

Conference substitute

House bill with modifications.

(m) Contractual agreements for PFC facilities

House bill

Facilities built with PFC revenues may not be subject to exclusive long term lease or use agreements, or leases which restrict the airport's ability to expand capacity.

Senate amendment

Gates constructed with PFC revenues may not be subject to lease of longer than 10 years or majority-in-interest clauses. Air carriers using facilities built with PFC revenues may not be charged a lower rate than carriers using other similar facilities at the airport.

Conference substitute

House bill.

(n) Relationship to airport fees

House bill

No similar provision

Senate amendment

Capitol costs of projects built with PFC revenues shall not be included in the rate base for establishing fees and rates for air carriers.

Conference substitute

Senate amendment. Under this provision and the provision in (m) above, if rates, fees and charges paid by air carriers using non-PFC funded facilities reflect depreciation, amortization or other recovery of capital costs, then rates, fees and charges paid by air carriers using similar PFC funded facilities may be based on depreciation amortization or other recovery of capital costs paid from PFC revenues. Nothing in these provisions would preclude air carriers using PFC funded projects for being charged through depreciation, amortization or other recovery of capital costs of commonly used facilities, such as runways, or non-PFC funded projects, if such costs are determined on a blended basis for all carriers.

(o) PFC conditions

House bill

No similar provision.

Senate amendment

All sponsor assurances which are required in AIP grants shall be required for PFCs. PFC projects subject to Davis-Bacon Act and Veterans Preference requirement which are imposed on AIP grants.

Conference substitute

No provision.

(vii) Administrative provisions

House bill

(vii) PFCs collected by air carriers, separately identified on tickets; air carriers reimbursed for collection expenses; DOT to regulate handling of funds and conduct periodic audits. DOT given authority to terminate a PFC and conduct a set off against AIP grants if PFC funds are misused.

Senate amendment

(vii) Similar, except no specifics on DOT's right to terminate PFCs and collect set off.

Conference substitute

House bill

(k) Entitlement give back and reallocation

House bill

(k) Large and medium hubs imposing PFCs would have their AIP entitlement reduced 50%. 25% of the new funds made available

would be added to the discretionary program established by existing law. The remaining 75% of the new funds made available would go into a new small airport fund—⅓ for general aviation airports, ⅔ for non-hubs and small commercial service airports.

Senate amendment

No similar provision.

Conference substitute

House Bill. Half the funds made available for the discretionary program of existing law would be available for grants to small hub airports.

21. STATE TAXING AUTHORITY

House bill

No similar provision.

Senate amendment

State may not tax aircraft flights which do not take off or land in state.

Conference substitute

Senate amendment.

22. ESSENTIAL AIR SERVICE

House bill

Amends the essential air service to eliminate from the program cities at which subsidy has been terminated under procedures established by recent appropriations acts. Provides that the Secretary does not have discretion to eliminate other cities from the program.

Provides that funding for the EAS program will be contract authority payable from the Airport and Airway Trust Fund. The amount of funding made available is $38.6 million per year for FY 1992–1998.

Senate amendment

No similar provision.

Conference substitute

House bill

23. NOISE

(1) DOT required to develop National Aviation Noise Policy by October 1, 1991. Policy shall include a date for phasing out of Stage 2 aircraft.

(2) FAA required to develop notice and comment procedures for airport noise or access restrictions that first became effective after October 1, 1990, or were negotiated or executed agreements as of October 1, 1990, or where FAA has already formed a working group to examine the noise impact of air traffic control procedure changes.

(3) No restrictions on Stage 3 aircraft or Stage 2 aircraft of less than 75,000 pounds may be imposed, unless agreed to by all aircraft operators and the airport, or approved by FAA. Criteria for approval are specified.

(4) No other restriction may be imposed unless it is published at least 180 days before it becomes effective.

(5) Airports ineligible for AIP grants if Stage 3 restrictions are imposed after October 1, 1990 without approval of FAA or agreement between airport and aircraft operators.

(6) Aircraft operators may get reevaluation of previously approved (by FAA) Stage 3 restrictions, if there has been a change affecting the matter which were the basis for approval. Reevaluation may not be made within 2 years of approval.

(7) Provides that Federal government shall be liable for a "taking" resulting from disapproval of a noise restriction.

Conference substitute

(1) The Secretary is required to establish a national aviation noise policy not later than July 1, 1991.

(2) After date of enactment airports wishing to impose restrictions on the operation of Stage 2 aircraft are required to give public notice of the proposed restriction at least 180 days before its effective date and at the same time give public notice of specified analysis. Airports wishing to impose restrictions on the operation of Stage 3 aircraft may not impose these restrictions unless they are agreed to by the airport proprietor and aircraft operation (which is intended to be limited to present effort by restriction) or are approved by the Secretary of Transportation. Specified types of existing restrictions are exempted from these requirements. It is the intent of the managers that the restrictions in effect at Long Beach Airport may be continued in effect notwithstanding any stated sunset provision, in order to preserve the status quo at that airport. The managers further intend that in reference to section 332—

(A) the requirements of this section shall not apply to airport noise or access restrictions which—

(i) first became effective prior to October 1, 1990;

(ii) are implemented pursuant to an intergovernmental agreement executed prior to October 1, 1990; or

(iii) are implemented at an airport where the FAA already has formed a working group to examine the noise impact of air traffic control procedure changes.

(3) The Secretary is directed to determine by study the applicability of the requirements specified in (2) above to noise restrictions on the operation of Stage 2 aircraft weighing less than 75,000 pounds.

(4) In the event a proposed noise restriction is disapproved under the procedures of this section, the Federal Government shall assume liability for noise damages subject to specific requirements.

(5) On and after December 31, 1999, no person may operate to or from an airport in the United States aircraft with a maximum weight of more than 75,000 pounds unless the aircraft complies with Stage 3 noise levels. Waivers may be granted to permit the operation of 15 percent of an air carrier's fleet at Stage 2 levels

through the year 2003 if the Secretary finds such waiver to be in the public interest. The Secretary shall establish schedules for phased in compliance with these requirements. An exemption is established for aircraft used solely to provide air transportation outside the 48 contiguous States.

(6) On and after the date of enactment, no person may import an aircraft of more than 75,000 pounds into the United States unless such aircarft complies with Stage 3 noise levels. This prohibition does not apply to aircraft owned by U.S. individuals and companies on date of enactment which enter the United States not later than 6 months after expiration of the lease agreement between the owner and the foreign air carrier.

24. SLOTS

House bill

No similar provision.

Senate amendment

(a) At National Airport, FAA shall create a pool of 30 daily air carrier authorizations for air carriers holding fewer than 12 existing slots. Shall be created so that actual daily operations do not exceed the total operations authorized by current regulations. New authorizations are allocated by lottery and designed to give each carrier the same number of authorizations not to exceed 12. If authorizations are unused, they will be distributed to other fewer-than-twelve slot carriers.

(b) FAA must create 30 new daily authorizations at LaGuardia, similar to National.

(c) Requires DOT studies of high density and buy sell rules.

Conference substitute

The Secretary is directed to initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density airports in order to provide improved opportunities for operations by new entrant carriers.

25. CERTIFICATE TRANSFERS

House bill

No similar provision.

Senate amendment

Before authorizing an air carrier certificate transfer, DOT must certify to Congressional Committees that transfer is consistent with specific public interest criteria.

26. FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING, AND DEVELOPMENT

House provision

The House provision is the "Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990".

Senate provision

No similar provision.

Conference

The conference adopted the House provision.

House provision

For Research, Engineering and Development the authorizations are as described in House Report 101-585.

Senate provision

For Research, Engineering and Development the authorizations are $260,000,000 for both fiscal years 1991 and 1992.

Conference

(See attached Conference chart)

Conference

For Research, Engineering and Development the authorizations are as follows:

[In millions of dollars]

Budget category	Fiscal year—		
	1991 FAA submission	1991 authority	1992 authority
Air traffic control	103.8	135.8	135.8
Advanced computer	18.1	19.1	19.1
Navigation	3.4	3.4	3.4
Aviation weather	7.7	9.7	9.7
Aviation medicine	6.5	16.5	16.5
Aircraft safety/security	47.1	70.1	70.1
Environment	2.4	5.4	5.4
Total	190.0	260.0	260.0

The above reflects augmentations as described in House Report 101-585 of the following amounts:

[In millions of dollars]

	Fiscal year—	
	1991	1992
Noise Research	3	3
Tiltrotor Aircraft	3	3
Aging Aircraft	5	5
Accident Prevention Research	10	10
Satellite Technology Applications	4	4
Aviation Security	8	8
University Research	9	9
Human Factors	4	4
Alcohol Research	10	10
ATC Training Research	3	3
ATC Automation Research	9	9
Aviation Weather	2	2

[In millions of dollars]

	Fiscal year—	
	1991	1992
Total	70	70

ENHANCED AIRPORT CAPACITY

House provision

No comparable provision.

Senate provision

The Senate provision authorizes funding for enhanced airport capacity of $25,000,000 for fiscal years 1990, 1991 and 1992. It also provides that "Within 60 days of the last day of each of fiscal years 1990, 1991, and 1992, the Administrator shall transmit a report on expenditures made for research and development for enhanced airport capacity."

House provision

No comparable provision.

Conference

The Conference adopted the Senate provision.

WEATHER SERVICES

House provision

The House provision provides authorization for weather services of $34,521,000 for fiscal year 1991 and $35,389,000 for fiscal year 1992.

Senate provision

The Senate provision provides authorization for weather services of $30,000,000 for each of the fiscal years 1990, 1991 and 1992.

Conference

The Conferees adopted the House provision which is the Administration's requested amounts for fiscal years 1991 and 1992.

AVIATION RESEARCH GRANT AND CONSORTIUM PROGRAM

House provision

The House provision amends the Federal Aviation Act of 1958 to authorize the Administrator to make grants directly to colleges, universities and non-profit research organizations for conducting aviation research and to establish a research consortium, consisting of regional centers of excellence in areas deemed by the Administrator to be required for the long-term growth of aviation.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision authorizing the Administrator to make grants to colleges, universities and non-proift research organizations to conduct aviation research.

STUDY BY THE GENERAL ACCOUNTING OFFICE OF MULTIYEAR CONTRACTING AUTHORITY

House provision

The House provision requires the Comptroller General to conduct a study of the advisability of granting to the Administrator of the FAA authority to issue multiyear contracts.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision.

BUY-AMERICAN REQUIREMENT

House provision

The House provision authorizes the Administrator of the FAA to award a contract to a domestic firm under certain circumstances that under the use of competitive procedures would be awarded to a foreign firm.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision.

CATASTROPHIC FAILURE PREVENTION RESEARCH PROGRAMS

House provision

The House provision provides that the Administrator develop a research and development program to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes and articles manufactured for use in aircraft, aircraft engines, propellers and appliances which could result in a catastrophic failure of an aircraft.

Senate provision

No comparable provision.

Conference

The Conference adopted the House provision. The legislative history is detailed in House Science Committee report 101-585.

AVIATION RESEARCH AND CENTERS OF EXCELLENCE

House provision

No comparable provision.

Senate provision

The Senate provision amends the Federal Aviation Act of 1958 to authorize the Administrator to make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable and directs the Research Advisory Committee established in Section 312(f)(2) of the Act to coordinate, disseminate and act as a clearinghouse for the work of the regional centers.

Conference

The Conference adopted the Senate provision but changed the responsibility of the Research Advisory Committee to review the work of the regional centers.

TITLE X—MISCELLANEOUS USER FEES AND OTHER PROVISIONS

SUBTITLE A—CUSTOMS USER FEES AND OTHER TRADE PROVISIONS

1. CUSTOMS USER FEES

(Section 12401 of House bill; section 6301 of Senate amendment; section 10001 of conference agreement)

a. Extension of Fees

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 establishes customs user fees on the processing of merchandise, air passengers arriving from abroad, various conveyances, dutiable mail, and customs broker permits. Section 111(e) of the Customs and Trade Act of 1990 (Public Law 101-382) extends these fees through September 30, 1991.

House bill

Section 12401 extends the merchandise processing fees and other user fees through September 30, 1995.

Senate amendment

Section 6301(a) is identical.

Conference agreement

The conferees agree to the House and Senate provision.

b. Adjustment Authority

Present law

Present law provides no authority for the Customs Service to adjust the current merchandise processing fee on formal entries of 0.17 percent ad valorem. Section 113 of the Customs and Trade Act of 1990 requires Customs to estimate the amount of the merchandise processing fee that would be required to offset the salaries and expenses incurred by Customs in conducting its commercial operations, develop a methodology for computing the fee, and report the estimate and methodology to Congress.

House bill

No provision.

Senate amendment

Section 6301(b) authorizes the Secretary of the Treasury to adjust the fee to take into account changes in economic conditions or trade flows, to avoid unintended under- or over-collections, and to help to ensure that the user fee will continue to conform to the requirements of the General Agreement on Tariffs and Trade (GATT).

The Secretary may adjust the merchandise processing fee on formal entries by the lesser of (1) the amount needed to meet the appropriate levels for allowable Commercial Operations costs, or (2) 0.02 percentage points (i.e., for a maximum level of 0.19 percent and a minimum level of 0.15 percent). When an adjustment is made, the Secretary shall take into consideration any under- or over-collections in prior years. The Secretary may adjust the fee only after: (1) publishing within 30 calendar days of the date of enactment of the Customs Service's regular annual appropriation, a notice of intent to adjust the fee, the amount of the proposed fee, and a request for public comment on the proposal; (2) consulting with the Senate Committee on Finance and the House Committee on Ways and Means for a period of 30 session days (as defined in the section); and (3) publishing a final determination of the new rate in the Federal Register after the public comment and Congressional consultation periods have expired. The new rate would be effective 15 days after the determination is published.

Conference agreement

The House recedes, with an amendment providing that the Secretary of the Treasury may adjust the fee only after: (1) publishing in the Federal Register within 45 calendar days of the date of enactment of the full-appropriation for the Customs Service a notice of intent to adjust the fee, the amount of the proposed fee, and request for public comment; (2) considering the public comment and consulting with the Senate Committee on Finance and the House Committee on Ways and Means during the 30-day period following the publication of the notice of intent; (3) providing to the Senate Committee on Finance and the House Committee on Ways and Means, upon expiration of the 30-day consultation period, written notification of the final determination to adjust the fee, the level of the fee and the methodology used to determine the level of the fee; and (4) submitting the final determination of the new rate for publication in the Federal Register upon expiration of the 15-"session-day" period (as defined in the section) following such notification to the Committees. The 15-day period is intended to ensure that Congress will have an opportunity to review the final determination and, if necessary, to act to change it before it goes into effect. The new rate would go into effect 15 calendar days after the final determination is published.

The conferees believe that the adjustment authority provided by this section will help to ensure that the user fee will continue to conform to the requirements of the GATT. The conferees also agree

that if the Secretary of the Treasury determines not to adjust the fee from the levels established for the prior fiscal year, the Secretary must report such determination and the methodology used to justify the level of the fee to the Senate Committee on Finance and the House Committee on Ways and Means within 45 days of the date of enactment of Customs' full-year appropriation. Any ad valorem adjustment made under this authority remains in effect until a future adjustment is made. The ad valorem rate floor ($21) and ceiling ($400) provided for in current law remain in effect under any future fee adjustment. Under the fee adjustment provision, a full-year appropriation is intended to include a regular full-year appropriation bill, a continuing resolution making appropriations for a full fiscal year, and a continuing resolution making appropriations for the remainder of a full fiscal year.

c. Small User Fee Airports and Miscellaneous Matters

Present law

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 111 of the Customs and Trade Act of 1990, exempts air courier hubs, express consignment carrier facilities, and user fee airport operators from paying entry-by-entry fees on "informal" entries (i.e., generally, those valued at less than $1,250), but requires these facilities to reimburse Customs in an amount that is double their current assessment for Customs processing services.

House bill

No provision.

Senate amendment

The Senate amendment provides that user fee airports that process fewer than 25,000 informal entires annually would be required to collect the entry-by-entry fee, in addition to the reimbursement required under section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b), instead of paying the double reimbursement. User fee airports processing 25,000 or more informal entries annually would continue to be exempt from the entry-by-entry fees and subject to the double reimbursement requirement.

Conference agreement

The House recedes with a technical amendment. This change reflects the fact that the double reimbursement requirement imposed an unintended hardship on those user fee airports that process low volumes of informal entries. The conferees also believe that this change will help ensure continued compliance with our GATT obligations.

The conferees also agree to clarify the distinction, created in section 111 of the Customs and Trade Act of 1990, between "automated" and "manual" entries for purposes of assessing the merchandise processing fee on imported merchandise. The conferees believe that clarifying the definition of "manual entry" will eliminate an ambiguity which had caused confusion for importers, particularly along the U.S. border with Canada.

2. TECHNICAL CORRECTIONS TO THE CUSTOMS AND TRADE ACT OF 1990

(Sections 6311 and 6312 of Senate amendment; sections 10011, 10012, and 10013 of conference agreement)

Present law

On August 20, 1990, the Customs and Trade Act of 1990 (Public Law 101–382) was enacted.

House bill

No provision.

Senate amendment

Sections 6311 and 6312 correct technical and drafting errors in various miscellaneous tariff provisions of the Customs and Trade Act of 1990 and reinstate two statutory provisions of the Customs Forfeiture Fund that were inadvertently deleted from existing law.

Conference agreement

The House recedes with an amendment regarding additional technical corrections that came to the attention of the conferees after passage of the Senate amendment.

Managers' Report

PATENT AND TRADEMARK OFFICE USER FEES

The House recedes to the Senate with an amendment. The conferees agreed in Fiscal Year 1991 to place all receipts raised by the surcharge on Patent user fees in a special fund in the Treasury and credited as offsetting receipts. This special fund shall be solely for the use of the Patent and Trademark Office. Of this, $91 million shall be available to the Patent and Trademark Office to the extent provided in appropriations acts, and the additional $18.8 million shall be directly available to the Office. In Fiscal Years 1992 through 1995 all receipts shall be placed in this special fund in the Treasury and credited as offsetting receipts, to be available to the Patent and Trademark Office only to the extent provided in appropriations acts.

The Judiciary Committees in the House and Senate were instructed to raise $91 million through an increase in Patent and Trademark Office user fees in Fiscal Year 1991 in order to meet the targets of the Budget Resolution. Prior to the Budget Resolution, the House Appropriations Committee had appropriated, and the House of Representatives approved, $109,807,000 out of the General Fund of the Treasury for the Patent and Trademark Office. The Commerce, State and Justice Appropriations Conference Report provides only $91 million for the Patent and Trademark Office, including $3 million from the General Fund of the Treasury for support of core public functions of the Office. Accordingly, the conferees have agreed to raise user fees by 13% above the House and Senate reconciliation bills. This will generate $109,807,000 in surcharges.

Because Congress must reauthorize the Patent and Trademark Office in 1991, the conferees did not adjust the surcharge on user

fees in Fiscal Years 1992 through 1995 and retain the figures in the House and Senate bills.

SUBTITLE C—SCIENCE AND TECHNOLOGY USER FEES

Statement of Managers

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—NOAA USER FEES

Under current law, the National Oceanic and Atmospheric Administration (NOAA) can only recover its costs in selling information and data it produces, except where legislative authority directly permits NOAA to charge fair market value.

House provision

The House provision authorizes NOAA to sell data materials with commercial value at fair market prices. The legislation places a cap on total revenues from increased user fees at $1 million in FY 1991, and $2 million in each of the fiscal years 1992, 1993, 1994, and 1995. It also places a total cap of $8 million over five years.

Senate provision

The Senate provision authorizes NOAA to sell data information and materials at fair market prices. The Senate provision also provides that the Secretary of Commerce shall waive the assessment of fees as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic and Atmospheric Administration.

Conference

The Conference agreed to a substitute reflecting the Senate language with the inclusion of adjusted limitations on the total revenues that could be collected annually through assessment of fees. This change, for example, would permit the Secretary to charge fees for forecast services where such services are redistributed by commercial entities for a profit.

The Conferees expect that NOAA will seek to ameliorate the potential negative impact of increased fees by spreading the fees over a variety of data and information products provided by NOAA branches in addition to the Weather Service.

The Conferees agree that the existing statute authorizing the Secretary to recover fees collected by the National Environmental and Satellite Data Information Service (NESDIS) from archived data to offset NESDIS cost should be continued without change.

RADON PROFICIENCY PROGRAM USER FEES

House provision

Section 10003 establishes a mandatory radon measurement proficiency program at the Environmental Protection Agency funded by user fees. Section 10003(a) directs the Administrator to conduct research to develop, test, and evaluate radon measurement methods. Section 10003(b) directs the Administrator to establish a mandatory program requiring that any product, device, or person employing a

technique in connection with a radon measurement offered to the public meet a minimum level of proficiency. This program would close existing loopholes, provide better consumer protection, and increase safeguards on public health. Section 10003 (c) directs the Administrator to establish a schedule of user fees for applicants for certification, with the amount of such fees designed to cover the operating and administrative costs of the certification and research program.

Senate provision

There is no comparable Senate provision.

Conference

The Conference agreed to a Senate substitute for the House provision. The substitute is a compromise provision which directs the Administrator to collect user fees for the radon proficiency program which recover the costs of the proficiency program as well as an additional 1.5 million dollars per year for the research program. This provision would result in budgetary savings of 1.5 million dollars per year for FY 1991, 1992, 1993, 1994 and 1995. The substitute also directs the Administrator to conduct a study on the feasibility of establishing a mandatory proficiency program with a report to the Congress by March 1, 1991.

NUCLEAR WASTE FUND

Present law

Section 302(a) of the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10222(a), requires civilian nuclear waste generators to pay fees to the Secretary of Energy for the disposal of their nuclear waste. These fees are deposited in a separate account in the Treasury known as the Nuclear Waste Fund, which can only be used to pay for nuclear waste disposal activities authorized by the Act.

Section 302(a) (2) and (3) set the amount of these fees at one mill (one-tenth of one cent) per kilowatt-hour of electricity associated with the waste. Section 302(a)(4) requires the Secretary of Energy to annually review the amount of fees being collected and to propose an increase or decrease in the amount of the fees if he finds too little or too much is being collected for full cost recovery.

House provision

The House provision would have imposed a surcharge on the fees to increase the amount collected in an amount that:

(1) "reflects the fair market value" of the Secretary's waste disposal activities;

(2) collects at least $5 million annually in fiscal years 1991 through 1995; and

(3) collects not more than:

(A) $6 million in fiscal year 1992;

(B) $7 million in fiscal year 1993;

(C) $8 million in fiscal year 1994, and

(D) $9 million in fiscal year 1995.

Senate provision

The Senate provision contains no comparable provision.

Conference

The Conference agreement does not include the House provision.

URANIUM ENRICHMENT ACT

House provision

The House provision contains no comparable provision.

Senate provision

Subtitle B of Title IV of the Senate provision includes a uranium enrichment provision which is a modification of S. 83, the Uranium Enrichment Act of 1989. The Act has been modified to provide for the following: (1) preclusion of payments in lieu of taxes by the Uranium Enrichment Corporation until fiscal year 1996; (2) restrictions on the expenditures of the Corporation and requirements to pay dividends during fiscal years 1991–1995; and (3) establishment of a fee of two-tenths of a mill per kilowatt-hour on net generation of electricity by each civilian nuclear power reactor during fiscal years 1991–1995.

Conference

The Conference agreement does not include the Senate provision on uranium enrichment.

The Conferees recognize that the Federal uranium enrichment enterprise faces increasing competitive challenges. The Conferees agree that priority should be given in the next session of Congress to legislation that allows the enterprise to operate, as a commercial enterprise, on a profitable and efficient basis in order to maximize the long term economic value of the enterprise to the United States Government. The legislation should also recognize the importance of maintaining a reliable and economical domestic supply of enrichment, of ensuring that the Nation's common defense and security objectives are achieved, and of conducting the enterprise's activities in a manner consistent with the health and safety of the public including the fair and equitable sharing of the costs of timely decontamination and decommissioning of the enrichment facilities.

DEPARTMENT OF ENERGY USER FEE STUDY

House provision

Section 10004 directs the Department of Energy (DOE) to study and report to Congress its findings and recommendations on all of its user fees to determine how to recover reasonable operational costs from non-proprietary users and fair market value from proprietary users consistent with the DOE mission.

Senate provision

The Senate has no comparable provision.

Conference

The Conferees agree to a modified provision, directing the Secretary of Energy to conduct a study of its user fee assessment and collection practices and make recommendations on ways to improve those practices. The Conferees recognize that imposition of a user fee system could have a significant impact on the relationship between DOE facilities and our Nation's academic, scientific and commercial communities as well as other government agencies. The Conferees expect the Secretary's recommendations to be the subject of hearings prior to any proposed action by the Secretary to implement the recommendations.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

House provision

The House provision directs the National Aeronautics and Space Administration (NASA) to study and report to Congress on all of its user fee and assessment practices and to make recommendations on ways to maximize revenues and on the advisability of recovering fair market value for certain services.

Senate provision

The Senate has no comparable provision.

Conference

The House recedes.

DEPARTMENT OF TRANSPORTATION

House provision

The House provision requires the Secretary of Transportation to conduct a study of licensing fee assessment in order to offset the operating budget for this activity.

Senate provision

The Senate has no comparable provision.

Conference

The Conferees agree to modify the House provision by requiring a report on actions by the Department of Transportation (DOT) for the assessment and collection of licensing fees under the Commercial Space Launch Act. The Conferees recognize that DOT's Office of Commercial Space Transportation has proposed the collection of $200,000 in fee reimbursements as a part of its fiscal year 1991 budget.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

House provision

Section 10007 directs the National Institute of Standards and Technology (NIST) to study and report to Congress on the feasibility of charging fees for its services, including how to fully recover operational costs from non-proprietary users and fair market value from proprietary users consistent with the NIST mission. The

study shall also include recommendations to recover the costs of carrying out the institute's contract and award programs.

The Secretary shall submit a report containing such findings and recommendations within 6 months after the date of enactment of this Act. There are authorized to be appropriated for carrying out this section not to exceed $500,000 out of funds otherwise available.

Senate provision

No provision.

Conference

The Conferees agree to modify the House provision by requiring the Secretary to undertake a study of current practices at, and any suggested improvement consistent with the mission of, NIST for recovering the costs of services and materials provided to private and nonprofit organizations, including services provided on a proprietary basis to users of Institute facilities. The Secretary shall submit a report containing such findings to Congress within 6 months after the date of enactment of this Act.

The Conferees note that NIST already collects substantial fees as part of its existing cost-recovery program and intend that the Secretary provide the Committees with a full description of these existing practices. The study should state how the current fee structure fits with NIST's multiple missions.

SUBTITLE E—COAST GUARD USER FEES

Section 10401—Establishment and Collection of Fees for Coast Guard Services

DIRECT COAST GUARD USER FEES

Section 3001 of the Senate bill directed the Coast Guard to establish and implement a system for the collection of $200 million from payments by users of direct and indirect services provided by the Coast Guard. The system would begin operations on October 1, 1990, and continue through fiscal year 1995, generating each year $200 million plus an amount sufficient to compensate for inflation.

Section 7102 of the House bill repealed section 2110 of title 46, United States Code, which bars the Coast Guard from assessing direct user fees for services, such as inspection and examination of vessels, and the licensing of masters, mates, pilots, and engineers.

The managers on the part of the House recede to the Senate with an amendment.

The conference agreement repeals the existing prohibition on the imposition of certain fees by the Coast Guard. It would allow the Coast Guard to collect direct fees for services including inspection and examination of vessels, and licensing of masters, mates, pilots, and engineers. The Administration proposed the imposition of fees for these services in a letter from the Secretary of Transportation to the House and the Senate.

INDIRECT COAST GUARD USERS FEES

As explained above, Section 3001 of the Senate bill directed the Coast Guard to establish and implement a system for the collection

of $200 million from payments by users of direct and indirect services provided by the Coast Guard. This provision allowed for the possibility of an indirect user fee on recreational boaters.

The House had no comparable provision.

The managers on the part of the House recede to the Senate with an amendment.

The conference agreement directs the Secretary to establish a fee or charge annually in fiscal years 1991, 1992, 1993, 1994, and 1995 on recreational vessels that are greater than 16 feet in length. The agreement limits the amount the Coast Guard may collect from a recreational boat owner and establishes a graduated schedule so that owners of larger vessels pay a higher fee. Small vessels 16 feet and under are exempt. The fee or charge would apply only to vessels operating on navigable waters of the United States where the Coast Guard has a presence. The agreement also exempts from the fee program public vessels and vessels used by the Coast Guard Auxiliary. Finally, the agreement contains enforcement provisions to assure compliance with the program. The program will terminate after five years at the end of the 1995 fiscal year.

The Administration proposed the imposition of indirect user fees in a letter from Secretary of Transportation Skinner to the House and the Senate.

Section-by-Section

Section 10401(a) amends section 2110 of title 46, United States Code to authorize the Coast Guard to establish and collect certain direct fees for Coast Guard services.

Section 2110(a)(1) of title 46 requires the Secretary of the department in which the Coast Guard is operating to collect fees of charges for a service or thing of value provided by the Coast Guard. The Coast Guard is already permitted to collect fees for documentation of vessels and filing, recording, and discharge of commercial instruments and maritime liens. The conference agreement amends existing section 2110 of title 46, United States Code, to permit the Coast Guard to collect a direct user fee for inspection and examination of certain vessels and licensing, certification, and documentation of personnel. Users fees for these services are currently prohibited by statute.

User fees under this section would be charged only for Coast Guard Services provided to specific, identifiable users. Among the users that may be affected by user fees authorized under this section are persons who are issued certificates, permits, approvals, licenses, and documents by the Coast Guard and the owners, charterers, managing operators, agents, masters, or individuals in charge of United States-flag commercial vessels.

In establishing these fees or charges, the Coast Guard will have to consider the criteria provided under section 9701 of title 31, United States Code, known as the General User Fee Statute. Accordingly, each fee or charge must be fair and be based on the costs to the government, the value of the service or thing provided to the recipient, public policy or interest served, and other relevant facts.

Paragraph (2) limits the amount of the fee or charge that the Coast Guard may establish for an inspection or examination of a

non-self-propelled tank vessel. The fee or charge may not exceed $500 annually.

Paragraph (3) permits the Secretary to adjust the fee or charge collected under paragraph (1) to accommodate changes in the cost of providing specific services. However, the adjusted charge may not exceed the total cost of providing the service for which the fee or charge is collected, including the costs of collections (which is the current rule as provided under the general user fee law).

Paragraph (4) prohibits the Secretary from collecting a fee or charge if it is in conflict with the international obligations of the United States.

Paragraph (5) prohibits the Secretary from collecting a fee or charge for any search and rescue services the Coast Guard may render.

Subsection (b) authorizes the Secretary to adopt rules assessing an indirect fee or charge to be collected annually from owners or operators of recreational vessels which measure over 16 feet in length. This fee will be collected only once each year for each of the next five fiscal years beginning in 1991. The indirect user fee authorized by this subsection is intended to require recreational boaters to share in the cost of existing Coast Guard programs, including search and rescue, boating safety, and aids to navigation, for which no direct user fee may be assessed, but which provides substantial benefits to recreational boaters.

Paragraph (2) provides that the indirect fee is to be collected on a graduated basis with the maximum allowable amount of the fee depending on the length of the vessel. No fee will be assessed on vessels 16 feet in length or less. Vessels over 16 feet in length, but less than 20 feet in length, may be assessed a fee of not more than $25. For vessels 20 feet or more in length but less than 27 feet in length, the fee may not be more than $35. For vessels 27 feet in length or more but less than 40 feet in length, the fee may not exceed $50. For vessels 40 feet in length or more, the fee may not exceed $100. The managers expect that a uniform charge will be established for each category.

Paragraph (3) limits the assessment of the fee to vessels operated on navigable waters of the United States where the Coast Guard has a presence.

Paragraph (4) provides that the fee may not be assessed on a public vessel or a vessel that qualifies as a public vessel by virtue of its use as a Coast Guard auxiliary vessel. It is intended to be imposed only on recreational vessels as that term is defined in 46 U.S.C. 2101(25). A recreational vessel is a vessel manufactured or operated primarily for pleasure or one which is leased, rented, or chartered to another for the latter's pleasure. The indirect fee or charge will not be imposed on a vessel engaged in commercial service, a fishing vessel, a fish processing vessel, or a fish tender vessel as these vessels are defined in 46 U.S.C. 2101 (11a), (11b), and (11c).

Subsection (c) authorizes the Secretary to recover appropriate administrative costs for collection and enforcement actions associated with the collection of delinquent fees or charges.

Subsection (d) authorizes the Secretary to employ a public or private agency to collect the fees or charges authorized by this legislation. The Secretary may enter into agreements with private enter-

prises or businesses to collect fees or charges. Any agreement shall be subject to reasonable terms and conditions agreed to by the Secretary and the collection service, and shall require an appropriate accounting to the Secretary. However, the collection service may not be used to institute litigation for collection of the fee. Federal agencies that serve as the collection agent must also account for their costs, and those costs must be credited to the account from which they are expended if the federal agency receives reimbursement of costs.

Subsection (e) authorizes a civil penalty of not more than $5,000 if a person fails to pay a charge or fee authorized under this subtitle. The current Coast Guard penalty assessment procedures in Part 1.07 of title 33, Code of Federal Regulations, may be used to assess the penalties prescribed by this Act.

Subsection (f) requires the Secretary of the Treasury, upon the request of the Secretary of Transportation, to deny clearance to a vessel to enter a place subject to the jurisdiction of the United States until the fee or charge is paid or a bond is posted for its payment.

Subsection (g) authorizes the Secretary to grant exemptions from the provisions of this legislation when the Secretary determines it is in the public interest to do so.

Subsection (h) provides that fees or charges collected by the Secretary shall be deposited in the general fund of the Treasury as proprietary receipts ascribed to Coast Guard activities.

Subsection (i) specifically limits the liability of the United States as a result of this Act. These fees or charges are not intended to alter the duties or liabilities of the Coast Guard with respect to services it provides to the public. The Coast Guard's duties and liabilities would remain as prescribed by existing law as interpreted by court decisions with regard to the performance of any service or activity. The imposition of these fees or charges is not intended to alter the standard of care to which the United States would be held if no charges or fees were assessed. The conferees intend to limit the liability of the United States to that of a government entity with sovereign immunity, rather than that of a provider of services.

TONNAGE DUTIES

Section 7101 of the House bill increased the existing tonnage duty for all vessels entering a port of the United States from any foreign port or place in North America, Central America, part of South America, and other parts of that geographical area to 27 cents per ton, not to exceed $1.35 per ton per year. The current rate for vessels arriving from ports within this geographic area is 2 cents per ton, not to exceed 10 cents per ton per year. The House bill also increased the tonnage duty for vessels entering U.S. ports from other foreign ports or places to 81 cents per ton, not to exceed $4.05 per ton per year. The current rate for vessels arriving from ports in this geographic area is 6 cents not to exceed $1.35 per ton per year.

The Senate had no comparable provision.

The managers on the part of the Senate recede to the House with an amendment.

This provision amends 46 App. U.S.C. 121 to increase the tonnage taxes presently collected from vessels arriving in the United States from foreign ports. The conference agreement increases the existing tonnage duties by a factor of 4.5 in fiscal years 1991, 1992, 1993, 1994, and 1995. After fiscal year 1995, the tonnage fees will return to the amount imposed under existing law. The agreement also imposes a duty on vessels that depart a United States port, engage in cruises to nowhere, and return to the same United States port. Vessels exempt from this new duty are: vessels of the United States (for example, a vessel enagaged in the coastwise trade or a fishing vessel); recreational vessels; and United States vessels that are not documented, numbered, or titled, such as undocumented barges operating under section 12110(b) of title 46.

Section-by-Section

Section 10401(a) increases the amount of existing tonnage duties for all vessels entering a port of the United States from any foreign port or place in North America, Central America, part of South America, and other parts of that geographical area to 9 cents per ton, not to exceed 45 cents per ton per year. This section would also increase the tonnage duty for vessels entering U.S. ports from other foreign ports or places to 27 cents per ton, not to exceed $1.35 per ton per year. This increase in the duty would be in effect and collectable for only five fiscal years beginning with fiscal year 1991; thereafter the duties would revert to the same amount as in effect prior to the passage of this legislation. Finally, vessels departing a United States port and returning to the same port, without going to another port or place, excepting vessels of the United States, recreational vessels, or a barge operating under authority of Section 12110(b) of this title, would pay 9 cents per ton, not to exceed 45 cents per ton per year for the next five fiscal years; in 1996 the rate for these vessels will be lowered to 2 cents per ton, not to exceed 10 cents per ton per year.

Tonnage taxes were first collected by the United States in 1790. The rates of regular tonnage duties now in effect have not been changed since 1909. Presently, all United States and foreign vessels arriving from foreign ports or places are required to pay the regular tonnage duty on their cargo carrying capacity, with certain exceptions. Vessels in distress or vessels not engaged in trade are not required to pay duty. Also, coastwise vessels and fishing vessels are specifically exempted from the duty.

Subsection (b) is a conforming amendment.

Subsection (c) provides that receipts from the increase in the tonnage charges will be deposited to the general fund as offsets to the Coast Guard operating budget.

TITLE XI—REVENUE PROVISIONS

A. Individual Income Tax Provisions

1. INDIVIDUAL INCOME TAX STRUCTURE; INDIVIDUAL ALTERNATIVE MINIMUM TAX RATE; PHASEOUT OF PERSONAL EXEMPTIONS

Present Law

Individual income tax rates

Individual income tax rates are 15 and 28 percent, and the tax rates apply to taxable income brackets which vary according to the filing status of the taxpayer.

In addition, there is, in effect, a 33-percent marginal tax rate which serves to phase out the tax benefits of both the 15-percent tax rate and the personal exemption amounts, i.e., "the bubble."

Capital gains are taxed at ordinary income tax rates.

Taxable income brackets for 1990 brackets are shown below for 3 income tax filing statuses.

TAXABLE INCOME BRACKETS

Tax rate	Married joint return	Head of Household	Single individual
15 percent	0–$32,450	0–$26,050	0–$19,450
28 percent	$32,451–$78,400	$26,051–$67,200	$19,451–$47,050
33 percent [1]	$78,401–$185,730	$67,201–$157,890	$47,051–$109,100
28 percent	Over $185,730	Over $157,890	Over $109,100

[1] The 33-percent tax rate terminates and the 28-percent tax rate again applies after the benefits of the 15-percent rate and the personal exemptions claimed by each taxpayer have been phased out. The amount of taxable income at which the phaseout is completed varies according to each taxpayer's family and filing status. This table shows the level at which the 33-percent tax rate would end in order to phase out completely the benefits of the 15-percent tax rate plus the minimum number of personal exemptions for each of the tax filing statuses shown. For this table, married individuals filing a joint return and heads of households are assumed to claim two personal exemptions; one personal exemption is assumed for a single individual. Each personal exemption is phased out over $11,480 of taxable income.

Individual alternative minimum tax rate

An individual taxpayer is also subject to an alternative minimum tax (AMT) which is payable to the extent it exceeds the taxpayer's regular income tax liability. The AMT rate is 21 percent of the alternative minimum taxable income. The AMT rate is set at 75 percent of the maximum regular marginal tax rate of 28 percent.

Phaseout of personal exemptions

A deduction for an individual, the individual's spouse, and each dependent is allowed. For 1989, the amount of the deduction was $2,050 for each exemption. The exemption amount is adjusted for inflation. The benefit of the deduction, as well as the benefit of the 15-percent tax bracket, is phased-out under present law by the imposition of the additional 5-percent tax described above. Each personal exemption phases out over $11,480 of taxable income.

House Bill

Individual income tax rate

An explicit, permanent 33-percent marginal tax rate is imposed after the 15- and 28-percent marginal tax rate brackets. In addi-

tion, the House bill repeals the phaseouts of the tax benefits of the 15-percent rate and the personal exemption amounts. The new rate begins at the same level of taxable income as the phase-out range in present law.

Capital gains income is subject to a maximum marginal tax rate of 28 percent, other than for capital gains for which the taxpayer elects the exclusions permitted under the House bill and capital gains income subject to the surtax under the House bill.

Individual alternative minimum tax rate

The individual AMT rate is increased to 25 percent, in order to retain the relationship in present law between the AMT rate and the top marginal tax rate in the individual income tax.

Phaseout of personal exemptions

The additional 5-percent tax is repealed and an additional tax bracket at a 33-percent rate is imposed, as described above.

Senate Amendment

No provision.

Conference Agreement

Individual income tax rate

The conference agreement follows the House bill with modifications. The maximum marginal income tax rate in the statutory rate structure in sec. 1 is 31 percent; the phaseout of the personal exemptions and overall limitation on itemized deductions are additional adjustments apart from the statutory tax rate structure. The 31-percent marginal tax brackets in 1991 begin at the following amounts:

Single individual	$49,200
Joint return	82,050
Head of household	70,350
Married, filing separately	41,025
Estate and trusts	10,350.

The conference agreement also modifies the tax rates applicable to trusts and estates in order to not increase the benefit of the lower brackets that might otherwise arise from the adoption of the 31-percent marginal tax rate bracket. The conferees believe that modification of these rates is necessary to prevent additional undesirable incentives to create multiple trusts (i.e., the benefit of the lower brackets to a trust will be a maximum of $726.00 per year compared to $708.50 under present law).

Accordingly, the income tax rates and threshold amounts applicable to trusts and estates before the inflation adjustment for 1991 are adjusted as follows:

If taxable income is:	The tax is:
Not more than $3,300	15% of taxable income.
Over $3,300 but not over $9,900	$495.00 plus 28 percent of the excess over $3,300.
Over $9,900	$2,343.00 plus 31 percent of the excess of $9,900.

Individual alternative minimum tax rate

The conference agreement follows the House bill with a modification that reduces the individual AMT tax rate from the House bill rate to 24 percent.

Phaseout of personal exemptions

The deduction for personal exemptions is phased-out as the taxpayer's adjusted gross income exceeds a threshold amount. The threshold amount is $150,000 for joint returns, $125,000 for a head of household, $100,000 for single taxpayers, and $75,000 for a married person filing a separate return. The phaseout range for the personal exemptions is $122,500. These amounts are indexed for inflation.

The exemption amount for each exemption is phased out by two percent for each $2,500 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds the applicable threshold amount; the phaseout rate is 4 percent for a married person filing a separate return. Thus, for example, a joint return with an adjusted gross income of $212,500 (in 1991) would be entitled to deduct one-half the exemption amount for each exemption that otherwise would be deductible without regard to the phase-out. The provision is effective for taxable years beginning after December 31, 1990, and before January 1, 1996.

2. Limitation on Itemized Deductions

Present Law

General rules for itemized deductions

Under present law, individuals who do nct elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain nonbusiness expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, casualty and theft losses, charitable contributions, qualified residence interest, a portion of personal interest (10 percent in 1990; zero thereafter), State and local income and property taxes, moving expenses, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount of the expense incurred during the taxable year exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of such expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness casualty or theft losses are deductible only to the extent that the amount of the loss arising from each casualty or theft exceeds $100 and only to the extent that total casualty and theft losses exceed 10 percent of the taxpay-

er's AGI. Unreimbursed employee business expenses and certain other miscellaneous itemized deductions are deductible only to the extent that the total of such expenses and deductions exceeds two percent of the taxpayer's AGI.

Deduction for contribution of appreciated property

In computing taxable income, a taxpayer generally is allowed to deduct the fair market value of property contributed to a charitable organization.[1] In the case of a charitable contribution of tangible personal property, however, a taxpayer's deduction for regular tax purposes is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis.

Deduction for cosmetic surgery

For purposes of the medical expense deduction, eligible "medical care" expenses are defined as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (sec. 213(d)(1)(A)). The Internal Revenue Service (IRS) has interpreted "medical care" as including procedures that permanently alter any structure of the body, even if the procedure generally is considered to be an elective, purely cosmetic treatment (such as removal of hair by electrolysis and face-lift operations).

House Bill

No provision.

Senate Amendment

General limitation on itemized deductions

The Senate amendment provides that total otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) are reduced by an amount equal to five percent of the amount of a taxpayer's AGI in excess of $100,000.[2] In no event, however, are total otherwise allowable itemized deductions (excluding medical expenses, casualty and theft losses, and investment interest) reduced by more than 80 percent. The provision applies only to individual taxpayers and not to an estate or trust.

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[1] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)). Special rules also limit the amount of a charitable contribution deduction to less than the contributed property's fair market value in cases of contributions of inventory or other ordinary income property and short-term capital gain property.

[2] The threshold amount is $50,000 in the case of a separate return filed by a married individual within the meaning of section 7703. The threshold amounts are not indexed for inflation.

In computing the amount of the reduction of total itemized deductions under the provision, all present-law limitations applicable to such deductions first are applied and the otherwise allowable total amount of deductions then is reduced pursuant to the provision. For purposes of the alternative minimum tax, itemized deductions which are otherwise allowed in computing AMTI are not reduced by the provision (i.e., the cutback amount determined for regular tax purposes is disregarded in calculating AMTI).[3] For purposes of determining the tax treatment of State income tax refunds and other similar payments, the present-law tax benefit rule applies.

Deduction for contributions of appreciated tangible personal property

For purposes of computing alternative minimum taxable income, the present-law rule that treats as a tax preference item the amount of appreciation with respect to a charitable contribution of capital gain property (sec. 57(a)(6)) is repealed in the case of a contribution of tangible personal property. Thus, if a taxpayer makes a charitable contribution of tangible personal property (other than inventory or other ordinary income property, or short-term capital gain property), the use of which is related to the donee's tax-exempt purpose, the taxpayer is entitled to claim a deduction for both regular tax and alternative minimum tax purposes in the amount of the property's fair market value (subject to present-law percentage limitations). Contributions of inventory or other ordinary income property and short-term capital gain property continue to be governed by present-law rules.

Denial of deduction for unnecessary cosmetic surgery

The Senate amendment provides that expenses paid for cosmetic surgery or other similar procedures are not deductible medical expenses, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease. For purposes of this provision, cosmetic surgery is defined as any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

Effective date

The provisions are effective for taxable years beginning after December 31, 1990.

Conference Agreement

General limitation on itemized deductions

The conference agreement generally follows the Senate amendment, except that total otherwise allowable deductions (other than medical expenses, casualty and theft losses, and investment interest) are reduced by an amount equal to three percent of the

[3] This is accomplished by providing a negative adjustment for AMT purposes for the amount of the regular tax cutback in itemized deductions.

amount of a taxpayer's AGI in excess of $100,000. In no event, however, are total otherwise allowable deductions (other than medical expenses, casualty and theft losses, and investment interest) reduced by more than 80 percent.

Inflation adjustments.—The conference agreement provides that for taxable years beginning after 1991, the $100,000 threshold amount will be adjusted for inflation.

Termination.—The conference agreement provides that the provision will not apply to taxable years beginning after December 31, 1995.

Deduction for contributions of appreciated tangible personal property

The conference agreement follows the Senate amendment, except that the provision applies only to contributions made during taxable years beginning in 1991. (Section 57(a)(6) will continue to apply to contributions of tangible personal property made in taxable years beginning after 1991.)

Denial of deduction for unnecessary cosmetic surgery

The conference agreement follows the Senate amendment.

In addition, the conference agreement clarifies that if expenses for cosmetic surgery are not deductible under this provision, then amounts paid for insurance coverage for such expenses are not deductible under section 213 and reimbursement for such expenses is not excludable from the gross income of an individual under a health plan provided by an employer (including under a flexible spending arrangement).

3. Surtax on Individual Taxable Income

Present Law

No surtax applies to the taxable income of any individuals in present law. The individual alternative minimum tax (AMT) rate is 21 percent.

House Bill

A 10-percent surtax is imposed on an individual's taxable income over $1,000,000. The surtax raises the marginal tax rate on taxable income over $1,000,000 to 36.3 percent (33 percent + 3.3 percent). The 33 percent rate is the maximum individual income tax rate in the House bill. The surtax applies to taxable income over $500,000 in the case of married individuals filing separate returns.

The surtax applied to the AMT rate specified in the House bill raises the AMT marginal rate to 27.5 percent (25 percent + 2.5 percent).

The surtax on capital gains income raises the total tax rate on such income to 30.8 percent (28 percent + 2.8 percent). The maximum regular tax rate applied to capital gains income is 28 percent.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. INDEXING OF INCOME TAX BRACKETS AND PERSONAL EXEMPTIONS

Present Law

The threshold amounts for individual income tax rates are indexed annually for changes in the Consumer Price Index (CPI) that have occurred since the last such adjustment was made. Adjustments for changes in the CPI also are made annually in the personal exemption amount and the standard deduction amounts (including the additional amounts for blind or elderly taxpayers).

House Bill

Indexing of the threshold amounts for the tax brackets of the individual income tax is delayed by one year. Thus, the next adjustment for changes in the CPI will reflect the change in the CPI from 1990 to 1991, and the indexing will affect taxable years beginning after December 31, 1991.

The personal exemption amount allowed for each taxpayer and taxpayer's dependent will not be indexed for the 1991 tax year and so will remain unchanged at $2,050 for 1991. Indexing will resume for taxable years beginning after December 31, 1991, and the change will reflect increases in the CPI from 1990 to 1991.

The standard deduction amounts (including the additional amounts for blind or elderly taxpayers) are indexed for 1991 as in present law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

5. CAPITAL GAINS DEDUCTION FOR INDIVIDUALS

Present Law

Net capital gain is taxed at the same rate as ordinary income.

House Bill

The House bill provides individuals aged 25 or older with a deduction equal to 50 percent of net capital gains. The maximum amount of gain with respect to which the deduction may be taken is $200,000 over the individual's lifetime.

Assets eligible for the deduction are capital assets held for more than one year, but not including collectibles or publicly traded assets.

The lifetime capital gains deduction is not allowed in computing the minimum tax.

In addition to the lifetime capital gains deduction, the bill provides individuals (other than dependents) with a deduction of up to $1,000 of net capital gains each year. The amount of the deduction is phased out for those with adjusted gross incomes between $100,000 and $150,000.

Assets eligible for the annual $1,000 capital gains deduction are capital assets held for more than one year (including publicly traded assets), but not including collectibles.

Both the lifetime capital gains deduction and the annual $1,000 capital gains deduction apply to sales or exchanges of assets on or after October 15, 1990.

The bill also provides that all depreciation on real property is recaptured as ordinary income, effective for dispositions on or after October 15, 1990.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not contain the House bill provision.

B. Modifications of Earned Income Tax Credit; Dependent Care Tax Credit

1. EARNED INCOME TAX CREDIT

a. Calculation of basic credit

Present Law

Certain individuals who maintain a home for one or more children are allowed an advance refundable tax credit based on the taxpayer's earned income (sec. 32). In 1990, the earned income tax credit (EITC) is equal to 14 percent of the first $6,810 of earned income.

The credit is phased out at a rate of 10 percent of the amount of adjusted gross income (or, if greater, earned income) that, in 1990, exceeds $10,730. The $6,810 and $10,730 amounts are adjusted annually for inflation, so that the maximum amount of credit and the maximum amount of income eligible for the credit increase with inflation.

The projected maximum amount of the credit in 1991 is $994. The actual maximum will depend on future inflation.

House Bill

The House bill modifies the EITC by providing an increase in the rate of the credit. The credit percentage is 18.5 percent for 1991, 19 percent for 1992 and 1993, and 20 percent for 1994 and thereafter. The phase-out percentage is 13 percent in 1991, 13.5 percent in 1992 and 1993, and 14 percent in 1994 and thereafter. The present-law dollar thresholds are retained.

The provision is effective for taxable years beginning after December 31, 1990.

Senate Amendment

The Senate amendment increases the amount of the EITC, modifies the present-law phase-out percentage, and adjusts the credit for family size as follows:

	Credit percentage	Phase-out percentage
For 1991:		
1 qualifying child	15.3	10.9
2 or more qual. children	15.7	11.2
For 1992:		
1 qualifying child	15.95	11.4
2 or more qual. children	16.55	11.8
For 1993:		
1 qualifying child	17.25	12.3
2 or more qual. children	18.25	13.0
For 1994 and thereafter:		
1 qualifying child	20.5	14.6
2 or more qual. children	22.5	16.1

As under present law, a taxpayer may receive the EITC on an advanced basis. However, the amount of the credit that may be received on this basis is limited to the credit that the taxpayer could receive if the taxpayer had only one qualifying child. If the taxpayer is entitled to receive a larger credit (e.g., by reason of family size), the balance of the credit may be refunded after the taxpayer's income tax return has been filed.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that the credit percentages and phase-out rates are modified and adjusted for family size as follows:

	Credit percentage	Phase-out percentage
For 1991:		
1 qualifying child	16.7	11.93
2 or more qual. children	17.3	12.36
For 1992:		
1 qualifying child	17.6	12.57
2 or more qual. children	18.4	13.14
For 1993:		
1 qualifying child	18.5	13.21
2 or more qual. children	19.5	13.93
For 1994 and thereafter:		
1 qualifying child	23	16.43
2 or more qual. children	25	17.86

For 1990, the maximum credit is $1,186 for taxpayers with one qualifying child and $1,228 for taxpayers with two or more qualifying children.

As under the Senate amendment, the amount of the credit that may be received on an advanced basis is limited to the credit that

the taxpayer could receive if the taxpayer had only one qualifying child.

b. Modification of rules relating to eligibility for EITC

Present Law

The earned income credit is available to: (1) married individuals filing a joint return who are entitled to a dependency exemption for a child, (2) a head of household who resides with a child, or (3) a surviving spouse. In order to qualify to file as a head of household or surviving spouse, a taxpayer must establish that he or she has provided over half of the cost of maintaining the household for the year. In order to be eligible to claim a dependency exemption, the taxpayer, in general, must provide over half of the support for the child, and the child must have the same principal place of abode as the taxpayer for at least half the year. Benefits under the Aid to Families with Dependent Children (AFDC) program and other public assistance programs are not considered support provided by the taxpayer. Thus, for example, if more than half of the taxpayer's income is from AFDC or sources other than the taxpayer's own income, the EITC generally is not available.

House Bill

Under the House bill, in order to qualify for the EITC, the taxpayer must meet the present-law earned income and adjusted gross income thresholds (as modified by the bill). In addition, the taxpayer must have a "qualifying child."

In order to be a qualifying child, an individual must satisfy a relationship test, a residency test, and an age test. The individual satisfies the relationship test if the individual is a son, stepson, daughter, or stepdaughter of the taxpayer, a descendent of a son or daughter of the taxpayer, or a foster or adopted child of the taxpayer. A foster child is defined as an individual whom the taxpayer cares for as the taxpayer's own child. An adopted child includes a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer.

As under present law, if the individual is married at the close of the taxpayer's year, the taxpayer generally must be entitled to a dependency deduction for the taxable year with respect to such individual in order to claim the EITC.

An individual satisfies the residency test if the individual has the same principal place of abode as the taxpayer for more than half the taxable year (the entire year for foster children). It is intended that the determination of whether the residency requirement is met is made under rules similar to those applicable with respect to whether an individual meets the requirements for head-of-household filing status. Thus, for example, certain temporary absences due to education or illness are disregarded for purposes of determining whether the child had the same principal place of abode as the taxpayer for over half the year. As under present law, the residence must be in the United States.

An individual satisfies the age test if the individual (1) has not attained the age of 19 at the close of the taxable year; (2) is a full-

time student who has not attained the age of 24 at the close of the taxable year; or (3) is permanently and totally disabled. Whether a child is a full-time student is determined under the rules relating to the dependency exemption (sec. 151(c)(4)). An individual is permanently and totally disabled if such individual meets the requirements relating to the credit for the disabled (sec. 22(e)(3)).

If, with respect to a taxable year, an individual is a qualifying child with respect to more than one taxpayer, then only the taxpayer with the highest adjusted gross income may claim the EITC with respect to that child for that year. In addition, a taxpayer may not claim the EITC if the taxpayer is a qualifying child.

As under present law, married taxpayers may only claim the EITC if they file a joint return.

Solely for purposes of the EITC, taxpayers are required to obtain and supply a taxpayer identification number (TIN) for each qualifying child who has attained the age of 1 as of the close of the taxable year of the taxpayer.

In order to claim the EITC, the taxpayer must complete and attach a separate schedule to his or her income tax return. In addition to the TIN requirement discussed above, this schedule is required to include the name and age of any qualifying children.

The Internal Revenue Service is to develop special procedures to notify taxpayers who have not claimed the EITC of their potential eligibility for the credit.

The provision is effective for taxable years beginning after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill, except that in addition to the information that may be required on the separate form under the House bill, the Senate agreement permits the Secretary to require adequate proof of the existence of health insurance if the taxpayer has claimed the supplemental EITC for health insurance (e.g., the policy number of the insurance or the employer identification number of the insurance company).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Supplemental young child credit

Present Law

Under present law, the EITC is not adjusted by reason of family size or the fact that an infant is under the age of 1 as of the close of the taxable year of the taxpayer.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

If any of the taxpayer's qualifying children are under the age of 1 as of the close of the taxable year of the taxpayer, the conference agreement allows an additional credit. The supplemental young child credit amount is available in addition to the amount determined by family size and is in addition to any supplemental credit for health insurance. Using present-law income limits and phaseout ranges, the supplemental young child credit provides an additional credit percentage of 5 percent and an increased phaseout percentage of 3.57 percent. Thus, the maximum supplemental young child credit is projected to be $355 in 1991.

If the taxpayer claims the supplemental young child credit, the child that qualifies the taxpayer for such credit is not a qualifying individual under the dependent care credit (sec. 21).

The portion of the credit available under the supplemental credit is not available on an advance basis.

The provision is effective for taxable years beginning after December 31, 1990.

d. Supplemental EITC for certain health insurance premium expenses

Present Law

Expenses for medical care, including health insurance premiums, are deductible to taxpayers who itemize deductions to the extent the expenses exceed 7.5 percent of adjusted gross income (AGI).

Health insurance provided by an employer is excludable from gross income. Self-employed individuals are entitled to deduct 25 percent of the amount of health insurance expenditures; the provision for self-employed individuals expires with respect to expenses for health insurance coverage for periods after September 30, 1990.[4]

Present law does not provide a credit for the cost of health insurance.

House bill

No provision.

Senate Amendment

Under the Senate amendment, a credit is available to taxpayers for qualified health insurance expenses that includes coverage for a qualifying child. The health credit is refundable, but not on an advance basis. The taxpayer may elect not to receive the health credit.

Qualified health insurance expenses for which the credit is available are amounts paid during the taxable year for health insurance coverage that includes one or more qualifying children (as defined for purposes of the EITC). These expenses include those relating to the cost of coverage (i.e., premium cost) only. Thus, expenses such as co-payments or deductibles under the insurance coverage, as

[4] Sec. 11410 of the bill extends this provision through 1991.

well as other out-of-pocket medical expenses, are not eligible for the credit as qualified health insurance expenses. In addition, qualified health insurance expenses do not include amounts paid by an employee who contributes to his or her employer-sponsored health plan on a pre-tax basis (i.e., through a plan described in sec. 125). Qualified health expenses do include such employee contributions if made on an after-tax basis.

The calculation of the child health credit is generally the same as the calculation of the EITC. Thus, the same eligibility criteria and income phase-in and phase-out requirements apply. However, there is no family size adjustment with respect to the health credit.

The maximum amount of the credit is calculated based on a percentage of earned income. When fully phased in, the credit percentage is 5.5 percent of earned income (up to the maximum amount of creditable earned income in effect for the EITC) and the phaseout rate is 3.9 percent. The credit is phased in so that the credit percentage is 1.1 percent for 1991, 2.475 percent for 1992, 2.5 percent for 1993, and 5.5 percent for 1994 and thereafter. The phase-out percentage is 0.8 percent in 1991, 1.8 percent in 1992 and 1993, and 3.9 percent in 1994 and thereafter.

The maximum credit after application of the phase-out requirement is limited to no more than the actual cost of coverage to the taxpayer for family coverage. Thus, the credit is limited to the lesser of the maximum amount of the credit as phased out with respect to the taxpayer and the actual qualified health insurance expenses.

The amount of expenses against which the credit is allowed reduces the amount of expenses for which the medical expense deduction may be allowed (sec. 213). A similar rule applies with respect to the amount of health insurance expenses upon which the deduction for health insurance costs for self-employed individuals (sec. 162(l)) may be based.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, except that the credit percentage is 6 percent and the phase-out rate is 4.285 percent. For 1991, the maximum health credit is projected to be $426.

The conference agreement deletes the express provision allowing a taxpayer to elect not to receive the credit for health insurance expenses. The conferees intend that, as is the case with respect to the dependent care credit, no formal election is necessary because the taxpayer may choose not to take the credit.

The conference agreement modifies the rule relating to the coordination of the health insurance credit with the medical expense deduction (sec. 213) and the deduction for health insurance expenses for self-employed individuals (sec. 162(l)). Under the conference agreement, the amount of any expenses eligible for the medical expense deduction or health insurance deduction for the self-employed is reduced dollar-for-dollar by the amount of allowable credit under this provision. Thus, for example, assume that a tax-

payer pays a $3,000 premium for health insurance coverage for the taxpayer and his or her family (including at least one qualifying child), and by reason of such expense is entitled to a $200 credit under this provision. The amount of expenses (absent any other medical expenses for the taxable year) available to be considered by the taxpayer for purposes of the medical expense deduction under sec. 213 is $2,800 ($3,000 less $200).

e. Treatment of EITC for means-tested programs

Present Law

The AFDC statute provides for the disregard of the EITC from income in determining eligibility and benefits for AFDC recipients. The food stamp statute provides for disregarding the EITC for purposes of determining eligibility and benefits if it is paid as an advance payment. EITC payments received as a lump sum are counted as assets. Some means-tested programs, including housing assistance programs, treat the EITC as income for determining eligibility and benefits.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the EITC (including the child health insurance portion) is not taken into account as income (for the month in which such refund or payment is made or any month thereafter) or as a resource (for the month in which such refund or payment is made or the following month) for the purpose of determining the eligibility or amount of benefit of such individual for AFDC, Medicaid, SSI, and for low-income housing programs. In addition, effective January 1, 1991, the EITC is not counted as income for purposes of applying the AFDC gross income limit for applicants and recipients of AFDC. A State may waive any AFDC overpayment based on the failure to count the EITC toward the gross income limit between October 1, 1989, and December 31, 1990.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, except that the EITC (including the child health insurance portion) is also not taken into account as income (for the month in which such refund or payment is made or any month thereafter) or as a resource (for the month in which such refund or payment is made or the following month) for the purpose of determining the eligibility or amount of benefit of such individual for purposes of the food stamp program and for purposes of certain other housing programs.

2. DEPENDENT CARE TAX CREDIT

Present Law

A credit equal to 30 percent of employment-related dependent care expenses is provided to taxpayers who maintain a household for a qualified individual. The 30-percent rate is reduced for taxpayers with AGI greater than $10,000 so that the credit percentage is 20 percent for taxpayers with AGI greater than $28,000.

The maximum amount of expenses eligible for the credit is $2,400 for one qualifying individual, and $4,800 for two or more individuals. In addition, the amount of eligible expenses cannot exceed the lesser of the taxpayer's earned income or that of the spouse, if married.

A qualifying individual is one for whom the taxpayer is entitled to claim a dependency or spousal exemption and is (1) under the age of 13 or (2) mentally or physically incapable of caring for himself or herself.

The credit is nonrefundable.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the dependent care credit is made partially refundable, except that taxpayers with AGI of $28,000 or more are not entitled to any refundable portion of the credit. As under present law, the full amount of the credit is available to offset tax liability. Ninety percent of the remaining credit amount (i.e., the amount of the credit in excess of tax liability) may then be received as a refund. Dependent care expenses paid, reimbursed, or subsidized by the Federal, State or local government are generally not eligible for the credit.

For purposes of determining the amount of credit that are refundable and nonrefundable, other credits and deductions are applied before the dependent care credit, except for the EITC which is applied after the dependent care credit.

For example, assume a taxpayer with AGI not exceeding $28,000 has tax liability of $70 after the application of all credits and deductions except the dependent care credit and the EITC. The taxpayer has $100 of dependent care credit (prior to application of the limit on refundability), and $150 of EITC. The taxpayer offsets $70 of tax liability with the dependent care credit. Of the remaining $30 of dependent care credit, $27 (90 percent of $30) may be obtained as a refund, while all of the $150 of the EITC is refundable.

The provision is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement does not include the Senate amendment.

3. STUDY OF ADVANCE PAYMENTS AND PUBLIC AWARENESS PROGRAM

Present Law

An employee may elect to furnish a certificate of eligibility for the EITC to his or her employer. Every employee for whom a certificate is in effect must receive, at the time wages are paid, an advance payment of the credit.

House Bill

No provision.

Senate Amendment

The Senate amendment requires the Comptroller General of the United States, in conjunction with the Secretary of the Treasury, to conduct a study of an advance payment system for the EITC, to determine (1) the effectiveness of such a system; (2) ways to alleviate complexity under such a system, if any, for small business; and (3) any other problems in administration of such a system. The study is to include an analysis of why there is currently a low rate of participation in the advance payment program.

The Secretary of the Treasury is to establish a taxpayer awareness program to inform the taxpaying public of the availability of the earned income, dependent care, and health insurance credits.

The study of the advance payment system is required to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means no later than one year after enactment.

The public awareness program provision is effective for the first day of the first calendar year following the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

4. TAXPAYER IDENTIFICATION NUMBERS FOR CHILDREN 1 YEAR OR OLDER

Present Law

Under present law, a taxpayer is required to provide a taxpayer identification number (TIN) with respect to any dependent who has attained the age of 2 as of the close of the taxable year of the taxpayer (sec. 6109(e)).

House Bill

The House bill requires that solely for purposes of the EITC, taxpayers are required to obtain and supply a taxpayer identification number (TIN) for each qualifying child who has attained the age of 1 as of the close of the taxable year of the taxpayer.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, except that it conforms the present-law rules requiring taxpayers to provide TINs for dependents to the proposed rules for the EITC. Under the conference agreement, a taxpayer is required to provide a TIN for any dependent who has attained the age of 1 as of the close of the taxable year of the taxpayer.

The provision is effective for taxable years beginning after December 31, 1990.

C. Excise Tax Provisions

1. INCREASE EXCISE TAXES ON DISTILLED SPIRITS, BEER, AND WINE

Present Law

Under present law, the following alcoholic beverages are subject to excise taxes at the rates indicated:

Beverage	Tax imposed
Distilled spirits	$12.50 per proof gallon.
Beer	9.00 per barrel generally.[1]
Still wines:	
Up to 14 percent alcohol	0.17 per wine gallon.
14 to 21 percent alcohol	0.67 per wine gallon.
21 to 24 percent alcohol [2]	2.25 per wine gallon.
Artificially carbonated wines	2.40 per wine gallon.

[1] The tax rate is $7.00 per barrel for certain small brewers.
[2] Wines containing more than 24 percent alcohol are taxed as distilled spirits.

House Bill

Increase in tax rates

The House bill provides for the following excise tax rates:

Beverage	Tax imposed
Distilled spirits	$13.50 per proof gallon.
Beer	18.00 per barrel generally.
Still wines:	
Up to 14 percent alcohol	1.27 per wine gallon.
14 to 21 percent alcohol	1.77 per wine gallon.
21 to 24 percent alcohol	3.35 per wine gallon.
Artificially carbonated wines	3.50 per wine gallon.

Small producer exception

Beer.—The House bill retains the present-law exception for certain small breweries (i.e., a $7 per-barrel rate remains in effect for the first 60,000 barrels of beer produced by domestic breweries with total production for the calendar year not exceeding 2 million barrels).

Wine.—The first 100,000 gallons of wine produced by domestic wineries with total production for the calendar year not exceeding 200,000 gallons are taxed at present-law rates.[5]

Effective date

The rate increases are effective on January 1, 1991, with floor stocks taxes being imposed on that date (including articles in foreign trade zones).

Senate Amendment

Increase in tax rates

The Senate amendment provides for the following excise tax rates, effective January 1, 1991:

Beverage	Tax imposed
Distilled spirits	$13.70 per proof gallon.
Beer	18.00 per barrel generally.
Still wines:	
Up to 14 percent alcohol	1.07 per wine gallon.
14 to 21 percent alcohol	1.57 per wine gallon.
21 to 24 percent alcohol	3.15 per wine gallon.
Artificially carbonated wines	3.30 per wine gallon.

Small producer exception

Beer.—The Senate amendment provides that certain small domestic breweries may claim a credit of $11.00 per barrel (i.e., the difference between the $18.00 per barrel rate provided for by the Senate amendment and the present-law $7 per barrel rate) on the first 30,000 barrels of beer produced during a calendar year. The credit is phased out for breweries with total production during the calendar year between 45,000 and 75,000 barrels.

Wine.—Small domestic wineries are entitled to a credit of 90 cents per wine gallon (the difference between the increased tax rates on wines provided for by the Senate amendment and the present-law rates) on the first 100,000 gallons of wine produced during a calendar year. The credit is phased out for wineries with total production during the calendar year between 150,000 and 250,000 gallons.[6]

Effective date

Same as the House bill.

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[5] Production of champagne and sparkling wines (the rates on which are not increased) is excluded for purposes of determining the first 100,000 gallons of wine produced during a calendar year, but production of champagne and sparkling wines is included for purposes of determining whether total production of a winery exceeds 200,000 gallons.

The Treasury Department is granted authority to prescribe regulations to prevent the small producer exceptions from benefiting any person who produces more than 2 million barrels of beer or 200,000 gallons of wine during a calendar year.

[6] The Treasury Department is granted authority to prescribe regulations to prevent the small brewery and winery credits from benefiting any person who produces more than 75,000 barrels of beer or 250,000 gallons of wine during a calendar year.

Conference Agreement

Increase in tax rates

The conference agreement provides for the following excise tax rates:

Beverage	Tax imposed
Distilled spirits	$13.50 per proof gallon.
Beer	18.00 per barrel.
Still wines:	
Up to 14 percent alcohol	1.07 per wine gallon.
14 to 21 percent alcohol	1.57 per wine gallon.
21 to 24 percent alcohol	3.15 per wine gallon.
Artificially carbonated wines	3.30 per wine gallon.

Small producer exception

Beer.—The conference agreement follows the House bill.

Wine.—The conference agreement follows the Senate amendment, except that the conference agreement includes the adjustment for counting champagne from the House bill (i.e., production of champagne and sparkling wines, the rates on which are not increased, is excluded for purposes of determining the first 100,000 gallons of wine produced during a calendar year, but production of champagne and sparkling wines is included for purposes of determining total production of a winery).

Effective date

The conference agreement follows the House bill and the Senate amendment.

2. INCREASE TOBACCO EXCISE TAXES

Present Law

The following is a listing of the Federal excise taxes imposed on tobacco products under present law:

Article	Tax imposed
Cigars:	
Small cigars	$0.75 per thousand.
Large cigars	8.5% of suggested wholesale price, up to $20 per thousand.
Cigarettes:	
Small cigarettes	8.00 per thousand (16 cents per pack of 20 cigarettes).
Large cigarettes	16.80 per thousand.
Cigarette papers	0.005 per 50 papers.
Cigarette tubes	0.01 per 50 tubes.
Chewing tobacco	0.08 per pound.
Snuff	0.24 per pound.
Pipe tobacco	0.45 per pound.

House Bill

In general

The House bill increases by 25 percent the current excise taxes on all tobacco products, including cigarettes, cigars, chewing tobacco, snuff, and pipe tobacco (e.g., increase the tax on a pack of 20 small cigarettes from 16 cents to 20 cents per pack), effective January 1, 1991. Further, the bill increases by the same dollar amount as the previous 25-percent increase the excise taxes on all tobacco products (e.g., increase the tax on a pack of 20 small cigarettes from 20 cents to 24 cents per pack), effective January 1, 1993.

Floor stocks taxes are imposed on cigarettes at the time of each rate increase (including cigarettes in foreign trade zones).

In addition, the bill provides a modification to the method for calculating the excise tax on large cigars. Under the bill, the excise tax is based on the manufacturer's or importer's actual selling price, rather than the suggested wholesale price.

Specific tax rate increases

1991 rate increases.—The following table shows the specific tobacco excise tax rates under the bill as of January 1, 1991:

Article	Tax rate (January 1, 1991)
Cigars:	
Small cigars	$0.9375 per thousand.
Large cigars	10.625% of manufacturer's price, up to $25 per thousand.
Cigarettes:	
Small cigarettes	$10.00 per thousand (20 cents per pack of 20 cigarettes).
Large cigarettes	$21.00 per thousand
Cigarette papers	$0.00625 per 50 papers.
Cigarette tubes	$0.0125 per 50 tubes.
Chewing tobacco	$0.10 per pound.
Snuff	$0.30 per pound.
Pipe tobacco	$0.5625 per pound.

1993 rate increases.—The following table shows the specific tobacco excise tax rates under the bill as of January 1, 1993:

Article	Tax rate (January 1, 1993)
Cigars:	
Small cigars	$1.125 per thousand.
Large cigars	12.75% of manufacturer's price, up to $30 per thousand.
Cigarettes:	
Small cigarettes	$12.00 per thousand (24 cents per pack of 20 cigarettes).
Large cigarettes	$25.20 per thousand.
Cigarette papers	$0.0075 per 50 papers.
Cigarette tubes	$0.015 per 50 tubes.
Chewing tobacco	$0.12 per pound.
Snuff	$0.36 per pound.
Pipe tobacco	$0.675 per pound.

Effective dates

The first rate increase described above is effective on January 1, 1991. The second rate increase described above is effective on January 1, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that (1) the Senate amendment does not provide the modification to the method for calculating the excise tax on large cigars (i.e., the current-law tax based on suggested wholesale price is retained), and (2) floor stocks taxes are imposed on all tobacco products.

Conference Agreement

The conference agreement follows the House bill.

3. EXPAND OZONE-DEPLETING CHEMICALS EXCISE TAX

Present Law

An excise tax is imposed on certain ozone-depleting chemicals. The amount of tax generally is determined by multiplying the base tax rate applicable for the calendar year by an ozone-depleting factor assigned to the chemical. Certain chemicals are subject to a reduced rate of tax for years prior to 1994.

The base tax rate applicable for 1991 is $1.37 per pound of ozone-depleting chemical; for 1992, $1.67 per pound of ozone-depleting chemical; and for 1993 and 1994, $2.65 per pound of ozone-depleting chemical. For years after 1994, the base tax rate increases by $0.45 per pound per year. A floor stocks tax applies upon each tax increase date occurring before 1995.

House Bill

The House bill expands the list of taxed chemicals by adding carbon tetrachloride, methyl chloroform, CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, and CFC-217 to the list of taxed chemicals.

The base tax rate is phased in for the newly taxed chemicals. For calendar years 1991 and 1992, the base tax rate is $1.37 per pound. For calendar year 1993, the base tax rate is $1.67 per pound. For calendar year 1994, the base tax rate is $3.00 per pound. For calendar year 1995, the base tax rate is $3.10 per pound. For calendar years after 1995, the base tax rate is to increase by $0.45 per pound as under present law.

The House bill is effective for newly taxable chemicals sold or used on or after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conference agreement is effective on January 1,

1991. The conferees intend that January 1, 1991, is a tax increase date and that consequently a floor stocks tax applies to newly taxed chemicals. In addition, the conference agreement makes technical modifications to the computation of the export exemption applicable to both chemicals taxable under present law and newly taxable chemicals.

4. INCREASE HIGHWAY AND MOTORBOAT FUELS EXCISE TAXES; EXCISE TAX ON RAIL FUELS

Present Law

Tax rates; exemptions

Federal excise taxes generally are imposed on gasoline (9 cents per gallon) and special motor fuels (9 cents per gallon) used in highway transportation and motorboats. In addition, a Federal excise tax is imposed on diesel fuel (15 cents per gallon) used in highway transportation. The 9-cents-per-gallon taxes on gasoline and special motor fuels and the 15-cents-per-gallon tax on diesel fuel are scheduled to expire after September 30, 1993.

Exemptions from some or all of these taxes are provided for fuels sold for export, for use in farming, for use by State and local governments, for use by nonprofit educational organizations, for use in off-highway business (e.g., in rail transportation), and for certain other uses.

A 6-cents-per-gallon exemption is provided from these taxes for certain fuels blended with alcohol, e.g., gasohol. The alcohol fuels exemption is scheduled to expire after September 30, 1993.

Use of revenues

Amounts equivalent to the revenues from the highway fuels taxes and motorboat fuels taxes are dedicated to the Highway Trust Fund and the Aquatic Resources Trust Fund, respectively. Amounts equal to 1 cent per gallon of the highway motor fuels taxes are set aside for the mass transit account of the Highway Trust Fund.

Collection of tax; registration

The 9-cents-per-gallon gasoline excise tax is imposed on the earlier of the removal or the sale of gasoline by the refiner, importer, or terminal operator (sec. 4081). The bulk transfer of gasoline to a terminal by a refiner or importer is not considered a removal or sale of gasoline by the refiner or importer. Under proposed Treasury regulations and Internal Revenue Service administrative practice, the tax generally is imposed on the earlier of (1) a sale within the terminal to an unregistered person, or (2) a removal from the terminal in a transfer which is not by pipeline or marine vessel. These rules and administrative practice further specify the parties that are liable for payment of the tax.

Persons subject to the gasoline and diesel fuel taxes are required to register with the Secretary of the Treasury before they incur any tax liability (sec. 4101). The Secretary also may require such registrants to post bond.

House Bill

No provision.

Senate Amendment

Tax rates; exemptions

The Senate amendment increases the present highway (including gasohol) and motorboat fuels taxes by 4 cents per gallon, effective on December 1, 1990, an additional 5 cents per gallon on July 1, 1991, and an additional 0.5 cents per gallon on January 1, 1992. It also imposes a 2-cents-per-gallon tax on fuels used in rail transportation, effective on December 1, 1990, an additional 2.5-cents-per-gallon tax on July 1, 1991, and an additional 0.25-cents-per-gallon tax on January 1, 1992.

Except as indicated above for fuels used in rail transportation, fuels used in off-highway business uses, in farming, by States and local governments, by school buses, and by other persons whose use is fully exempt from the present highway and motorboat fuels taxes are not subject to the increased rates. Certain intercity buses continue to be subject to a maximum fuels tax of 3.1 cents per gallon (including the 0.1 cent tax for the Leaking Underground Storage Tank Trust Fund). The excise tax exemption for gasohol made from ethanol and qualified ethanol fuel is reduced to 5.5 cents per gallon (4.0 cents in the case of partially exempt ethanol fuels). (See also the discussion relating to the alcohol fuels credit, exemption, and tariff (Item F.1.b.).)

Use of revenues

All of the revenues from the tax on fuels used in rail transportation and the amounts attributable to the reduction in the excise tax exemption for fuels made from ethanol are retained in the general fund. The revenues derived each year from 60 percent of the increases in the highway and motorboat fuel tax rates are dedicated to the Highway Trust Fund and Aquatic Resources Trust Fund, respectively; the revenues derived from the remaining 40 percent of the increases in the highway and motorboat fuel rates are retained in the general fund. Twenty percent of the increased revenues dedicated to the Highway Trust Fund are set aside for the mass transit account of that Trust Fund.

Revenues from the increased rates on motorboat fuels that are dedicated to the Aquatic Resources Trust Fund are to be deposited in a new Wetlands Restoration Account in the Aquatic Resources Trust Fund, to be expended to carry out the creation, restoration, protection, enhancement, and conservation of wetlands upon enactment of, and as provided in, qualified authorizing legislation substantially identical to the Coastal Wetlands Planning, Protection and Restoration Act as passed by the Senate on August 2, 1990.

Registration and reporting

Code section 4101 is amended to require that, in addition to persons subject to the gasoline and diesel fuel taxes, such persons as the Secretary requires by regulation must be registered. The Secretary is given authority to issue regulations which prescribe the

manner, form, terms, and conditions of registration and to specify how the registration may be used. To the extent necessary to permit effective administration, the Secretary is authorized to disclose the name and registration number of each registrant and the address of each terminal owned by each registrant who is subject to the excise tax provisions.

As under present law, the Secretary is authorized to require, as a condition of registration, that registrants post a bond in such sum as the Secretary determines appropriate. The Senate amendment also provides that the Secretary may require a registrant, in addition or as an alternative to posting a bond, to agree to the imposition of a lien on such person's property (or rights to property) as the Secretary determines appropriate. The Secretary must release a lien in connection with a transfer of the property if a bond in an appropriate amount is furnished. The Secretary must respond not later than 90 days after the request for release of a lien in connection with the transfer of the property.

Persons registered as terminal operators, and from whose terminal gasoline is removed, are required to make a return, at such time and in such form as the Secretary requires by regulations.

Effective dates

The excise tax increase provisions are effective on December 1, 1990. The registration and reporting provisions are effective on January 1, 1991. Floor stocks taxes are imposed on December 1, 1990, July 1, 1991, and January 1, 1992 on inventories (including inventories in foreign trade zones) that are held on those dates and that were taxed at the old rates has been paid or that previously were exempt but which are taxed under the bill, e.g., fuels held for use in rail transportation.

The present-law motor fuels tax rates and increases (both the Trust Fund and deficit reduction portions) are extended through September 30, 1995. In general, the exemptions also expire on that date, but the alcohol fuels exemption is extended through September 30, 2000. The present-law (October 1, 1993) expiration of Highway Trust Fund expenditure authority is retained.

Conference Agreement

The conference agreement generally follows the Senate amendment, with the following modifications.

Tax rates; exemptions

The conference agreement increases the present highway (including gasohol) and motorboat fuels taxes by 5 cents per gallon, effective December 1, 1990. The conference agreement imposes a 2.5-cents-per-gallon tax on fuels used in rail transportation, also effective on December 1, 1990. The excise tax exemption for gasohol made from ethanol and qualified ethanol fuel is reduced to 5.4 cents per gallon. (See also the discussion relating to the alcohol fuels credit, exemption, and tariff (Item F.1.b.).) The excise tax exemption for partially exempt ethanol and methanol fuels remains at 50 percent of the applicable tax rate (i.e., 7 cents per gallon under the conference agreement).

Use of revenues

The revenues derived each year from one-half of the increases in the highway fuels taxes and motorboat fuels taxes are dedicated to the Highway Trust Fund and Aquatic Resources Trust Fund, respectively; the revenues derived from the remaining half of the increases are retained in the general fund. All of the revenues from the tax on fuels used in rail transportation are retained in the general fund.

The conference agreement establishes the wetlands restoration program within the Sports Fish Restoration Account of the Aquatic Resources Trust Fund and provides an alternative method of funding the program. Under the conference agreement, amounts equivalent to the revenue from taxes imposed on gasoline used in small-engine outdoor power equipment are to be transferred from the Highway Trust Fund to the Sport Fish Restoration Account of the Aquatic Resources Trust Fund, to be used to carry out purposes that are substantially identical to those of the Coastal Wetlands Planning, Protection and Restoration Act, as set forth in S. 3252 as introduced on October 26, 1990. The conferees intend that small-engine outdoor power equipment include equipment powered by engines having less than 40 horsepower—such as riding and walk-behind rotary mowers, chainsaws, snowblowers, tillers, line trimmers and edgers, log splitters, leaf blowers, lawn vacuums, and leaf shredders and branch grinders.

Collection of tax

The conference agreement amends section 4081 and codifies present Treasury regulations and Internal Revenue Service administrative practice by imposing a tax on (1) the removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States, and (4) the sale to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such gasoline under (1), (2), or (3). The tax is not applicable to any entry or removal of gasoline transferred in bulk to a terminal, unless the entry or removal is by or to a person that is not registered (or the terminal operator is not registered). The entry of gasoline into the United States is considered to occur at the time the gasoline is transferred from customs custody unless the gasoline is transferred in bulk to a terminal. The conference agreement permits the Secretary, as he is permitted under present law, to prescribe rules and administrative procedures for determining liability for payment of tax.

Where a taxpayer willfully fails to pay the gasoline or diesel tax, the conference agreement imposes joint and several liability on (1) any officer, employee or agent of the taxpayer who is under a duty to assure the payment of such tax and who willfully fails to perform such duty and (2) any other person who willfully causes the taxpayer to fail to pay such tax.

The conference agreement provides for a refund (without interest) to any person who pays the tax on gasoline who establishes to the satisfaction of the Secretary that a prior tax was paid to the Treasury with respect to such gasoline. A refund will be paid only if the person paying the second tax files a claim for refund. The

conference agreement contemplates that the Secretary will allow a refund pursuant to this provision only to the extent that evidence is provided clearly establishing that the prior tax was in fact paid to the Treasury with respect to the same gasoline on which the claimant has in fact paid tax. Section 6416(d) is amended to deny the taxpayer the option of a credit in lieu of a refund.

Registration and reporting

The conference agreement authorizes the Secretary to require registration of such persons as the Secretary determines appropriate and in such form and manner, and subject to such terms and conditions, as the Secretary requires by regulations. Such persons may include refiners, importers, terminal operators, blenders, compounders, throughputters, and traders of gasoline. The conferees intend that persons operating downstream of the terminal and not in the business of buying and storing gasoline in bulk in the terminal (e.g., wholesale distributors) will not be eligible for registration enabling them to purchase gasoline tax-free. The conference agreement also provides that the Secretary may deny registration to an applicant if the Secretary determines that denial is necessary to protect the revenue.

The conference agreement authorizes the Secretary to require such information reporting by any registered person or any other person as the Secretary deems necessary to carry out the petroleum products excise taxes. Under this authority, the Secretary may, for example, require registered terminal operators to report, with respect to removals from their terminals, (1) the name, address, and registration number of the owner of the gasoline (or, if the actual owner is not known to the terminal operator, the owner of record on the books of the terminal operator), (2) the amount of gasoline removed, and (3) such other information as the Secretary may require. In addition, the Secretary may, under this authority, require reporting by persons making tax-free transfers of gasoline to a registered terminal and by producers and wholesale distributors of alcohol that sell alcohol to a gasohol blender. A failure to file an information return or filing an incorrect return may subject the person required to file to penalties.

Effective dates

The fuels tax increase is effective on December 1, 1990, with applicable floor stocks taxes imposed on that date. No floor stocks tax is imposed on gasoline or diesel fuel held for use in an intercity bus where tax paid under section 4081 or 4091 with respect to such gasoline or fuel is refundable in whole or in part pursuant to section 6421(b) or 6427(b).

The provisions relating to the collection of the tax are effective on July 1, 1991.

5. Increase Airport and Airway Trust Fund Excise Taxes

Present Law

Aviation tax rates.—Excise taxes are imposed on air passenger transportation (8 percent), air freight (5 percent), international departures ($6 per person), noncommercial aviation gasoline (12 cents

per gallon), and noncommercial aviation nongasoline fuels (i.e., jet fuels) (14 cents per gallon). The taxes are scheduled to expire after December 31, 1990.

Tax reduction trigger.—The aviation excise taxes (other than the international departure tax and the 9-cents-per-gallon basic portion of the tax on aviation gasoline) will be reduced by 50 percent beginning January 1, 1991, if appropriations from the Airport and Airway Trust Fund for fiscal years 1989 and 1990 for airport improvements, facilities and equipment, and research, engineering and development were less than 85 percent of the total amounts authorized for these programs. (The amounts appropriated for these programs for fiscal years 1989 and 1990 were 80.7 percent of the amounts authorized.) Thus, if the aviation excise taxes are extended beyond 1990, the tax reduction trigger is scheduled to go into effect on January 1, 1991.

Use of aviation tax revenues.—Revenues from the aviation excise taxes go to the Airport and Airway Trust Fund through December 31, 1990 (when the taxes are scheduled to expire).

House Bill

Aviation tax rates.—The House bill extends the current aviation excise taxes through December 31, 1995. Also, the House bill increases the tax on air passengers to 10 percent, the tax on air freight to 6.25 percent, the tax on noncommercial aviation gasoline to 15 cents per gallon, and the tax on noncommercial aviation jet fuel to 17.5 cents per gallon.

The increases in tax rates are effective on December 1, 1990, except that the increases in the taxes on air passengers and air freight apply only for amounts paid after November 30, 1990.

Tax reduction trigger.—The House bill repeals the aviation tax reduction trigger, effective on the date of enactment.

Use of aviation tax revenues.—Revenues from the extension of the current aviation excise taxes continue to go to the Airport and Airway Trust Fund through December 31, 1995. All revenues from the increases in aviation excise taxes are to go to the General Fund through 1992, and to the Airport and Airway Trust Fund for 1993-1995.

Senate Amendment

Aviation tax rates.—Same as the House bill, except that the increases in aviation excise tax rates are effective on January 1, 1991.

Tax reduction trigger.—Same as the House bill.

Use of aviation tax revenues.—Same as the House bill with respect to the use of the extension of the current aviation excise tax revenues. All revenues from the increases in aviation tax revenues will go to the Airport and Airway Trust Fund through 1995.

Conference Agreement

Aviation tax rates.—The conference agreement follows the House bill (i.e., the increases in tax rates are effective on December 1, 1990), with a modification providing that the increases in aviation

tax rates (but not the extensions of the present-law rates) are contingent upon enactment as part of this budget reconciliation conference report of the Airport Noise and Capacity Act of 1990, the Aviation Safety and Capacity Expansion Act of 1990, and the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 in a form identical to the provisions of such Acts as included in the conference report on H.R. 5835 of the 101st Congress.

Tax reduction trigger.—The conference agreement follows the House bill and the Senate amendment.

Use of aviation tax revenues.—The conference agreement follows the House bill.

6. INCREASE IN HARBOR MAINTENANCE EXCISE TAX

Present Law

An excise tax of 0.04 percent of commercial value is imposed on commercial cargo loaded or unloaded at U.S. ports. The tax also generally applies to commercial ship passenger fares, except for certain ferry boats. There are certain exceptions for shipments to or from (or between) the U.S. mainland, Hawaii, Alaska, and U.S. possessions.

Revenues from the tax go to the Harbor Maintenance Trust Fund. The authorizing statute permits Trust Fund expenditures of up to 40 percent of eligible harbor maintenance and related costs.

House Bill

The House bill increases the harbor maintenance tax to 0.125 percent, effective on January 1, 1991.

Senate Amendment

Same as the House bill, except that the Senate amendment also modifies the authorizing statute to permit Trust Fund expenditures of up to 100 percent of eligible harbor maintenance and related costs.

Conference Agreement

The conference agreement follows the House bill.

7. REIMPOSE THE LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX

Present Law

Prior to September 1, 1990, a tax of 0.1 cent per gallon was imposed on gasoline, diesel fuel, special motor fuels, aviation fuel, and fuels used on inland waterways. Amounts equivalent to the revenues from this tax were deposited in the Leaking Underground Storage Tank Trust Fund. The 0.1-cent tax was terminated on August 31, 1990, after the Fund reached a statutory ceiling of $500 million of net revenue. If the ceiling had not been reached, the tax was scheduled to expire after December 31, 1991.

House Bill

The House bill reimposes the Leaking Underground Storage Tank Trust Fund tax, extends the tax through December 31, 1995, and eliminates the Trust Fund revenue ceiling. The provision is effective 30 days after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill except that the effective date is December 1, 1990.

Conference Agreement

The conference agreement follows the Senate amendment.

8. GAS GUZZLER EXCISE TAX

Present Law

An excise tax is imposed on automobiles that do not meet statutory standards for fuel economy (Code sec. 4064). The tax is imposed on the manufacturer or importer and generally applies to passenger automobiles with unloaded gross vehicle weights of 6,000 pounds or less. The amount of tax varies according to the fuel efficiency of a model of automobile. For 1986 and thereafter, no gas guzzler tax is imposed if the fuel economy of the automobile model is at least 22.5 miles per gallon (as determined by the Environmental Protection Agency). For the automobile models that do not meet that standard, the tax begins at $500 and increases to $3,850 for the automobile models with fuel economy ratings of less than 12.5 miles per gallon.

A special rule exempts from the gas guzzler tax manufacturers who lengthen existing automobiles (this process is frequently utilized in the manufacturing of stretch limousines). In addition, if the Secretary determines that it is not feasible for a small manufacturer (defined as a manufacturer of fewer than 10,000 automobiles) to meet the fuel economy standards, the Secretary may prescribe an alternate rate of tax for the small manufacturer. To date, the Secretary has not approved any application for an alternate rate of tax.

House Bill

The House bill doubles the tax rates on automobiles that do not meet the statutory standard for fuel economy. Consequently, the tax begins at $1,000 for the automobile models that do not meet the 22.5 miles per gallon standard, and increases to $7,700 for the automobile models with fuel economy ratings of less than 12.5 miles per gallon.

In addition, the House bill subjects limousines (including stretch limousines) to the gas guzzler tax regardless of their weight and repeals the special rules permitting Treasury to set the rate of tax for small manufacturers.

The provision is effective on or after January 1, 1991.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

9. EXTENSION OF TELEPHONE EXCISE TAX; MODIFICATION OF COLLECTION PERIOD; EXEMPTION CERTIFICATES

a. Extension of tax

Present Law

A 3-percent excise tax is imposed on local and toll telephone service. The tax is scheduled to expire after December 31, 1990.

House Bill

No provision.

Senate Amendment

The 3-percent telephone excise tax is permanently extended. The provision is effective on January 1, 1991.

Conference Agreement

The conference agreement follows the Senate amendment.

b. Collection of tax

Present Law

Tax billed to the customer in a semi-monthly period is considered to be collected during the second following semi-monthly period. The tax must be deposited within 3 banking days after the end of the semi-monthly period for which the tax is considered collected.

House Bill

No provision.

Senate Amendment

The tax for a semi-monthly period is considered collected during the first week of the second following semi-monthly period. Deposit is required within 3 banking days after the end of the week for which the tax is considered to be collected.

The provision is effective for taxes considered collected for semi-monthly periods beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, with the technical modification that the provision is effective for taxes considered collected during semi-monthly periods beginning after December 31, 1990.

c. Exemption certificates

Present Law

Those claiming exemption from the telephone excise tax generally must file annual exemption certificates.

House Bill

No provision.

Senate Amendment

Communications service recipients exempt from the tax by reason of being a qualified international organization, nonprofit hospital, nonprofit educational organization, or a State or local government are relieved of filing a certificate of exemption annually after filing an initial certificate of exemption.

The provision is effective for any claim for exemptions made after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

10. LUXURY EXCISE TAX

Present Law

No luxury excise taxes are imposed under present law. Although a number of luxury items were subject to various excise taxes in the past, those excise taxes were repealed in the Excise Tax Reduction Act of 1965.

House Bill

Imposition of tax

The House bill imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified below:

(1) Automobiles above $30,000.—An automobile is any passenger vehicle manufactured primarily for use (as well as sold primarily for use or actually used predominantly) on public streets, roads, and highways that is rated at 6,000 pounds unloaded gross vehicle weight or less. This includes trucks and vans, except that only trucks and vans with a loaded gross vehicle weight of 6,000 pounds or less are subject to this tax. Limousines are subject to this tax regardless of weight. Also, the tax does not apply to the sale or leasing of any passenger vehicle for use by the purchaser or lessee exclusively (other than a de minimis amount) in the active conduct of a trade or business of transporting persons or property for compensation or hire. Thus, for example, the tax will apply to a vehicle purchased or leased by a business and used to transport its employees or officers. The trade or business of transporting persons or property for compensation or hire does not include the leasing or rental of an automobile without a hired driver.

(2) Boats and yachts above $100,000.—Boats and yachts that are used exclusively (other than a de minimis amount) in a trade or business (except for entertainment or recreation purposes, including the trade or business of providing entertainment or recreation) are exempt from this tax. In addition, boats and yachts that are used exclusively in the trade or business of commercial fishing or of transporting persons or property for compensation or hire are exempt from this tax. The transporting of persons or property for compensation or hire includes transportation by a cruise ship (regardless of destination) or by a boat chartered with a pilot. These may be exempt from the tax provided that the other conditions for exemption are met.

(3) Aircraft above $100,000.—The tax applies to aircraft above $100,000, with exceptions for: aircraft used exclusively (other than a de minimis amount) in the trade or business of transporting persons or property for hire; cropdusters; certain helicopters used exclusively in transporting individuals, equipment, or supplies in the exploration, development or removal of oil, gas, or hard minerals, or in planting or cutting of trees; and aircraft used exclusively for flight training purposes.

(4) Jewelry above $5,000.—The tax applies on an item- by-item basis. Custom fabrication of jewelry (from new or used materials) also is subject to this tax. Repairs and slight modifications to jewelry are not subject to this tax. For example, replacing a broken clasp on a necklace is not subject to a tax. Watches are included as jewelry.

(5) Furs above $10,000.—The tax applies to items made from fur or in which fur is a major component. The tax does not apply to leather or to artificial fur.

Special rules

Tax applicable only to newly manufactured items.—This tax applies only to the first retail sale (for a purpose other than resale) after manufacture, production or importation of items subject to the tax. It does not apply to subsequent sales of these items. Thus, for example, if a jeweler sells a new brooch (or a new brooch manufactured from used materials) for $10,000, that item is subject to this tax. If, however, the jeweler sells an antique brooch for $10,000, that item is not subject to this tax. If the sale is voided, the tax is refunded. Thus, for example, if a taxpayer purchases an item of jewelry subject to the tax and pays the tax, but later returns the item to the store for a refund of the purchase price, the tax would also be refunded at that time.

Collection and deposit of tax.—In general, the retailer must collect the tax and remit it to the IRS in accordance with the rules generally applicable to excise taxes.

Anti-abuse rules.—An anti-abuse rule prevents businesses from briefly using items subject to this tax in their trade or business and then selling them (or converting them to personal use) a short time thereafter as a way of avoiding this tax. An additional anti-abuse rule prevents the avoidance of the tax on automobiles, boats, yachts and aircraft through separate purchases of major component parts. Thus, for example, if the taxpayer purchases a sailboat from a distant boatyard without an inboard motor or mast, and

purchases and has installed locally the inboard motor and mast, those purchases would be aggregated for purposes of this tax. The installer must collect the tax due and remit it to the IRS.

Special rule for leases.—A special rule applies to the leasing of boats and aircraft (as well as long-term leases of passenger vehicles) by a person in the trade or business of leasing. These lessors do not pay the tax on their purchase of these items; instead, their leasing of these items is treated as a sale (parallel to present-law excise tax rules). Thus, a pro-rata portion of the tax is due on each lease payment, unless the lease payment is being made by a person who would be exempt from the tax (because of the nature of the use of the item) if the person owned the item.

Exemptions.—In addition to the other exemptions from this tax, the tax on automobiles, boats, yachts, and aircraft does not apply to the sale of those items to the Federal Government or a State or local government for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities or to any person for use exclusively in providing emergency medical services.

Determination of price.—The retail sales price is the price paid by the retail customer, including any charge incident to placing the article in condition ready for use (such as preparation charges, dealer add-ons, and delivery charges). Retail sales taxes (if separately stated) are excluded. The retail sales price is determined without subtraction for any trade-in. Thus, the total price paid (whether paid in cash, in a trade-in, or otherwise) is the retail sale price. The manufacturer's suggested retail price (if any) is not the basis on which the price is computed. Significant variation from general retail market prices of comparable items may, however, be considered by IRS to be an indication of an attempt to avoid the tax. Similarly, the IRS may consider published guides to the value of used property (such as automobile "blue books") in considering whether the value of used property exchanged for the new items subject to tax was understated so as to reduce improperly the amount of luxury excise tax paid.

Tax applicable to imports.—This tax applies to all items subject to the tax upon their importation into the United States (regardless of whether the item was used outside the United States prior to importation), unless the item is being imported by someone in the trade or business for subsequent retail sale or leasing (in which instance the subsequent retail sale or lease would be subject to tax). Thus, for example, the tax is imposed on the retail value of a passenger vehicle (whether new or used) that an individual imports for personal use.

Tax inapplicable to exports.—This tax does not apply to exported items.

Effective date.—This tax applies to retail sales occurring on or after January 1, 1991. In general, the date on which a sale occurs is to be determined in accordance with existing rules for Federal excise taxes on heavy duty trucks. Thus, in general, a sale will be considered to occur upon the passage of title (regardless of when the contract for sale was or is executed or the purchase price was or is paid).

Senate Amendment

The Senate amendment is the same as the House bill, except that:

(1) the threshold for furs is $5,000 (instead of $10,000).

(2) The threshold for aircraft is $250,000 (instead of $100,000). A special rule also applies to aircraft at least 80 percent of the use of which is in a trade or business. The tax must be paid upon the purchase of these aircraft; after a period of one full year, the taxpayer who purchased such an aircraft and who can demonstrate that at least 80 percent of the use of the aircraft was in a trade or business during the preceding 12 month period, may claim a refund for the tax that was paid.

(3) The tax expires after December 31, 1999.

Conference agreement

The conference agreement generally follows the Senate amendment with several modifications. The thresholds for both furs and jewelry are $10,000. The special rule for aircraft at least 80 percent of the use of which is in a trade or business is modified. A taxpayer who purchases or leases an aircraft with respect to which the taxpayer reasonably anticipates that at least 80 percent of the use will be in a trade or business may file a certificate (in the form required by the Secretary) so stating. The filing of this certificate with the seller or lessor permits the purchase or leasing of the aircraft without the payment of tax. On its tax returns for the next two years, the taxpayer must demonstrate to the satisfaction of the Secretary that at least 80 percent of the use of the aircraft was in a trade or business. If this cannot be demonstrated, the taxpayer must pay the tax (with interest). If the taxpayer does not demonstrate business use as required and does not pay the tax, no depreciation deductions are allowed with respect to the aircraft.

In addition, the conference agreement reflects the following clarifications. First, use of an automobile exclusively for demonstration purposes while a potential customer is present is exempt from the use tax. Thus, the tax on vehicles used exclusively for these demonstration purposes will be due upon the sale of such vehicles to the customer. Second, passenger vehicles, boats, and aircraft used exclusively by the Federal government or a State or local government for public works purposes are exempt from the tax. Thus, a State ferry boat would not be subject to the tax. The use must be directly and integrally related to the public works purpose. Thus, transportation of a governmental executive would never qualify for this exemption. Third, the use tax is clarified by providing that it shall not apply to any use of an item after import if the user establishes to the satisfaction of the Secretary that the first sale or use occurred outside the United States prior to January 1, 1991. Thus, if an item is purchased outside the United States on July 1, 1991, is used outside the United States for one year, and is then imported into the United States for use on July 1, 1992, the use tax would apply to the value of the item on that date. If, however, the facts are the same except that the item was purchased on July 1, 1990, the use tax would not apply. Fourth, rebates that are fixed at the

time of sale and that go directly to the customer are not included in the base for purposes of computing this tax.

The tax applies after December 31, 1990 and before January 1, 2000. The tax does not apply to an article purchased pursuant to a contract that was binding on the purchaser on September 30, 1990 and at all times thereafter and before January 1, 1991.

11. EXTEND SUPERFUND TAXES AND TRUST FUND

Present Law

Four different Superfund taxes are imposed under the Code. These are in general:

(1) A tax on petroleum, imposed at a rate of 9.7 cents per barrel, on domestic or imported crude oil or refined products;

(2) A tax on listed hazardous chemicals, imposed at a rate that varies from $0.24 to $10.13 per ton;

(3) A tax on imported substances that contain or use chemical derivatives of one or more of the hazardous chemicals described in (2) above; and

(4) An environmental tax equal to 0.12 percent of the amount of modified alternative taxable income of a corporation that exceeds $2 million.

The receipts from these taxes are deposited in the Hazardous Substance Superfund. Amounts in this Trust Fund are generally available for expenditures incurred in connection with releases or threats of releases of hazardous substances into the environment.

In general, these taxes are scheduled to expire after December 31, 1991. However, these taxes would cease to apply earlier if the unobligated balance in the Trust Fund exceeds $3.5 billion on specified dates, or if the Secretary of the Treasury estimates that more than $6.65 billion of these taxes have been credited into the Trust Fund.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement extends without modification the current Superfund taxes for 4 years, and extends the Trust Fund for 4 years. The cap on the aggregate amount of Superfund tax revenue that may be collected is increased from $6.65 billion to $11.97 billion. This increase is proportionate (on an annual basis) to the aggregate amount of tax that may be collected under present law, which has proven adequate to meet actual and forecasted obligations of the Fund. The provision is effective from January 1, 1992 through December 31, 1995.

D. Other Revenue-Increase Provisions

1. AMORTIZATION OF POLICY ACQUISITION EXPENSES OF INSURANCE COMPANIES

Present Law

A life insurance company generally is required to compute its taxable income using an accrual method of accounting, or (to the extent permitted in Treasury regulations), using a combination of an accrual method of accounting with another permissible method (but not the cash method). To the extent not inconsistent with Federal income tax accounting rules and other Federal tax rules applicable to life insurance companies, all computations, however, are to be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

In determining net income from operations for purposes of the annual statement, in general, life insurance companies may deduct commissions and other selling expenses for the year in which incurred. Thus, for purposes of determining life insurance company taxable income under the regular tax, policy acquisition expenses generally are not subject to an amortization requirement.

In the case of certain reinsurance transactions, however, present law requires the reinsuring company to capitalize ceding commissions and amortize them over the useful life of the asset rather than permitting a current deduction for such expenses.[7]

Under the adjusted current earnings provision of the corporate alternative minimum tax, in the case of a life insurance company, acquisition expenses are capitalized and amortized generally in accordance with the treatment generally required under generally accepted accounting principles. Acquisition expenses that both vary with, and are primarily related to, the production of new business must be amortized under current generally accepted accounting principles (unlike under annual statement accounting rules).

Although property and casualty insurance companies are required to reduce the amount of the change in the unearned premium reserve by a fraction (20 percent) intended to represent the allocable portion of expenses incurred in generating the unearned premiums, such companies are not subject to an amortization requirement (either for regular tax or for corporate alternative minimum tax purposes) with respect to policy acquisition expenses.

House Bill

The House bill requires insurance companies to amortize policy acquisition expenses on a straight-line basis over a period of 120 months beginning with the first month in the second half of the taxable year. The bill provides that policy acquisition expenses required to be capitalized and amortized are determined, for any taxable year, for each category of specified insurance contracts, as a percentage of the net premiums for the taxable year on specified

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[7] *Colonial American Life Insurance Co.* v. *Commissioner*, 109 S. Ct. 2408 (June 15, 1989), and Rev. Proc. 90-36 (indemnity reinsurance); Treas. Reg. sec. 1.817-4(d)(2) (assumption reinsurance).

insurance contracts in that category. The House bill provides for three categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts, and (3) other specified insurance contracts that are not included in the other categories. The percentages for each of the categories are as follows:

	Percent
Annuities	1.50
Group life	1.80
Other life (including noncancellable or guaranteed renewable accident and health)	6.75

An annuity contract combined with noncancellable or guaranteed renewable accident and health insurance is treated as a noncancellable or guaranteed renewable accident and health insurance contract. Net premiums are defined under the bill as the excess of (1) the gross amount of premiums and other consideration on specified insurance contracts, over (2) return premiums on such contracts and premiums and other consideration incurred for reinsurance of such contracts.

A special rule is provided for certain reinsurance transactions. Under this rule, premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of the Part III of Subchapter N.

It is believed that this rule may generally be consistent with existing income tax treaties. For example, the provision does not deny a deduction for reinsurance premiums paid to a foreign person. Rather, the provision affects the timing of a deduction for an amount of acquisition expenses, without regard to whether expenses are incurred by making a payment to a foreign or domestic person. However, it is intended that this rule apply even if there is found to be a conflict with a treaty.

The House bill provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for policy acquisition expenses of a company that meets the bill's definition of a small company. A small company is an insurance company that has assets of less than $500 million at the close of the taxable year. For purposes of determining assets, all insurance companies that are members of the same controlled group (determined under section 1563(a) with certain modifications) are treated as one company.

In the case of reinsurance contracts, the reinsurer may not apply the 60-month amortization period to the portion of amortizable policy acquisition expenses for the taxable year that are attributable to premiums or other consideration under a reinsurance contract unless for such taxable year each insurance company that takes into account premiums or other consideration with respect to the reinsured contract is a small company.

The House bill also provides rules regarding the treatment of ceding commissions in reinsurance transactions, treatment of qualified foreign contracts, repeal of the minimum tax treatment of acquisition expenses, treatment of cancellable accident and health insurance contracts of life insurance companies, treatment of life in-

surance reserves of property and casualty insurance companies, and waiver of estimated tax penalties.

The House bill provision generally is effective September 30, 1990.

Senate Amendment

The Senate amendment is the same as the House bill, except as follows.

The Senate amendment provides for the following categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts and noncancellable or guaranteed renewable accident and health insurance contracts, and (3) other specified insurance contracts that are not included in the other categories. The percentages for these categories are as follows:

	Percent
Annuities	1.85
Group life and noncancellable or guaranteed renewable accident and health	2.20
Other life	8.30

Generally, combinations of different types of specified insurance contracts are treated as other specified insurance contracts, unless the combination is of two types of insurance in the same category, in which case the combination contract is considered to be in that category.

The Senate amendment includes the House bill rule that premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of Part III of Subchapter N. But the Senate amendment provides that it is intended that this rule not apply if there is found to be a conflict with a treaty.

The Senate amendment provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for the first $5 million of amortizable policy acquisition expenses of an insurance company for any taxable year. The availability of the 60-month amortization period is phased out ratably (on a dollar-for-dollar basis) as amortizable policy acquisition expenses increase from $10 million to $15 million. Thus, for example, an insurance company with $11 million of amortizable policy acquisition expenses for the taxable year amortizes $4 million of such expenses over a 60-month period. For purposes of determining the amount of amortizable policy acquisition expenses under this rule, all insurance companies that are members of the same controlled group of corporations (as defined in section 1563(a) with additional modifications) are treated as one company. The 60-month amortization period does not apply to any policy acquisition expenses for any taxable year that are attributable to premiums or other consideration under any reinsurance contract.

In addition, for any company that meets the definition of a small life insurance company, the Senate amendment repeals the amortization requirement under the adjusted current earnings provision of the corporate alternative minimum tax for the entire period the requirement is in effect (taxable years beginning after December

31, 1989). A small life insurance company is defined in the Senate amendment as a life insurance company that has assets of less than $500 million at the close of the taxable year. For purposes of determining assets, all insurance companies that are members of the same controlled group (determined under section 1563(a) with certain modifications) are treated as one company.

The Senate amendment provides regulatory authority to the Treasury Department to provide a separate category for a type of insurance contract, with a separate percentage applicable to the category, under certain circumstances. The authority may be exercised if the Treasury Department determines that the deferral of policy acquisition expenses for the type of contract which would otherwise result under the provision is substantially greater than the deferral of acquisition expenses that would have resulted if actual acquisition expenses (including indirect expenses) and the actual useful life for the type of contract had been used. In making this determination, it is intended that the amount of a reserve for a contract not be taken into account.

If the authority is exercised, the Treasury Department is required to adjust the percentage that would otherwise have applied to the category that included the type of contract, so that the exercise of the authority does not result in a decrease in the amount of revenue received by reason of the amortization provision for any fiscal year.

Conference Agreement

The conference agreement follows the House bill, with modifications, with respect to categories of specified insurance contracts and treatment of reinsurance, and follows the Senate amendment with respect to small company rules and regulatory authority to provide separate categories. In addition, the conference agreement provides a transition rule with respect to the treatment of life insurance reserves of property and casualty insurance companies. The conference agreement otherwise follows the House bill and the Senate amendment.

Categories of specified insurance contracts

The conference agreement provides for three categories of specified insurance contracts: (1) annuity contracts, (2) group life insurance contracts, and (3) other specified insurance contracts (including noncancellable or guaranteed renewable accident and health insurance contracts) that are not included in the other categories. The percentages for each of the categories are as follows:

	Percent
Annuities	1.75
Group life	2.05
Other life (including noncancellable or guaranteed renewable accident and health)	7.70

An annuity contract combined with noncancellable or guaranteed renewable accident and health insurance is treated as a noncancellable or guaranteed renewable accident and health insurance contract. The conferees intend that net premiums with respect to specified insurance contracts include any premiums that are paid

by means of a policyholder loan. Further, the conferees intend that the full amount of any advance premium is to be included in net premiums for the taxable year in which received and not for any later year in which the premium is due, so as to avoid double counting.

Treatment of reinsurance

Relation to income tax treaties

The conference agreement includes the rule of the House bill and the Senate amendment that premiums and other consideration incurred for reinsurance are to be taken into account in determining net premiums only to the extent that the premiums and other consideration are includible in the gross income of a person subject to tax under Subchapter L or under Chapter 1 by reason of Subpart F of Part III of Subchapter N.

The conferees believe that it is reasonable to interpret existing income tax treaties as being consistent with this rule. The conferees understand that an issue may be raised whether the rule is consistent with treaties that have a provision similar to paragraph 4 of Article 24 of the 1981 proposed U.S. model income tax treaty ("U.S. model treaty"). Paragraph 4 provides that, except where certain related party rules apply, interest, royalties, and other disbursements paid by a resident of one treaty country to a resident of the other treaty country shall, for the purposes of determining the taxable profits of the payor, be deductible under the same conditions as if they had been paid to a resident of the first treaty country.[8]

For the following reasons, the conferees believe that the rule is consistent with this language:

First, the rule does not deny a deduction for reinsurance premiums paid to any foreign person. Those premiums are fully deductible in computing net income. Rather, the provision affects the timing of a deduction for an amount of acquisition expenses incurred in originating insurance, without regard to whether the expenses were paid, or are payable, to a foreign or domestic person.

Second, in view of the policy acquisition expense amortization provision added to Subchapter L by the conference agreement, the conferees believe that a payment to such a foreign person cannot be said to meet the same conditions as a payment that a U.S. taxpayer is required to include in income under the principles of Subchapter L (either directly or because the U.S. taxpayer is a U.S. shareholder of a controlled foreign corporation), even if the foreign person resides in a country with a previously negotiated and ratified treaty. A company in the latter category will be subject to a modification in the way its income is taxed as a result of the amortization provision of the bill, while a company in the former category will not. A reinsurance contract entered into with a U.S. rein-

[8] This language is essentially identical to language in paragraph 5 of Article 24 of the 1977 model income tax treaty of the Organisation of Economic Cooperation and Development ("OECD"). The Commentary of the OECD Committee on Fiscal Affairs states that this language is designed to end a particular form of discrimination resulting from the fact that in certain countries the deduction of interest, royalties, and other disbursements allowed without restriction when the recipient is resident, is restricted or even prohibited when the recipient is a nonresident (Commentary on Article 24, para. 56).

surer will take into account the impact of the amortization provision on the U.S. company, while a reinsurance contract entered into with a reinsurer that is not subject to tax under the principles of Subchapter L will not.

The conferees believe that, in this case, it is unreasonable to interpret existing treaties containing the U.S. model treaty nondiscrimination provisions so as to require this difference to create an anomaly in the effect of the amortization provision on reinsurance entered into with U.S. and foreign nonresident reinsurers. Moreover, the conferees believe that such an interpretation is unreasonable in this case in light of the need to depart from what the conferees believe is the plain meaning of both the treaty language and the related OECD Commentary in order to arrive at that interpretation. The conferees therefore believe that, regardless of the fact that the foreign person may be resident in a treaty country, in this case it is appropriate, for treaty purposes, to draw a distinction between companies subject to tax under the principles of Subchapter L and those not subject to such tax, recognizing that many foreign persons may fall in the latter category. The conferees do not generally view statutory changes to the deductibility of payments made to foreign persons (or even such statutory changes accompanied by increased tax burdens on U.S. income) as consistent with the treaty language.

If the conferees are incorrect in their technical interpretation of the interaction between treaties and this rule for the treatment of premiums and other consideration incurred for reinsurance, the conferees intend that any contrary treaty provision not defeat this rule.

Requirement of consistent treatment of amounts payable under reinsurance arrangements

The conferees intend that taxpayers who are parties to a reinsurance arrangement treat amounts payable under the arrangement consistently in determining net premiums under the amortization provision. The conference agreement therefore provides that the Treasury Department is required to prescribe such regulations as may be necessary to ensure that premiums and other consideration with respect to reinsurance are treated consistently by the parties to the reinsurance arrangement. The conferees strongly encourage the Treasury Department to provide prompt guidance as to the applicable rules for determining such consistent treatment. It is intended that such rules state what amounts are to be taken into account as premiums and other consideration by ceding companies and reinsurers (including under retrocessions), rather than merely requiring consistency.

In the absence of such guidance, the conferees intend that the following principles guide taxpayers in the application of this consistency requirement. The conferees intend no inference as to the content of guidance promulgated by the Treasury Department to ensure consistency.

First, in the absence of Treasury Department guidance, the principles of present law for determining the amount of premiums in-

curred in a reinsurance transaction [9] are to apply in determining the net premiums of the ceding company and the reinsurer for purposes of the amortization requirement.

Further, in the absence of Treasury Department guidance, the conferees intend that in the case of a modified coinsurance agreement, the amount of any payment that represents a reserve adjustment (including the amount of any payment that represents the investment income with respect to reserves) is to be taken into account in determining the net premiums of the reinsurer and the ceding company for purposes of the amortization requirement.[10]

In addition, in the absence of Treasury Department guidance, the conferees intend that in the case of a conventional coinsurance agreement, any amount payable by a reinsurer to a ceding company that represents the reserve of the reinsurer with respect to a reinsured contract, and that is payable by reason of the reinsurer transferring liability for losses under such contract to the ceding company, is to be taken into account in determining the net premiums of the reinsurer and the ceding company for purposes of the amortization requirement.

The conferees intend (without regard to the promulgation of Treasury Department guidance) that return premiums and policyholder dividends receivable by a ceding company under a reinsurance contract are to be included in the gross amount of premiums of the ceding company in determining the amortizable acquisition expenses of the ceding company. Similarly, return premiums and policyholder dividends payable by a reinsurer under a reinsurance contract are to reduce the gross amount of premiums of the reinsurer in determining the amortizable acquisition expenses of the reinsurer.

Small company rules

The conference agreement provides a shorter amortization period of 60 months, rather than the generally applicable 120 months, for the first $5 million of amortizable policy acquisition expenses of an insurance company for any taxable year. The availability of the 60-month amortization period is phased out ratably (on a dollar-for-dollar basis) as amortizable policy acquisition expenses increase from $10 million to $15 million. For purposes of determining the amount of amortizable policy acquisition expenses under this rule, all insurance companies that are members of the same controlled group of corporations (as defined in section 1563(a) with modifications) are treated as one company. The 60-month amortization period does not apply to any policy acquisition expenses for any

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[9] *See* Treas. Reg. sec. 1.817-4(d)(2).

[10] Thus, in the absence of Treasury Department guidance, in the case of a modified coinsurance agreement, the net premiums of the ceding company generally are to be determined by reducing gross premiums by the excess (if any) of (1) the reinsurance premiums and reserve adjustments payable to the reinsurer under the agreement over (2) the reserve adjustments and policyholder dividends receivable from the reinsurer under the agreement. In the event that the reserve adjustments and policyholder dividends receivable from the reinsurer under the agreement exceed the reinsurance premiums and reserve adjustments payable to the reinsurer under the agreement, then the excess amount is to increase the gross premiums of the ceding company in determining the amortizable acquisition expenses of the ceding company. Similar rules are to apply in determining the net premiums of the reinsurer under a modified coinsurance agreement.

taxable year that are attributable to premiums or other consideration under any reinsurance contract.

In addition, for any company that meets the definition of a small life insurance company (within the meaning of section 806, as modified, one with assets of less than $500 million at the close of the taxable year), the conference agreement repeals the amortization requirement under the adjusted current earnings provision of the corporate alternative minimum tax for the entire period the requirement is in effect (taxable years beginning after December 31, 1989).

Regulatory authority to provide separate categories

The conference agreement follows the Senate amendment in providing regulatory authority to the Treasury Department to provide a separate category for a type of insurance contract, with a separate percentage applicable to the category, under certain circumstances.

Treatment of life insurance reserves of property and casualty insurance companies

The conference agreement provides a transition rule for property and casualty insurance companies that are required by the bill to change the method of determining the amount of the reserve for noncancellable or guaranteed renewable accident and health insurance. Under the conference agreement, the change is to be treated as a change in method of accounting that is initiated by the taxpayer and that is made with the consent of the Treasury Secretary. The net amount of the adjustment that is required by section 481 of the Code (whether positive or negative) is to be taken into account over a period that does not exceed 4 taxable years beginning with the first taxable year that begins on or after September 30, 1990. The requirement under section 832(b)(4)(C) of the Code (to include a certain portion of the unearned premiums on outstanding business at the end of the most recent taxable year beginning before January 1, 1987) is not altered by this provision, but rather, is intended to continue as under present law.

2. TREATMENT OF SALVAGE AND SUBROGATION OF PROPERTY AND CASUALTY INSURANCE COMPANIES

Present law

A property and casualty insurance company, in determining its underwriting income for Federal income tax purposes, may deduct losses incurred. The deduction for losses incurred includes losses paid during the year and the increase in discounted unpaid losses for the year. Present law requires paid losses to be reduced by the increase in salvage (including subrogation claims) recoverable. Since 1947, Treasury regulations have provided an exception to the requirement that paid losses be reduced by salvage, if under applicable State law or State insurance rules the salvage may not be treated as an asset for statutory accounting purposes. This regulatory exception was removed, in temporary Treasury regulations originally promulgated December 30, 1987, but the effective date of the temporary regulations has been deferred several times, and the

temporary regulations at present are technically in effect for taxable years beginning after December 31, 1989.

House Bill

The deduction allowed to property and casualty insurance companies for losses incurred, both paid and unpaid, is reduced by estimated recoveries of salvage (including subrogation claims) attributable to such losses, whether or not the salvage is treated as an asset for statutory accounting purposes. The Treasury Department is required to issue regulations providing for discounting of salvage taken into account under the provision.

The House bill also waives additions to tax under section 6655 with respect to any underpayment of estimated tax for any period before March 16, 1991, to the extent the underpayment was created or increased by the treatment of salvage under the bill.

The provision applies for taxable years beginning after December 31, 1989. The House bill provides a "fresh start", i.e., a permanent forgiveness of income in the amount of the adjustment that would otherwise be includible in gross income.

The amount of the adjustment is the discounted amount of estimated salvage recoverable as of the close of the last taxable year beginning before January 1, 1990. The House bill provides for recapture of the excess, if the amount of the adjustment is overstated. The House bill also provides that the earnings and profits of an insurance company for its first taxable year beginning after December 31, 1989, is increased by the amount of the adjustment.

Senate Amendment

The Senate amendment is the same as the House bill, except that, with respect to the effective date, the Senate amendment provides a partial fresh start, for 23 percent of the amount of the adjustment, and provides a comparable forgiveness of income equal to 23 percent of the amount of the adjustment for companies that took estimated salvage into account for the last taxable year beginning before January 1, 1990. The remaining amount of the adjustment is required to be included in income over a period that does not exceed 4 years.

Conference Agreement

The conference agreement follows the Senate amendment, with a modification in the application of the effective date.

The conference agreement provides that 87 percent of the amount of the adjustment that otherwise is included in income over a period not to exceed 4 years is forgiven under the bill. The conference agreement also provides that, for companies that took estimated salvage into account in determining the deduction for losses incurred for the last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of estimated salvage recoverable as of the close of the last taxable year beginning before January 1, 1990, is allowed as a deduction ratably over the first 4 taxable years beginning after December 31, 1989.

Under the conference agreement, the calculation under the rule that applies in the event of the overstatement of the adjustment is made as follows. If for any taxable year beginning after December 31, 1989, the full amount of the adjustment determined without regard to discounting exceeds the sum of (1) the amount of salvage recovered taken into account for the taxable year and for any preceding taxable year beginning after December 31, 1989, attributable to losses incurred for an accident year beginning before 1990, and (2) the undiscounted amount of estimated salvage recoverable as of the close of the taxable year on account of such pre-1990 losses, then 87 percent of the excess (as adjusted) is included in gross income for such taxable year. The amount of the excess is adjusted for this purpose by multiplying the excess by the ratio of the full amount of the adjustment determined on a discounted basis to the full amount of the adjustment determined without regard to discounting.

The conference agreement clarifies that the Treasury Department regulatory authority to provide that amounts of estimated salvage are determined on a discounted basis does not apply to reinsurance recoverable.

The conference agreement also provides that the amount of estimated salvage recoverable shall be determined on a discounted basis in accordance with procedures established by the Treasury Department. Thus, pending issuance of regulations or other Treasury guidance with respect to discounting of estimated salvage recoverable, the conferees anticipate that taxpayers will compute discounted salvage in accordance with the principles set forth in the legislative history to the House bill and the Senate amendment, and the rules for determining the applicable interest rate for discounting unpaid losses.

3. COMPLIANCE PROVISIONS

a. Suspension of statute of limitations during proceedings to enforce certain summonses

Present Law

The statute of limitations for most tax returns (whether corporate or individual) is three years. The IRS and the taxpayer can together agree to extend the statute of limitations, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the statute of limitations by providing notice to the IRS on the appropriate form. Because of the complexity of the issues involved, the IRS frequently cannot complete an audit of a corporate tax return within the statutorily specified three-year period.

During an audit, the IRS frequently requests informally that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS is compelled to seek information by issuing an administrative summons. Such a summons will not be enforced by judicial process unless the Government (as a practical matter, the Department of Justice) seeks and

obtains an order for enforcement in Federal court. In addition, a taxpayer may petition in court to have an administrative summons quashed where this is permitted by statute (for example, under section 6038A(e)(4) or 7609(b)(2)).

House Bill

In general, the House bill tolls the statute of limitations for a corporation during the period of time that the corporation and the IRS are in court litigating the issue of whether the corporation must comply with a specific type of summons issued by the IRS (called, for purposes of this provision, a "designated summons"). The statute of limitations may only be suspended with respect to a corporation; it may not be suspended with respect to individuals.

The IRS may issue a designated summons, which must be issued at least 60 days before the day on which the period for assessment of tax for the year in question (including any extensions) would otherwise expire. A designated summons may be issued by the IRS only once for any tax return of a taxpayer.

The statute of limitations is suspended for the period that commences when a lawsuit is brought in court to either enforce or quash the designated summons and ends on the date there is a final resolution of the summonsed person's response to the summons. For these purposes, the term "final resolution" means the same as it does in section 7609(e)(2)(B). In general, this means that no court proceeding remains pending and that the summonsed person has complied with the summons to the extent required by the court. If a court requires additional compliance to any extent with the summons, the statute of limitations is suspended for an additional 120 days after final resolution of the summonsed person's response. If additional compliance is not required, the assessment period would in no event expire until the 60th day after that final resolution. This provision is designed to preserve the ability of the IRS to conclude the audit and assess any taxes that may be due regardless of the length of time that it might take to obtain judicial resolution of the summons enforcement lawsuit.

These rules for suspending the statute of limitations also apply with respect to any summons issued to any person during the 30-day period following the issuance of the designated summons, so long as the subsequent summons pertains to the same tax return as the designated summons. This is necessary because, for example, a designated summons may be issued to a corporation that cannot respond adequately on the grounds that the summonsed information is in the control of a shareholder; a summons to the shareholder for the same information would be necessary to obtain the summonsed information. Thus, the statute of limitations is tolled during the course of any enforcement litigation over the subsequent summons.

This provision applies to any tax (regardless of whether imposed before, on, or after the date of enactment) if the statute of limitations for the assessment of the tax has not expired on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the statute of limitations may be extended with respect to any taxpayer.

Conference Agreement

The conference agreement follows the House bill.

b. Apply accuracy-related penalty more effectively to section 482 adjustments

Present Law

Valuation questions are frequently central to disputes between taxpayers and the IRS involving section 482. Substantial valuation overstatements are subject to penalty. A substantial valuation overstatement occurs if the value of any property claimed on a tax return is 200 percent or more of the amount determined to be correct. The penalty is 20 percent of the understatement of tax attributable to the substantial valuation overstatement. No penalty is imposed if it is shown that there was reasonable cause for the underpayment and that the taxpayer acted in good faith, or if the portion of the underpayment for the taxable year attributable to substantial valuation overstatements does not exceed $5,000 ($10,000 in the case of corporation other than an S corporation or a personal holding company).

House Bill

The present-law valuation overstatement penalty is extended to apply to specified valuation misstatements in connection with section 482. First, the penalty applies to the understatement of tax attributable to a net section 482 transfer price adjustment for the taxable year that exceeds $10,000,000. The net section 482 transfer price adjustment is the net increase in taxable income for a taxable year that results from all adjustments under section 482 in the price of any property or services. For this purpose, rules similar to the rules of the last sentence of section 55(b)(2) apply. That is, in the case of a taxpayer whose regular tax is determined by reference to an amount other than its taxable income, it is the increase in that other amount resulting from section 482 adjustments that constitutes the taxpayer's net section 482 transfer price adjustment.

Second, the penalty also applies in instances where the transfer price claimed on the return is 200 percent or more (or 50 percent or less) of the amount determined to be the correct transfer price under section 482.

Third, as under present law, the penalty is doubled in cases of gross valuation misstatements (where the dollar amount described above exceeds $20,000,000 or the percentages described above are 400 percent or more (or 25 percent or less)).

The reasonable cause and de minimis exceptions in present law also apply to these modifications.

The provision is effective for taxable years ending after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with certain modifications and technical clarifications.

First, the conference agreement clarifies that the valuation misstatement penalties (and thresholds) relating to adjustments under section 482 apply to underpayments resulting from adjustments in prices for any property or services (or for the use of property). Thus, the conference agreement makes clear that a penalty may apply, for example, in a case where the amount of a royalty claimed on the tax return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of the royalty (assuming that neither the de minimis exception nor the reasonable cause exception applies). In general, the conferees intend that the term "price for any property or services (or for the use of property)" be broadly interpreted to encompass consideration of all kinds that may be adjusted by the IRS under section 482, including but not limited to purchase prices, fees for services, royalties, interest, and rents.

Second, the conference agreement clarifies the rule in the House bill and Senate amendment providing for the application of rules similar to the rules of the last sentence of section 55(b)(2) in determining the amount of the net section 482 transfer price adjustment. Thus, the conference agreement expressly provides that if the regular tax (as defined in section 55(c)) imposed on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of the taxpayer for purposes of the definition of net section 482 transfer price adjustment.

For example, assume that under section 482 the IRS makes a single adjustment to the net income of a foreign corporation for the taxable year, and that adjustment consists of a $25,000,000 decrease in the foreign corporation's interest expense. Assume also that the foreign corporation is subject to U.S. regular tax only with respect to its gross income which is either derived from sources within the United States or effectively connected with the conduct of a trade or business in the United States (or both). Further, assume that the section 482 decrease in interest expense increases by less than $10,000,000 the foreign corporation's taxable income effectively connected with the conduct of a trade or business in the United States. Under the conference agreement, the net section 482 transfer price adjustment for the taxable year of the foreign corporation does not exceed $10,000,000.

As another example, assume the same facts as above except that the foreign corporation is a controlled foreign corporation, and the $25,000,000 interest expense adjustment results in a U.S. shareholder having an additional subpart F inclusion in excess of $10,000,000. Under the provision, the net section 482 transfer price

adjustment for the taxable year of the U.S. shareholder may exceed $10,000,000 (assuming neither the reasonable cause exception nor the foreign-to-foreign adjustment exception, as described below, applies).

The conference agreement further provides two modifications, under which certain net increases in taxable income resulting from section 482 adjustments are disregarded in determining whether a taxpayer's net section 482 transfer price adjustment exceeds the $10,000,000 or $20,000,000 thresholds. First, under the conference agreement there is disregarded any portion of the net increase in taxable income which is attributable to a redetermination of a price, if it is shown that there was a reasonable cause for the taxpayer's determination of the price, and that the taxpayer acted in good faith with respect to the price. The conferees intend that the same standard of reasonable cause and good faith apply for purposes of this modification as would otherwise apply to the valuation misstatement penalty under section 6664(c).

Second, in determining whether a taxpayer's net section 482 transfer price adjustment exceeds the $10,000,000 or $20,000,000 thresholds, under the conference agreement there is disregarded any portion of the net increase in taxable income which is attributable to any transaction solely between foreign corporations (unless the treatment of that transaction affects the determination of any such foreign corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business in the United States). For example, assume that a net increase in the taxable income of a U.S. shareholder results from an adjustment in the royalty paid by one controlled foreign corporation to another controlled foreign corporation. Assume that neither foreign corporation earns any income from U.S. sources or income effectively connected with the conduct of a trade or business in the United States. Under the conference agreement's foreign-to-foreign adjustment exception, the net increase in the U.S. shareholder's taxable income resulting from the IRS's adjustment of the royalty amount will not be counted in determining whether the net section 482 transfer price adjustment of the U.S. shareholder exceeds $10,000,000 or $20,000,000.

Assume, however, that even without regard to the foreign-to-foreign royalty adjustment the net section 482 transfer price adjustment of the U.S. shareholder exceeds $10,000,000. Under the conference agreement, the penalty does apply to any substantial valuation misstatement resulting from that foreign-to-foreign royalty adjustment (unless an exception, such as reasonable cause, applies).

c. Treatment of persons providing services

Present Law

Tax returns and return information are confidential, and may not be disclosed without statutory authorization. Unauthorized disclosure is punishable upon conviction by a fine of up to $5,000, a prison sentence of not more than 5 years (or both) (sec. 7213), or, in addition, a private lawsuit for damages (sec. 7431).

The IRS is permitted to disclose returns and return information to other persons to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns.

House Bill

The House bill provides that persons who provide services to the IRS and to whom the IRS discloses returns and return information pursuant to section 6103, are subject to the same penalties for unauthorized disclosure as are IRS employees. No inference is intended that these persons were not subject to these penalties for unauthorized disclosure prior to this amendment.

The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Application of 1989 information reporting and related amendments to open years

Present Law

Information reporting and maintenance

Under present law, any corporation that is 25-percent owned by one foreign person and is either a domestic corporation or a foreign corporation that conducts a trade or business in the United States (a "reporting corporation") must furnish the IRS with such information as the Secretary may prescribe, with respect to taxable years beginning after July 10, 1989, regarding transactions carried out directly or indirectly with certain foreign persons treated as related to the reporting corporation ("reportable transactions") (sec. 6038A(a)). A related person for this purpose includes a 25-percent shareholder as well as any person that is treated as related within the meaning of sections 267(b), 707(b)(1), or 482.

A reporting corporation is also required to maintain (or cause another person to maintain), at the location, in the manner, and to the extent prescribed by regulations, any records deemed appropriate to determine the correct tax treatment of reportable transactions with respect to taxable years beginning after July 10, 1989 (sec. 6038A(a)). The Secretary has broad flexibility in prescribing these regulations,[11] including, for example, the flexibility to exclude classes of supporting documentation from any general regulatory specification that the required records be maintained within the United States.[12]

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[11] "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 114-16 (1989).

[12] *Id.* at 114.

Application of U.S. legal process to foreign persons

The statutory scope of general IRS summons authority extends to certain persons that are not themselves subject to tax in the United States. In addition, the Code provides that in order to avoid the consequences of the noncompliance rule (discussed below) with respect to certain reportable transactions for taxable years beginning after July 10, 1989, each foreign person that is a related party of a reporting corporation must agree to authorize the latter to act as its agent in connection with any request or summons by the IRS to examine records or produce testimony related to any reportable transaction, solely for the purpose of determining the tax liability of the reporting corporation (sec. 6038A(e)(1)).

Sanctions for noncompliance

Monetary penalty

Failure to furnish the IRS with information or to maintain records with respect to a taxable year beginning after July 10, 1989, as required under section 6038A (a) and (b) is subject to a monetary penalty of $10,000, and additional penalties are imposed if the failure continues more than 90 days after the IRS notifies the taxpayer of the failure (sec. 6038A(d)). The additional penalties are $10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90th day following IRS notification. An exception from liability for the monetary penalty exists in cases in which the taxpayer demonstrates to the satisfaction of the Secretary that reasonable cause exists for the failure to furnish required information or maintain required records (sec. 6038A(d)(3)).

Noncompliance rule

Failure of a related party to designate a reporting corporation as its agent for accepting service of process in connection with reportable transactions (as discussed above), or, under certain circumstances, noncompliance with IRS summonses in connection with reportable transactions, can result in the application of the noncompliance rule in computing tax liability with respect to a taxable year beginning after July 10, 1989. For certain payments to related parties in connection with reportable transactions, this rule permits the IRS to allow the reporting corporation only those deductions and amounts of cost of goods sold as shall be determined by the Secretary in the Secretary's sole discretion, based on any information in the knowledge or possession of the Secretary or on any information that the Secretary may choose to obtain through testimony or otherwise (sec. 6038A(e)).

Prior law

The information reporting and related requirements described above reflect provisions of the Omnibus Budget Reconciliation Act of 1989 ("the 1989 Act") amending the prior-law provisions of Code section 6038A. The 1989 Act amendments apply only to taxable years beginning after July 10, 1989. The information reporting and related requirements applicable to taxable years beginning before July 11, 1989, are less extensive than those described above.

House Bill

The House bill generally extends the application of the 1989 Act amendments to the information reporting and related provisions of section 6038A so that they also apply to future acts (and failures to act) in connection with taxable years beginning before July 11, 1989.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Information reporting by foreign corporations engaged in U.S. business

Present Law

In general

A foreign corporation that is engaged in a trade or business within the United States during the taxable year is subject to U.S. income tax on its taxable income which is effectively connected with the conduct of that trade or business (sec. 882(a)(1)). A foreign corporation is also subject to a flat 30-percent branch profits tax on its "dividend equivalent amount," which is a measure of the U.S. effectively connected earnings of the corporation that are removed in any year from the conduct of its U.S. trade or business.

In determining the taxable income of a foreign corporation, gross income includes only gross income which is effectively connected, whether derived from sources within or without the United States (sec. 882(a)(2)), and deductions generally are allowed only to the extent they are connected with such effectively connected gross income (sec. 882(c)(1)). For this purpose, deductible expenses (other than interest expense) are allocated and apportioned to effectively connected gross income under the same rules that are applicable for allocating and apportioning the expenses of U.S. persons between U.S. and foreign sources (Treas. Reg. sec. 1.882-4(c)). With respect to computing deductible interest expense, regulations generally require that the worldwide liabilities of the foreign corporation be taken into consideration in determining which liabilities are treated as "U.S.-connected liabilities," that amount being based on a specified percentage of the corporation's U.S. effectively connected assets. Deductible interest expense is determined by multiplying the amount of such U.S.-connected liabilities by one or more average rates of interest (Treas. Reg. sec. 1.882-5). A foreign corporation is also subject to a branch level interest tax, which amounts to a flat 30 percent of the interest deducted by the foreign corporation in computing its U.S. effectively connected income but not paid by the U.S. trade or business.

Information reporting and maintenance

A foreign corporation may claim the benefit of deductions and credits only if it files or causes to be filed with the Secretary a true and accurate return in the manner prescribed in subtitle F of the Code, which return includes all the information deemed necessary by the Secretary for the calculation of those deductions or credits (sec. 882(c)(2)). A foreign corporation that claims deductions from effectively connected gross income is subject to certain rules for providing information with respect to those expenses. Under regulations, if a foreign corporation is requested to do so by the IRS district director, it must furnish information, in English if so requested, sufficient to establish that the corporation is entitled to the deductions in the amounts claimed. The information must be submitted in a form suitable to permit verification of the deductions claimed (Treas. Reg. sec. 1.882-4(c)(2)).

Transactions with certain related persons

As described more fully in Part d. above ("Application of 1989 information reporting and related amendments to open years"), under present law, any foreign corporation that conducts a trade or business in the United States and that is 25-percent owned by one foreign person (in terms defined by the Code, a "25-percent foreign-owned" corporation that is also a "reporting corporation") must furnish the IRS with such information as the Secretary may prescribe, with respect to taxable years beginning after July 10, 1989, regarding transactions carried out directly or indirectly with certain foreign persons treated as related to the reporting corporation ("reportable transactions") (sec. 6038A(a)). A reporting corporation is also required to maintain (or cause another person to maintain), at the location, in the manner, and to the extent prescribed by regulations, any records deemed appropriate to determine the correct tax treatment of reportable transactions with respect to taxable years beginning after July 10, 1989 (sec. 6038A(a)).

Failure to furnish the IRS with information or to maintain records with respect to a taxable year beginning after July 10, 1989, as required under section 6038A (a) and (b) is subject to a monetary penalty of $10,000, and additional penalties are imposed if the failure continues more than 90 days after the IRS notifies the taxpayer of the failure (sec. 6038A(d)). The additional penalties are $10,000 for each 30-day period (or fraction thereof) during which the failure continues following the 90th day after IRS notification.

As described in Part d. above, certain requirements for furnishing information to the IRS concerning certain related party transactions also apply to taxable years of a foreign corporation beginning before July 11, 1989, so long as the foreign corporation was 50 percent owned by one foreign person. The penalty for failure to meet these requirements is $1,000, plus an additional $1,000 (up to a maximum of $24,000) for each 30-day period (beginning 90 days after IRS notification) that the failure remained or remains outstanding.

Application of U.S. legal process to foreign persons

Failure of a related party to designate a reporting corporation as its agent for accepting service of process in connection with reportable transactions (as discussed in Part d. above), or, under certain circumstances, noncompliance with IRS summonses in connection with reportable transactions, can result in the application of the noncompliance rule (discussed in Part d. above) in computing tax liability with respect to a taxable year beginning after July 10, 1989.

The fact that compliance with the summons would lead to the imposition of civil or criminal penalties on the reporting corporation (or a related party) under any foreign law does not constitute grounds for either quashing or refusing to enforce the summons. Thus, although in some instances the noncompliance rules are inapplicable if the summons is quashed or a court refuses to enforce, the noncompliance rule *does* apply in a case where compliance with the summons is illegal under foreign law (unless an independent ground to quash or refuse enforcement exists, other than that the corporation is unable to provide records requested in the summons by reason of the fact that the reporting corporation failed to maintain records as required under the provision).

House Bill

The House bill adds new section 6038C to the Internal Revenue Code. The new provision subjects all foreign corporations that carry on trades or businesses in the United States to information reporting and record maintenance rules that are similar to the present-law rules contained in section 6038A applicable to certain 25-percent foreign-owned corporations. While under section 6038A these rules (and the related sanctions) are generally applicable only to furnishing information, maintaining records, and complying with summonses pertaining to related party transactions, and then only when the foreign corporation is 25-percent foreign-owned, under new section 6038C these rules apply to related party transactions in the case of any foreign corporation with a U.S. trade or business, whether or not the foreign corporation is 25-percent foreign-owned. In addition, under new section 6038C these rules apply to information, records, and summonses regarding such other information as the Secretary may prescribe by regulations relating to any item not directly connected with such a related party transaction. The House bill generally applies the section 6038C provisions to future acts (and failures to act) without regard to the taxable year involved. The bill does not affect the application of section 6038A under present law (as amended by the 1989 Act) to foreign corporations in the case of past acts (and failures to act).

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

f. Studies and other administrative matters

Present Law

In the Tax Reform Act of 1986, Congress stated that a comprehensive study of intercompany pricing rules should be conducted by the Internal Revenue Service and that careful consideration should be given to whether the existing regulations could be modified in any respect. Such a study was issued by the Treasury and IRS in October 1988. Changes to the regulations are yet to be proposed. In addition, in the Revenue Reconciliation Act of 1989, a legislative intention was expressed that the IRS report on its efforts to audit U.S. taxpayers that are subsidiaries of or otherwise related to foreign corporations. It was intended that such a report be submitted to Congress within five years after the 1989 Act amendments to section 6038A took effect.

House Bill

The House bill provides for a report to be made by the Secretary of the Treasury or his delegate regarding the effectiveness of the compliance provisions contained in this part of the bill (described above) in increasing compliance with Code section 482, the use of advanced determination agreements with respect to section 482 issues, possible additional statutory provisions or administrative changes to assist the IRS in increasing compliance with section 482, and coordination of the administration of section 482 with the administration of similar provisions of foreign tax laws and of domestic non-tax laws. The House bill provides for this report, along with such recommendations as the Secretary may deem advisable, to be submitted to the House Committee on Ways and Means and the Senate Committee on Finance no later than March 1, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

g. Extend statute of limitations for collection of taxes

Present Law

After an assessment of tax has been made, the Internal Revenue Service (IRS) must institute collection proceedings to collect this tax within 6 years. Otherwise, the IRS is barred from collecting the assessment.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the statute of limitations for the collection of taxes after assessment from 6 years to 10 years.

Conference Agreement

The conference agreement follows the Senate amendment.

h. Modifications relating to reporting of cash received in a trade or business

Present Law

A person engaged in a trade or business who receives, in the course of the trade or business, more than $10,000 in cash or foreign currency in one or more related transactions must report it to the Internal Revenue Service (IRS) and provide a statement to the payor. Reporting is required whether or not consideration is returned for the cash and whether or not the cash is received for the recipient's own account or for the account of another (with narrow exceptions provided by IRS regulations).

For purposes of the reporting requirement, only currency is treated as cash—not checks, traveller's checks, drafts, money orders, or other cash equivalents. A transaction subject to reporting is any receipt of cash including receipt in connection with the purchase of goods or services, the purchase or exchange of property, the opening of a deposit or credit account, or any similar transaction.

The recipient of the cash is required to report the name, address and taxpayer identification number of the payor, the amount of cash received, the date and nature of the transaction, and such other information as the Secretary may require. In addition to furnishing reports on each cash transaction to the IRS, the recipient of the cash must furnish each payor an annual statement aggregating the amounts of cash received from him. This statement must be furnished on or before January 31 of the year following the year of the reportable event.

Any taxpayer subject to this provision who receives more than $10,000 in cash in one or more related transactions is required to report those transactions. For example, assume that an individual purchases a $8,000 item and a $1,500 item at an auction. The auction house adds a 10-percent buyer's premium and a 5-percent local sales tax. The taxpayer pays his $10,972.50 bill in cash. The auction house must report on that transaction. The auction house could not avoid the reporting requirement by presenting two separate bills of $9,240 and $1,732.50.

Reporting is not required on payments (1) that are received in a transaction reported under the Bank Secrecy Act if the Secretary of the Treasury determines that the report under this provision would duplicate the report under the Bank Secrecy Act, or (2) that are received by certain specified financial institutions within the meaning of the Bank Secrecy Act.

The penalty for failure to file required reports with the IRS and to furnish statements to taxpayers is similar to that imposed on

failures to make other information reports and statements. Thus, the penalty is $50 per failure, subject to a maximum of $250,000 for any calendar year. The penalty is not applicable if the failure is due to reasonable cause and not to willful neglect. If, however, the failure to file required reports with the IRS is due to intentional disregard of the filing requirements, the penalty is 10 percent of the aggregate amount of the items required to be reported and the $250,000 limitation does not apply. In addition, under section 7203, any willful violation related to the filing of returns relating to cash receipts of more than $10,000 received in the course of conducting a trade or business is, upon conviction, punishable by a fine of not more than $25,000 ($100,000 in the case of a corporation) or imprisonment not to exceed 5 years or both. Similar civil and criminal penalties apply to persons who, for the purpose of evading the return requirement, cause or attempt to cause a trade or business to fail to file, or to file falsely, a required return.

House Bill

The House bill provides that, to the extent provided in Treasury regulations, any monetary instrument (whether or not in bearer form) other than personal checks with a face amount of not more than $10,000 is included in the definition of cash. Revised Treasury regulations must be issued not later than June 1, 1991. In addition, the bill increases the penalty for intentional disregard of these reporting requirements to mirror the civil penalty applicable for currency transaction reports filed under the Bank Secrecy Act. Thus, the penalty is the greater of $25,000 or the amount of cash received in the transaction (but no more than $100,000). The heading of the provision of present law prohibiting evasion techniques is clarified. The Treasury Department is required to submit to the Congress no later than March 31, 1991, a study of the operation of section 6050I.

The House bill is effective generally for cash received after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

i. Extend IRS user fees

Present Law

The Internal Revenue Service (IRS) provides written responses to questions of individuals, corporations, and organizations relating to their tax status or the effects of particular transactions for tax purposes. The IRS responds to these inquiries through the issuance of letter rulings, determination letters, and opinion letters. The IRS charges a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The legislation that requires the establishment of this fee program pro-

vides that it is not to apply to requests made after September 29, 1990.

House Bill

The House bill extends for five years the IRS program that requires the payment of a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The provision applies to requests made after September 29, 1990.

Senate Amendment

The Senate amendment permanently extends the IRS program that requires the payment of a fee for most requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. The provision applies to requests made after September 29, 1990. The IRS may collect the fee for requests made after September 29, 1990, and on or before the date that is 30 days after the date of enactment at such time as the IRS may determine in its discretion. The fee for any request made more than 30 days after the date of enactment must be collected in advance.

CONFERENCE AGREEMENT

The conference agreement follows the House bill (*i.e.*, the IRS user fee program is extended for five years), with the following modification. The IRS may collect the fee for requests made after September 29, 1990, and on or before the date that is 30 days after the date of enactment at such time as the IRS may determine in its discretion. The fee for any request made more than 30 days after the date of enactment must be collected in advance.

4. CERTAIN CORPORATE TAX PROVISIONS

a. Impose corporate tax on divisive transactions in connection with certain changes of ownership

Present Law

A corporation generally must recognize gain on the sale or distribution of appreciated property, including stock of a subsidiary. However, corporate distributions of subsidiary stock that meet the requirements of section 355 of the Code are tax-free both to the distributing corporation and to the distributee shareholders.

Present law imposes a 5-year holding period requirement for any corporate distributee that has acquired 80 percent of the stock of a corporation ("target"), unless the stock was acquired solely in nontaxable transactions. If the 5-year holding period is not met, distributions of subsidiaries by the target corporation are not tax-free under section 355.

House Bill

In addition to the provisions of present law, the House bill generally requires recognition of corporate-level gain (but does not require recognition by the distributee shareholders) on a distribution

of subsidiary stock qualifying under section 355 if, immediately after the distribution, a shareholder holds disqualified stock that constitutes 50-percent or more of the vote or value of the distributing corporation or of a distributed subsidiary. Disqualified stock is stock that was acquired by purchase (as defined in the provision) within the preceding 5-year period and after October 9, 1990.

The House bill contains attribution rules under which a person and certain related persons are treated as one. It also provides rules to determine the relevant date of purchase in certain related party cases.

Stock is generally considered acquired by purchase for purposes of this provision if it is acquired in any transaction in which the acquiror's basis of the stock is not determined in whole or in part by reference to the adjusted basis of such stock in the hands of the person from whom acquired and is not determined under section 1014(a).

Except as provided in regulations, stock is not generally considered acquired by purchase if it is acquired in an exchange to which section 351, 354, 355 or 356 applies. However, stock acquired in an exchange to which section 351 applies is treated as acquired by purchase to the extent that such stock is acquired in exchange for any cash, cash item, marketable security, or debt of the transferor.

The Treasury Department has authority to exclude transactions from the definition of a purchase to the extent consistent with the purposes of the provision.

For purposes of determining whether stock is acquired during the 5-year period ending on the date of the distribution, the holding period of such stock is reduced for any period in which the holder's risk of loss with respect to such stock is directly or indirectly substantially diminished by any device or transaction.

The Treasury Department has general regulatory authority to prevent the avoidance of the purposes of the provision through any means, including through the use of related persons, pass-through or intermediary entities, options, or other arrangements.

The House bill applies to distributions of stock after October 9, 1990. Transitional relief is provided if the acquisition of stock by purchase after October 9, 1990 is pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter before such acquisition. Transitional relief is also provided if the acquisition of stock by purchase after October 9, 1990 is pursuant to a tender offer filed with the Securities and Exchange Commission before October 10, 1990, or pursuant to an offer the material terms of which were described in a written public announcement before October 10, 1990, which was the subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991. Stock acquired under these rules is treated as acquired before October 10, 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is generally the same as the House bill and the Senate amendment, with certain clarifications.

In general

The conference agreement generally requires recognition of corporate-level gain (but does not require recognition by the distributee shareholders) on a distribution of subsidiary stock or securities qualifying under section 355 (whether or not part of a reorganization otherwise described in section 361(c)(2)) if, immediately after the distribution, a shareholder holds a 50-percent or greater interest in the distributing corporation or a distributed subsidiary that is attributable to stock or securities that were acquired by purchase (as defined in the provision) within the preceding 5-year period. Thus, for example, under the provision, the distributing corporation will recognize gain on the distribution of subsidiary stock and securities if a person purchases distributing corporation stock or securities, and within 5 years, 50 percent or more of the subsidiary stock is distributed to that person in exchange for the purchased stock or securities. The distributing corporation will recognize gain as if it had sold the distributed subsidiary stock and securities to the distributee at fair market value.

Related persons are treated as one person for purposes of the provision. Thus, for example, in determining whether a person holds a 50-percent or greater interest, a corporation and its more than 50-percent-owned subsidiary are treated as one person. The related party rules applied for this purpose are the rules of sections 707(b)(1) and 267(b).

In addition, persons acting pursuant to a plan or arrangement with respect to acquisitions of stock or securities in the distributing or any controlled corporation are treated as one person for purposes of determining whether a shareholder holds a 50-percent or greater interest acquired by purchase.

Other attribution rules

For purposes of determining attribution from an entity, the rules of section 318(a)(2) are applied, substituting 10 percent for 50 percent in section 318(a)(2)(C). Where securities are owned by an entity, a person who would be deemed to own all or a portion of the stock (if any) owned by the entity under these attribution rules will be deemed to own the same proportion of securities (if any) held by such entity.

Disqualified distribution

A disqualified distribution is any section 355 distribution if, immediately after the distribution, any person holds disqualified stock in either the distributing corporation or any distributed controlled corporation constituting a 50-percent or greater interest in such corporation.

Disqualified stock

The conference agreement defines disqualified stock to include any stock in the distributing corporation or any controlled corpora-

tion acquired by purchase (as defined) after October 9, 1990 and during the 5-year period ending on the date of the distribution. In addition, disqualified stock includes stock in any controlled corporation received in the distribution, to the extent attributable to distributions on stock or securities in the distributing corporation acquired by purchase after October 9, 1990 and during the 5-year period ending on the date of the distribution.

Example 1.— Assume that after the effective date, individual A acquires by purchase a 20-percent interest in the stock of corporation P and a 10-percent interest in the stock of its subsidiary, S, and 40 percent or more of the stock of S is distributed to A within 5 years in exchange for his 20-percent interest in P. (The remainder of the S stock distributed in the section 355 distribution is distributed to other shareholders). Under the provision P must recognize gain with respect to the distributed stock of the S because all 50 percent of the stock of S held by A is disqualified stock.

Example 2.— Assume that after the effective date individual A acquires by purchase a 20-percent interest in corporation P and P redeems stock of other shareholders so that A's interest in P increases to a 30 percent interest. Within 5 years of A's purchase, P distributes 50 percent of the stock of its subsidiary, S, to A in exchange for his 30 percent interest in P (the remainder of the stock of S distributed in the section 355 transaction is distributed to other shareholders). P recognizes gain on the distribution of the stock of S because all 50 percent of the stock of S held by A is disqualified stock.

Fifty percent or greater interest

The conference agreement provides that a 50-percent or greater interest means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock. Whether disqualified stock constitutes a 50-percent or greater interest is determined immediately following the distribution of stock (whether to that shareholder, or to other shareholders). In applying the 50-percent or greater interest test, all stock that the shareholder (including related parties) acquires after the effective date of the provision by purchase (or that is attributable to distributions on stock or securities acquired after the effective date by purchase), as that term is defined for purposes of the provision, is taken into account.

Acquisition by purchase

Stock or securities are generally considered acquired by purchase for purposes of the provision if they are acquired in any transaction in which the acquiror's basis of the stock or securities is not determined in whole or in part by reference to the adjusted basis of such stock or securities in the hands of the person from whom acquired and is not determined under section 1014(a). Thus, for example, stock issued by a corporation to a transferor in a section 1032 contribution to capital is acquired by the transferor by purchase. Further, stock or securities acquired by a partner in a section 732(b) distribution from a partnership is acquired by purchase at the time of the distribution because the partner's basis in the stock

or securities is determined by reference to the partner's basis in the liquidated partnership interest.

Stock or securities are not generally considered acquired by purchase if they are acquired in an exchange to which section 351, 354, 355 or 356 applies.

Stock acquired in an exchange to which section 351 applies is treated as acquired by purchase to the extent that such stock is acquired in exchange for any cash, cash item, marketable stock or securities, or debt of the transferor.

If property is acquired in a carryover basis transaction (including a gift, tax-free reorganization or liquidation, contribution to a partnership or corporation, or distribution of property from a partnership under section 732(a)) from a transferor who, directly or indirectly, acquired the property by purchase, the acquiror is generally considered to have acquired the property by purchase on the date that the transferor actually acquired it by purchase. However, the time of the purchase could be later in some circumstances. As one example, the time of purchase could be later under the "deemed purchase" rules described below if the property is acquired in a carryover basis transaction from an entity whose holdings were attributed to the acquiror and the acquiror had acquired his interest in the entity by purchase at a date later than the date the entity was considered to have purchased the stock. As another example, to the extent gain is recognized in a carryover basis transaction, any property treated as purchased under regulations may be treated as acquired by purchase at the time of the transaction.

Five-year period

Gain is recognized under the provision in the case of a section 355 distribution within 5 years after a shareholder acquires stock or securities by purchase (if the shareholder meets the 50-percent or more ownership test immediately after the distribution).

For purposes of determining whether stock or securities are acquired during the 5-year period ending on the date of the distribution, the holding period of such stock or securities is reduced for any period during which the holder's risk of loss with respect to such stock or securities or with respect to any portion of the activities of the corporation is directly or indirectly substantially diminished by any device or transaction, including: a short sale; the holding by any person of a put, a call, or any other option; or the use of any special class of stock. It is expected that all the facts and circumstances relating to the stock or securities and the corporate activities, as well as any other arrangements related to the holdings, will be scrutinized to determine whether the holder's risk of loss has been substantially diminished. Risk of loss ordinarily will not be considered to be substantially diminished solely by virtue of customary indemnities given by the seller of stock.

If stock or securities grant special rights or bear special risks with respect to the earnings or the other aspects of less than all of the activities of a corporation, such stock or securities shall be considered to diminish substantially the holder's risk of loss with respect to some of the activities of the corporation for purposes of this provision and the holding period of such stock or securities shall be suspended. One example is so-called "tracking stock" that

grants particular rights to the holder or the issuer, or bears particular risks for the holder or the issuer with respect to the earnings, assets, or other attributes of less than all the activities of a corporation or any of its subsidiaries. Another example is stock or securities (or any related instruments or arrangements) the terms of which provide for the distribution (whether or not at the option of any party or in the event of any contingency) of any controlled corporation or other specified assets to the holder or to persons other than the holder.

If a person acquires shares of more than one class of stock or securities, some but not all of which have a suspended holding period, it is expected that the respective values of such instruments will be closely scrutinized to assure that the purposes of this section are not avoided by allocation of more or less than fair market value to the different instruments.

"Deemed purchase" and other timing rules

If any person acquires by purchase an interest in an entity and any stock or securities held by such entity are attributed to such person under the rules of section 318(a)(2) (modified as described above), such person is treated as acquiring such stock or securities by purchase on the later of the date of the purchase of the interest in the entity or the date the stock or securities are purchased by the entity (or treated as purchased under the carryover basis or other applicable rules).

The "deemed purchase" rule also applies to determine the timing of a purchase where a person and an entity are treated as a single person under the related party rules. Thus, if a person who is already treated as one person with an entity, purchases an additional interest in that entity, that person is treated as purchasing (on the date the interest is purchased) the additional amount of stock or securities owned by the entity that is attributed to the person under section 318(a)(2) by reason of the increased interest in the entity. This timing rule applies even though the person was already treated as owning such stock or securities under the related party rules, prior to purchasing the increased interest in the entity.

Under the basic purchase rules, if persons or entities are treated as one person and one later acquires stock or securities from the other by purchase, the date of the later purchase is the date used for purposes of the 5-year test.

The following examples illustrate the operation of these timing rules:

Example 3.—Assume that individual A purchases 10 percent of the stock of corporation P, which has held 100 percent of the stock of corporation T for more than 5 years at the time of A's purchase. A is deemed to have purchased 10 percent of P's T stock at the time A purchased the P stock. If A later purchases an additional 41 percent of the stock of P, A is deemed to have purchased an additional 41 percent of P's T stock at the time of such later purchase. Because A and P are now related persons under section 267(b), they are treated as one person and A is treated as owning all of P's T stock. A is treated as acquiring 51 percent of the T stock by purchase at the times of A's respective purchases of P stock; the re-

maining 49 percent of T stock is treated as acquired when P acquired the T stock.

Example 4.—Assume that A has owned 60 percent of P's stock for more than 5 years and P has owned 40 percent of T's stock for more than 5 years. A and P are treated as one person and A is treated as owning 40 percent of T for more than 5 years. If P later purchases an additional 20 percent of the stock of T, A is treated as acquiring by purchase such other 20 percent at the date of P's purchase. If A then purchases an additional 10 percent of P's stock, under the attribution rule and the deemed purchase timing rule, A is deemed to have purchased 10 percent of T's stock at that time (including 10 percent of the 20 percent A was treated as acquiring when P purchased the additional 20 percent of T stock). This timing result under the deemed purchase rule applies even though A is already treated as owning all of P's T stock under the related party rule. Thus, A will be treated as owning all 60 percent of the T stock owned by P and as having purchased a total of 24 percent of T's stock as a result of the purchase of T stock by P and the purchase of P stock by A.

Example 5.—Assume that A purchases a 20-percent interest in partnership M. M has owned 30 percent of the stock and 25 percent of the securities of corporation P for more than 5 years. P has owned 40 percent of the stock and 100 percent of the securities of corporation T for more than 5 years. Under section 318(a)(2), A is deemed to own 6 percent of the stock of P corporation and therefore is deemed to own the same percentage of the stock and securities owned by P corporation. A is deemed to own 2.4 percent of T's stock and 6 percent of T's securities; and the T stock and securities are deemed to have been purchased on the date that A purchased the M partnership interest. If M later purchases an additional 10 percent of P stock, 2 percent of the stock and securities owned by P (i.e., .8 percent of T's stock and 2 percent of T's securities) are deemed to have been purchased by A on such later date.

Example 6.—A and B are brother and sister. For more than 5 years, A has owned 75 percent of the stock of corporation P and B has owned 25 percent of the stock of corporation P. A and B are treated as one person under the rules of section 267(b) and the stock of each is treated as purchased on the date it was purchased by A and B, respectively. If B now purchases from A 50 percent of the P stock, A and B are still treated as one person. However, the 50 percent of P stock that B purchased is treated as purchased on the date of that purchase.

Regulatory authority

The Treasury Department has general regulatory authority (1) to prevent the avoidance of the purposes of the provision through any means, including through the use of related persons, intermediaries, pass-through entities, options, or other arrangements; and (2) to exclude from the provision transactions that do not violate the purposes of this provision. The conferees intend that the Treasury Department consider whether special rules may be appropriate in the case of certain foreign transactions.

In determining whether a person has acquired by purchase a 50-percent or greater interest, the conferees intend that pursuant to

the Treasury Department's general regulatory authority to prevent avoidance of the provision, an option to acquire stock (including rights to acquire stock, warrants, obligations convertible into stock, or other similar interests) will be treated as exercised if that would cause the person to have a 50-percent or greater interest acquired by purchase and where, under all the facts and circumstances, (including projected earnings or appreciation and including the risk-shifting or other effects of any other arrangements with the option holder or related parties) the effect of the option would be to avoid the application of the provision. For example, assume individual A acquires 10 percent of the stock of corporation P by purchase within 5 years prior to a pro-rata distribution of its subsidiary, S, and at the time of the distribution or immediately thereafter A has an option to acquire another 40 percent of the stock of S. If, under all the facts and circumstances, the effect of the option is to avoid the application of the provision, A will be deemed to have acquired by purchase 50 percent of the stock of the subsidiary for purposes of the provision and the distribution would be a disqualified distribution taxed at the corporate level. The same result would follow if the option were to acquire another 40 percent of the stock of P rather than S.

In determining whether a shareholder has acquired by purchase a 50-percent or greater interest within 5 years prior to a distribution, the conferees expect that the regulations will consider the effect of related transactions in determining an acquiror's percentage interest and in determining the time of a purchase. Thus, as one example, a subsequent redemption that is related to a distribution of stock will result in the distributing corporation recognizing corporate-level gain with respect to the distribution if the redemption results in the shareholder having acquired by purchase a 50-percent or greater interest.

Regulations may also provide in appropriate cases that an exchange to which section 351, 354, 355, or 356 applies is treated as a purchase. As one example, assume that individual A has owned stock of corporation P for more than 5 years and acquires stock of corporation D and boot in exchange for P stock in a statutory merger qualifying under section 368(a)(1)(A). The conferees intend that the Treasury Department will issue regulations that generally treat the D stock acquired by A as acquired by purchase at the time of the merger because gain recognized by A in the merger increases A's basis in the D stock. Similarly, if gain is not recognized in the merger and A had acquired the P stock by purchase within 5 years prior to the merger, it is expected that regulations will generally treat A as acquiring the D stock by purchase at the time A purchased the P stock. In addition, the conferees intend that the regulations treat property constituting boot as acquired by purchase.

The conferees also expect that regulations may provide that a section 351 exchange in which cash, cash items, marketable stock or securities, or debt of the transferor are transferred will not be treated as a purchase where the transferors and transferee (if in existence before the transaction) are members of the same affiliated group both before and after the section 351 exchange and any related transactions, except where the transaction results in in-

creasing ownership or providing a basis step-up inconsistent with the purposes of this section. It is further expected that the regulations will not treat any part of the stock of the transferee acquired in a section 351 exchange as acquired by purchase if such items are transferred as part of an active trade or business (including debt incurred in the ordinary course of the trade or business) and such items do not exceed the reasonable needs of such trade or business.

The purposes of the provision are not generally violated if there is a distribution of a controlled corporation within 5 years of an acquisition by purchase and the effect of the distribution is neither (1) to increase ownership in the distributing corporation or any controlled corporation by persons who have directly or indirectly acquired stock within the prior five years, nor (2) to provide a basis step-up with respect to the stock of any controlled corporation.

For example, assume that individual A acquires by purchase 60 percent of corporation P, which has a first-tier and a second-tier subsidiary (S and T, respectively). Further assume that within 5 years after A's 60-percent acquisition of P corporation, S distributes all the stock of T to P in a transaction otherwise qualifying under section 355. Although the distribution would be a disqualified distribution under the basic operation of the provision, the conferees expect that regulations will provide that the provision does not apply to require S to recognize corporate-level gain on the distribution. However, if T were further distributed pro-rata to all of P's shareholders, so that A obtained a stepped-up basis in the stock of T immediately after the distribution, then corporate level gain would be recognized. Similarly, if T were distributed in a section 355 transaction to A in exchange for his P stock, corporate level gain would be recognized on that distribution.

By contrast, assume that 50 percent of the P stock is owned by corporation N, the remaining P stock is owned by unrelated persons, and A purchases all the stock of N from the N shareholders. If within 5 years of A's purchase N exchanges its P stock for stock of S, P would recognize corporate-level gain on the distribution because A's indirect interest in S was increased as a result of the distribution.

As another example of an acquisition that regulations may treat as not being by purchase, assume that individuals A and B form partnership M. On the formation, A contributes all of the stock of corporation D, which A has held for more than 5 years, and B contributes other property. Three years later, due to business differences, A and B agree to cease partnership operations and terminate M. Pursuant to the plan of liquidation, A receives the stock of D and B receives the other property. As a result of these events, assume that A's interest and basis in the D stock are the same as immediately before the formation of M. Provided that neither A, B, nor any other person has directly or indirectly avoided the purposes of the provision as a result of any partnership or related transactions, the regulations may provide that the liquidating distribution under section 732(b) is not treated as the purchase of the D stock by A, and that A acquired the D stock at the time A originally acquired the D stock (more than 5 years ago).

Effective date

The provision generally applies to distributions of stock after October 9, 1990. In determining whether the distribution occurs within 5 years after stock or securities are acquired by purchase, only stock or securities acquired by purchase after October 9, 1990 are taken into account.

Transitional relief is provided for distributions after October 9, 1990 that are pursuant to a binding written contract in effect on October 9, 1990 and at all times thereafter before such distribution.

Transitional relief is also provided if the acquisition of stock or securities by purchase after October 9, 1990 is pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter before such acquisition. Transitional relief is further provided if the acquisition of stock or securities by purchase after October 9, 1990 is pursuant to a transaction reflected in documents filed with the Securities and Exchange Commission before October 10, 1990, or pursuant to a transaction the material terms of which were described in a written public announcement before October 10, 1990, which was the subject of a prior filing with the Securities and Exchange Commission, and which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991. Stock or securities with respect to which transitional relief is provided under these rules is treated as acquired before October 10, 1990.

No inference is intended whether any distribution described in the transitional rules otherwise qualifies for tax-free treatment under section 355 of the Code.

b. Modify treatment of preferred stock issued with a redemption premium

Present Law

If preferred stock is considered to have an unreasonable redemption premium, the portion of the premium that is considered to be unreasonable is deemed to be distributed to the preferred stockholder ratably over the time during which such stock cannot be called for redemption.

If a debt instrument is issued with original issue discount (OID), the holder of the instrument includes the entire amount of OID in gross income over the term of the instrument on an economic accrual basis if the amount of OID exceeds the product of (1) one-quarter of one percent of the stated redemption price and (2) the number of complete years to maturity.

House Bill

The House bill applies the economic accrual rule and the de minimis rule applicable to debt instruments issued with OID to preferred stock that is subject to mandatory redemption, or is puttable, at a premium, regardless of whether the stock is callable.

In general, the OID de minimis rule will not apply to preferred stock that is callable solely at the option of the issuer (unless such stock is subject to a mandatory redemption or is puttable). Nonetheless, the economic accrual rule will apply to the entire call pre-

mium on such stock if such premium is considered to be unreasonable without regard to this provision. In such cases, except as provided in regulations, the entire call premium will be accrued over the period of time during which the preferred stock cannot be called for redemption.

There is no intention to limit the present-law authority of the Secretary and the IRS regarding the proper treatment of redemption premiums on preferred stock. Thus, the Secretary may determine what constitutes a redemption premium (or a disguised redemption premium). For example, if at the time of issuance of cumulative preferred stock there is no intention for dividends to be paid currently, the IRS may treat such dividends as a disguised redemption premium. In addition, the Secretary may treat stock that, in form, is merely callable as being subject to mandatory redemption or a put if the existence of other arrangements effectively require the issuer to redeem the stock.

It is intended that the economic accrual and OID de minimis rules generally apply as described above as of the effective date of the bill without regard to when the regulations are amended to reflect such rules. Except as provided herein, there is no intention to limit the authority of the Secretary to promulgate regulations relating to the accrual of redemption premiums on callable preferred stock. It is expected that such regulations will be prospective.

The provision is effective for stock issued on or after October 10, 1990, unless issued pursuant to a binding written contract in effect on October 9, 1990, and at all times thereafter until such issuance, or pursuant to an SEC or similar state registration statement filed before such date and the stock is issued within 90 days of the filing.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. In addition, the conference agreement provides that the provision does not apply to stock issued after October 9, 1990, pursuant to a plan filed before October 10, 1990, in a title 11 or similar case.

c. Expand and clarify information reporting and allocation rules for certain acquisitions

Present Law

Special allocation and information reporting rules apply to applicable asset acquisitions (sec. 1060). The information reporting rules of section 1060 do not apply to an acquisition of a trade or business which is structured as a stock acquisition if the transferee does not elect under section 338 to treat the stock purchase as an asset acquisition. It is unclear, however, whether these reporting rules apply to such a stock acquisition if a section 338 election or a section 338(h)(10) election is made.

Courts apply different standards in determining whether a party to a sale of a business can assert an allocation of consideration to

assets that is inconsistent with the allocation contained in a written agreement. In the Danielson case, the Third Circuit held that a party could refute a purchase price allocation only if the proof would be admissible in an action to show unenforceability because of mistake, undue influence, fraud, or duress.

House Bill

The House bill provides that in the case of a stock purchase where a section 338(h)(10) election is made, the purchasing corporation and the selling consolidated group must report information with respect to the consideration received in the transaction at such times and in such manner as may be provided in regulations under section 338. The committee report clarifies that, in general, the reporting and allocation rules of section 1060 do not apply in any case in which a stock purchase is treated as an asset purchase under section 338.

In addition, the House bill provides that where a person holds at least 10 percent of the value of an entity and both transfers an interest in the entity and also enters into an employment contract, covenant not to compete, royalty or lease agreement or other agreement with the transferee, such person and the transferee must report information concerning the transaction at such time and in such manner as the Secretary may require.

Finally, the House bill provides that a written agreement regarding the allocation of consideration to, or the fair market value of, any of the assets in an applicable asset acquisition will be binding on both parties for tax purposes, unless the parties are able to refute the allocation or valuation under the standards set forth in the Danielson case.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. In addition, the conferees are aware that the information reporting rules under section 1060 may, in certain circumstances, duplicate the reporting requirements under section 6050J (relating to foreclosures and abandonments of security). Thus, the conferees intend that if a lender is required to report under section 6050J upon the foreclosure of property, no reporting is required under section 1060 by the lender, provided that no allocation is required to be made (under the residual method required by section 1060) to goodwill or going concern value. The conferees do not intend to limit the Secretary's authority under section 6050J. In particular, the conferees do not intend to limit the Secretary's authority to: (1) require reporting under section 6050J of information that is similar to that required under section 1060; or (2) exempt borrowers and lenders that are required to report under section 6050J from the reporting rules of section 1060.

d. Expand the definition of a corporate equity reduction transaction for purposes of limiting certain NOL carrybacks

Present Law

The ability of a C corporation to obtain refunds of taxes paid in prior years by carrying back net operating losses (NOLs) is limited in cases where the losses are created by interest deductions allocable to a corporate equity reduction transaction ("CERT"). A CERT includes the acquisition of 50 percent or more of the vote or value of the stock of another corporation. However, a CERT does not include the acquisition of the stock of another corporation (1) that, immediately before the acquisition, was a subsidiary of an affiliated group, or (2) with respect to which an election under section 338 was made to treat the stock acquisition as an asset acquisition.

House Bill

The House bill repeals the exception to the definition of a CERT relating to the acquisition of the stock of another corporation which, immediately before the acquisition, was a member of an affiliated group (other than the parent of such group). The provision is effective for acquisitions on or after October 10, 1990, unless pursuant to a binding written contract in effect before and on such date and at all times thereafter until such acquisition.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Clarify treatment of debt exchanges

Present Law

Income from the cancellation of indebtedness

In general.—Gross income includes income from the cancellation of indebtedness (COD). Taxpayers in title 11 cases and insolvent debtors generally exclude COD from income but reduce tax attributes by the amount of COD created on the discharge of debt. The amount of COD excluded from income by an insolvent debtor not in a title 11 case cannot exceed the amount by which the debtor is insolvent. For all taxpayers, the amount of COD generally is the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy such debt. The COD rules generally apply to the exchange of an old obligation for a new obligation, including a modification of the old debt that is treated as an exchange (a debt-for-debt exchange).

Treatment of stock-for-debt exchanges.—For purposes of determining COD, if a debtor corporation transfers stock to a creditor in satisfaction of debt, the corporation is treated as having satisfied the debt with an amount of money equal to the fair market value of the stock. However, taxpayers in title 11 cases and insolvent debt-

ors generally may issue stock in satisfaction of debt without creating COD (the stock-for-debt exception).

Original issue discount rules

The issuer of a debt instrument with original issue discount (OID) generally accrues and deducts the discount, as interest, over the term of the instrument on an economic accrual basis. The holder of an OID instrument also includes the amount of OID in income on an economic accrual basis. Original issue discount is the excess of the stated redemption price at maturity over the issue price of a debt instrument. For purposes of the OID rules, the issue price of a debt instrument that is issued for property generally is determined by reference to fair market value if either the debt instrument or the property for which it was issued is publicly traded (sec. 1273(b)(3)). If neither the debt instrument nor the property for which it is issued is publicly traded, the issue price of the instrument generally is its stated principal amount, provided the instrument has adequate stated interest. If the debt instrument lacks adequate stated interest, the issue price of the instrument generally is determined by using the applicable Federal rate to discount all payments due under the instrument (sec. 1274). Finally, for debt-for-debt exchanges in a reorganization, the issue price of a new debt instrument is not less than the adjusted issue price of the old debt instrument (sec. 1275(a)(4)). In certain other cases, issue price is equal to stated redemption price at maturity (sec. 1273(b)(4)).

House Bill

Debt-for-debt exchanges

Under the House bill, for purposes of determining the amount of COD of a debtor that issues a new debt instrument in satisfaction of an old debt, such debtor will be treated as having satisfied the old debt with an amount of money equal to the issue price of the new debt. For this purpose, the issue price of the new obligation will be determined under the general rules applicable to debt instruments issued for property (i.e., secs. 1273(b) and 1274). For debt instruments subject to section 483 (rather than sec. 1274), the issue price as determined under section 1273(b)(4) is reduced to exclude unstated interest for purposes of determining COD.

In addition, the reorganization exception in section 1275(a)(4) of the OID rules is repealed. Thus, either or both COD or OID may be created in a debt-for-debt exchange that qualifies as a reorganization, so long as the exchange qualifies as a realization event under section 1001 for the holder. The provision does not change the present-law rules of section 354, 355, or 356 regarding the amount of gain or loss recognized or not recognized in a reorganization. The repeal of section 1275(a)(4) will be applicable to the holder as well as the issuer of the new debt instrument for purposes of determining the issue price of the new debt instrument received in a debt-for-debt exchange.

Stock-for-debt exchanges

The House bill also repeals the stock-for-debt exception for title 11 cases and insolvent debtors for taxpayers that issue disqualified stock in exchange for debt. For this purpose, disqualified stock is any stock with a stated redemption price and that either has a fixed redemption date, is callable by the issuer, or is puttable by the holder. In addition, disqualified stock will not be considered to be stock for purposes of the de minimis rule of section 108(e)(8).

Effective date

The provision generally is effective for debt-for-debt or stock-for-debt exchanges occurring on or after October 10, 1990. The provision does not apply to an exchange that is pursuant to a written binding contract in effect on October 9, 1990, and all times thereafter before the exchange. The provision does not apply to an exchange that is pursuant to a tender offer or exchange offer filed with the Securities and Exchange Commission before October 10, 1990. The provision does not apply to an exchange that is pursuant to an offer the material terms of which were described in a written public announcement before October 10, 1990, and which was the subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991.

In addition, the provision does not apply to an exchange resulting from a proceeding in a title 11 or similar case that had been filed before October 10, 1990.

Senate Amendment

The Senate amendment generally follows the House bill. However, under the Senate amendment, the provision does not apply to an exchange that is pursuant to a transaction the material terms of which were described in a written public announcement before October 10, 1990, and which was the subject of a prior filing with the Securities and Exchange Commission, and which is subsequently filed with the Securities and Exchange Commission before January 1, 1991.

Conference Agreement

The conference agreement generally follows the House bill as modified by the Senate amendment.

The conference agreement also modifies the effective date provisions. Under the agreement, the provision generally is effective for debt instruments issued, or stock transferred, after October 9, 1990, in satisfaction of any indebtedness. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a written binding contract in effect on October 9, 1990, and all times thereafter before such issuance or transfer. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a transaction that was described in documents filed with the Securities and Exchange Commission before October 10, 1990. The provision does not apply to a debt issuance or a stock transfer that is pursuant to a transaction the material terms of which were described in a writ-

ten public announcement before October 10, 1990, and which was the subject of a prior filing with the Securities and Exchange Commission, and which is the subject of a subsequent filing with the Securities and Exchange Commission before January 1, 1991.

The conferees recognize that, with respect to debt restructurings, documents filed with the Securities and Exchange Commission may not initially describe all the final terms relevant to the instruments to be issued in connection with such filings. Amendments or supplements may be required in response to certain market conditions, comments by the Securities and Exchange Commission, continuing negotiations with bondholders, and otherwise. The conferees intend that the transition rules provided in this provision would continue to apply in those instances.

Finally, the provision does not apply to an issuance or transfer in a title 11 or similar case which was filed before October 10, 1990.

5. MODIFY RULES RELATING TO INTEREST PAID BY CORPORATIONS TO THE IRS ON TAX OBLIGATIONS

Present Law

In general, corporations are allowed an income tax deduction for all interest paid or accrued, including interest on tax obligations.

Individuals are not permitted to deduct personal interest. For this purpose, personal interest includes interest on underpayments of the individual's income taxes, even if all or a portion of the individual's income is attributable to a trade or business.

Interest is charged on the underpayment of tax. The underpayment rate is the sum of the short-term Federal rate plus 3 percentage points.

House Bill

No provision.

Senate Amendment

The Senate amendment denies corporations a deduction for interest attributable to periods after 30 days after the earlier of the furnishing of a notice of proposed deficiency (commonly called a 30-day letter) or the furnishing of a statutory notice of deficiency issued pursuant to section 6212 (commonly called a 90-day letter). In the case of an underpayment of a tax other than an income tax, a notice provided by the IRS that is similar to these notices is treated similarly.

The provision is effective for interest attributable to periods beginning on or after January 1, 1991, regardless of the taxable period (if any) to which the underlying tax may relate.

Conference Agreement

The conference agreement establishes an underpayment rate equal to the sum of the short-term Federal rate plus 5 percentage points (the "AFR plus 5 rate"). The AFR plus 5 rate is applicable to C corporations for purposes of determining the rate of interest attributable to periods after the 30th day following the earlier of the

furnishing of a notice of proposed deficiency (commonly called a 30-day letter) or the furnishing of a statutory notice of deficiency issued pursuant to section 6212 (commonly called a 90-day letter). In the case of an underpayment of a tax other than an income tax, a notice provided by the IRS that is similar to these notices is treated similarly. For example, a notice under section 6303 is one type of similar notice.

The AFR plus 5 rate applies to the amount determined to be the underpayment, regardless of the amount of tax assessed in the 30-day letter, 90-day letter, or other notice.

The AFR plus 5 rate does not apply to the interest charges that the taxpayer timely assesses against itself in return for using a method of tax accounting or reporting that defers the payment of tax. For example, the AFR plus 5 rate does not apply to the interest charges relating to installment obligations of nondealers (sec. 453A(c)) or passive foreign investment companies (sec. 1291(c)).

The AFR plus 5 rate does not apply to any underpayment of a tax for any taxable period if the underpayment is $100,000 or less. Underpayments of different types of taxes (e.g., income taxes and employment taxes) as well as underpayments relating to different taxable periods would not be added together for purposes of determining the $100,000 threshold.

Under present law, the Secretary has the authority to credit the amount of any overpayment against any liability under the Code (sec. 6402). To the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax (sec. 6601(f)). The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice.

The provision is effective for purposes of determining interest for periods after December 31, 1990, regardless of the taxable period (if any) to which the underlying tax may relate.

6. EMPLOYMENT TAX PROVISIONS

a. Increase dollar limitation on amount of wages and self-employment income subject to the Medicare hospital insurance payroll tax

Present Law

As part of the Federal Insurance Contributions Act (FICA), a tax is imposed on employees and employers up to a maximum amount of employee wages. The tax is comprised of two parts: old-age, survivor, and disability insurance (OASDI) and Medicare hospital insurance (HI). For wages paid in 1990 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $51,300 of wages and the OASDI tax rate is 6.2 percent on both the employer and the employee on the first $51,300 of wages.

Under the Self-Employment Contributions Act of 1954 (SECA), a tax is imposed on an individual's self-employment income. The self-employment tax rate is the same as the total rate for employers and employees (i.e., 2.9 percent for HI and 12.40 percent for OASDI). For 1990, the tax is applied to the first $51,300 of self-employment income and, in general, the tax is reduced to the extent

that the individual had wages for which employment taxes were withheld during the year.

The cap on wages and self-employment income subject to FICA and SECA taxes is indexed to changes in the average wages in the economy. In 1991, the amount of wages or self-employment income subject to the tax will be $53,400.

House Bill

The House bill increases the cap on wages and self-employment income considered in calculating HI tax liability to $100,000. As under present law, for years beginning after 1991, this cap is indexed to changes in the average wages in the economy. The OASDI wage cap remains at the level provided under present law.

The provision is effective on January 1, 1991.

Senate Amendment

The Senate amendment is the same as the House bill, except that the cap considered in calculating HI tax liability is increased to $89,000.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except that the cap considered in calculating HI tax liability is increased to $125,000.

b. Extend Medicare coverage of, and application of hospital insurance tax to, all State and local government employees

Present Law

Before enactment of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), State and local workers were covered under Medicare only if the State and the Secretary of Health and Human Services entered into a voluntary agreement providing for coverage under the social security and Medicare programs (OASDI and HI). In COBRA, the Congress extended Medicare coverage (and the corresponding hospital insurance payroll tax) on a mandatory basis to State and local government employees (other than students) hired after March 31, 1986.

For wages paid in 1990 to Medicare-covered employees, the total HI tax rate is 2.9 percent of the first $51,300 of wages. In 1991, the amount of wages subject to tax will be $53,400. The tax is divided equally between the employer and the employee.

House Bill

No provision.

Senate Amendment

The Senate amendment requires coverage of all employees of State and local governments under Medicare without regard to the employee's date of hire. The 2.9-percent HI payroll tax rate is phased in with respect to newly covered State and local govern-

ment employees so that the tax rate is 1.6 percent in 1992, 2.7 percent in 1993, and 2.9 percent in 1994 and thereafter. The present-law student exception is retained with respect to students employed in public schools, colleges, and universities. As under present law, coverage may be provided to such individuals at the option of the State government.

In the case of certain employees who are required to pay the HI tax as a result of the provision and who meet certain other requirements, State and local service prior to the effective date of the provision is deemed to have been covered by the HI tax for purposes of determining Medicare eligibility. Prior State and local service is counted regardless of whether such service was continuous.

Under the provision, the HI trust fund is reimbursed from the general fund of the Treasury for any additional cost arising by reason of this provision.

The Secretary of Health and Human Services is required to provide a process by which employees may provide evidence of prior State and local governmental service if such service is necessary to qualify for coverage under the program.

The provision is effective with respect to services performed after December 31, 1991.

Conference Agreement

The conference agreement does not include the Senate amendment.

c. Extend social security coverage (OASDHI) to State and local government employees not covered by a public employee retirement program

Present Law

Under present law, employees of State and local governments are covered under social security by voluntary agreements entered into by the States with the Secretary of Health and Human Services (HHS). After a State has entered into such an agreement, it may decide, or permit its political subdivisions to decide, whether to include particular groups of employees under the agreement. All States have entered into such agreements. The extent of coverage is high in some States and limited in others. Nationally, about 72 percent of State and local workers are covered by social security.

With certain exceptions, a State has broad latitude to decide which groups of State and local employees are covered under its agreement. In some cases in which States have elected not to provide coverage, a part of the workforce does not participate in any public retirement plan.

For 1990, the social security (Old Age, Survivors, and Disability Insurance) tax rate is 6.2 percent of covered wages up to $51,300 and is imposed on both the employer and employee (for a total of 12.40 percent). In 1991, the amount of wages subject to tax is $53,400.

As part of the Federal Insurance Contributions Act (FICA), a Medicare hospital insurance tax is imposed (HI). For wages paid in

1990 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $51,300 of wages.

House Bill

The House bill requires social security (Old Age, Survivors, and Disability Insurance) coverage for State and local workers who are not covered by a State voluntary agreement or a retirement system in conjunction with their employment for the State or local government and subjects the wages of such employees to the OASDI tax under the Federal Insurance Contributions Act (FICA). An exception is provided for students employed in public schools, colleges, and universities, for whom coverage may, as under present law, be provided at the option of the State government. This exception maintains parallel coverage rules for students employed by public educational institutions and those employed by private schools, colleges, and universities.

A retirement system is defined as under the definition of retirement system in the Social Security Act (42 U.S.C. sec. 418(b)(4)). Thus, a retirement system is defined as a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

Whether an employee is a member (i.e., is a participant) of a retirement system is based upon whether that individual actually participates in the program. Thus, whether an employee participates is not determined by whether that individual holds a position that is included in a retirement system. Instead, that individual must actually be a member of the system. For example, an employee (whose job classification is of a type that ordinarily is entitled to coverage) is not a member of a retirement system if he or she is ineligible because of age or service conditions contained in the plan and, therefore, is required to be covered under social security. Similarly, if participation in the system is elective, and the employee elects not to participate, that employee does not participate in a system for purposes of this rule, and is to be covered under the social security system.

The Secretary of the Treasury, in conjunction with the Social Security Administration, is required to issue guidance in order to implement the purposes of this provision.

The provision is effective with respect to services performed after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill, except that the provision is effective with respect to services performed after December 31, 1991.

Conference Agreement

The conference agreement follows the House bill and Senate amendment, except that the provision is effective with respect to services performed after June 30, 1991.

As under the House bill and Senate amendment, an exception is provided for students employed in public schools, colleges, and uni-

versities, for whom coverage may, as under present law, be provided at the option of the State government. The conference agreement also contains other exceptions as contained in the House bill and Senate amendment (e.g., service by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100).

The conference agreement follows the House bill and the Senate amendment with respect to the definition of retirement system, except that the Secretary of the Treasury and the Social Security Administration are authorized to provide guidance under which a particular plan or class of plans will not be considered a retirement system if such characterization is necessary to effectuate the purposes of this provision.

The conference agreement follows the House bill and Senate amendment in that whether an employee is a member (i.e., is a participant) of a retirement system is based upon whether that individual actually participates in the program. Thus, whether an employee participates is not determined by whether that individual holds a position that is included in a retirement system. Instead, that individual must actually be a member of the system. For example, an employee (whose job classification is of a type that ordinarily is entitled to coverage) is not a member of a retirement system if he or she is ineligible because of age or service conditions contained in the plan and, therefore, is required to be covered under social security. Similarly, if participation in the system is elective, and the employee elects not to participate, that employee does not participate in a system for purposes of this rule, and is to be covered under the social security system.

Except as otherwise provided under the conference agreement, or in guidance promulgated by the Secretary of the Treasury, rules similar to those applicable in determining whether an individual is an active participant for purposes of contributing to an individual retirement account (Code sec. 219) apply in determining whether a specific employee is a member of a retirement system.

The conference agreement extends Medicare coverage to, and applies the HI tax with respect to the wages of, those employees (otherwise not already subject to the HI tax) who become subject to OASDI by reason of this provision.

d. Extend Federal Unemployment Tax (FUTA) surtax

Present Law

The Federal Unemployment Act (FUTA) imposes a gross employer tax of 6.2 percent on the first $7,000 paid annually to each employee. This 6.2-percent rate includes a temporary surtax of 0.2 percent. Employers in States meeting certain requirements and with no overdue Federal loans are eligible for a full 5.4-percentage point credit, making the basic net FUTA tax rate 0.8 percent. The 0.2-percent surtax is scheduled to expire for wages paid after 1990, after which the basic net FUTA tax rate will be 0.6 percent.

House Bill

The House bill extends the 0.2-percent surtax imposed on employers under the Federal Unemployment Tax Act (FUTA) through 1995.

The provision is effective with respect to wages paid on or after January 1, 1991.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Increase in railroad retirement tier 2 payroll taxes

Present Law

Railroad employers, employees, and employee representatives are subject to a payroll tax to fund tier 2 railroad retirement benefits. The tax rate is 4.90 percent for employees, 16.10 percent for employers, and 14.75 percent for employee representatives. In 1990, the tax is imposed on wages up to a maximum of $38,100. In 1991, this wage base will be $39,600.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the tier 2 tax rate by 0.10 percent for employees (for a total rate of 5.00 percent), 0.30 percent for employers (for a total rate of 16.40 percent), and 0.30 percent for employee representatives (for a total rate of 15.05 percent).

The provision applies to compensation paid after December 31, 1990, in the case of the employer tax and to compensation received after December 31, 1990, in the case of the employee and employee representative taxes.

Conference Agreement

The conference agreement does not include the Senate amendment.

f. Payroll tax deposit stabilization

Present Law

Treasury regulations have established the system under which employers deposit income taxes withheld from employees' wages and FICA taxes. The frequency with which these taxes must be deposited increases as the amount required to be deposited increases.

Employers are required to deposit these taxes as frequently as eight times per month, provided that the amount to be deposited

equals or exceeds $3,000. These deposits must be made within three banking days after the end of the eighth-monthly period.

Effective August 1, 1990, employers who are on this eighth-monthly system are required to deposit income taxes withheld from employees' wages and FICA taxes by the close of the applicable banking day (instead of by the close of the third banking day) after any day on which the business cumulates an amount to be deposited equal to or greater than $100,000 (regardless of whether that day is the last day of an eighth-monthly period).

For 1990, the applicable banking day is the first. For 1991, the applicable banking day is the second. For 1992, the applicable banking day is the third. For 1993 and 1994, the applicable banking day is the first. The Treasury Department is given authority to issue regulations for 1995 and succeeding years to provide for similar modifications to the date by which deposits must be made in order to minimize unevenness in the receipts effects of this provision.

House Bill

The House bill requires that deposits equal to or greater than $100,000 must be made by the close of the next banking day for all years. Thus, no change from present law is necessary for calendar year 1990, but for calendar years 1991 and 1992 deposits are accelerated. The regulatory authority provided to the Treasury Department is repealed. The provision is effective for amounts required to be deposited after December 31, 1990.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. TRUSTS WITH FOREIGN GRANTORS

Present Law

A grantor who transfers property to a trust while retaining certain powers or interests over the trust is treated as owner of the trust for income tax purposes under the so-called "grantor trust rules." If a grantor or other person is treated as the owner of a trust, the income and deductions of the trust are included directly in the grantor's taxable income. The nominal grantor is not treated as the grantor if another party is in fact the grantor.

House Bill

The House bill provides that a U.S. person who is a beneficiary of a trust is treated as the grantor to the extent that the beneficiary transferred property, directly or indirectly, to a foreign person who otherwise would have been treated as the owner under the "grantor trust rules." This rule would apply even if the beneficiary

was not a U.S. person at the time of the transfer. For purposes of the rule, annual gifts of less than $10,000 are disregarded.

The provision applies to any trust created after the date of enactment and any portion of an existing trust that is attributable to amounts contributed after that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The conferees intend that no inference be drawn that would prevent a court from treating a person who is not directly the grantor as the grantor under present-law trust rules.

E. Extend Expiring Tax Provisions Through 1991

1. Allocation and Apportionment of Research and Experimental Expenditures

Present Law

Under a statutory rule, research and experimental expenditures are allocated as follows: (1) expenses for research that is undertaken solely to meet certain legal requirements imposed by a political entity and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside that entity's jurisdiction are allocated to income from sources in that jurisdiction; (2) remaining research expenses which are conducted in the United States are allocated 64 percent to U.S. source income, and such expenses which are conducted outside of the United States are allocated 64 percent to foreign source income; and (3) remaining research expenses are allocated and apportioned on the basis of either sales or gross income. If gross income is used, however, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would be so apportioned under the sales method.

Research expenses incurred by U.S. persons for activities conducted in space, in Antarctica, or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, U.S. possession, or the United States, are allocated and apportioned in the same manner as if they were attributable to activities conducted in the United States. Such expenses incurred by foreign persons are allocated and apportioned as if they were attributable to activities conducted outside the United States.

The statutory allocation rule is effective only for the taxpayer's first taxable year beginning after August 1, 1989 and before August 2, 1990, and applies only to that portion of research expenses treated as having been paid or incurred during the first nine months of the first taxable year beginning after August 1, 1989 and before August 2, 1990. In determining which research expenses for that year are treated as paid or incurred in the first nine months of the year, research expenses are treated as if paid or incurred ratably throughout the taxable year.

Research expenditures that are not covered by the effective date of the statutory rule are allocated pursuant to Treasury regulations which were promulgated in 1977. Under those regulations, research and experimental expenditures are generally allocated as follows: (1) expenses for research that is undertaken solely to meet certain legal requirements imposed by a political entity and which cannot reasonably be expected to generate income (beyond de minimis amounts) outside a single geographical source are allocated to income from that source; and (2) remaining research expenses are generally apportioned to foreign source income based on either (a) gross sales, except that a taxpayer using this method may first apportion at least 30 percent of such expenses exclusively to the source where over 50% of the taxpayer's research is performed; or (b) gross income, except that expenses apportioned to U.S. and foreign source income using a gross income method can not be less than 50% of the respective portions that would be apportioned to each income grouping using a combination of the sales and place-of-performance methods.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the application of the statutory allocation rule so that it applies to the taxpayer's first two taxable years beginning after August 1, 1989, and on or before August 1, 1991. Thus, under the Senate amendment, the statutory allocation rule applies to the remainder of the year covered by the 1989 Act as well as to the subsequent year.

Conference Agreement

The conference agreement follows the Senate amendment.

2. RESEARCH AND EXPERIMENTATION TAX CREDIT

Present Law

A 20-percent tax credit is allowed to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit will not apply to amounts paid or incurred after December 31, 1990, and a special rule to prorate qualified research expenditures applies in the case of any taxable year which begins before October 1, 1990, and ends after September 30, 1990.[13] The 20-percent tax credit also applies to certain payments to universities for basic research.

House Bill

No provision.

[13] Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, is multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991.

Senate Amendment

The 20-percent incremental credit for qualified research expenditures and the university basic research credit are extended through December 31, 1991. The special rule to prorate research expenditures incurred during 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference Agreement

The conference agreement follows the Senate amendment.

3. EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE

Present Law

Under present law, an employee (including a self-employed individual) must include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless (1) the cost of such assistance qualifies as a deductible job-related expense of the employee (secs. 132, 162) or (2) the educational assistance is provided under an educational assistance program that meets certain requirements (sec. 127).

The exclusion for educational assistance benefits provided pursuant to an educational assistance program described in section 127 expired for taxable years beginning after September 30, 1990. Only amounts paid before October 1, 1990, in a taxable year beginning in 1990 are taken into account in determining the amount of the exclusion.

No more than $5,250 of educational assistance benefits provided during any calendar year can be excluded from the income of an employee. In addition, the exclusion for educational assistance benefits does not apply to graduate level courses. Specifically, the exclusion does not apply to any payment for, or the provision of any benefits with respect to, any course taken by an employee who has a bachelor's degree or is receiving credit toward a more advanced degree if the particular course can be taken for credit by any individual in a program leading to a law, business, medical, or other advanced academic or professional degree.

To the extent that employer-provided educational assistance is not excludable from income because it exceeds the maximum dollar limitation or because of the limitation on graduate-level courses, it may be excludable from income as a working condition fringe benefit (sec. 132(d)), provided the requirements of that section are otherwise satisfied (e.g., the education is job related as defined under sec. 162).

House Bill

No provision.

Senate Amendment

The Senate amendment extends the exclusion for employer-provided educational assistance benefits through taxable years begin-

ning before January 1, 1992. The special rule limiting the exclusion in the case of a taxable year beginning in 1990 is repealed. In addition, the restriction on graduate level courses is repealed.

The provision generally is effective for taxable years beginning after December 31, 1989, except that the repeal of the restriction on graduate level courses is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment.

4. EXCLUSION FOR EMPLOYER-PROVIDED GROUP LEGAL SERVICES; TAX EXEMPTION FOR QUALIFIED GROUP LEGAL SERVICES ORGANIZATIONS

Present Law

Under present law, amounts contributed by an employer to a qualified group legal services plan for an employee (or the employee's spouse or dependents) are excluded from the employee's gross income for income and employment tax purposes (sec. 120). The exclusion also applies to any services received by an employee (or the employee's spouse or dependents) or any amounts paid to an employee under such a plan as reimbursement for the cost of legal services for the employee (or the employee's spouse or dependents). The exclusion is limited to an annual premium value of $70. In order to be a plan under which employees are entitled to tax-free benefits, a group legal services plan is required to fulfill certain requirements. One such requirement is that group legal services benefits may not discriminate in favor of highly compensated employees in certain respects.

The exclusion for group legal services benefits expired for taxable years beginning after September 30, 1990. Only amounts paid before October 1, 1990, in taxable years beginning in 1990 for coverage before October 1, 1990, are taken into account in determining the amount of the exclusion for the year.

In addition, present law provides tax-exempt status for an organization the exclusive function of which is to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan (sec. 501(c)(20)). The tax exemption for such an organization expired for taxable years beginning after September 30, 1990.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the exclusion for employer-provided group legal services and the tax exemption for qualified group legal services organizations through taxable years beginning before January 1, 1992. In addition, the special rule limiting the exclusion in the case of taxable years beginning in 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference Agreement

The conference agreement follows the Senate amendment.

5. TARGETED JOBS TAX CREDIT

Present Law

A tax credit is available on an elective basis to employers of individuals described in at least one of nine targeted groups. The nine groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged (as measured by family income), or disabled. The credit generally is equal to 40 percent of the first $6,000 of qualified first year wages. A credit equal to 40 percent of up to $3,000 of wages to any disadvantaged summer youth employees is also allowed. The employer's deduction for wages must be reduced by the amount of the credit. The credit expired on September 30, 1990.

Present law also authorizes appropriations for administrative and publicity expenses relating to the credit through September 30, 1990. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the targeted jobs tax credit through December 31, 1991. Generally, the authorization for appropriations also is extended.

Conference Agreement

The conference agreement follows the Senate amendment. The conference agreement also clarifies that an individual is to be treated as convicted, for purposes of the credit, if a State court places him on probation without making a finding of guilty (deferred adjudication). This clarification is made on a prospective basis and no inference is intended by this clarification as to present law.

6. BUSINESS ENERGY TAX CREDITS

Present Law

Business energy tax credits were allowed through September 30, 1990, for three types of energy property:

	Percent credit
Solar energy	10
Geothermal energy	10
Ocean thermal energy	10

House Bill

No provision.

Senate Amendment

The business energy tax credits are extended for qualified property which is placed in service after September 30, 1990, through December 31, 1991.

Conference Agreement

The conference agreement follows the Senate amendment, with the modification that the one-year extension of the business energy tax credits does not include ocean thermal property.

7. LOW-INCOME RENTAL HOUSING TAX CREDIT

Present Law

A tax credit is allowed in annual installments over 10 years for qualifying low-income rental housing, which may be newly constructed or substantially rehabilitated residential rental property. For most newly constructed and substantially rehabilitated housing placed in service after 1987, the credit percentages are adjusted monthly to maintain a present value of the credit stream of 70 percent of the total qualified expenditures. In the case of housing receiving other Federal subsidies (including the use of the proceeds of tax-exempt bonds) and the acquisition of an existing building which is substantially rehabilitated, monthly adjustments are made to maintain a present value of the credit stream of 30 percent of the total qualified expenditures. Generally, that part of the building for which the credit is claimed must be rented to qualified low-income tenants at restricted rents for 15 years after the building is placed in service. In addition, a subsequent additional 15-year period of low-income use is generally also required.

In order for a credit to be claimed with respect to a building, the building owner generally must receive a credit allocation from the appropriate credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation. The low-income housing credit is allocated by State or local government authorities subject to an annual limitation for each State. The annual State credit limitation was $1.25 per resident for years before 1990 and is $0.9375 per resident for 1990.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the low-income rental housing tax credit through December 31, 1991. It also restores the credit allocation limit to $1.25 per State resident for 1990 and makes several changes to the low-income credit. In addition, the Senate amendment makes the following modifications.

Rights of first refusal

The amendment expands present law to provide that tenant cooperatives, resident management corporations, qualified nonprofits,

and governmental agencies, as well as tenants acting individually, may have a right of first refusal to purchase their units at the end of the compliance period.

Definition of qualified nonprofit

The amendment provides that a qualified nonprofit organization must own (directly or indirectly) an interest in the project throughout the compliance period. Also, a qualified nonprofit organization (as determined by the State housing credit agency) may not be affiliated with or controlled by a for-profit organization.

10-year rule

The amendment provides an exception from the 10-year placed-in-service rule for owner-occupied single family dwelling units that have had no use other than as a principal residence for the owner thereof for the 10-year period before its placement in service with respect to which the credit is claimed.

Compliance

The amendment provides that qualified allocation plans must include a procedure for monitoring and reporting noncompliance to the IRS.

Intermediary costs

The requirement that the amount of intermediary costs be given the highest priority in allocating the credit is deleted from the qualified plan requirements and is instead made a factor in project evaluations.

Gross rent limitation

For purposes of the gross rent rules, the amendment provides that FmHA's Section 515 program is to be treated comparably to the HUD Section 8 program.

Qualified census tracts

The amendment authorizes the Secretary of Housing and Urban Development (HUD) to use data from census enumeration districts in lieu of data from census tracts in situations where data from census tracts is unavailable.

Credit and HUD Section 8 programs

The amendment provides an exception from the denial of the credit in conjunction with the Section 8 Moderate Rehabilitation program for funds disbursed under the Stewart B. McKinney Homeless Assistance Act of 1988.

Units occupied by students

The amendment provides that dwelling units occupied by students receiving AFDC payments do not fail to qualify for the credit.

Passive loss rules

The amendment modifies the $25,000 deduction equivalent allowance by removing the $200,000 to $250,000 adjusted gross income

phaseout range for the rehabilitation tax credit in certain circumstances. This phaseout range is removed with respect to any portion of the passive activity credit that is attributable to the rehabilitation investment credit (within the meaning of section 48(o)) with respect to a building for which a credit is determined under section 42 for such year.

Effective dates

The amendments generally are effective for determinations made under section 42 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990. For projects not subject to the credit allocation limits, the amendments generally apply to buildings placed in service after December 31, 1990.

The provisions relating to rights of first refusal, the definition of qualified nonprofit, the 10-year rule, and units occupied by students are effective upon date of enactment.

The provision relating to compliance monitoring and reporting procedures in State allocation plans is effective for calendar years beginning after December 31, 1991.

The provision which removes the adjusted gross income limitation for rehabilitation tax credits, in certain circumstances, under the passive loss rule is effective in taxable years ending after December 31, 1990, for property placed in service for purposes of the rehabilitation tax credit after December 31, 1990. In addition, if the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

Rights of first refusal

The conference agreement follows the Senate amendment.

Definition of qualified nonprofit

The conference agreement follows the Senate amendment.

10-year rule

The conference agreement follows the Senate amendment.

Compliance

The conference agreement follows the Senate amendment.

Intermediary costs

The conference agreement follows the Senate amendment.

Gross rent limitation

The conference agreement follows the Senate amendment.

Qualified census tracts

The conference agreement follows the Senate amendment.

Credit and HUD Section 8 programs

The conference agreement follows the Senate amendment with a modification. The modification is to mandate a study to be undertaken jointly by the Secretary of the Treasury and the Inspector General of the Department of Housing and Urban Development. The purpose of the study is to report on the combined use of the low-income credit and Section 8 Moderate Rehabilitation funds and the effectiveness of this provision in meeting the objectives of the low-income housing credit. Congress is concerned about the use of the low-income credit with such funds in light of previous allegations of questionable practices with the Section 8 Moderate Rehabilitation program. The report is to be submitted to the House Ways and Means Committee and the Senate Finance Committee by January 1, 1993.

Units occupied by students

The conference agreement follows the Senate amendment.

Passive loss rules

The conference agreement follows the House bill.

Election to accelerate credit

The conference agreement permits individual taxpayers, who held an interest in a low-income housing credit property on October 26, 1990, to claim credits in taxable year 1990 with respect to that interest which are otherwise allowable in future years. The election may increase the credit claimed in 1990 by up to 50 percent of the otherwise allowable credit. This election is binding on all successors in interest to the taxpayer. In the case of property owned by a partnership, the election is made at the partnership level and is binding on all partners.

Allowable credits, in future years, for the same property are ratably reduced by the additional amount of the credit claimed in 1990. For example, if a taxpayer elected to claim an addition $70 of credit, with respect to a credit property which is eligible for seven years of credit after 1990, then the allowable credit in each of the subsequent seven years is reduced by ten dollars per year.

Effective dates

The amendments generally are effective for determinations made under section 42 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990. For projects not subject to credit allocation limits, the amendments generally apply to buildings placed in service after December 31, 1990 but only with respect to bonds issued after December 31, 1990.

The provisions relating to rights of first refusal, the definition of a qualified nonprofit, the 10-year rule, and units occupied by students are effective upon the date of enactment.

The provision relating to compliance monitoring and reporting procedures in the State allocation plans is effective after December 31, 1991.

The provision relating to the election to accelerate the credit is generally effective for taxable years ending after October 26, 1990.

The provision relating to bond-financed buildings in progress in the termination year of the credit (section 42(o)) is effective for calendar years after 1989.

8. MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES

Present Law

Qualified mortgage bonds (QMBs) generally are used to finance the purchase or qualifying rehabilitation or improvement of single family, owner-occupied homes. The recipients of QMB-financed loans must meet purchase price, income, and other restrictions.

Qualified governmental units may elect to exchange qualified mortgage bond authority for authority to issue mortgage credit certificates (MCCs). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC generally remains in effect as long as the residence being financed continues to be the certificate-recipient's principal residence. MCCs generally are subject to the same borrower eligibility requirements as QMBs.

Effective for loans originating after December 31, 1990, a portion of the QMB and MCC subsidy (other than qualified home improvement loans) is recaptured upon disposition of a house financed with an assisted loan within ten years. The amount of the recapture is phased out for taxpayers who have resided in the home for more than five years. The recapture is the lesser of fifty percent of the gain realized on disposition or 1.25 percent of the initial loan principal multiplied by the number of years (up to a maximum of 5 years) that the taxpayer has owned the home. Recapture only applies to certain recipients whose income rises substantially after the financing is received.

Authority to issue QMBs and to exchange private activity bond volume authority for authority to issue MCCs expired on September 30, 1990.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the QMB and MCC programs through December 31, 1991. It also delays the effective date of the recapture provision for one year. Specifically, the recapture provision becomes effective for loans originating or MCCs issued after December 31, 1991, rather than loans originating or MCCs issued after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment on the extension of authority to issue QMBs and MCCs, but adopts certain modifications to the present recapture rules in lieu of delaying the

effective date of those rules as was provided in the Senate amendment.

The conference agreement includes three principal modifications to the present-law rules governing recapture of the subsidy provided by QMBs and MCCs. First, the maximum recapture period is reduced from 10 years to 9 years. Second, the amount recaptured is adjusted annually throughout this 9-year period rather than monthly. Thus, the recapture amount is the lesser of: (1) 50 percent of the gain realized on disposition or (2) a percentage of the imputed MRB or MCC subsidy (other than qualified home improvement loans). The imputed subsidy limitation is 20 percent for dispositions within one year after a homebuyer receives the MRB or MCC financing. The percentage increases to 40 percent in year two, 60 percent in year three, 80 percent in year four, and 100 percent in year five. The imputed subsidy limitation then is reduced to 80 percent in year six, 60 percent in year seven, 40 percent in year eight, 20 percent in year nine and zero thereafter. Third, the recapture provision's income adjustment exception is liberalized to determine the 5-percent-per-year inflation adjustment with compounding.

These modifications are effective as if included in the Technical and Miscellaneous Revenue Act of 1988.

9. QUALIFIED SMALL-ISSUE BONDS

Present Law

Interest on certain small issues of private activity bonds is exempt from tax if at least 95 percent of the net proceeds of the bonds is to be used to finance manufacturing facilities or certain land or property for first-time farmers ("qualified small-issue bonds").

The issuer of a qualified small-issue bond must receive an allocation from the State private activity volume cap. Authority to issue qualified small-issue bonds expired September 30, 1990.

House Bill

No provision.

Senate Amendment

The Senate amendment extends authority to issue qualified small-issue bonds through December 31, 1991.

Conference Agreement

The conference agreement follows the Senate amendment.

10. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS

Present Law

Present law provides a deduction for 25 percent of the amounts paid for health insurance for a taxable year on behalf of a self-employed individual and the individual's spouse and dependents. The

25-percent deduction is also available to a more than 2-percent shareholder of an S corporation.

No deduction is allowable for any taxable year in which the self-employed individual or eligible S corporation shareholder is eligible to participate (on a subsidized basis) in a health plan of an employer of the self-employed individual (or of such individual's spouse).

The 25-percent deduction expires for taxable years beginning after September 30, 1990. For taxable years beginning in 1990, the deduction is allowed only for premiums paid for coverage before October 1, 1990. In addition, an individual's earned income for the taxable year beginning in 1990 is pro rated in determining the applicable deduction for such year.

House Bill

No provision.

Senate Amendment

The Senate amendment extends the 25-percent deduction for health insurance costs of self-employed individuals through taxable years beginning before January 1, 1992. In addition, the special rule prorating the deduction for taxable years beginning in 1990 is repealed.

The provision is effective for taxable years beginning after December 31, 1989.

Conference Agreement

The conference agreement follows the Senate amendment.

11. ORPHAN DRUG TAX CREDIT

Present Law

A 50-percent tax credit is allowed for qualified clinical testing expenses incurred during the taxable year for human clinical tests of drugs for certain rare diseases or conditions. Clinical testing expenses do not qualify for the credit unless the drug previously has been approved for human testing by the Food and Drug Administration (FDA), but the drug has not yet been approved for sale by the FDA.

This tax credit expires after December 31, 1990.

House Bill

No provision.

Senate Amendment

The credit will be allowed for expenses incurred in qualified human clinical testing after December 31, 1990, and before January 1, 1992.

Conference Agreement

The conference agreement follows the Senate amendment.

F. Other Tax Incentive Provisions

1. ENERGY INCENTIVE PROVISIONS

a. Credit for nonconventional fuels

Present Law

In general

Nonconventional fuels are eligible for a production credit that is equal to $3 per barrel or BTU oil barrel equivalent (adjusted for inflation). Qualified fuels must be produced from a well drilled, or a facility placed in service, before January 1, 1991. The production credit is available for qualified fuels sold before January 1, 2001.

Qualified fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass, and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Gas produced from tight formations

Under the nonconventional fuels production credit, qualifying gas produced from a tight formation only includes gas the price of which is regulated by the United States or for which the maximum lawful price is at least 150 percent of the applicable price under section 103 of the Natural Gas Policy Act of 1978 (P.L. 95–621). As a cumulative result of various legislative and regulatory actions that have occurred since the section 29 credit was enacted, the credit presently is not available to most gas produced from tight formations, and will no longer be available for any such gas as of January 1, 1993.

House Bill

No provision.

Senate Amendment

The January 1, 1991 drilled or placed-in-service date and the sunset date of January 1, 2001 under section 29 are repealed, and the nonconventional fuels credit is made permanent under the Senate amendment. For purposes of the credit, the Senate amendment treats as qualifying tight formation gas any gas produced from a tight formation (1) which is produced from a well drilled after December 31, 1990, or (2) which, as of April 20, 1977, was committed or dedicated to interstate commerce. Wells producing gas that was not committed or dedicated to interstate commerce as of April 20, 1977, and thus was subject to decontrol under provisions of the Natural Gas Policy Act of 1978, do not qualify for reinstatement of the credit under the Senate amendment. The provisions related to natural gas produced from tight formations apply to qualifying tight formation gas which is produced after December 31, 1990.

Conference Agreement

The conference agreement generally follows the Senate amendment with the following two modifications. First, rather than extending the section 29 credit permanently, the conference agreement extends both the drilled or placed-in-service date and the sunset date of the credit for two years. Thus, the credit will apply with respect to qualified fuels which are produced from a well drilled before January 1, 1993, or produced in a facility placed in service before January 1, 1993, and which are sold before January 1, 2003.

Second, the conference agreement specifies that the amount of credit allowable under section 29 with respect to any qualifying production from an enhanced oil recovery project must be reduced by the amount of general business credit claimed with respect to that project for the taxable year or any prior taxable year that is attributable to the enhanced oil recovery credit provided under a separate provision of the conference agreement.

b. Alcohol fuels credit, exemption, and tariff

Present Law

An income tax credit of 60 cents per gallon is allowed to producers and blenders of alcohol (190 or greater proof) used as fuel, sold at retail for use as fuel, or mixed with fuel in a mixture used as fuel in a motor vehicle driven on highways. Alcohol with a proof greater than 150 but less than 190 is allowed a credit of 45 cents per gallon. The alcohol fuels may be blended with gasoline, diesel fuel, or special motor fuels. The income tax credit is scheduled to expire after December 31, 1992.

Alternatively, in lieu of the income tax credit, a 6-cents-per-gallon excise tax exemption from excise taxes on gasoline, diesel fuel, or special motor fuels used to finance the Highway Trust Fund is allowed on the sale of an alcohol fuel mixture that consists of 10-percent alcohol fuel and 90-percent motor fuel. The excise tax exemption terminates after September 30, 1993.

In addition, a tariff of 15.85 cents per liter (metric equivalent of 60 cents per gallon) of imported alcohol fuel is levied to offset the domestic alcohol fuels tax credit and excise tax exemption. Certain quantities of alcohol fuel may be imported duty-free from Caribbean Basin Initiative (CBI) countries, if the alcohol fuel meets statutory requirements with respect to value added in the CBI. Imports of ETBE (ethyl tertiary butyl ether) enter with a duty rate of 6.66 cents per liter. The three import provisions terminate after December 31, 1992 (except that the ETBE tariff also expires on an earlier date, if any, that Treas. Reg. 1.40–1 is withdrawn or declared invalid).

House Bill

No provision.

Senate Amendment

A new 10-cents-per-gallon income tax credit is allowed for production of up to 15 million gallons per year of ethanol by an eligible small ethanol producer, defined as a person with a productive capacity for alcohol not in excess of 20 million gallons of alcohol per year. Appropriate anti-abuse rules are included (1) to recapture the credit in event of failure to use ethanol or an ethanol fuel mixture as fuel and (2) to prevent the credit from benefiting directly or indirectly any producer with a productive capacity in excess of 20 million gallons of alcohol per year or any person with respect to more than 15 million gallons of ethanol per year.

The income tax credit of 60 cents per gallon for ethanol fuels or ethanol fuel mixtures is decreased to 55 cents per gallon for 190 or greater proof ethanol. The credit for 150 to 190 proof ethanol is reduced from 45 cents to 40 cents per gallon.

The excise tax exemption is reduced from 6 cents per gallon to 5.5 cents per gallon for a 10-percent ethanol fuel/90-percent motor fuel mixture.

The credit and the excise tax exemption for alcohol fuels and alcohol fuel mixtures are extended through December 31, 2000, and September 30, 2000, respectively. In addition, at any time prior to January 1, 2001, the credit and the excises tax exemption will terminate, or will be reinstituted, at the same time that the Highway Trust Fund financing rates under the motor fuels excise taxes expire, are terminated, or are reinstituted. Unused credits may be carried forward only for two taxable years after termination of the credit.

Appropriate adjustments are made in the tariff schedules to reduce the tariff on ethanol from 15.85 cents per liter to 14.53 cents per liter. These adjustments conform the tariff rate to the reduced income tax credit of 55 cents per gallon. The tariff and the CBI exemption terminate after September 30, 2000, and in the case of ETBE, the earlier date, if any, on which Treas. Reg. sec. 1.40–1 is withdrawn or declared invalid. The tariff rate is inapplicable during any period when the Highway Trust Fund financing rate is not in effect.

The provisions of the Senate amendment are effective after December 31, 1990.

Conference Agreement

The conference agreement follows the Senate amendment with modifications.

The additional alcohol fuels credit of 10 cents per gallon is made available to producers with annual production capacity of up to 30 million (instead of 20 million) gallons of alcohol. The ethanol blender credit is reduced to 54 cents per gallon, and the ethanol exemption from the gasoline tax is reduced to 5.4 cents per gallon of gasohol mixture. Corresponding adjustments are made to the tariffs on ethanol and ETBE. The tariff on ethanol will decrease to 14.27 cents per liter (11.34 cents per liter on imports from Canada) and the tariff on ETBE will decrease to 5.99 cents per liter (4.76 cents per liter on imports from Canada).

The conference agreement modifies the anti-abuse rules in the Senate amendment to provide that in the case of flow-thru entities, the productive capacity limitation will be applied at both the entity and interest holder levels.

The conference agreement includes an extension of the tax and tariff provisions relating to ethanol. As under present law, the tariff provision on ETBE would cease to have effect in the event that Treasury regulation sec. 1.40–1 (relating to ETBE) is withdrawn or judicially declared invalid. The conferees intend that no inference be drawn as to Congressional acquiescence in such regulation under present law.

c. Tax credit for costs attributable to enhanced oil recovery projects and qualified exploratory costs

Present Law

Enhanced oil recovery

Under present law, no tax credit is allowed for costs related to enhanced oil recovery projects (generally these projects are referred to as tertiary recovery projects).

Exploratory drilling costs

Under present law, an operator who pays or incurs intangible drilling or development costs ("IDCs") in the development of a domestic oil or gas property may elect either to expense or capitalize such amounts. If a taxpayer elects to expense IDCs, the taxpayer deducts the amount of the IDC as an expense in the taxable year the cost is paid or incurred. Generally, if IDCs are not expensed, but are capitalized, they can be recovered through depletion or depreciation, as appropriate, or under a special election, they may be amortized over a 60-month period. In the case of a nonproductive well ("dry hole"), IDCs may be deducted, at the election of the operator, as an ordinary loss in the taxable year in which the dry hole is completed. In the case of an integrated oil company, 30 percent of the IDCs on productive wells must be capitalized and amortized over a 60-month period.

House Bill

No provision.

Senate Amendment

General rule

The Senate amendment adds a new domestic energy exploration and production tax credit as a component of the general business credit. The exploration and production credit is equal to 15 percent of qualified costs attributable to qualified enhanced oil recovery ("EOR") projects and to certain exploratory drilling in the United States. To the extent that a credit is allowed for these costs, the taxpayer must reduce the amount otherwise deductible or required to be capitalized and recovered through depreciation, depletion, or amortization, as appropriate, with respect to these costs.

The amount of the exploration and production credit is to be reduced in a taxable year following a calendar year during which the average price of crude oil exceeds $28 (adjusted for inflation). The credit will be reduced ratably over a $6 phaseout range.

Tax credit base

One component of the exploration and production credit base consists of qualified enhanced oil recovery costs. This term includes the following costs which are paid or incurred with respect to a qualified domestic EOR project: (1) the cost of tangible property which is an integral part of the project and with respect to which depreciation or amortization is allowable; (2) intangible drilling and development costs with respect to which a taxpayer may make an election to deduct under section 263(c); and (3) the cost of tertiary injectants with respect to which a deduction is allowable under section 193.

The second component of the exploration and production credit base includes qualified exploratory costs attributable to domestic exploratory drilling. The term qualified exploratory costs generally means intangible drilling and development costs of a taxpayer other than an integrated oil company that the taxpayer may elect to deduct under section 263(c), and that are paid or incurred in connection with the drilling of an exploratory well located in the United States. However, qualified exploratory costs do not include any cost related to the acquisition, construction, transportation, erection, or installation of an offshore platform. Nor do they include costs incurred after the commencement of the installation of the production string of casing.

Effective date

The enhanced oil recovery portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, with respect to costs paid or incurred in EOR projects begun or significantly expanded after that date. The exploratory drilling portion of the exploration and production credit is effective for taxable years beginning after December 31, 1990, for costs paid or incurred after that date.

Conference Agreement

The conference agreement generally follows the Senate amendment, with the modification that the credit applies only to qualified enhanced oil recovery costs. That is, the conference agreement does not include qualified exploratory costs in the credit base.

In addition, the conference agreement incorporates several other modifications to the Senate amendment. Nine tertiary recovery methods were listed in the June 1979 Department of Energy regulations (section 212.78(c)). The conferees intend that a project employing one of these listed methods generally be considered a qualified enhanced oil recovery project. In addition, for purposes of the enhanced oil recovery credit, immiscible non-hydrocarbon gas displacement generally is considered a qualifying tertiary recovery method, even if the gas injected is not carbon dioxide. By inclusion of this additional qualifying method, the conferees intend no infer-

ence regarding whether the costs of these injectants are deductible under section 193. The Secretary of the Treasury is granted the authority under the conference agreement to clarify the scope and parameters of the listed tertiary recovery methods for application of the enhanced oil recovery credit (e.g., the Secretary may re-examine the use of polymer-augmented water flooding and may distinguish situations in which this method is appropriately treated as a tertiary recovery method from situations in which it is not). In addition, the Secretary is given discretion to add to the list of qualifying methods to take into account advances in enhanced oil recovery technology. The conferees expect that the Secretary will issue regulations regarding the enhanced oil recovery credit in a timely manner.

Under the conference agreement, one component of the base of the enhanced oil recovery credit is intangible drilling costs with respect to which the taxpayer may elect to deduct under section 263(c). The conferees wish to clarify that in the case of an integrated oil company, the credit base includes those intangible drilling costs which the taxpayer is required to capitalize under section 291(b)(1).

d. Modification of percentage depletion rules

Present Law

In general

Under present law, certain persons owning economic interests in domestic oil and gas producing properties may deduct an allowance for depletion in computing taxable income. The percentage depletion allowance for oil and gas is computed as a fixed percentage (i.e., 15 percent) of the taxpayer's gross income from the oil or gas property.

Net income limitation

The allowance for percentage depletion is subject to a net income limitation; that is, the deduction for percentage depletion is limited (on a property-by-property basis) to an amount not in excess of 50 percent of the taxpayer's net taxable income from the property, computed without a deduction for depletion.

Transferred property limitation

The allowance for percentage depletion generally does not apply to interests in oil or gas properties that were transferred after December 31, 1974 by one taxpayer to another if, at the time of the transfer, the principal value of the property had been demonstrated by prospecting, exploration, or discovery work.

House Bill

No provision.

Senate Amendment

Net income limitation

Under the Senate amendment, the net income limitation on oil and gas percentage depletion is increased from 50 percent to 100 percent of the net income from the property.

Transferred property limitation

The Senate amendment repeals the prohibition on claiming percentage depletion on transferred proven oil and gas properties.

Percentage depletion on marginal production

In addition, under the Senate amendment, the statutory percentage depletion rate will be increased by one percent (subject to a maximum rate increase of 10 percent) for each whole dollar that the average domestic wellhead price of crude oil for the immediately preceding calendar year is less than $20 per barrel (not to be adjusted for inflation). This provision of the Senate amendment applies only to interests in marginally producing oil and gas wells (i.e., stripper wells or wells that produce heavy oil) held by independent producers or royalty owners.

Effective dates

The provisions related to the net income limitation and the percentage depletion rate for marginal properties are effective for taxable years beginning after December 31, 1990. The provision repealing the transfer rule is effective for property transfers occurring after October 11, 1990.

Conference Agreement

The conference agreement generally follows the Senate amendment, subject to the following modification and clarification.

The conference agreement modifies the manner in which marginal production is defined for purposes of the provision of the Senate amendment that increases the rate of percentage depletion on such production in certain cases. (In addition, this modified definition applies to the provision of the conference agreement that provides a special deduction from alternative minimum taxable income for percentage depletion attributable to marginal production.)

Under the conference agreement, the term marginal production includes (1) crude oil and natural gas produced from a domestic stripper well property, and (2) oil produced from a domestic property, substantially all of the production from which during the year is heavy oil (i.e., oil that has a weighted average gravity of 20 degrees API or less corrected to 60 degrees Fahrenheit). A stripper well property is any oil or gas producing property which produces a daily average of 15 or less equivalent barrels of oil and gas per producing oil or gas well on such property in the calendar year during which the taxpayer's taxable year begins.

The determination of whether a property qualifies as a stripper well property under the conference agreement shall be made separately for each calendar year. The fact that a property does or does not qualify as a stripper well property for one year shall not affect

the determination of the status of that property for a subsequent year. The stripper well property determination is to be made by a taxpayer for each separate property interest, as defined under section 614, held by the taxpayer during a calendar year. The determination is to be based on the total amount of production from all producing wells that are treated as part of the same property interest of the taxpayer. For this purpose, a well is considered a producing well only if it produces more than an insignificant amount of oil or gas during the calendar year. A property qualifies as a stripper well property for a calendar year only if the wells on such property were producing during that period at their maximum efficient rate of flow.

Where a taxpayer's property consists of a partial interest in one or more oil or gas producing wells, the determination of whether the property is a stripper well property or a heavy oil property shall be made with respect to total production from such wells, including the portion of total production attributable to ownership interests other than the taxpayer's.

The conference agreement clarifies the application of the marginal property determination with respect to a taxpayer with a taxable year other than the calendar year. In such a case, the taxpayer must determine whether its property interest qualifies as a stripper well property or a heavy oil property on the basis of production from the producing wells on the property during the calendar year. If a property qualifies as a stripper well or heavy oil property for a calendar year, then the taxpayer's share of production from that property for its taxable year beginning in that calendar year will qualify as marginal production. If in the following calendar year the property does not satisfy the definition of a stripper well property, then the taxpayer's share of production from that property for its following taxable year will not be treated as marginal production.

e. Alternative minimum tax relief for oil and gas operations

Present Law

Under present law, corporations and individuals are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent that it exceeds the taxpayer's regular income tax owed. The tax is imposed at a flat rate of 20 percent (21 percent in the case of individuals) on alternative minimum taxable income in excess of the exemption amount.

The items of tax preference relating to oil and gas operations for which additions are made to taxable income to arrive at alternative minimum taxable income are as follows: (1) to the extent that a percentage depletion deduction for regular tax purposes represents depletion in excess of the taxpayer's basis in the depletable property, that deduction constitutes an item of tax preference (the "percentage depletion preference"), and (2) the amount of intangible drilling costs (IDCs) that are expensed in excess of the amount that would have been allowable if the costs had been capitalized and recovered through cost depletion or amortized ratably over a 10-year period and that are in excess of 65 percent of the amount

of net oil and gas income is an item of tax preference (the "excess IDC preference").

For taxable years beginning after 1989, the alternative minimum taxable income of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) exceed pre-net operating loss alternative minimum taxable income. In general, adjusted current earnings means alternative minimum taxable income with additional adjustments. These adjustments generally follow the rules presently applicable to corporations in computing their earnings and profits.

The adjustments specifically relating to oil and gas operations are as follows: (1) the allowance for depletion for any property placed in service in a taxable year beginning after 1989 shall be computed using the cost depletion method (the "ACE depletion adjustment"), and (2) intangible drilling costs deductible under section 263(c) in taxable years beginning after 1989 are capitalized and amortized over the 60-month period beginning with the month in which such costs are paid or incurred (the "ACE IDC adjustment").

House Bill

No provision.

Senate Amendment

The Senate amendment provides a special energy deduction for purposes of computing alternative minimum taxable income. The deduction is based on a specified portion of the various oil and gas related tax preference items. In addition, for corporations, the deduction generally includes a specified percentage of the energy-related portion of the adjusted current earnings adjustment.

Specifically, the special energy deduction is initially determined by determining the taxpayer's (1) intangible drilling cost preference and (2) marginal production depletion preference. The intangible drilling cost preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the excess IDC preference and the ACE IDC adjustment. The marginal production depletion preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the excess depletion preference and the ACE depletion adjustment attributable to marginal production. The intangible drilling cost preference is then apportioned between (1) the portion of the preference related to qualified exploratory costs and (2) the remaining portion of the preference. The portion of the preference related to qualified exploratory costs is multiplied by 75 percent and the remaining portion is multiplied by 15 percent. The marginal production depletion preference is multiplied by 50 percent. The three products described above are added together to arrive at the taxpayer's special energy deduction (subject to certain limitations).

The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either the special energy deduction or the alternative tax net operating loss deduction. Any special energy deduction amount limited by the 40-percent threshold may not be

carried to another taxable year. In addition, the combination of the special energy deduction, the alternative tax net operating loss deduction, and the alternative minimum tax foreign tax credit cannot reduce more than 90 percent of the taxpayer's alternative minimum tax liability determined without such items.

The special energy deduction will be phased out in taxable years that follow calendar years in which the price of crude oil exceeds a specified level. The amount of the special energy deduction (determined without regard to the phase-out) is to be reduced for any taxable year that immediately follows a calendar year during which the average price of crude oil exceeds $28 per barrel (adjusted for inflation using the GNP implicit price deflator) and will be completely phased out if the average price of oil exceeds such inflation adjusted amount by $6 or more in such year.

The special energy deduction is effective for taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement generally follows the Senate amendment. The conference agreement clarifies that for purposes of determining the intangible drilling cost preference and marginal production depletion preference, respectively, alternative minimum taxable income is computed without taking into account the special energy deduction and the alternative tax net operating loss deduction.

The conference agreement clarifies that the special energy deduction has no effect on the tax base for the environmental tax computed under section 59A. That is, the environmental tax is equal to 0.12 percent of alternative minimum taxable income determined without regard to (1) the alternative tax net operating loss deduction, (2) the environmental tax deduction, and (3) the special energy deduction.

In addition, the conference agreement provides a number of modifications and clarifications with respect to the definitions of the terms qualified exploratory costs and exploratory well. Generally, qualified exploratory costs are IDCs which the taxpayer may elect to deduct as expenses under section 263(c), and which are attributable to the drilling of a domestic oil or gas well. With regard to this definition, the conferees wish to clarify that IDCs attributable to the drilling of nonproductive wells are not precluded from being treated as qualified exploratory costs. In addition, costs which the taxpayer elects to capitalize and amortize under section 59(e) are treated as IDCs for purposes of determining total IDCs and the exploratory portion of total IDCs. Under the conference agreement, IDCs paid or incurred after the installation of the production string of casing begins with respect to a well also are not precluded from being treated as qualified exploratory costs.

Under the conference agreement, a well (the "new well") generally qualifies as an exploratory well if at the time it is completed (or if not completed, at the time drilling operations cease), there is no completed oil or gas well that is capable of production in commercial quantities within a 1.25 mile radius of the new well. If the new well is drilled within 1.25 miles of a completed well capable of

production in commercial quantities of oil or gas, it will qualify as an exploratory well if it is drilled to a total depth at least 800 feet below the completion depth of the deepest completion depth of any oil or gas well capable of production in commercial quantities within that 1.25 mile radius. For purposes of applying this distance test, the conferees wish to clarify that distance is to be measured by reference to the surface locations of the relevant wells. If the new well fails both the distance and depth tests, it nevertheless will be considered an exploratory well if it is drilled into a new reservoir of oil or gas and is capable of production in commercial quantities. A reservoir, for this purpose, generally is a separate and distinct producing oil or gas reservoir that is not in communication with any other producing reservoir. The conference agreement specifies that a gas well will not be treated as having been completed into a new reservoir if the reservoir consists of a deposit of tight formation gas, Devonian shale, or coal seams gas.

The conference agreement provides that with respect to the drilling of offshore wells, the term exploratory well generally includes wells drilled from a mobile drilling rig or ship. The conference agreement provides, however, that qualified exploratory costs do not include IDCs attributable to any well drilled from an offshore platform, unless it can be demonstrated by the taxpayer that the well is drilled into a reservoir that has not previously been penetrated by any well.

Under the conference agreement, a well generally is presumed to be capable of production in commercial quantities at the time that it has been completed with the installation of a "christmas tree" or other mechanism to regulate the flow of oil or gas. An offshore well generally is deemed not to be capable of production in commercial quantities prior to the time of the installation of the related offshore platform or other production system. Under the conference agreement, a well generally is considered completed when the production string of casing and a "christmas tree" or other mechanism to regulate the flow of oil or gas has been installed.

2. SMALL BUSINESS INCENTIVES

a. Revision of estate freeze rules

Present Law

Estate tax inclusion relating to estate freezes

If a person, in effect, transfers property having a disproportionately large share of the potential appreciation in such person's interest in an enterprise while retaining an interest, or right in, the enterprise, then the transferred property is includible in his gross estate (Code sec. 2036(c)). Dispositions of either the transferred or retained property prior to the transferor's death result in a deemed gift equal to the amount that would have been includible in the gross estate had the transferor died at the time of the transfer.

Preferred interests in corporations and partnerships

The transfer of a residual interest in a corporation or partnership for less than full and adequate consideration is a gift. The

value of a residual interest in a corporation or partnership often is determined by subtracting the value of the preferred interest from the value of all interests in the corporation or partnership.

Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Under the "willing buyer, willing seller" valuation standard, it is assumed that rights will be exercised so as to maximize the value of the owner's interests. The failure to exercise rights in an arm's-length manner may give rise to a taxable gift.

Gift tax statute of limitations

Generally, no proceeding in a court for the collection of gift tax can begin without an assessment within 3 years after the filing of the return. If no return is filed, the tax may be assessed, or a suit commenced to collect the tax without assessment, at any time.

Trusts and term interests in property

The transfer of a remainder interest in property results in a taxable gift if the value of the remainder interest exceeds the value of any consideration received for such interest. The value of the remainder interest is the value of the entire property less the value of rights in the property retained by the transferor. Income interests retained by the transferor generally are valued pursuant to Treasury tables that assume a rate of return on the underlying property equal to 120 percent of the applicable Federal midterm interest rate.

Options and buy-sell agreements

Some courts have held that the price contained in a buy-sell agreement limits fair market value for estate tax purposes if the price is fixed or determinable, the estate is obligated to sell, the agreement contains restrictions on lifetime transfers, and there is a valid business purpose for the agreement.

Lapsing rights

Some courts have held that the fair market value of property is determined the moment after death. Under this theory, the value attributable to a right that lapses upon death is not subject to estate tax.

House Bill

No provision.

Senate Amendment

Estate tax inclusion relating to estate freezes

The Senate amendment repeals section 2036(c) retroactively.

Preferred interests in corporations and partnerships

The Senate amendment provides rules for valuing certain rights held by the transferor or certain family members immediately

after the transfer of a residual interest in a corporation or partnership. The rules rely on present law principles that value residual interests by subtracting the value of preferred interests from the value of the entire corporation or partnership, with an adjustment to reflect the actual fragmented ownership. The rules apply in determining the value of a residual interest that is transferred to, or for the benefit of, a family member.

The Senate amendment establishes specific valuation rules for three types of retained rights. First, a retained liquidation, put, call, conversion or similar right is valued at zero, unless such right must be exercised at a specific time and amount. Second, a retained distribution right that is noncumulative or lacks a preference upon liquidation is valued at zero if the transferor and applicable family members control the corporation or partnership. Third, a cumulative distribution right having a preference upon liquidation in a corporation or partnership in which the transferor and applicable family members retain control is valued under a special standard: the determination of whether a dividend can reasonably be expected to be timely paid is made without regard to the transferor's control. The amendment exempts from these rules a retained interest that is publicly traded, that is of the same class as the transferred interest, that is of the same class but for nonlapsing differences in voting power, or that possesses proportionally the same rights as the transferred interest.

The Senate amendment values a redemption or liquidation right without a fixed date at zero even if such right is held in conjunction with a cumulative distribution right. The Senate amendment does not specify the treatment of a distribution right with no fixed termination date.

The Senate amendment increases the amount of estate or gift tax on a subsequent transfer of the retained preferred interest by the time value of accumulated distributions. The amount of accumulated distributions and interest thereon that is subject to gift or estate tax is capped at an amount equal to (1) the excess of the fair market value of the residual interests in the corporation or partnership at the date of the subsequent transfer over the fair market value of such interests at the date of the initial transfer multiplied by (2) a fraction the numerator of which is the value of the preferred interests in the corporation or partnership held by the transferor and the denominator of which is the value of all such interests.

The Senate amendment also provides that the aggregate value of the junior equity interests in a corporation or partnership can be no less than 10 percent of the sum of the total equity in the corporation or partnership plus any debt which the corporation or partnership owes to the transferor or members of his family.

Except as provided in Treasury regulations, any redemption, recapitalization, contribution to capital, or other change in the capital structure of a corporation or partnership is treated as a transfer of an interest in such entity if an individual or applicable family member thereby receives a retained right affected by the bill. Regulations also may provide that such an event results in a transfer if the individual or applicable family member thereafter holds such an interest.

Statute of limitations

The Senate amendment provides that the gift tax statute of limitations runs for transfers subject to the rules governing preferred interests in corporations and partnerships and to increases in taxable gifts with respect to cumulative preferred stock only if the transfer is disclosed on a gift tax return with sufficient detail to apprise the Secretary of the Treasury of the nature of the transferred and retained interests.

Trusts and term interests in property

Under the Senate amendment, retained interests in trusts or term interests in property generally are valued at zero for gift tax purposes unless they take the form of an annuity or unitrust interest.

Buy-sell agreements

The Senate amendment provides that the value of property is determined without regard to any option, agreement, right or restriction, unless (1) the option, agreement, right or restriction is a bona fide business arrangement, (2) the option, agreement, right or restriction is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration, and (3) the terms of the option, agreement, right or restriction are comparable to those obtained in similar arrangements entered into by persons in an arm's length transaction.

Lapsing rights

Under the Senate amendment, the value of property is determined without regard to any restriction other than a restriction which by its terms will never lapse.

In addition, any right held by the decedent with respect to property includible in the gross estate which effectively lapses on the death of the decedent would, in valuing such property in the estate, be deemed exercisable by the estate.

Treasury study

The Senate amendment requires that the Secretary of the Treasury study buy-sell agreements and discretionary rights that have the potential for distorting transfer tax value and report the results of the study no later than December 31, 1992.

Effective date

The Senate amendment generally applies to transfers made and agreements entered into (or substantially modified) after October 8, 1990.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

Preferred interests in corporations and partnerships

Valuation of distribution rights

The conferees are concerned that by ignoring liquidation, put, call and conversion rights held in conjunction with a distribution right, the Senate amendment undervalues certain applicable retained rights. By valuing at zero a liquidation right associated with a distribution right, the Senate amendment permits the possibility that the distribution right also would receive little value, particularly when such liquidation right is likely to be exercised at the earliest possible date.

Accordingly, the conference agreement modifies the rules applicable to the valuation of distribution rights. Under the conference agreement, a retained interest that confers (1) a liquidation, put, call or conversion right and (2) a distribution right that consists of the right to receive a qualified payment (as defined below) is valued on the assumption that each right is exercised in a manner resulting in the lowest value for all such rights. Each right receives a value consistent with that assumption.

Example 1.—Father retains cumulative preferred stock in a transaction to which the provision applies. The cumulative dividend is $100 per year and the stock may be redeemed at any time after two years for $1,000. Under the conference agreement, the value of the cumulative preferred stock is the lesser of (1) the present value of two years of $100 dividends plus the present value of the redemption for $1,000 in year two, or (2) the present value of $100 paid every year in perpetuity. If the present values are substantially identical, the stock receives such value.

A qualified payment is a dividend payable on a periodic basis and at a fixed rate [14] under cumulative preferred stock (or a comparable payment under a partnership agreement).[15] A transferor or applicable family member may elect to treat any other distribution right as a qualified payment to be paid in the amounts and at the times specified in the election.

The election to treat distribution rights as qualified payments cannot be inconsistent with the legal instrument underlying the right. Accordingly, the transferor cannot elect to treat a distribution right as a right to receive a qualified payment in excess of amounts that could actually be received under the instrument. For example, a transferor cannot elect to value a noncumulative right to $100 per year on the assumption that it would pay $110 per year.

Example 2.—Father and Daughter are partners in a partnership to which Father contributes an existing business. Father is entitled to 80 percent of the net cash receipts of the partnership until he receives $1 million, after which time he and Daughter both receive 50 percent of the partnership's cash flow. Father's liquidation preference equals $1 million. Under the conference agreement, the retained right to $1 million is valued at zero, unless Father elects to

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[14] For this purpose, a fixed rate includes one bearing a fixed relationship to a specified market rate.

[15] A transferor or applicable family member may elect not to treat such a dividend (or comparable payment) as a qualified payment. If the transferor made such an election, unpaid amounts on cumulative preferred interests would not be subject to the compounding rules.

treat it as a right to receive qualified payments in the amounts, and at the times, specified in the election. If Father elects such treatment, amounts not paid at the times specified in the election become subject to the compounding rules.

Regulatory authority

The conference agreement also grants the Secretary of the Treasury regulatory authority to treat a retained interest as two or more separate interests under the provision. Such treatment would allow value to be accorded to the participating feature of a participating preferred interest pursuant to the exception for retained interests that are of the same class as the transferred interest.

Example 3.—Mother owns all the stock in a corporation. One class is entitled to the first $100 in dividends each year plus half the dividends paid in excess of $100 that year; the second class is entitled to one half of the dividends paid above $100. The preferred right under the first class is cumulative. Mother retains the first class and gives the second class to Child. Under the conference agreement, Treasury regulations may treat an instrument of the first class as two instruments under the provision: one, an instrument bearing a preferred right to dividends of $100; the other, an instrument bearing the right to half the annual dividends in excess of $100, which would fall within the exception for retained interests of the same class as the transferred interest.

Example 4.—Father and Daughter enter into a partnership agreement under which Father is to receive the first $1 million in net cash receipts and is thereafter to share equally in distributions with Daughter. Under the conference agreement, Treasury regulations may treat Father's retained interests as consisting of two interests: (1) a distribution right to $1 million and (2) a 50 percent partnership interest. Father could elect to treat the first interest as a right to receive qualified payments at specified amounts and times; the second interest would fall within the exception for retained interests of the same class as the transferred interest.

Limitation on transfer tax inclusion

Under the conference agreement, the limitation on the amount of unpaid dividends and interest subject to subsequent transfer tax equals (1) the excess of the fair market values of equity interests that are junior to any retained preferred interests at the date of the later transfer over such values as of the date of the prior transfer of the junior interest, multiplied by (2) a fraction (determined immediately before the later transfer), the numerator of which is the number of shares of preferred interests held by the transferor and the denominator of which is the number of all shares of the same class of preferred interest. This limitation applies with respect to each class of preferred held by the transferor or applicable family member.

Example 5.—A corporation has four classes of stock. Class A is entitled to the first $10 of dividends each year; Class B is entitled to the second $10 of dividends each year; Class C is entitled to the third $10 of dividends each year; and Class D is entitled to all dividends in excess of those paid to classes A, B and C. Classes A, B and C all have cumulative rights to dividends. In a transaction to

which the provision applies, Father gives Daughter stock in classes A and C while retaining stock in class B. Class D is owned by an unrelated party. Dividends are not paid on the class C stock and several years later Father dies holding the class B stock. The cap on future amounts subject to transfer tax equals the excess of the fair market value of stock in classes C and D at the date of Father's death over such value at the date of the gift multiplied by a fraction equal to the percentage of class B stock held by Father.

Exceptions

Under the conference agreement, a retained interest is valued under present law if it is of a class which is proportionally the same as the transferred interest but for nonlapsing differences in voting power (or, in the case of a partnership, nonlapsing differences with respect to management and limitations on liability). This exception would apply, for instance, if the retained and transferred interests consisted of two classes of common stock, which shared in all distributions, liquidation and other rights in a two-to-one ratio. It would not apply to a partnership with both a general and limited partner if one partner had a preference with respect to distributions.

Except as provided in Treasury regulations, a right that lapses by reason of Federal or State law generally would be treated as nonlapsing under this exception. The conferees intend, however, that Treasury regulations may give zero value to rights which lapse by reason of Federal or State law that effectively transfer wealth that would not pass in the absence of a specific agreement. Such regulations could, for example, give zero value to a management right that lapses by reason of the death of a partner under the Uniform Partnership Act as adopted in a State if the decedent had waived in the partnership agreement the right to be redeemed at fair market value under that Act.

Definitions

The conference agreement modifies two definitions in the Senate amendment.

Junior equity interest.—In the case of a partnership, a junior equity interest is any partnership interest under which the rights to income and capital are junior to the rights of all other classes of equity interests in the partnership.

Transfer.—Except as provided in Treasury regulations, a contribution to capital, or a redemption, recapitalization, or other change in the capital structure of a corporation or partnership is treated as a transfer of an interest in such entity if an individual or applicable family member thereby receives a retained right whose value would be affected by the provision. Regulations also may provide that such an event results in a transfer if the individual or applicable family member thereafter holds such an interest.

The conferees understand that such regulations would apply the provision to a contribution to capital, or a redemption, recapitalization, or other change in capital structure of a corporation or partnership that effects a transfer (determined under the above valuation rules). Thus, for example, the regulations might provide that a contribution to capital, or a redemption, recapitalization or other

change in capital structure is subject to these rules if such event would result in a gift if all applicable retained interests were valued at zero.

The conference agreement provides, however, that the provision would not apply to a change in capital structure other than a contribution to capital if the interests held by the transferor, applicable family members, and family members are substantially identical before and after the change. The provision would not apply, for example, to a recapitalization not involving a contribution to capital if all shareholders held substantially identical interests both before and after the recapitalization. Nor would it apply to a change in corporate name. In addition, the conferees intend that the addition of capital to an existing partnership or corporation would result in the application of these rules only to the extent of such contribution.

Buy-sell agreements and options

The conferees do not intend the provision governing buy-sell agreements to disregard such an agreement merely because its terms differ from those used by another similarly situated company. The conferees recognize that general business practice may recognize more than one valuation methodology, even within the same industry. In such situations, one of several generally accepted methodologies may satisfy the standard contained in the conference agreement.

Treatment of certain restrictions and lapsing rights

In general

The conference agreement modifies the provision in the Senate amendment regarding the effect of certain restrictions and lapsing rights upon the value of an interest in a partnership or corporation. These rules are intended to prevent results similar to that of *Estate of Harrison* v. *Commissioner*, 52 T.C.M. (CCH) 1306 (1987). These rules do not affect minority discounts or other discounts available under present law. The conferees intend that no inference be drawn regarding the transfer tax effect of restrictions and lapsing rights under present law.

Lapsing rights

The conference agreement provides that the lapse of a voting or liquidation right in a family-controlled corporation or partnership results in a transfer by gift or an inclusion in the gross estate. The amount of the transfer is the value of all interests in the entity held by the transferor immediately before the lapse (assuming the right was nonlapsing) over the value of the interests immediately after the lapse. The conference agreement grants the Secretary of the Treasury regulatory authority to apply these rules to rights similar to voting and liquidation rights.

Example 6.—Parent and Child control a corporation. Parent's stock has a voting right that lapses on Parent's death. Under the conference agreement, Parent's stock is valued for Federal estate tax purposes as if the voting right of the parent's stock were nonlapsing.

Example 7.— Father and Child each own general and limited interests in a partnership. The general partnership interest carries with it the right to liquidate the partnership; the limited partnership interest has no such right. The liquidation right associated with the general partnership interest lapses after ten years. Under the conference agreement, there is a gift at the time of the lapse equal to the excess of (1) the value of Father's partnership interests determined as if he held the right to liquidate over (2) the value of such interests determined as if he did not hold such right.

Restrictions

Under the conference agreement, any restriction that effectively limits the ability of a corporation or partnership to liquidate is ignored in valuing a transfer among family members if (1) the transferor and family members control the corporation or partnership, and (2) the restriction either lapses after the transfer or can be removed by the transferor or members of his family, either alone or collectively.

Example 8.—Mother and Son are partners in a two-person partnership. The partnership agreement provides that the partnership cannot be terminated. Mother dies and leaves her partnership interest to Daughter. As the sole partners, Daughter and Son acting together could remove the restriction on partnership termination. Under the conference agreement, the value of Mother's partnership interest in her estate is determined without regard to the restriction. Such value would be adjusted to reflect any appropriate fragmentation discount.

This rule does not apply to a commercially reasonable restriction which arises as part of a financing with an unrelated party or a restriction required under State or Federal law. The provision also grants to the Treasury Secretary regulatory authority to disregard other restrictions which reduce the value of the transferred interest for transfer tax purposes but which do not ultimately reduce the value of the interest to the transferee.

b. Treatment of certain expenditures incurred to make businesses accessible to disabled individuals

Present Law

Under present law, a taxpayer may elect to deduct up to $35,000 of certain architectural and transportation barrier removal expenses for the taxable year in which paid or incurred rather than capitalizing such expenses.

House Bill

No provision.

Senate Amendment

Disabled access credit

Under the Senate amendment, an eligible small business that elects the application of the provision is allowed a nonrefundable income tax credit equal to 50 percent of the amount of the eligible

public accommodations access expenditures for any taxable year that exceed $250 but do not exceed $10,250.

An eligible small business is defined for any taxable year as any person that is engaged in the trade or business of operating a public accommodation and is required by Federal law to make such accommodation accessible to, or usable by, individuals with disabilities, and that either (1) had gross receipts for the preceding taxable year that did not exceed $4 million or (2) has fewer than 30 full-time employees during the taxable year.

Eligible public accommodations access expenditures are defined as amounts paid or incurred by a taxpayer either (1) for the purpose of removing architectural, communication, or transportation barriers which prevent a public accommodation operated by the taxpayer from being accessible to, or usable by, an individual with a disability, or (2) for providing auxiliary aids or services to an individual with a disability who is an employee of, or using, a public accommodation operated by the taxpayer.

The disabled access credit applies to expenditures paid or incurred after the date of enactment.

Reduction of amount deductible as architectural and transportation barrier removal expenses

The Senate amendment also reduces the amount of architectural and transportation barrier removal expenses that may be deducted for any taxable year to $15,000.

The reduction in the amount of deductible architectural and transportation barrier removal expenses applies to taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

First, an eligible small business is defined for any taxable year as a person that had gross receipts for the preceding taxable year that did not exceed $1 million or had no more than 30 full-time employees during the preceding taxable year.

Second, the amount of the credit for any taxable year is equal to 50 percent of the eligible access expenditures for the taxable year that exceed $250 but do not exceed $10,250. Eligible access expenditures are defined as amounts paid or incurred by an eligible small business for the purpose of enabling such eligible small business to comply with applicable requirements of the Americans With Disabilities Act of 1990 (as in effect on the date of enactment of the credit).

Eligible access expenditures generally include amounts paid or incurred (1) for the purpose of removing architectural, communication, physical, or transportation barriers which prevent a business from being accessible to, or usable by, individuals with disabilities; (2) to provide qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (3) to provide qualified readers, taped texts, and other effective methods of making visually delivered materials available to individuals with visual impairments; (4) to acquire or

modify equipment or devices for individuals with disabilities; or (5) to provide other similar services, modifications, materials, or equipment. The expenditures must be reasonable and necessary to accomplish these purposes.

Finally, the disabled access credit is included as a general business credit and, thus, is subject to the rules of present law that limit the amount of the general business credit that may be used for any taxable year. The portion of the unused business credit for any taxable year that is attributable to the disabled access credit is not to be carried back to any taxable year ending before the date of enactment of the credit.

c. Expand election to expense certain depreciable business property

Present Law

Under section 179 of the Code, a taxpayer generally may elect, subject to certain limitations, to deduct the cost of up to $10,000 of qualifying property for the taxable year in which the property is placed in service, in lieu of depreciating such property. For this purpose, qualifying property is generally defined as depreciable tangible property that is purchased for use in the active conduct of a trade or business.

House Bill

No provision.

Senate Amendment

The Senate amendment amends section 179 to allow taxpayers to elect to deduct the cost of up to $14,000 of qualifying property for the taxable year in which the property is placed in service, subject to the limitations of present law.

The provision is effective for property placed in service in taxable years beginning after December 31, 1990.

Conference Agreement

The conference agreement does not include the Senate amendment.

d. Review of impact of IRS regulations on small business

Present Law

The Internal Revenue Service (IRS) must submit proposed regulations (after they are published) to the Small Business Administration (SBA) for comment on the impact of those regulations on small business. The SBA must respond within four weeks. Similar rules apply to final regulations that do not supersede proposed regulations.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

IRS must continue to submit proposed regulations (after they are published) to the SBA for comment on the impact of those regulations on small business. The SBA must respond within four weeks. The IRS must consider the SBA comments and discuss them in the preamble of the final regulations. Similar rules apply to final regulations that do not supersede proposed regulations. The provision applies to regulations issued after the date that is 30 days after the date of enactment.

e. Requirement of pie charts in IRS tax form instruction booklets

Present Law

There is no requirement for the Internal Revenue Service (IRS) to publish pie charts. Pie charts illustrating where the Government dollar comes from and where it goes have, however, been published by the IRS in Publication 17, Your Federal Income Tax.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement requires the IRS to include two pie charts in individual income tax form instruction booklets: one depicting sources of Government revenue and the other showing how that revenue is spent. This provision applies to instructions prepared for taxable years beginning after 1990.

G. Other Provisions

1. TAX TECHNICAL CORRECTIONS

House Bill

No provision in H.R. 5835. H.R. 5822 as reported by the House Ways and Means Committee contains technical, clerical, and conforming amendments to the Revenue Reconciliation Act of 1989, the Technical and Miscellaneous Revenue Act of 1988, and other recently enacted tax legislation (H. Rpt. 101-894).

Senate Amendment

No provision.

Conference Agreement

The conference agreement contains the tax technical correction provisions of H.R. 5822 as reported by the House Ways and Means Committee.

Tax-exempt bonds.—With regard to the technical corrections to the tax-exempt bond provisions of the 1989 Act, the conferees wish to clarify that the legislative history specifying the treatment of investment earnings in determining whether the expenditure requirements of the 24-month exception to arbitrage rebate requirement have been satisfied is intended to apply only to bonds issued after October 16, 1990.

OID.—One of the technical corrections provides rules for determining the yield on a debt instrument that makes a payment or payments in the form of the stock of the issuer (or a related person). The conferees understand that, in the case of a debt instrument that makes payments in the form of stock which provides for an annual dividend rate and a stated redemption amount by a fixed date, the amount of stock to be taken into account under the technical correction should generally be determined by discounting such payments. The discount rate for such purpose shall be the yield on the debt instrument, determined assuming the payments under the stock are made as provided.

2. REPEAL OF OBSOLETE PROVISIONS ("DEADWOOD"); REQUIREMENTS FOR CERTAIN TREASURY STUDIES

House Bill

No provision in H.R. 5835. H.R. 5822 as reported by the House Ways and Means Committee repeals expired and obsolete provisions (referred to as "deadwood") of the Internal Revenue Code of 1986 (H. Rpt. 101-894).

H.R. 5822 also revises the requirements for various Treasury studies which Congress has mandated in previous years.

Senate Amendment

No provision.

Conference Agreement

The conference agreement contains the "deadwood" provisions and the Treasury study provisions of H.R. 5822 as reported by the House Ways and Means Committee.

3. INCREASE IN REFUND REVIEW THRESHOLD FOR REPORTS SUBMITTED TO THE JOINT COMMITTEE ON TAXATION

Present law

No refund or credit in excess of $200,000 of any income tax, estate or gift tax, or certain other specified taxes, may be made until 30 days after the date a report on the refund is provided to the Joint Committee on Taxation (sec. 6405). A report is also required in the case of certain tentative refunds. Additionally, the

staff of the Joint Committee on Taxation conducts post-audit reviews of large deficiency cases and other select issues.

House Bill

No provision. (H.R. 5822 as reported by the Ways and Means Committee contains the provision which is included in the Senate amendment.)

Senate Amendment

The Senate amendment increases the threshold above which refunds must be submitted to the Joint Committee on Taxation for review from $200,000 to $1,000,000. The staff of the Joint Committee on Taxation would continue to exercise its existing statutory authority to conduct a program of expanded post-audit reviews of large deficiency cases and other select issues, and the IRS is expected to cooperate fully in this expanded program.

The provision is effective on the date of enactment, except that the higher threshold does not apply to a refund or credit with respect to which a report was made before the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

4. ACCESS TO TAX INFORMATION BY THE DEPARTMENT OF VETERANS AFFAIRS

Present law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (Code sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977. This disclosure, pursuant to a written request by the agency, is for the purpose of determining eligibility for, and the correct amount of benefits under, certain enumerated programs. Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized redisclosure of the information.

House Bill

The House bill allows disclosure of certain third-party and self-employment tax information to the Department of Veterans Affairs (DVA) to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs. Thus, the DVA will have direct access to information on the types and amounts of income received by vet-

erans. The income tax returns filed by the veterans themselves will not be disclosed to DVA.

The DVA is required to comply with the safeguards presently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The House bill is effective on the date of enactment. Information disclosed pursuant to this provision may not be used to reduce, deny, or otherwise affect any benefit provided before the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with technical modifications. The provision expires in two years. GAO is required to do a detailed report on the effects of the provision.

5. INCREASE IN THE PERMANENT PUBLIC DEBT LIMIT

Present law

The permanent limit on the public debt is $3,122.7 billion. A temporary limit through October 24, 1990, is $3,195 billion.

House Bill

The permanent public debt limit is increased from the present permanent level of $3,122.7 billion to $4.5 trillion ($4,500 billion) from the date of enactment through September 30, 1993.

Effective on October 1, 1993, the permanent debt is increased by an additional $500 billion to $5.0 trillion ($5,000 billion).

Senate Amendment

The permanent public debt limit is increased by $321 billion to $3,443.7 billion

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with a modification to increase the permanent public debt limit to $4,145,000,000,000.

In addition, the Secretary is instructed to credit to Federal funds (except the Civil Service Retirement and Disability Trust Fund or the Thrift Savings Fund of the Federal Employee's Retirement System) an amount equal to interest income lost because of a failure to invest amounts in any Federal fund during the debt issuance suspension period from October 15, 1990, through December 31, 1990.

TITLE XII—PENSIONS

A. Treatment of Employer Reversions of Qualified Plan Assets to Employers and Transfers to Retiree Health Accounts

Present Law

Under present law, pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities as of the date of plan termination. An employer may not recover residual assets (i.e., those that remain after all benefit liabilities have been satisfied) unless the pension plan provides for an employer reversion, the reversion does not contravene other provisions of law, and the other requirements of titles I and IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA) are met. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to a 15-percent excise tax (sec. 4980).

Subject to certain limitations, under present law, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan and (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, and (b) the actuarial value of the plan's assets.

Under present law, a pension plan may provide medical benefits to retirees through a section 401(h) account that is part of such plan. The assets of a pension plan may not be transferred to a section 401(h) account without disqualifying the pension plan, subjecting the amounts transferred to income tax and the reversion excise tax. In addition, generally under the fiduciary responsibility provisions of title I of ERISA, once assets are contributed to a pension plan, those pension assets may only be used to pay pension benefits and reasonable administrative expenses under the plan prior to plan termination.

House Bill [1]

Treatment of employer reversions of qualified plan assets

Reversion excise tax

Under the House bill, the rate of the reversion excise tax is increased to either 50 percent or 20 percent. The applicable rate depends, in part, on the actions of the employer in connection with the plan termination. The excise tax rate is 20 percent if the employer (1) establishes or maintains a qualified replacement plan following the plan termination to which the employer transfers assets equal to 30 percent of the maximum reversion that could be received (reduced by the present value of certain increases in participants' nonforfeitable accrued benefits that take effect upon the termination), or (2) provides pro-rata increases in the nonforfeitable

[1] The House bill contains amendments to both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974, as amended (ERISA). In the House bill, amendments to ERISA are in Title III of the bill (Committee on Education and Labor) and amendments to the Internal Revenue Code are in Title XIII of the bill (Committee on Ways and Means: Revenues).

accrued benefits of all participants (including nonactive participants) in connection with the plan termination equal to at least 25 percent of the maximum reversion that could be received. If the employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases, the reversion excise tax rate is 50 percent. The excise tax is 20 percent in the case of an employer who, as of the plan termination date, is in bankruptcy liquidation under chapter 7 of title 11 of the United States Code or in liquidation under similar proceedings under State law.

Under the House bill, in order for a plan to be a qualified replacement plan, substantially all of the participants in the terminating plan who remain as employees of the employer after the termination are required to be active participants in the replacement plan. Certain other requirements must also be satisfied.

Fiduciary rules

The House bill clarifies the application of ERISA's fiduciary responsibility provisions to implementation of certain of the reversion excise tax provisions by delineating specific fiduciary duties that exist if an employer elects to establish or maintain a qualified replacement plan or to increase benefits pursuant to the reversion excise tax rules. The amendments to ERISA make clear that these provisions are also subject to the fiduciary duties and legal and equitable remedies under present law. As under present law, these specific duties do not apply to settlor decisions.

Transfers to retiree health accounts

Qualified transfers

Under the House bill, on a temporary basis, qualified transfers of excess assets are permitted from the pension assets in a defined benefit pension plan (other than a multiemployer plan) to the section 401(h) account that is a part of such plan. The assets transferred are not includible in the gross income of the employer and are not subject to the excise tax on reversions. The defined benefit pension plan does not fail to satisfy the qualification requirements (sec. 401(a)) solely on account of the transfer and does not violate the present-law requirement that medical benefits under a section 401(h) account be subordinate to the retirement benefits under the plan. The transfer also is not a prohibited transaction.

In order to qualify for the treatment described above (i.e., to be a qualified transfer): (1) except with respect to a special rule for 1990 expenses, a transfer of assets to a section 401(h) account may be made only once in any taxable year of the employer and may be made only in taxable years beginning after December 31, 1990, and before January 1, 1996; (2) the transferred assets (and income thereon) are required to be used to pay certain retiree health benefit liabilities; (3) certain vesting requirements must be satisfied with respect to benefits under the pension plan; (4) the employer must satisfy a minimum cost requirement with respect to retiree health benefits provided in the year of a transfer and the following 4 years; (5) the amount transferred cannot exceed certain limits; and (6) the transfer cannot contravene any other provision of law.

The requirement that the transfer cannot contravene any other provision of law is designed to clarify that the amendments to ERISA and the Code authorizing the transfer do not supersede any other legal restrictions that may prevent or limit an employer's ability to divert pension assets to satisfy other preexisting corporate liabilities for retiree health benefits. For example, the ability of an employer to transfer assets from the ongoing pension plan to a section 401(h) account may be subject to collective bargaining under relevant law. An employer's ability to transfer assets may also be subject to other laws, such as those applicable to government contractors.

The special rule for 1990 provides that a transfer is treated as a qualified transfer if the transfer is made with respect to qualified current retiree health liabilities for the employer's first taxable year beginning after December 31, 1989, and meets certain other requirements. The employer's otherwise allowable deductions for the 1990 taxable year are reduced by the amount of the qualified transfer made to reimburse 1990 expenses.

For taxable years other than 1990, the amount that can be transferred is reduced to the extent that the employer has previously made a contribution to a section 401(h) account or a welfare benefit fund relating to the same liabilities. The portion of existing reserves that relate to qualified current retiree health liabilities is determined on a pro-rata basis. Solely for purposes of the special rule for 1990, the maximum amount of assets that may be transferred for 1990 liabilities is not reduced by a contribution to a welfare benefit fund in 1990 to fund retiree health benefits for participants in the section 401(h) account.

Fiduciary rules

Under the House bill, a transfer made in accordance with the provision does not violate the anti-inurement and exclusive purpose provisions of title I of ERISA. Although the decision to transfer assets is a settlor decision made by the employer, the implementation of that decision by the fiduciary is subject to the fiduciary duties and legal and equitable remedies under ERISA.

The House bill also amends title I to require that notice of a proposed transfer be provided to the Secretary of Treasury, the Secretary of Labor, plan participants, and employee representatives (if any) at least 60 days prior to the transfer. The notice must include information about the amount of excess pension assets, the portion of assets to be transferred, the amount of health benefit liabilities expected to be provided with the transferred assets, and the amount of each participant's pension benefits that will be nonforfeitable after the transfer.

Effective date

The provisions relating to reversions apply to reversions occurring after September 30, 1990, other than (1) in the case of plans subject to title IV of ERISA, reversions pursuant to a termination, notice of which was provided under such title to participants (or if no participants, the Pension Benefit Guaranty Corporation) on or before such date, and (2) in the case of plans not subject to title IV of ERISA, but subject to title I, a notice of intent to reduce future

benefit accruals was provided to plan participants on or before such date.

The provision permitting the transfer of excess pension assets to pay current retiree health benefits is effective for transfers occurring in taxable years beginning after December 31, 1990, and before January 1, 1996.

Senate Amendment [2]

Treatment of employer reversions of qualified plan assets

The Senate amendment is the same as the House bill, except that the excise tax is 40 percent if the employer (1) does not maintain a qualified replacement plan to which the employer transfers assets equal to 20 percent of the reversion (reduced by the present value of increases in participants' nonforfeitable accrued benefits that take effect upon termination) or (2) provide pro-rata benefit increases to plan participants (including nonactive participants) equal to at least 15 percent of the reversion.

Transfers to retiree health accounts

The Senate amendment is the same as the House bill, except that in allocating existing reserves to qualified current retiree health liabilities, the Senate amendment permits the liabilities to be allocated on a pro-rata basis or otherwise as provided by the Secretary.

Effective date

The Senate amendment is the same as the House bill.

Conference Agreement

Treatment of employer reversions of qualified plan assets

Reversion excise tax

The conference agreement follows the House bill and the Senate amendment with the following modifications. Under the conference agreement, the rate of the reversion tax is increased to 50 percent or 20 percent, depending on the circumstances. The excise tax rate is 20 percent if the employer transfers assets equal to 25 percent of the maximum reversion that could be received (reduced by the present value of certain increases in participant's benefits that take effect upon the termination), or (2) provides pro-rata benefit increases in the accrued benefits of qualified participants in connection with the plan termination equal to at least 20 percent of the maximum reversion that could be received. The reversion tax is 50 percent if the employer does not maintain a qualified replacement plan or provide certain pro-rata benefit increases.

The conference agreement clarifies the rules regarding (1) benefit increases that reduce dollar for dollar the 25-percent cushion requirement and (2) pro-rata benefit increases under the 20-percent pro-rata benefit increase provision.

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[2] In the Senate amendment, Internal Revenue Code and ERISA changes are in both Title VII (Committee on Finance—Revenues) and Title X (Committee on Labor and Human Resources).

With respect to benefit increases that reduce the 25-percent cushion, the conference agreement clarifies that the increases may be provided to any group of participants and/or beneficiaries under the plan (provided the increases satisfy the generally applicable qualification requirements, such as the nondiscrimination rules). Thus, for example, under this provision benefit increases may be, but are not required to be, provided to participants in pay status.

The conference agreement also clarifies the participants to whom benefit increases must be provided under the pro-rata benefit increase rule. Under this provision, increases must be provided to all qualified participants. Qualified participants include active participants, participants in pay status, certain beneficiaries, or individuals who have a nonforfeitable right to an accrued benefit under the terminated plan as of the termination date (determined without regard to this provision) and whose service terminated during the period beginning 3 years before the termination date and ending with the date on which the final distribution of assets occurs. Thus, for example, individuals who terminated employment before the termination date and received a lump-sum distribution of their benefits would not be qualified participants. Under the conference agreement, as under the House bill and the Senate amendment, the aggregate maximum benefit increase that may be provided under this provision to qualified participants other than active participants is 40 percent of the aggregate minimum required benefit increase.

The conference agreement also clarifies that the increases under both benefit increase provisions are to be made to participants' accrued benefits (rather than nonforfeitable accrued benefits). Total accrued benefits (including the increase in benefits under the provision) will become nonforfeitable upon plan termination.

Under the conference agreement, the participation requirement applicable to qualified replacement plans is modified so that, in order for the requirement to be satisfied, at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are required to be active participants in the replacement plan. The conference agreement also clarifies that the employer is determined on a controlled group basis.

The conference agreement provides that, as provided by the Secretary of the Treasury, a plan of a successor employer may be taken into account in determining whether there is a qualified replacement plan.

Of course, the present-law permanence requirement which precludes premature plan termination applies to both the terminating plan and the replacement plan.

The conferees intend that the Secretary of the Treasury will prevent avoidance of the reversion tax provisions, for example, in cases involving avoidance of the replacement plan rules through successive plan terminations or abuses of the participation rule.

Transfers to retiree health accounts

The conference agreement follows the House bill and the Senate amendment with the following modifications: (1) the conference agreement does not adopt the provision of the Senate bill permit-

ting allocation of existing reserves to qualified current retiree health liabilities on other than a pro-rata basis, and (2) the conference agreement provides that no addition to tax shall be made under the estimated tax provisions for the taxable year preceding the taxpayer's first taxable year beginning after December 31, 1990, with respect to any underpayment that occurs by reason of the rule permitting reimbursement of 1990 qualified current retiree health liabilities.

Effective date

The conference agreement adds an additional transitional rule under the reversion excise tax provisions. Under the conference agreement, in the case of plans not subject to either title I or title IV of ERISA, the provisions relating to the reversion excise tax do not apply to terminations with respect to which a request for a determination letter was filed with the Secretary of the Treasury before October 1, 1990. In addition, in the case of plans that have only one participant, the provisions relating to the reversion tax do not apply if a resolution terminating the plan was adopted before October 1, 1990.

B. Increase in PBGC Premiums

Present Law

Under present law, a flat-rate per-participant premium of $16 is payable with respect to each single-employer defined benefit pension plan covered under title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The premium is payable to the Pension Benefit Guaranty Corporation (PBGC). An additional premium of $6.00 multiplied by $1,000 of unfunded vested benefits is payable with respect to underfunded plans. The maximum additional per-participant premium (i.e., the total additional premium divided by the number of plan participants) is capped at $34.

House Bill [3]

The House bill raises the flat-rate PBGC premium to $19, increases the assessment per $1,000 of unfunded vested benefits to $9, and increases the per-participant cap on the additional premium to $53.

The increases in the premium are effective for plan years beginning after December 31, 1990.

Senate Amendment [4]

The Senate amendment is the same as the House bill.

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[3] In the House bill, this provision was in both Title III (Committee on Education and Labor) and Title XII (Committee on Ways and Means: Spending).

[4] In the Senate amendment, this provision was in both Title VI (Committee on Finance—Spending Reductions) and Title X (Committee on Labor and Human Resources).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE XIII—BUDGET ENFORCEMENT

BUDGET ENFORCEMENT ACT OF 1990

The conference agreement adds new enforcement mechanisms for discretionary spending entitlements, and recepits to preserve the deficit reduction achieved by this Act over the next five years. The conference agreement adds a pay-as-you-go mechanism to ensure that any new entitlement or receipt legislation will not increase the deficit. The conference agreement also sets forth limits (caps) on discretionary spending provided in the annual appropriations process for each of fiscal years 1991 through 1995, and enforces these through a mechanism to require across-the-board cuts within any category to make up for any overages. To enforce deficit targets in fiscal years 1994 and 1995, the conference agreement extends the existing Gramm-Rudman-Hollings mechanism through fiscal year 1995, but with new procedures to allow adjustment for revised economic and technical estimates, in 1994 and 1995 at the President's option.

I. ENFORCING DISCRETIONARY SPENDING LIMITS

Current law

Under the Congressional Budget Act of 1974, the Senate and the House of Representatives limit discretionary spending primarily through overall allocations to their respective Appropriations Committees in the joint statement of the managers accompanying the concurrent resolution on the budget. These allocations, made pursuant to section 302(a) of the Congressional Budget Act of 1974, are sometimes called "302(a)s" or "crosswalks." All committees must then divide these allocations among their subcommittees or programs. The Committees on Appropriations—which have jurisdiction over discretionary spending—must divide the allocations among their 13 subcommittees (including their Subcommittees on Defense and on Foreign Operations) under section 302(b) of the Congressional Budget Act. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any legislation that would cause spending to exceed these subdivided limits.

House bill

The House bill sets forth, in a new section of the Congressioal Budget Act, limits for discretionary spending in three categories—defense, international, and domestic—for fiscal years 1991 through 1993, and in one category—discretionary spending—for fiscal years 1994 and 1995. The House bill creates a new mechanism for across-the-board cuts—called "sequestration"—within a category if discretionary spending for a fiscal year exceeds spending in that category. The President orders these cuts for that fiscal year within 15 days after the end of a session. Under a "look-back" procedure, if

legislation is enacted for that fiscal year in the next session that causes spending to exceed a category's limit, then the applicable spending limits for the next fiscal year are reduced accordingly, and a further sequestration occurs unless appropriations legislation adjusts spending downward.

The initial limits proposed by the House include separate amounts of new budget authority and outlays by category (for fiscal years 1991 through 1993) and by total (for fiscal years 1994 and 1995).

The House bill provides that the President shall adjust the spending limits in the annual budget submission for changes in concepts and definitions, inflation, credit reestimates, Internal Revenue Service compliance funding, debt forgiveness, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

Senate amendment

The Senate amendment sets forth as a freestanding part of the Omnibus Budget Reconciliation Act of 1990 limits for discretionary spending in the same categories and for the same years as in the House bill. The Senate amendment also creates a new mechanism for across-the-board cuts—called "sequestration"—within a category if discretionary spending exceeds spending for that category. In the Senate amendment, however, the President orders these cuts on November 15 for appropriations bills enacted before November 1 or after June 30 of a fiscal year, or 15 days after enactment for bills enacted between October 31 and July 1.

The initial limits on discretionary spending proposed by the Senate are the same as those proposed by the House. As does the House bill, the Senate amendment provides that the President may adjust the spending limits in the annual budget submission for changes in inflation, credit reestimates, Internal Revenue Service compliance funding, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

The Senate amendment allows for changes in the definition of "budget authority" (which it changes elsewhere)—but not changes in other concepts and definitions, and allows for adjustment for debt forgiveness for the Arab Republic of Egypt and the Polish government—but not other debts.

Conference agreement

The conference agreement establishes the limits on discretionary spending by category, as proposed by the House and Senate, as a new title VI of the Congressional Budget Act of 1974.

The initial limits on discretionary spending are as follows (in billions of dollars):

	Fiscal year—				
	1991	1992	1993	1994	1995
Defense:					
Budget authority	288.918	291.643	291.785		
Outlays	297.660	295.744	292.686		

	Fiscal year—				
	1991	1992	1993	1994	1995
International:					
Budget authority	20.100	20.500	21.400		
Outlays	18.600	19.100	19.600		
Domestic:					
Budget authority	182.700	191.300	198.300		
Outlays	198.100	210.100	221.700		
Total discretionary:					
Budget authority				510.800	517.700
Outlays				534.800	540.800

The President shall adjust the spending limits according to the method proposed by the House, except with regard to limited defined special allowances. The conference agreement accepts the Senate approach for adjustments for the International Monetary Fund and debt forgiveness. The special allowances authorize the President to adjust the spending limits for new budget authority and associated outlays by specified percentages, depending on the spending category and the fiscal year. Outlay limits for categories of discretionary spending also shall be increased by specified dollar amounts so long as the budget authority limits for the applicable categories are not breached; this special outlay allowance insulates the legislative process from estimating differences.

The conference agreement accepts a compromise mechanism for initiating across-the-board spending cuts if discretionary spending limits are breached. During the session in which the fiscal year begins, the enactment of legislation causing a breach in the spending limits of any category would trigger a presidential sequestration order that would impose across-the-board cuts in that category bringing spending down to the established limits. This presidential sequestration order would be issued within 15 days after the end of a session of Congress. During the following session, the enactment of legislation causing a breach in the spending limits would trigger sequestration 15 days after enactment if the legislation were enacted before July 1, or would reduce the applicable spending limits for the next fiscal year by the amount of the breach if the legislation were enacted on or after July 1.

II. ENFORCING PAY-AS-YOU-GO

Current law

Under current law, the Senate and the House of Representatives limit entitlements through spending allocations to their respective authorizing committees in the joint statement of the managers accompanying the concurrent resolution on the budget, just as with discretionary spending. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any new entitlement program that would cause spending to exceed limits that flow from these allocations. Similarly, the concurrent resolution on the budget sets a revenue floor, and a point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any tax-cutting

legislation that would cause revenues to fall below the floor in the resolution.

House bill

The House bill creates a new "pay-as-you-go" mechanism to require across-the-board cuts in those entitlement programs subject to Gramm-Rudman-Hollings if new entitlement spending or tax-cutting legislation increases the deficit. The President orders these cuts on October 15—the same date that a final sequestration order is issued pursuant to Gramm-Rudman-Hollings. The House bill cuts the first $5 billion in excess solely from entitlement programs now covered by Gramm-Rudman-Hollings. In the case of any excess above $5 billion, the House would cut 50 percent of the further excess from entitlement and 50 percent from discretionary spending.

Senate amendment

The Senate amendment creates a mechanism similar to the House bill, except that the President orders these cuts on November 15, and makes the across-the-board cuts solely in entitlement programs now covered by Gramm-Rudman-Hollings. Discretionary programs would not be reduced through the pay-as-you-go sequester.

Conference agreement

The conference agreement makes across-the-board cuts only in non-exempt entitlement programs, as in the Senate amendment. These cuts are ordered on the same day as the discretionary spending and deficit sequestrations. The conference agreement includes a provision for emergency direct spending or receipts legislation, which would not be subject to the pay-as-you-do requirement.

Section 252(b)(1) of the conference agreement excludes from the pay-as-you-go sequester procedure legislation maintaining the deposit insurance guarantee in effect on the date of enactment. The conferees intend that the funding to meet deposit insurance liabilities that meet existing commitments be exempt from any pay-as-you-go sequestration.

III. REVISING AND ENFORCING DEFICIT TARGETS

Current law

Gramm-Rudman-Hollings established deficit targets ("maximum deficit amounts") in 1985 and the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 revised them as follows (in billions of dollars):

	1985 law	1987 revision
Fiscal year:		
1986	171.9	
1987	144	
1988	108	144
1989	72	136
1990	36	100
1991	0	64
1992		28
1993		0

Gramm-Rudman-Hollings enforces these targets, based on projections of the deficit, through across-the-board cuts on October 15. The cuts cancel non-exempt budgetary resources to achieve outlay savings sufficient to reduce the deficit to the maximum deficit amount. Under section 301(i) of the Congressional Budget Act, budget resolutions must also meet these maximum deficit amount targets or be subject to a point of order (that requires 60 votes to waive in the Senate and a three-fifths majority to waive in the House). Gramm-Rudman-Hollings expires on September 30, 1993. For a discussion of current law, see the conference report to accompany H.J. Res. 324 (Increasing the Statutory Limit on the Public Dept), House Report 100–313 (September 21, 1987), 100th Cong. 1st Sess., pages 42–62.

House bill

The House bill revises the deficit targets as follows (in billions of dollars):

	Current law	House bill
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	302.3
1992	28	276.8
1993	0	189.7
1994		58.1
1995		18.7

The House bill amends Gramm-Rudman-Hollings to provide for sequestration in a manner similar to current law, except that for fiscal years 1991 through 1993 the President must annually revise the targets for changes in economic and technical assumptions occurring since the last year. As a consequence, during those years, the sequester covers only changes caused by legislative actions. The consequences of those actions, however, are addressed by the new mechanisms for enforcement of the discretionary spending limits and pay-as-you-go. Thus, during the first three years covered by the House bill, this should not require the President to order cuts under the conventional Gramm-Rudman-Hollings process. For fiscal years 1994 and 1995, the House bill authorizes (but does not require) the President to continue the process of adjustment for economic and technical changes, but continues a process similar to the current Gramm-Rudman-Hollings for those years if the President chooses not to make such adjustments.

Senate amendment

The Senate amendment revises the deficit targets as follows (in billions of dollars):

	Current law	Senate Amendment
Fiscal year:		
1986	171.9	.....
1987	144	.....
1988	144	.....
1989	136	.....
1990	100	.....
1991	64	242
1992	28	219
1993	0	165
1994	.....	86
1995	.....	62

The Senate amendment retains much of the language of the existing Gramm-Rudman-Hollings, but adopts a process similar to the House bill for annual adjustment of the deficit targets.

The revised deficit targets proposed by the Senate differ from those proposed by the House because of differences in economic and technical assumptions.

Conference agreement

The conference agreement revises the deficit targets (as a new section of the Congressional Budget Act of 1974) as follows (in billions of dollars):

	Current law	House bill
Fiscal year:		
1986	171.9	.....
1987	144	.....
1988	144	.....
1989	136	.....
1990	100	.....
1991	64	327
1992	28	317
1993	0	236
1994	.....	102
1995	.....	83

The conference agreement incorporates the procedures proposed by the House under which the President must adjust the deficit targets for fiscal years 1991 through 1993 and may adjust the target for fiscal years 1994 and 1995. The deficit targets established reflect current economic projections and the removal of Social Security trust fund balances from the deficit calculation. These deficit targets will be adjusted for further updated economic and technical factors through fiscal year 1993.

IV. RESTORATION OF FUNDS SEQUESTERED

Current law

Under current law, an initial sequestration order, issued August 25, withholds budgetary resources at the sequestered levels effective October 1. A final sequestration order, issued October 15, permanently cancels budgetary resources, effective that date, and supersedes the initial sequestration order. After their issuance, initial and final sequestration orders can be rescinded and sequestered funds restored only upon the enactment of a law specifically directing those actions. The sequester for fiscal year 1991 was suspended temporarily by four continuing appropriations measures enacted in October: H.J. Res. 655 (P.L. 101-403), H.J. Res. 666 (P.L. 101-412), H.J. Res. 677 (P.L. 101-444), and H.J. Res. 681 (P.L. 101-461).

House bill

The House bill rescinds both the initial and final sequestration order for fiscal year 1991, reverses any action taken to implement the orders, and restores any sequestered budgetary resources.

Senate amendment

The Senate amendment proposes identical language.

Conference agreement

The conference agreement incorporates the House and Senate language rescinding the fiscal year 1991 sequester and restoring sequestered amounts.

V. SEQUESTRATION REPORTS AND ORDERS

Current law

Under current law, the Directors of the Office of Management and Budget and the Congressional Budget Office issue initial and revised sequestration reports each year in August and October which estimate the baseline deficit for the fiscal year, determine whether the deficit target has been exceeded, and calculate the percentages and amounts by which spending in non-exempt accounts must be reduced to lower the estimated deficit to the target level.

The Office of Management and Budget Director's initial and revised sequestration reports trigger initial and final presidential sequestration orders which implement any required sequestration reductions specified in the reports (the Congressional Budget Office reports are advisory). The General Accounting Office also issues a compliance report in November, which is also advisory. Through fiscal year 1992, a sequestration order is triggered if the baseline deficit exceeds the deficit target by more than $10 billion. For fiscal year 1993, when the target is zero, any deficit excess would trigger sequestration. The sequestration process expires at the end of fiscal year 1993. The President's sequestration orders must comply fully with the Office of Management and Budget Director's reports.

Sequestration reports and orders are issued only in August and October each year. There are no procedures for issuing additional or revised reports and orders to eliminate any excess deficit that occurs after the sequestration process for a fiscal year has been

completed. Further, if sequestration is triggered, it applies to all non-exempt accounts. The only categorization is that one-half of the reductions are made in defense programs, with the other half coming from non-defense programs. There are no separate or specialized reporting requirements or presidential orders for other categories of spending.

House bill

The House bill establishes new sequestration reporting requirements and presidential sequestration orders to implement the discretionary spending sequester (enforcing the discretionary spending categories), the pay-as-you-go sequester (enforcing the deficit-neutrality of mandatory spending and receipt legislation), and the deficit sequester (enforcing the deficit targets).

The bill establishes the following timetable for sequestration reports and orders:

On or before	Action to be completed
First Monday in February	Lock in the Office of Management and Budget estimating assumptions.
August 15	Initial snapshot.
August 20	Sequester preview.
Latest possible date before October 15	Final snapshot.
October 15	Pay-as-you-go and deficit sequester reports; Presidential order.
Within 15 days after end of session	Discretionary sequester reports; Presidential order.
30 days later	GAO compliance report.

On August 20, both the Congressional Budget Office and the Office of Management and Budget Directors issue sequester preview reports to the President and Congress for the pay-as-you-go and deficit sequesters for the fiscal year. For the pay-as-you-go sequester preview, the reports must set forth the change in the deficit for the fiscal year caused by the enactment of direct spending and receipts legislation, identify each law included in the estimate, and calculate the appropriate sequester percentage. For the deficit sequester, the reports must estimate the baseline deficit for the fiscal year, any deficit excess, the deficit margin, any deficit excess remaining after the pay-as-you-go sequester has been made, and calculate the specified reductions required to eliminate any remaining deficit excess.

On October 15, the Office of Management and Budget and Congressional Budget Office Directors issue revised pay-as-you-go and deficit sequester reports updated to reflect laws enacted through the final snapshot date and containing all the information required in the sequester preview reports. If the revised Office of Management and Budget report indicates that any pay-as-you-go and deficit sequester is required, the President shall issue an order on the same date implementing the sequester without change.

Within 15 days after the end of the session, the Congressional Budget Office and Office of Management and Budget Directors issue discretionary spending sequestration reports to the President and Congress. In general, the reports shall explain any adjustments made in the discretionary spending limits for budget authority and outlays for each fiscal year through fiscal year 1995, specify

any breach in the discretionary categories for the current year and the budget year, and calculate the sequestration necessary to achieve the required reduction. If the Office of Management and Budget report indicates that any discretionary sequester is required, the President shall issue an order on the same date implementing the sequester without change.

Within 30 days of the issuance of the discretionary spending sequester report and order, the General Accounting Office (GAO) shall submit to the President and Congress a compliance report on all the sequester reports and orders issued for the fiscal year.

Senate amendment

The Senate amendment provides that the estimates and determinations necessary to implement the new pay-as-you-go sequester and any deficit sequester shall be issued as part of the initial and revised sequestration reports required under current law. However, the Senate amendment changes the dates of submission for these reports. For the Congressional Budget Office, the initial sequestration report is due on January 27 (March 10 in years in which a new President is inaugurated) and the revised report is due on November 10 (the Congressional Budget Office reports remain advisory). For the Office of Management and Budget, the initial sequestration report is due simultaneously with submission of the President's budget—February 1 in most years, and March 15 in years in which a new President is inaugurated—and the revised report is due on November 15. An initial sequestration order would be issued simultaneously with the initial report and become effective on October 1. A final sequestration order would be effective November 15.

For discretionary spending sequestration, the Senate amendment requires both the Congressional Budget Office and the Office of Management and Budget to report to the President within 5 days after enactment of an appropriations act. The reports must determine whether any of the discretionary spending categories have been exceeded as a result of the act, and, if necessary, calculate the amounts and percentages by which spending in the affected categories must be reduced in the appropriate category to eliminate any excess. If the Office of Management and Budget report calculates a discretionary spending sequestration, the President must issue an order implementing the sequestration reductions—within 15 days if the measure is enacted before June 30, and on November 15 if the measure is enacted between June 30 and November 1.

Conference agreement

As soon as possible after Congress completes action on a discretionary spending, direct spending, or revenue bill, and after consultation with the budget committees, the Congressional Budget Office (CBO) is to provide the Office of Management and Budget (OMB) with an estimate of the bill's effect on spending and revenues. Within 5 days after the bill's enactment, OMB transmits to the Congress its own estimate of the bill's budgetary impact. OMB is required to explain differences between its estimates and those of CBO. OMB is also required to use its bill estimates in subsequent sequestration reports.

The timetable for sequestration reports and orders is as follows:

Date	Action
5 days before the budget	CBO sequestration preview report.
President's budget submission	OMB sequestration preview report.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report.
30 days later	GAO compliance report.

This timetable continues the feature of current law in which CBO issues its reports 5 days before OMB, and OMB is required to explain differences between its estimates and those of OMB.

All 3 sequestration reports will contain updated estimates of the maximum deficit amount and the discretionary spending limits for each category. They will also contain estimates of any net deficit increase or decrease (under the pay-as-you-go provisions), any excess deficit (compared to the deficit target), and the sequestration reductions and percentages necessary to eliminate a deficit increase or excess deficit. The final sequestration reports will include estimates of new budget authority and outlays for each discretionary spending category, the amounts of any breach in the discretionary spending limits, and the sequestration percentages necessary to eliminate a breach. In addition, the final reports will contain, for each budget account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and outlays and the required reductions.

An extra pair of sequestration reports and an additional Presidential order will be required if, after the final sequestration report but before July 1, enactment of an appropriation bill causes a discretionary spending breach. These within-session sequestration reports are to contain the same information regarding discretionary spending as a final end-of-session sequestration report.

VI. TREATMENT OF SOCIAL SECURITY

Current law

Under current law, the Social Security trust funds are off-budget but are included in deficit estimates and calculations made for purposes of the sequestration process. However, Social Security benefit payments are exempt from any sequestration order.

Section 310(g) of the Congressional Budget Act of 1974 prohibits the consideration of reconciliation legislation "that contains recommendations" with respect to Social Security. (A motion to waive this point of order requires 60 votes in the Senate and a simple majority in the House.)

House bill

The House bill reaffirms the off-budget status of Social Security and removes the trust funds—excluding interest receipts—from the deficit estimates and calculations made in the sequestration process. The House bill retains the current law exemption of Social Security benefit payments from any sequestration order.

The House bill creates a "fire wall" point of order (as free-standing legislation) to prohibit the consideration of legislation that would change the actuarial balance of the Social Security trust funds over a 5-year or 75-year period. In the case of legislation decreasing Social Security revenues, the prohibition would not apply if the legislation also included an equivalent increase in Medicare taxes for the period covered by the legislation.

Senate amendment

The Senate amendment also reaffirms the off-budget status of Social Security and removes the trust funds from the deficit estimates and calculations made in the sequestration process. However, unlike the House bill, the Senate amendment removes the gross trust fund transactions—including interest receipts—from the sequestration deficit calculations. The Senate amendment also retains the current law exemption of Social Security benefit payments from any sequestration order.

The Senate amendment also creates a procedural fire wall to protect Social Security financing, but does so by expanding certain budget enforcement provisions of the Congressional Budget Act of 1974. The Senate amendment expands the prohibition in Section 310(g) of the Budget Act to specifically protect Social Security financing, prohibits the consideration of a reported budget resolution calling for a reduction in Social Security surplus, and includes Social Security in the enforcement procedures under Sections 302 and 311 of the Budget Act. The Senate amendment also requires the Secretary of Health and Human Services to provide an actuarial analysis of any legislation affecting Social Security, and generally prohibits the consideration of legislation lacking such an analysis.

For more on the budgetary treatment of Social Security under current law and historically, see SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. No. 101-426, 101ST Cong. 2d Sess. (1990).

Conference agreement

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing all their transactions from the deficit estimates and calculations made in the sequestration process.

Further, the conference agreement provides that the "fire wall" procedure proposed by the House shall apply only to the House and that the "fire wall" procedures proposed by the Senate shall apply only to the Senate.

VII. CREDIT REFORM

Current law

The credit programs of the Federal Government are displayed in the budget on a cash accounting basis. Cash accounting overstates the real economic cost of direct loan programs and understates the real economic costs of loan guarantee programs in the year loans are made.

House bill

The House bill provides for a revised system of accounting for Federal credit programs that requires the appropriation of budget authority equal to the cost to the government, which is the estimated net present value of the cash flows associated with federal direct loan and loan guarantee programs. The revised accounting would also apply to any modifications in the costs of outstanding direct loans or loan guarantees. An exception from the requirement for an appropriation is provided for existing entitlement credit programs and the credit activities of the Commodity Credit Corporation. The credit program cost estimates will not include administrative expenses, but these expenses will be displayed in the program account as a separate subaccount on a cash basis. All of the residual cash flows associated with direct loan and loan guarantee programs not included in the cost to the government estimate would be non-budgetary and treated as means of financing.

The House bill gives the Director of the Office of Management and Budget (OMB) the authority to make credit cost estimates for the Executive Branch. The OMB Director could also delegate such authority to any Federal agency through written guidelines. The Director of the OMB would have access to necessary data from the Federal agencies and has a mandate to work with the Congressional Budget Office to improve cost estimates through an annual review process. The House bill authorizes the President to establish the necessary non-budgetary accounts and the Secretary of the Treasury to borrow from, receive from, lend to, or pay to such amounts as may be appropriate to these non-budgetary accounts. These transactions will be subject to the Antideficiency Act. The House bill also authorizes the funds necessary to implement this change in credit accounting.

The House bill makes credit reform effective starting in fiscal year 1992 and provides that direct loans and loan guarantees made before this date shall be reflected in the budget on a cash basis. The House also provides permanent indefinite authority to liquidate the loan obligations and guarantee commitments made prior to October 1, 1991.

The House bill also calls for a study by the OMB and the CBO concerning whether the accounting for Federal deposit insurance programs should be made on a cash basis, on the same basis as loan guarantees, or on some other basis.

Finally, the House bill would no longer require the inclusion of credit authority amounts in budget resolutions, allocations, costs estimates, or any other document related to the Budget Act.

Senate amendment

The Senate amendment states that the purposes of credit reform is to measure accurately the costs of Federal credit programs, place the cost of credit programs on a budgetary basis equivalent to other Federal spending, encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries, coordinate accounting and review of credit programs by CBO and OMB, and enhance the Congressional oversight of credit programs.

The Senate amendment defines "Federal agency", "direct loan", "direct loan obligation", "loan guarantee", "loan guarantee commitment", "cost to the government", "subsidy account", "financing account", and "liquidating account". Of particular note, the "cost to the government" was defined as the estimated long-term net present value of a loan guarantee. The Senate bill emphasized the variety of cash flows to be estimated by listing the specific contractual cash flows to be measured and the variations to the contractual cash flows that could occur.

The Senate amendment made it the responsibility of the Director of OMB to estimate the costs to the government of federal credit programs, establish reporting requirements by the agencies, and monitor agency performance with respect to credit programs. In developing the estimates, the Senate mandates coordination with the CBO and consultation with the Congress. Any changes to the estimating criteria are to be reported to the Congress. CBO and OMB are to study the differences in long-term administrative costs for credit programs vis-a-vis grant programs.

The Senate amendment requires that the executive budget submission include both direct loan obligation and loan guarantee commitment levels, and the estimated cost to the government of these credit levels. No direct loan or loan guarantee or modification of an outstanding loan could be made without appropriations in advance.

The Senate Amendment lays out the responsibilities of each Federal Agency to make timely submissions of credit data, make annual requests for credit appropriations, use due diligence in carrying out responsibilities for credit programs under the new credit cost controls, and maintaining the reserves of the financing accounts. And applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The point of order would sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Section 1107 lays out the budgetary treatment of federal credit programs. The cost to the government of direct loan and loan guarantee programs will be carried in the appropriate budget function. The financing accounts will be treated as a means of financing, but their aggregated activity will be displayed in the budget documents in a function known as "credit financing activities". The section makes it clear that the financing activities are off-budget and not subject to budget act points of order.

Section 1108 provided the authority necessary for appropriations of budget authority for the cost to the government. The head of each Federal agency has authority to issue notes to the Secretary of the Treasury should the resources of the financing accounts prove insufficient to meet the obligations of the financing account. The Secretary of the Treasury has authority to set the terms and conditions of such borrowings. The Senate bill authorizes appopriations for the funding needs of the liquidating accounts and authorized appropriations for the salaries and expenses necessary to carry out credit reform.

Deposit insurance programs and other government insurance programs are excluded from credit reform. OMB and CBO are di-

rected to study the applicability of credit reform to the excluded programs and to Government Sponsored Enterprises.

Nothing in the Senate bill is to be construed as limiting existing mandatory credit authorities nor establishing a limit on existing credit programs. Nor does the Senate bill contemplate changing the existing authorities for the liquidation of obligations made prior to enactment of credit reform. Excess funds in the liquidating accounts are to be transferred to the Treasury on at least an annual basis.

Credit reform is made effective for fiscal year 1992. OMB is to submit an explanation of its credit reform methodology with its annual budget submission; CBO is to include the cost to the government for all reported bills.

The Senate amendment defines a government sponsored enterprise (GSE) to emphasize that to qualify as a GSE and thereby escape budget act treatment, a GSE must: have a federal charter; be privately owned; be controlled by a board of directors elected by the owners; and be a financial institution with powers to make loans, guarantee loans, issue debt, or guarantee the debt of others. Further, a GSE could not exercise powers that are reserved to the Government (eg. taxing powers or regulating interstate commerce), commit the Government financially, or employ federal civil servants.

The Senate amendment creates a new point of order that will lie against legislation that did not provide a subsidy appropriation for the cost to the government of credit activities and applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The 302(f)(2) point of order will sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Conference agreement

The conference agreement indicates that the purpose of credit accounting reform is to measure more accurately the costs of Federal direct loan and loan guarantee programs, to place the cost of those programs on a basis equivalent to other spending, to encourage more efficient delivery of Federal assistance, and to improve the allocation of resources between credit and other spending programs. The conference agreement also substantially accepts the definitions in the Senate bill.

The conference agreement requires that, starting with fiscal year 1992, the budget cost of credit programs be the net present value of the long-term costs to the Government, excluding administrative costs and incidental effects on governmental receipts and outlays. All of the other cash flows resulting from credit programs will be treated as means of financing and included in non-budgetary financing accounts. The cash flows resulting from direct loan obligations and loan guarantee commitments made prior to fiscal year 1992 will be reflected in the budget on a cash flow basis.

The conference agreement provides that the Director of the Office of Management and Budget will be responsible for coordinating credit cost estimates for the executive branch and may delegate that authority to other agencies based upon written guidelines. The Director of the Office of Management and Budget is to consult with

the Director of the Congressional Budget Office in developing guidelines for credit cost estimates and in reviewing and improving those estimates.

The conference agreement requires the appropriation of new budget authority to cover the cost of direct loan and loan guarantee programs before new assistance can be provided. An exception to this requirement is provided for entitlement credit programs (such as the guaranteed student loan program and veteran's home loan guaranty program) and for the credit programs of the Commodity Credit Corporation. The agreement also provides that budget authority must be available to cover the cost of modifying any outstanding direct loan or loan guarantee. Administrative expenses for credit programs will continue to be counted on a cash flow basis, but displayed in a separate subaccount within the account for the credit program.

In a few cases, the cost to government of a loan or guarantee may be zero or negative. In such case, it is still necessary for appropriations bills to provide specific authority before loans could be made. Providing such authority will generate an off-setting receipt (negative budget authority and outlays) which would be credited to the appropriations committees and count against discretionary spending limits.

The conference agreement provides that, if initial estimates of the costs of credit activity are determined to be incorrect, reestimates are recorded on the budget as soon as possible. These reestimates will take the form of payments from the Treasury to the financing accounts or vice versa. The reestimate is discounted back to the time when the loan was disbursed; the discounted portion is charged to the program account (as a mandatory) and the rest is charged to net interest.

The conference agreement provides authority for the Secretary of the Treasury to conduct the transactions necessary to maintain the non-budgetary financing accounts.

As part of the transition provisions, new credit authority is made subject to a 302 point of order in the Senate in fiscal year 1991. However, the agreement sunsets this point of order in both houses in 1992.

If excesses were to develop in the financing accounts, the agreement presumes that these excesses would revert to the Treasury. These excesses do not include balances necessary to maintain adequate reserves, achieve mandated capital levels, or preserve the mutuality of certain credit programs.

The financing accounts are made subject to the Antideficiency Act. However, Federal agencies will continue to administer and operate direct loan and loan guarantee programs as they do now. Permanent indefinite authority is provided to make any payments required to liquidate direct loan obligations and loan guarantee commitments made prior to fiscal year 1992. The agreement provides an authorization to cover the administrative expenses of implementing credit accounting reform. Finally, the activities of Federal insurance programs are excluded from credit accounting reform, but the Director of the Office of Management and Budget and the Director of the Congressional Budget are required to study whether the accounting for Federal deposit insurance programs should be a

cash basis, on the same basis as loan guarantees, or on a different basis.

VIII. GOVERNMENT SPONSORED ENTERPRISES

Current law

Congress has created several Government-sponsored enterprises or GSEs to help make credit more reliably available to farmers, homeowners, colleges, and students. Through federal charters provided in statute, GSEs are privately owned and operated, limited in their activities to specific economic sectors, and given certain benefits that help them accomplish their goals.

Due to the public missions described in the charters of these entities, the Government does have an interest in the activities of the GSEs. While there is no explicit Federal backing for the GSEs, in 1987, the Government infused significant additional resources into the Farm Credit System when the system had financial difficulties. This Government financial assistance to a GSE and the problems of the Savings and Loan sector have generated increased interest in Congressional oversight of the GSEs.

House bill

Section 13501(a), of the House bill defined GSEs for this legislation to include the Farm Credit System (including Farm Credit Banks, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, and the Farm Credit Insurance Corporation) the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and Student Loan Marketing Association.

Senate amendment

The Senate had no similar provision.

Conference report

The conference report adopts the House language except that it deletes the reference to the Farm Credit Insurance Corporation which is an on-budget entity.

House bill

Subsection (b) mandates a Treasury study on the financial safety and soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, and the financial exposure of the Federal Government posed by GSEs. The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

Senate amendment

Section 12254(a)(1) of the Senate amendment contained an essentially identical provision.

Conference report

The conference report accepts the House provision but expands the scope of the Treasury study to analyze the impact of GSE activities on Treasury borrowing.

House bill

Subsection (c) mandates a Congressional Budget Office study on GSEs due to Congress no later than April 30, 1991. The study will include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk management, and the financial exposure of the Federal Government posed by GSEs. The study will also include an analysis of alternative models for oversight of GSEs of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

Senate amendment

The Senate amendment contains a mandate for a similar study.

Conference report

The conference report accepts the House language with the scope expanded to include an analysis of the effects of GSE activities on Treasury borrowing.

House bill

Subsection (d) provides the Treasury and the CBO full access to GSE books and records and other information as requested by the Secretary of the Treasury or the Director of the Congressional Budget Office. This subsection also allowed the Secretary of the Treasury and the Director of the Congressional Budget Office to request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

Senate amendment

The Senate amendment contains essentially the same provision.

Conference report

The conference report adopts the House language.

House bill

Subsection (e) provides for the confidentiality of the information provided to Treasury and the Congressional Budget Office. The House bill requires the Secretary of the Treasury and the Director of the Congressional Budget Office to determine and maintain the confidentiality of any book, record, or information made available by a GSE, consistent with the level of confidentiality established by the GSE involved. The Department of the Treasury and the Congressional Budget Office were made exempt from Freedom of Information Act requirements for the purpose of this Act. Finally, an officer or employee of the Department of the Treasury or the Congressional Budget Office were made subject to the penalties set forth in section 1906 of title 18, United States Code, if, by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section and if he or she discloses the material in any manner other than to an officer or employee of the Department of the Treasury Congression-

al Budget Office or pursuant to the exceptions set forth in such section 1906.

Senate amendment

The Senate amendment contained (at 12254(a)(C) essentially similar language to the House bill except that the Senate provided a separate standard of confidentiality for the Congressional Budget Office (at 12254(b)) that did not impose the penalties contemplated by the House bill.

Conference report

The conference report adopted the House language with respect to Treasury confidentiality and the Senate language with respect to CBO confidentiality requirements.

House bill

Subsection (f) put into statutory language the requirement that the committees of jurisdiction in the House and Senate prepare and report legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government no later than September 15, 1991.

Senate amendment

Beginning at subsection (a), the Senate amendment incorporates a sense of the Congress resolution that the appropriate committees of jurisdiction will study the Administration's proposals with respect to GSEs and report legislation by September 15, 1991. Committee legislation will ensure the financial safety and soundness of the GSEs. The sense of the Congress resolution states that if the appropriate committees of jurisdiction failed to act, the Senate will consider GSE legislation on the floor. The sense of the Congress language was intended to be advisory and not binding on the Committees or the leadership if intervening events next year prevented such consideration.

Conference report

The conference adopts the House language with respect to consideration of legislation by the appropriate committees of jurisdiction. However, the conference decides to make the statutory nature of the House language apply only to the House, while the Senate will retain the language in the form of a sense of the Senate resolution. This language intends to provide impetus for Senate action. The conference report also drops the original Senate language that referred to floor action.

The conference report also adopts a provision that was not contained in either bill, requiring the President's budget to analyze and discuss the financial condition of the GSEs, and the financial exposure of the Federal Government, if any, posed by the GSEs.

Section 13501(f) of the bill requires the committees of jurisdiction in the House and Senate to report legislation to ensure the financial soundness of government sponsored enterprises by September 15, 1991. If such legislation is not reported, it is the intent of the conferees that the Leadership of the House and Senate ensure that, by the end of the first session of the 102nd Congress, there is con-

sideration of, and a vote on, legislation the Administration may submit on the financial soundness of GSEs.

The conferees intend that nothing in subtitle E be construed as changing the existing committee jurisdictions with regard to government-sponsored enterprises.

IX. ADDITIONAL CHANGES TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

Current law

The Congressional Budget and Impoundment Control Act of 1974, as amended, provides for the adoption each year of a concurrent resolution on the budget setting forth spending, deficit, and revenue levels. The budget resolution is enforced principally through points of order against legislation violating budget resolution spending, revenue, and deficit levels, and through reconciliation instructions to congressional committees. Budget resolutions include budget levels for three fiscal years, but only the first year levels are binding (i.e., enforceable by points of order).

The budget resolution may not provide for a deficit in excess of the Gramm-Rudman-Hollings deficit target for the fiscal year. There are no other restrictions on congressional discretion in setting budget resolution levels under current law.

Title X of the Act establishes congressional procedures for considering impoundment of funds by the executive branch.

House bill

The House bill amends the Congressional Budget Act to establish procedures for enforcing the discretionary spending limits established for fiscal years 1991–1995 through action each year on the budget resolution. Through fiscal year 1995, budget resolutions are required to cover five fiscal years.

The House bill also establishes a procedure for automatic reconciliation instructions to the tax committees should legislation be enacted reducing revenues without an offset.

The House provisions are enacted as temporary amendments to the 1974 Budget Act, generally expiring at the end of fiscal year 1995.

Senate amendment

The Senate amendment also expands 1974 Budget Act enforcement procedures to ensure compliance with the discretionary spending limits and pay-as-you-go requirements to assure that the 5-year, $500 billion deficit reduction plan is implemented and maintained. In addition, the Senate amendment establishes new timetables for congressional and executive budget actions, strengthens and permanently codifies the Byrd Rule on extraneous matter, and makes other conforming changes in the 1974 Budget Act.

The Senate amendment makes permanent changes in the 1974 Budget Act.

Conference agreement

The conference agreement includes a number of budget process changes. It makes temporary changes in the Congressional Budget

Act to create 5-year budget resolutions that would be enforced by points of order against exceeding committee allocations for both the first year and the total of the 5 years covered by the budget resolution. Section 601(b) of the conference agreement also creates temporary points of order in the Senate against violating the discretionary spending limits.

The conference agreement codifies section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 as part of the Congressional Budget Act without change. Following the Senate bill, the conference agreement allows for display of the increase in the debt as a measure of the deficit, display of Federal retirement trust fund balances, and the creation in budget resolutions of pay-as-you-go provisions similar to reserve funds established in budget resolutions since 1987. The conference agreement standardizes the language of points of order, corrects a precedent in the Senate that effectively kills amendments between Houses if points of order under the Congressional Budget Act are sustained against them (*see* Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database)), and similarly makes clear that if a point of order under the Act is sustained against a bill, the bill should be sent back to committee instead of the calendar, so that the committee may then take corrective action to improve the bill. The conference agreement makes clear that amendments between the Houses on budget resolutions are covered in the Senate under section 305(c), which also deals with conference reports on budget resolutions. The conference agreement also repeals section 202 of public law 100-119, the exceptions to which the conferees believe had come to be abused (*see* W. Dauster, CONGRESSIONAL BUDGET ACT ANNOTATED 567-77 (1990)) and codifies the Byrd Rule on extraneous matter in reconciliation bills (*see id.* at 593-650; section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), amended by the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), and amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 20.5, 101 Stat. 754, 784-85 (Sept. 29, 1987)).

The conference report also makes conforming changes to title 31 of the United States Code to make clear that funds sequestered are not available for expenditure and that ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

X. DEFINITION

Current law

Section 257 of Gramm-Rudman-Hollings defined the terms "automatic spending increase," "budget outlays," "budget authority,"

"concurrent resolution on the budget," "deficit," "maximum defict amount," "real economic growth," "sequester," "sequestration," "account," "sequesterable resource," "margin," "prepayment of a loan," "outlay rate," and "combined outlay rate."

Specifically, section 257 defines "margin" to mean $10 billion for fiscal years 1988 through 1992 and zero for fiscal year 1993. If the deficit exceeds the Gramm-Rudman-Hollings targets by less then the margin through fiscal year 1992, a sequester order is not triggeted.

House bill

The House bill moves the definitions section to a new section 250 and retains or revises the definitions of "outlays," "budget authority," "maximum deficit amount," "real economic growth," "sequester," "sequestration," "account," and "prepayment of a loan." the House bill adds to the definitions section new definitions for "breach," 'category," "baseline," "budgetary resources," "discretionary appropriations," "direct spending," "current," "sale of an asset," "budget year," "current year," "outyear," "OMB," and "CBO," but strikes definitions for "automatic spending increase," "concurrent resolution on the budget," "deficit," sequesterable resources," "outlay rate," and "combined outlay rate." Finally, the House bill redefines "margin" to mean $15 billion for fiscal year 1994 and 1995 (minus any authorized outlay adjustments).

Senate amendment

The Senate amendment redefines "margin" to mean zero for fiscal years 1991 through 1993 and $15 billion for fiscal years 1994 and 1995. Other than in the definition of "margin," the Senate amendment makes no changes in the Gramm-Rudman-Hollings definitions.

Conference agreement

The conference agreement accepts the definition changes proposed by the House, except that no definition of "sale of an asset" is provided. Additionally "margin" is redefined to mean zero for fiscal years 1992 and 1993 and $15 billion for fiscal years 1994 1995.

XI. PRESIDENT'S BUDGET SUBMISSION

The conference agreement includes a provision permitting the President to delay submission to Congress of the Budget of the United States Government from the present requirement of "on or before the first Monday after January 3 of each year" to not later than the first Monday in February. The conferees intended that this increased flexibility be used very rarely to meet only the most pressing exigencies. An orderly and timely budget process requires that Presidential submissions be made on or before the first Monday after January 3 whenever possible. The conferees expect that Presidential submission dates will comply with the January deadline.

XII. SCOREKEEPING

The conferees recognize that, because of the constraints imposed by the Supreme Court's decision in *Bowsher v. Synar,* the conference agreement vests substantial power to estimate the costs of legislation with the Office of Management and Budget. The conferees are concerned that the Office of Management and Budget has not always shown complete objectivity in its estimates. The conferees urge the Congress to scrutinize the scorekeeping of the Office of Management and Budget as that Office implements the procedures under this conference agreement. The conferees considered procedures under which Congress would enact into law Congressional Budget Office cost estimates as part of any spending legislation. Should the Office of Management and Budget abuse its scorekeeping power, the conferees believe that the Congress should adopt such procedures at that time.

Section 251(a)(7) and 252(d) of Gramm-Rudman-Hollings as amended by this conference agreement provide that the Office of Management and Budget must make its estimates in conformance with scorekeeping guidelines determined for consultation among the Senate and House Committees on the Budget, the Congressional Budget Office, and the Office of Management and Budget. These provisions carry on and codify the existing consultative process that has led to these parties developing the following scorekeeping guidelines:

SCOREKEEPING GUIDELINES FOR FY 1991

The guideline listed below reflect general budget scorekeeping conventions that will be used by the House and Senate Budget Committees and the Office of Management and Budget in measuring compliance with Congressional budget targets and the Budget Summit Agreement.

To the extent possible under the Budget Enforcement Act of 1990, the Gramm-Rudman-Hollings statute, the Congressional Budget Office and the Office of Management and Budget will follow these guidelines in calculating deficit estimates and making projections for Gramm-Rudman-Hollings and the Budget Enforcement Act 1990.

For both budget scorekeeping and Gramm-Rudman-Hollings, final scoring will necessarily depend on the review of legislation by the scorekeepers, as provided in the Budget Enforcement Act of 1990, the Congressional Budget Act and Gramm-Rudman-Hollings. These rules will be reviewed on an annual basis.

1. Mandatory spending

The list of accounts that are considered mandatory for purposes of scoring appropriations bills follows.

2. Outlays prior

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

3. Direct spending programs

Entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, unless Congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations bills will be scored against the Appropriations Committee section 302(b) allocations in the House and the Senate except for those savings provisions that are to be enacted by an authorizing committee pursuant to the Budget Summit Agreement.

4. Transfer of budget authority from a mandatory account to a discretionary account

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory.

5. Permissive transfer authority

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or Congressional intent.

This guideline will apply to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) for FY 1991 and to both specific and general transfer authority thereafter.

6. Reappropriations

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

7. Advance appropriations

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

Advance appropriations will be classified as mandatory or discretionary consistent with the mandatory list below.

8. Rescissions and transfers of unobligated balances

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the amount from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amounts in the source accounts. Such

amounts of budget authority will be projected at zero. Outlay estimates for both the transferring and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

9. Delay of obligations

Appropriations bills specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the bill is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended. If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation. If an appropriation is contingent on enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If an appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation and outlays will be estimated based on the best information about when (or if) the contingency will be met. Non-lawmaking contingencies within the control of the Congress are not scoreable events.

10. Absorption

Appropriations bills or reports should contain language that clearly specifies the extent to which funds for pay raises are either provided or absorbed within the levels appropriated in the bill, or remain to be provided.

11. Scoring purchases, lease-purchases and leases

General Rule.—When a bill provides the authority for an agency to enter into a contract for the purchase, lease-purchase, or lease of a capital asset, budget authority will be scored in the year in which the budget authority is first made available in the amount of the government's total estimated legal obligations.

Outlays for a purchase or for a lease-purchase in which the Federal government assumes substantial risk—for example, through an explicit government guarantee of third-party financing—will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for a lease, or for a lease-purchase in which the private sector retains substantial risk, will be spread across the lease period. In all cases, the total amount of outlays scored over time against a bill will equal the amount of budget authority scored against that bill.

Implementation of the Rule.—Contracts under existing authority will not be rescored. Purchases and lease-purchases will be scored on the basis of this rule starting in FY 1991. Multi-year leases will

be scored consistent with current practice, rather than this rule, in FY 1991.

Further details.—See "Addendum: Details on scoring purchases, lease-purchases, and leases".

12. Write-offs of uncashed checks, unredeemed food stamps, and similar instruments

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have built up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

13. Reclassification after an agreement

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification of spending and revenues (e.g. from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

ADDENDUM: DETAILS ON SCORING PURCHASES, LEASE-PURCHASE, AND LEASES

Budget Authority.—Budget authority *scored against a bill* will include all costs of the project except for imputed interest costs calculated at Treasury rates. Imputed interest costs will not be scored against a bill or for current level but will count for other purposes.

Criteria for Defining a Lease.—Under a lease arrangement, ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period. In addition, the Government should enter into the contract for limited use of an asset and not consume a substantial portion (75 percent) of its economic value. All risks of ownership of the asset (e.g. financial responsibility for destruction or loss of the asset) should remain with the lessor.

Illustrative Criteria Determining Private Risk.—Legislation and lease-purchase contracts will be considered against the following type of illustrative criteria to evaluate the level of private-sector risk in a project.

There should be no explicit government guarantee of third party financing.

All risks to ownership of the asset (e.g. financial responsibility for destruction or loss of the asset, etc.) should remain with the lessor unless the Government was at fault for such losses.

The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee. There should be a private-sector market for the asset.

The project should not be constructed on Government land.

Directed Scorekeeping.—Language that attempts to waive the Anti-Deficiency Act, or to limit the amount of timing of obligations recorded, does not change the government's obligations or obligation authority, and so will not affect the scoring of budget authority or outlays.

Authority to Obligate.—Unless bill language that authorizes a project clearly states that *no* obligations are allowed unless budget authority is provided specifically for that project in an Appropriations bill in advance of the obligation, the bill will be interpreted as providing obligation authority, in an amount to be estimated by the Congressional Budget Office (for the Congress) and the Office of Management and Budget (for the Executive).

APPROPRIATED ENTITLEMENTS AND MANDATORIES FOR FISCAL YEAR 1991

Commerce-Justice-State

Payment to the Foreign Service retirement and disability fund
19-0540-0-1-153
Fishermen's guaranty fund
19-5121-0-2-376
Salaries of judges:
Supreme Court, S&E [1]
10-0100-0-1-752
U.S. Court of International Trade [1]
10-0400-0-1-752
U.S. Court of Appeals [1]
10-0510-0-1-752
Courts of Appeals, District Courts, etc.[1]
10-0920-0-1-752
Payment to judicial officers' retirement fund
10-0941-0-1-752
Fees and expenses of witnesses
15-0311-0-1-752
Independent counsel
15-0327-0-1-752
Public Safety Officers benefits
15-0403-0-1-754
Civil liberties public education fund
15-0329-0-1-808

Defense

Payment to the Central Intelligence Agency retirement fund
56-3400-0-1-054

District of Columbia

No mandatory accounts.

Energy-Water

No mandatory accounts.

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[1] Account split—Only salaries of judges are mandatory.

Foreign Operations

Housing and other credit guaranty programs
72-4340-0-3-151
Guarantee reserve fund
11-4121-0-3-152
Payment to the Foreign Service retirement and disability fund
11-1036-0-1-153

Interior

Miscellaneous trust funds
14-9971-0-7-302
Range improvements
14-5132-0-2-302
Administration of territories [2]
14-0412-0-1-808
Compact of free association [3]
14-0415-0-1-808

Labor-HHS-Education

Guaranteed student loans
91-0230-0-1-502
Higher education facilities loans
91-0240-0-1-502
College housing and academic facilities loans [4]
91-0242-0-1-502
Federal unemployment benefits and allowances (FUBA)
16-0326-0-1-504
16-0326-0-1-603
Social services block grant
75-1634-0-1-506
Payments to States for foster care and adoption assistance
75-1645-0-1-506
Rehabilitation services and handicapped research
91-0301-0-1-506
Vaccine improvement program trust fund
20-8175-0-7-551 [5]
Retirement pay and medical benefits for commissioned officers
75-0379-0-1-551
Medicaid
75-0512-0-1-551
Medical facilities guarantee and loan fund
75-4430-0-3-551
HMO loan and loan guarantee fund
75-4420-0-3-551
Health professions graduate student loan insurance fund
75-4305-0-3-553

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[2] Account split—The interest rate differential related to the Guam Power Authority refinancing and the Northern Marianas covenant will be scored as mandatory.
[3] Account split—The account shall be split between mandatory payments (required by treaty) and discretionary costs.
[4] Account split—Payment of interest to Treasury shall be scored as mandatory. Loan levels shall be scored as discretionary loan limitations and borrowing authority.
[5] The administrative expenses associated with this account are discretionary within the jurisdiction of the Commerce, Justice, State subcommittee.

Payments to health care trust funds
75-0580-0-1-571
Advances to the unemployment trust fund
16-0327-0-1-601
Special benefits
16-1521-0-1-601
16-1521-0-1-602
Black lung disability trust fund
20-8144-0-7-601
Federal payments to the railroad retirement accounts
60-0113-0-1-601
Special benefits for disabled coal miners
75-0409-0-1-601
Supplemental security income program [6]
75-0406-0-1-609
Family support payments to States
75-1501-0-1-609
Payments to States for family support activities
75-1509-0-1-609
Payments to social security trust funds
75-0404-0-1-651

Legislative Branch

Compensation of members, Senate
00-0100-0-1-801
Compensation of members, House
00-0200-0-1-801
Payments to windows and heirs of deceased members of Congress
00-0215-0-1-801
Payments to windows and heirs of deceased members of Congress—Senate
00-0115-0-1-801

Military Construction

No mandatory accounts.

Rural Development—Agriculture

Reimbursement to the rural electrification and telephone fund
12-3101-0-1-271
Conservation reserve program [7]
12-3319-0-1-302
Dairy indemnity program
12-3314-0-1-351
Temporary emergency food assistance program (TEFAP) [8]
12-3635-0-1-351
Federal Crop Insurance Corporation fund
12-4085-0-1-351
Agricultural credit insurance fund [9]

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[6] Account split—Administrative expenses shall be scored as discretionary BA and outlays.
[7] Appropriations to fund an agreed-upon level of 40 million acre minimum specified in authorizing legislation shall be scored as mandatory. Appropriations above this level shall be scored as discretionary.
[8] Account split—Only purchases of commodities for Hunger Prevention Act are mandatory.

12-4140-0-3-351
Commodity Credit Corporation fund
12-4336-0-3-351
Payments to the farm credit system financial assistance corp.
20-1850-0-1-351
Rural housing insurance fund [9]
12-4141-0-3-371
Rural communication development fund
12-4142-0-3-452
Rural development insurance fund [9]
12-4155-0-3-452
Special milk program
12-3502-0-1-605
Food donations programs for selected groups [10]
12-3503-0-1-605
Food stamp program
12-3505-0-1-605
Child nutrition programs
12-3539-0-1-605
Nutrition assistance for Puerto Rico
12-3550-0-1-605
Funds for strengthening markets (section 32) [11]
12-5209-0-2-605

Transportation

WMATA, interest payments
46-0300-0-1-401
FAA, aircraft purchase loan guarantee program
69-1399-0-1-402
Coast Guard, retired pay
69-0241-0-1-403

Treasury—Postal Service

Payment to the Postal Service fund for non-funded liabilities
18-1004-0-1-372
Government payment for annuitants, employees health benefits
24-0206-0-1-551
Government payment for annuitants, employees life insurance
24-0500-0-1-602
Compensation of the President
11-0001-0-1-802
Payment of government losses in shipment
20-1710-0-1-803
Payment to civil service retirement and disability fund
24-0200-0-1-805

Veterans—HUD

FSLIC resolution fund
51-4065-0-3-371

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[9] Account split—Appropriations for losses will be scored as mandatory. Changes to loan levels allocated to authorizing committees will be scored as discretionary.
[10] Account split—Only purchases of commodities for Hunger Prevention Act are mandatory.
[11] The entire account shall be scored as mandatory except to the extent that discretionary set asides are specified in appropriations language.

Federal Housing Administration fund [12]
86-4070-0-3-371
Veterans Benefits Administration
Insurance and indemnities
36-0120-0-1-701
Compensation
36-0153-0-1-701
Pensions
36-0154-0-1-701
Burial benefits
36-0155-0-1-701
Readjustment benefits
36-0137-0-1-702
Guaranty and indemnity fund
36-4023-0-3-704
Loan guaranty revolving fund
36-4025-0-3-704

DISCRETIONARY APPROPRIATIONS CATEGORIES

The following is a list of discretionary accounts organized by three subsets of discretionary appropriations: defense, international, and domestic discretionary, pursuant to Section 250(c)4(A). New accounts or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

APPROPRIATED DEFENSE DISCRETIONARY ACCOUNTS FOR FISCAL 1991

COMMERCE, JUSTICE, STATE

Department of Transportation, Maritime Administration, Ready reserve force
69-1710-0-1-054

DEFENSE

Department of Defense, Procurement, Coastal defense augmentation
17-0380-0-1-051
Military personnel, Marine Corps
17-1105-0-1-051
Operation and Maintenance, Marine Corps
17-1106-0-1-051
Operation and Maintenance, Marine Corps Reserve
17-1107-0-1-051
Reserve personnel, Marine Corps
17-1108-0-1-051
Procurement, Marine Corps
17-1109-0-1-051
Research, development, test, and evaluation, Navy
17-1319-0-1-051

[12] Account split—Payments for interest, net realized losses, and temporary mortgage assistance payments are mandatory. Administrative expenses transferred to Management and Administration and Inspector General accounts will be classified as a discretionary obligation limitation and outlays.

Reserve personnel, Navy
17-1405-0-1-051
Military personnel, Navy
17-1453-0-1-051
Aircraft procurement, Navy
17-1506-0-1-051
Weapons procurement, Navy
17-1507-0-1-051
Shipbuilding and conversion, Navy
17-1611-0-1-051
Operation and Maintenance, Navy
17-1804-0-1-051
Operation and Maintenance, Navy Reserve
17-1806-0-1-051
Other procurement, Navy
17-1810-0-1-051
Navy Stock Fund
17-4911-0-4-051
Navy Industrial Fund
17-4914-0-4-051
Marine Corps Industrial Fund
17-4914-0-4-051
Operation and Maintenance, National Board for the Promotion of Rifle Practice, Army
21-1705-0-1-051
Military Personnel, Army
21-2010-0-1-051
Operation and Maintenance, Army
21-2020-0-1-051
Aircraft procurement, Army
21-2031-0-1-051
Missile procurement, Army
21-2032-0-1-051
Procurement of weapons and tracked combat vehicles, Army
21-2033-0-1-051
Procurement of ammunition, Army
21-2034-0-1-051
Other procurement, Army
21-2035-0-1-051
Research Development, test and evaluation, Army
21-2040-0-1-051
Military Personnel, National Guard personnel, Army
21-2060-0-1-051
Operation and Maintenance, Army National Guard
21-2065-0-1-051
Reserve personnel, Army
21-2070-0-1-051
Operation and Maintenance, Army Reserve
21-2080-0-1-051
Revolving and management funds, Army stock fund
21-4991-0-4-051
Army Industrial Fund
21-4992-0-4-051
Aircraft procurement, Air Force

57-3010-0-1-051
Missile procurement, Air Force
57-3020-0-1-051
Other procurement, Air Force
57-3080-0-1-051
Operation and Maintenance, Air Force
57-3400-0-1-051
Military personnel, Air Force
57-3500-0-1-051
Research, development, test, and evaluation, Air Force
57-3600-0-1-051
Reserve personnel, Air Force
57-3700-0-1-051
Operation and Maintenance, Air Force Reserve
57-3740-0-1-051
Operation and Maintenance, Air National Guard
57-3840-0-1-051
National Guard personnel, Air Force
57-3850-0-1-051
Air Force stock fund
57-4921-0-4-051
Air Force Industrial Fund
57-4922-0-4-051
Operation and Maintenance, Defense agencies
97-0100-0-1-051
Court of Military Appeals, Defense
97-0104-0-1-051
Drug interdiction and counter-drug activities, Defense
97-0105-0-1-051
Goodwill Games
97-0106-0-1-051
Office of the Inspector General
97-0107-0-1-051
Procurement, Defense agencies
97-0300-0-1-051
National guard and reserve equipment
97-0350-0-1-051
Defense production act purchases
97-0360-0-1-051
Chemical agents and munitions destruction, Defense
97-0390-0-1-051
Research, development, test, and evaluation, Defense agencies
97-0400-0-1-051
Developmental test and evaluation, Defense
97-0450-0-1-051
Operational test and evaluation, Defense
97-0460-0-1-051
Environmental Restoration, Defense
97-0810-0-1-051
Humanitarian assistance
97-0819-0-1-051
Defense Stock Fund
97-4961-0-4-051
Defense Industrial Fund

97-4962-0-4-051
Emergency Response fund
97-4965-0-4-051
Central Intelligence Agency, Enhanced security countermeasures capabilities
56-3401-0-1-054
Intelligence community staff
95-0400-0-1-054

ENERGY AND WATER

Department of Energy, Atomic energy defense activities
89-0220-0-1-053
Defense Nuclear Facilities Safety Board, S&E
95-3900-0-1-053

MILITARY CONSTRUCTION

Department of Defense, Family Housing, Navy and Marine Corps
17-0703-0-1-051
Military construction, Navy
17-1205-0-1-051
Military construction, Naval Reserve
17-1235-0-1-051
Family Housing, Army
21-0702-0-1-051
Military construction, Army
21-2050-0-1-051
Military construction, Army National Guard
21-2085-0-1-051
Military construction, Army Reserve
21-2086-0-1-051
Family housing, Air Force
57-0704-0-1-051
Military construction, Air Force
57-3300-0-1-051
Military construction, Air Force Reserve
57-3730-0-1-051
Military construction, Air National Guard
57-3830-0-1-051
Base realignment and closure account
97-0103-0-1-051
Military construction, defense agencies
97-0500-0-1-051
Family Housing, Defense agencies
97-0706-0-1-051
North Atlantic Treaty Organization infrastructure
97-0804-0-1-051
Family housing, Homeowners assistance fund, Defense [1]
97-4090-0-3-051

[1] Portion of account is non-appropriated mandatory.

VETERANS', HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

Federal Emergency Management Agency, S&E (Defense-related activities)
58-0100-0-1-054
Emergency management planning and assistance (defense-related)
58-0101-0-1-054
Selective Service System, S&E
90-0400-0-1-054

APPROPRIATED INTERNATIONAL DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991

COMMERCE, JUSTICE, STATE

Foreign Claims Settlement Commission, S&E
15-0100-0-1-153
Payment of Vietnam and U.S.S. *Pueblo* prisoner of war claims
15-0104-0-1-153
Department of State, Administration of Foreign Affairs, S&E
19-0113-0-1-153
Soviet-East European research and training
19-0118-0-1-153
Administration of Foreign Affairs, Protection of foreign missions and officials
19-0520-0-1-153
Emergencies in the diplomatic and consular service
19-0522-0-1-153
Payment to the American Institute in Taiwan
19-0523-0-1-153
Office of the Inspector General
19-0529-0-1-153
Acquisition and maintenance of buildings abroad
19-0535-0-1-153
Acquisition and maintenance of buildings abroad (special foreign currency)
19-0538-0-1-153
Representation allowances
19-0545-0-1-153
International Organizations and Conferences, contributions for international peacekeeping activities
19-1124-0-1-153
International conferences and contingencies
19-1125-0-1-153
Contributions to international organizations
19-1126-0-1-153
U.S. bilateral science and technology agreements
19-1151-0-1-153
International Trade Commission, S&E
34-0100-0-1-153
Commission on the Ukraine Famine, S&E
48-0050-0-1-153
Commission for the Study of Intl. Migration and Coop., S&E

48-1400-0-1-153
Arms Control and Disarmament Agency, activities
94-0100-0-1-153
Commission for the Preservation of America's Heritage Abroad, S&E
95-3700-0-1-153
Department of State, Payment to the Asia Foundation
19-0525-0-1-154
United States Information Agency, S&E
67-0201-0-1-154
East West Center
67-0202-0-1-154
Radio construction
67-0204-0-1-154
Radio broadcasting to Cuba
67-0208-0-1-154
Educational and cultural exchange programs
67-0209-0-1-154
National Endowment for Democracy
67-0210-0-1-154
Office of the Inspector General
67-0300-0-1-154
Board for International Broadcasting, Grants and expenses
95-1145-0-1-154
Israel relay station
95-1146-0-1-154
Japan-United States Friendship Commission trust fund
95-8025-0-1-154

FOREIGN OPERATIONS

Department of State, U.S. emergency refugee and migration assistance
11-0040-0-1-151
Multilateral assistance, contribution to the Inter-American Dvlt. Bank
11-0072-0-1-151
Contribution to the International Development Association
11-0073-0-1-151
Contribution to the Asian Development Bank
11-0076-0-1-151
Contribution to the Intl. Bank for Reconstruction
11-0077-0-1-151
Contribution to the International Finance Corporation
11-0078-0-1-151
Contribution to the African Development Fund
11-0079-0-1-151
Contribution to the African Development Bank
11-0082-0-1-151
Peace Corps
11-0100-0-1-151
African Development Foundation
11-0700-0-1-151
Agency for Intl. Development, operating expenses

11-1000-0-1-151
Trade and Development Program
11-1001-0-1-151
Multilateral assistance, Intl. organizations and programs
11-1005-0-1-151
AID, operating expenses
11-1007-0-1-151
Sahel development program
11-1012-0-1-151
American schools and hospitals abroad
11-1013-0-1-151
Sub-Saharan Africa development assistance
11-1014-0-1-151
Functional development assistance program
11-1021-0-1-151
Department of State, International narcotics control
11-1022-0-1-151
AID, international disaster assistance
11-1035-0-1-151
Special assistance initiatives
11-1042-0-1-151
Inter-American Foundation
11-4031-0-3-151
Department of State, migration and refugee assistance
19-1143-0-1-151
Overseas Private Investment Corporation
71-4030-0-3-151
AID, Private sector revolving fund
72-4341-0-3-151
International security assistance, peacekeeping operations
11-1032-0-1-152
Economic support fund
11-1037-0-1-152
Special assistance for Central America, reconciliation assistance
11-1038-0-1-152
International Security Assistance, Military assistance
11-1080-0-1-152
International military education and training
11-1081-0-1-152
Foreign military financing
11-1082-0-1-152
Department of State, FMS interest buydown
11-8882-0-1-152
Anti-terrorism assistance
19-0114-0-1-152
Intl. Monetary Programs, contribution to enhanced structural adjustments facility
11-0005-0-1-155
Military sales programs, special defense acquisition fund
11-4116-0-3-155
Export-Import Bank of the United States
83-4027-0-3-155

LABOR, HHS

United States Institute of Peace, operating expenses
95-1300-0-1-153

AGRICULTURE RURAL DEVELOPMENT AND RELATED AGENCIES

Foreign assistance programs, expenses, Public Law 480
12-2274-0-1-151

APPROPRIATED DOMESTIC DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991

COMMERCE, JUSTICE, STATE

Department of State, International Commissions, S&E, IBWC
19-1069-0-1-301
Construction, IBWC
19-1078-0-1-301
American section, international commissions
19-1082-0-1-301
Conservation and land management, Intl. fisheries commissions
19-1087-0-1-302
Marine Mammal Commission, S&E
95-2200-0-1-302
National Oceanic and Atmospheric Administration, operations, research and facilities
13-1450-0-1-306
Aviation weather services program
13-8105-0-7-306
NOAA, Damage assessment and restoration revolving fund [1]
Commission on Agricultural Workers, S&E
48-0057-0-1-352
Department of Commerce, General Administration, S&E
13-0120-0-1-376
Minority Business Development Agency
13-0201-0-1-376
Export Administration, operations and administration
13-0300-0-1-376
Bureau of the Census, S&E
13-0401-0-1-376
Periodic censuses and programs
13-0450-0-1-376
National Institute of Standards and Technology, scientific and technical research
13-0500-0-1-376
National Telecommunications and Information Administration, S&E
13-0550-0-1-376
United States Travel and Tourism Administration, S&E
13-0700-0-1-376
Patent and Trademark Office, S&E
13-1006-0-1-376
Technology Administration, S&E

[1] Treasury identification number not yet assigned.

13-1100-0-1-376
International Trade Administration, operations and administration
13-1250-0-1-376
Economic and Statistical Analysis, S&E
13-1500-0-1-376
NIST, working capital fund
13-4650-0-4-376
NOAA, Fishing vessel and gear damage compensation fund
13-5119-0-2-376
Fishermen's contingency fund
13-5120-0-2-376
Foreign fishing observer fund
13-5122-0-2-376
Fisheries promotional fund
13-5124-0-2-376
Promote and develop fishery products and research pertaining [2]
13-5139-0-2-376
Economic Development Administration, miscellaneous appropriations
13-9911-0-1-376
Department of State, fishermen's protective fund
19-5116-0-2-376
Federal Communications Commission, S&E
27-0100-0-1-376
Federal Trade Commission, S&E
29-0100-0-1-376
Securities and Exchange Commission, S&E
50-0100-0-1-376
Small Business Administration, S&E
73-0100-0-1-376
Office of the Inspector General
73-0200-0-1-376
Pollution control equipment contract guarantee revolving fund
73-4147-0-3-376
Business loan and investment fund
73-4154-0-3-376

Direct Loans

Guaranteed Loans

Surety bond guarantees revolving fund
73-4156-0-3-376
Christopher Columbus Quincentennary Jubilee Commission, S&E
76-0800-0-1-376
Competitiveness Policy Council
95-3750-0-1-376
Advisory Commission on Conferences in Ocean Shipping, S&E
48-2500-0-1-403
Federal Maritime Commission, S&E
65-0100-0-1-403
Maritime Administration, Ship construction

[2] Portion of account is non-appropriated permanent.

69-1708-0-1-403
Operating Differential subsidies
69-1709-0-1-403
Operations and Training
69-1750-0-1-403
War risk insurance revolving fund
69-4302-0-3-403
Vessel operations revolving fund
69-4303-0-3-403
Economic Development Administration, Grants and loans administration
13-0125-0-1-452
Office of the Inspector General
13-0126-0-1-452
Economic Development assistance programs
13-2050-0-1-452

Guaranteed Loans

Regional development programs
13-2100-0-1-452
NOAA, coastal energy impact fund
13-4315-0-3-452
Economic development revolving fund
13-4406-0-3-452
Miscellaneous appropriations (area and regional dvlt.)
13-9911-0-1-452
Small Business Administration, disaster relief and insurance, disaster loan fund
73-4153-0-3-453

Direct Loans

Department of Commerce, NTIA, Public telecommunications facilities, planning and construction
13-0551-0-1-503
Department of Health and Human Services, vaccine improvement program trust fund
20-8175-0-7-551
Department of Justice, federal law enforcement activities, General Admin., S&E
15-0129-0-1-751
Department of Justice, working capital fund
15-4526-0-4-751
Federal Bureau of Investigation, S&E
15-0200-0-1-751
Interagency law enforcement, Organized crime drug enforcement
15-0323-0-1-751
General Administration, Office of the Inspector General
15-0328-0-1-751
Emergency Drug funding
15-0331-0-1-751
United States Parole Commission, S&E
15-1061-0-1-751
Drug Enforcement Administration, S&E
15-1100-0-1-751

Immigration and Naturalization Service, S&E
15-1217-0-1-751
Immigration Emergency Fund
15-1218-0-1-751
Equal Employment Opportunity Commission, S&E
45-0100-0-1-751
Commission on Civil Rights, S&E
95-1900-0-1-751
Supreme Court of the United States, S&E [3]
10-0100-0-1-752
Care of the building and the grounds
10-0103-0-1-752
United States Court of International Trade, S&E [3]
10-0400-0-1-752
United States Court of Appeals for the Federal Circuit, S&E [3]
10-0510-0-1-752
Courts of Appeals, District Courts, and other judicial serivces, S&E [2] [3]
Defender services
10-0923-0-1-752
Fees of jurors and commissioners
10-0925-0-1-752
Administrative Office of the United States Courts, S&E
10-0927-0-1-752
Federal judicial center, S&E
10-0928-0-1-752
Courts of Appeals, District Courts, and other judicial services, court security
10-0930-0-1-752
Furniture and furnishings
10-0932-0-1-752
United States Sentencing Commission S&E
10-0938-0-1-752
Department of Justice, General Legal Activities, S&E
15-0128-0-1-752
Antitrust division, S&E
15-0319-0-1-752
United States Attorneys, S&E
15-0322-0-1-752
United States Marshals Service, S&E
15-0324-0-1-752
Community Relations Service, S&E
15-0500-0-1-752
Support of United States prisoners
15-1020-0-1-752
Assets forfeiture fund [2]
15-5042-0-2-752
United States trustees system fund
15-5073-0-2-752
Payment to the Legal Services Corporation
20-0501-0-1-752

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[3] Portion of account is mandatory.

State Justice Institute, S&E
48-0052-0-1-752
Federal Prison System, buildings and facilities
15-1003-0-1-753
Salaries and Expenses
15-1060-0-1-753
Federal Prison Industries, Incorporated [2]
15-4500-0-4-753
Office of Justice Programs, Justice Assistance
15-0401-0-1-754
National Institute of Corrections
15-1004-0-1-754
Commission on Security and Cooperation in Europe, S&E
09-0110-0-1-801
Dwight David Eisenhower Centennial Commission, expenses
76-1700-0-1-801
Office of the United States Trade Representative, S&E
11-0400-0-1-802
The Judiciary, Bicentennial activities
10-0933-0-1-808
Commission on the Bicentennial of the U.S. Constitution, S&E
76-0054-0-1-808
Martin Luther King, Jr. Federal Holiday Commission, S&E
76-0600-0-1-808
Department of Justice, Working Capital Fund
15-4526-0-4-751

DEFENSE

Mildred and Claude Pepper Foundation
97-0826-0-1-552

DISTRICT OF COLUMBIA

Federal payment to the District of Columbia
20-1700-0-1-806

ENERGY AND WATER

Department of Energy, General science and research activities
89-0222-0-1-251
Office of the Nuclear Waste Negotiator, S&E
48-0070-0-1-271
Nuclear Waste Technical Review Board, S&E
48-0500-0-1-271
Geothermal resources development fund
89-0206-0-1-271
Energy supply, R&D activities
89-0224-0-1-271
Uranium supply and enrichment activities
89-0226-0-1-271
Environmental restoration and waste management
89-0237-0-1-271
Southeastern Power Administration, Operation and Maintenance
89-0302-0-1-271

Southwestern Power Administration, Operation and Maintenance
89-0303-0-1-271
Operation and Maintenance, Alaska Power Administration
89-0304-0-1-271
Isotope production and distribution fund
89-4180-0-3-271
Colorado river basins power marketing fund, Western Area P.A.
89-4452-0-3-271
Construction, rehabilitation, operation and maintenance, Western Area P.A.
89-5068-0-2-271
Nuclear waste disposal fund
89-5227-0-2-271
Nuclear Regulatory Commission, S&E
31-0200-0-1-276
Office of the Inspector General
31-0300-0-1-276
Federal Energy Regulatory Commission
89-0212-0-1-276
Departmental Administration
89-0228-0-1-276
Office of the Inspector General
89-0236-0-1-276
Department of the Interior, Bureau of Reclamation, Loan Program
14-0667-0-1-301

Direct Loans

Construction program
14-0684-0-1-301
Working capital fund
14-4524-0-4-301
Emergency fund
14-5043-0-2-301
General investigations
14-5060-0-2-301
Operation and Maintenance
14-5064-0-2-301
General administrative expenses
14-5065-0-2-301
Colorado River dam fund, Boulder Canyon project [2]
14-5656-0-2-301
Corps of Engineers, Inland waterways trust fund
20-8861-0-7-301
Delaware River Basin Commission, S&E
46-0100-0-1-301
Contribution to Delaware River Basin Commission
46-0102-0-1-301
Susquehanna River Basin Commission, S&E
46-0500-0-1-301
Contribution to Susquehanna River Basin Commission
46-0501-0-1-301
Flood control, Mississippi River and tributaries

96-3112-0-1-301
Corps of Engineers, General investigations
96-3121-0-1-301
Corps of Engineers, Construction, general
96-3122-0-1-301
Corps of Engineers, Water resources, operation and maintenance, general
96-3123-0-1-301
Corps of Engineers, General expenses
96-3124-0-1-301
Corps of Engineers, Flood control and coastal emergencies
96-3125-0-1-301
Corps of Engineers, Regulatory Program
96-3126-0-1-301
Corps of Engineers, Revolving fund
96-4902-0-4-301
Harbor maintenance trust fund
96-8863-0-7-301
Corps of Engineers, operation and maintenance, general
96-3123-0-1-303
Contribution to Interstate Commission on the Potomac River Basin
46-0446-0-1-304
Appalachian Regional Commission, development programs
46-0200-0-1-452
Tennessee Valley Authority fund (area and regional development)
64-4110-0-3-452
Environmental restoration and waste management
89-0237-0-1-271

INTERIOR

Department of the Treasury, Financial Management Service, Energy security reserve
20-0112-0-1-271
Biomass energy development
20-0114-0-1-271
Department of Energy, fossil energy research and development
89-0213-0-1-271
Naval petroleum and oil shale reserves
89-0219-0-1-271
Clean coal technology
89-0235-0-1-271
Alternative Fuels Production
89-5180-0-2-271
Energy conservation
89-0215-0-1-272
Emergency energy preparedness, strategic petroleum reserve
89-0218-0-1-274
SPR petroleum
89-0233-0-1-274
Emergency preparedness
89-0234-0-1-274

Energy information, policy, and regulation, Energy Information Administration
89-0216-0-1-276
Economic regulation
89-0217-0-1-276
Department of Agriculture, Forest Service, Construction
12-1103-0-1-302
Forest research
12-1104-0-1-302
State and Private Forestry
12-1105-0-1-302
National forest system
12-1106-0-1-302
Firefighting
12-1111-0-1-302
Range betterment fund
12-5207-0-2-302
Acquisition of lands for national forests, special acts
12-5208-0-5-302
Acquisition of lands to complete land exchanges
12-5216-0-2-302
Resource management-timber receipts
12-5220-0-1-302
Gifts, donations and bequests for forest and rangeland research
12-8034-0-7-302
Bureau of Land Management, Management of lands and resources
14-1109-0-1-302
Construction and access
14-1110-0-1-302
Oregon and California grant lands
14-1116-0-1-302
Firefighting
14-1119-0-1-302
Office of Surface Mining Reclamation and Enforcement, regulation and technology
14-1801-0-1-302
Minerals management service, leasing and royalty management
14-1917-0-1-302
Bureau of Indian Affairs, Operation of Indian programs (cons. & land management)
14-2100-0-1-302
Bureau of Land Management, Working capital fund
14-4525-0-4-302
OSMRE, Abandoned mine reclamation fund
14-5015-0-2-302
BLM, Service charges, deposits, and forfeitures
14-5017-0-2-302
Land acquisition
14-5033-0-2-302
Department of Agriculture, Forest Service, land acquisition
12-5004-0-2-303
Urban Park and Recreation Fund
14-1031-0-1-303

Department of the Interior, Operation of the national park system
14-1036-0-1-303
John F. Kennedy Center for the Performing Arts
14-1038-0-1-303
Construction
14-1039-0-1-303
National recreation and preservation
14-1042-0-1-303
Illinois and Michigan canal national heritage-corridor Commission
14-1043-0-1-303
United States Fish and Wildlife Service, Resource management
14-1611-0-1-303
Construction
14-1612-0-1-303
Rewards and Operations
14-1692-0-1-303
Land acquisition
14-5020-0-2-303
National Park Service, Land acquisition [2]
14-5035-0-2-303
Historic preservation fund
14-5140-0-2-303
North American Wetlands Conservation Fund [2]
14-5241-0-2-303
Advisory Council on Historic Preservation, S&E
95-2300-0-1-303
Department of the Interior, Office of the Secretary, S&E
14-0102-0-1-306
Construction Management
14-0103-0-1-306
Office of Inspector General
14-0104-0-1-306
Office of the Solicitor
14-0107-0-1-306
Oil spill emergency fund
14-0119-0-1-306
Geological survey, Surveys, investigations and research [2]
14-0804-0-1-306
Bureau of Mines, mines and minerals
14-0959-0-1-306
Soledad Canyon demonstration project [1]
National Park Service, ground transportation, Construction (trust fund)
14-8215-0-7-401
Pennsylvania Avenue Development Corporation, S&E
42-0100-0-1-451
Public development
42-0102-0-1-451
Land acquisition and development fund
42-4084-0-3-451
National Capital Planning Commission, S&E
92-2500-0-1-451

Commission of Fine Arts, S&E
95-2600-0-1-451
Bureau of Indian Affairs, Operation of Indian programs (Area and regional dvlt.)
14-2100-0-1-452
Construction
14-2301-0-1-452
Miscellaneous payments to Indians
14-2303-0-1-452
Payment to the Navajo Rehabilitation Trust Fund
14-2368-0-1-452
Revolving fund for loans
14-4409-0-3-452

Direct Loans

Indian loan guaranty and insurance fund
14-4410-0-3-452

Guaranteed Loans

Department of the Interior, Bureau of Indian Affairs, Operation of Indian programs (elementary, secondary, and vocational education)
14-2100-0-1-501
Department of Education, Office of Elementary and Secondary Education, Indian Education
91-0101-0-1-501
Institute of American Indian and Alaska Native Culture, S&E
95-2900-0-1-502
Smithsonian Institution, S&E
33-0100-0-1-503
Museum programs and related research (special foreign)
33-0102-0-1-503
Construction and improvements, National Zoological Park
33-0129-0-1-503
Repair and restoration of buildings
33-0132-0-1-503
Construction
33-0133-0-1-503
National Gallery of Art, S&E
33-0200-0-1-503
Repair, restoration, and renovation of buildings
33-0201-0-1-503
Woodrow Wilson International Center, S&E
33-0400-0-1-503
Payment to the endowment challenge fund
33-0401-0-1-503
National Endowment for the Arts, grants and administration
59-0100-0-1-503
National Endowment for the Humanities, grants and administration
59-0200-0-1-503
Institute of Museum Services, grants and administration
59-0300-0-1-503

Commission of Fine Arts, National capital arts and cultural affairs
95-2602-0-1-503
Department of HHS, Indian Health Service, Tribal health admin.[2]
75-0390-0-1-551
Indian health facilities
75-0391-0-1-551
Federal Indian Health Administration
75-0392-0-1-551
Department of the Interior, National Indian Gaming Commission
14-0118-0-1-806
BLM, Payments in lieu of taxes
14-1114-0-1-806
U.S. Fish and Wildlife Service, National wildlife refuge fund [2]
14-5091-0-2-806
Territorial and Intl. Affairs, Admin. of territories [3]
14-0412-0-1-808
Trust Territory of the Pacific Islands
14-0414-0-1-808
Compact of free association [2] [3]
14-0415-0-1-808
Office of Navajo and Hopi Indian Relocation, S&E
48-1100-0-1-808
Franklin Delano Roosevelt Memorial Commission, S&E
76-0700-0-1-808
United States Holocaust Memorial Council
95-3300-0-1-808

LABOR, HHS

Department of Education, Office of Elementary and Secondary Education, Impact aid
91-0102-0-1-501
Chicago litigation settlement
91-0220-0-1-501
Office of Special Education and Rehabilitative Services, Education of the handicapped
91-0300-0-1-501
Office of Vocational and Adult Education [2]
91-0400-0-1-501
OSERS, Payments to institutions for the handicapped (elementary, secondary, & voc.)
91-0600-0-1-501
OESE, Compensatory education for the disadvantaged
91-0900-0-1-501
School improvement program
91-1000-0-1-501
Office of Bilingual Education and Minority Languages Affairs, Bilingual and immigrant education
91-1300-0-1-501
National Commission on Migrant Education, S&E
95-0600-0-1-501

Higher Education, Natl. Commission on Responsibilities for Financing Post Sec.
48-0400-0-1-502
Department of Education, Office of Postsecondary Educ., Student Financial Assistance
91-0200-0-1-502
Higher education
91-0201-0-1-502
College housing and academic facilities loans [3]
91-0242-0-1-502

Direct Loans

OSERS, Payments to institutions for the handicapped (Higher education)
91-0601-0-1-502
Payments to institutions for the handicapped (Higher education)
91-0602-0-1-502
Office of Postsecondary Education, Howard University
91-0603-0-1-502
Corporation for Public Broadcasting fund
20-0151-0-1-503
Department of Education, Office of Educational Research and Improvement, Libraries
91-0104-0-1-503
Departmental Management, Program admin. (Research and general education aids)
91-0800-0-1-503
Office of Educational Research and Improvement, Research, Statistics, and Improvement of practice
91-1100-0-1-503
Natl. Commission on Libraries and Information Science, S&E
95-2700-0-1-503
White House conference on library and information services
95-2701-0-1-503
Department of Labor, Employment and Training Administration, program admin.
16-0172-0-1-504
Training and employment services
16-0174-0-1-504
Community service employment for older Americans
16-0175-0-1-504
Worker Readjustment
16-0176-0-1-504
State unemployment insurance and employment service operations
16-0179-0-1-504
Unemployment Trust fund (Training and employment)[2]
20-8042-0-7-504
Department of Health and Human Services, Family Support Admin., Work Incentives
75-1505-0-1-504
Department of Labor, Labor-Management Services, S&E
16-0104-0-1-505
Employment Standards Administration, S&E

16-0105-0-1-505
Departmental Management, Office of the Inspector General
16-0106-0-1-505
Special foreign currency program
16-0151-0-1-505
Salaries and Expenses
16-0165-0-1-505
Bureau of Labor Statistics, S&E
16-0200-0-1-505
National Labor Relations Board, S&E
63-0100-0-1-505
Federal Mediation and Conciliation Service, S&E
93-0100-0-1-505
National Mediation board, S&E
95-2400-0-1-505
ACTION, Operating expenses
44-0103-0-1-506
Department of HHS, Family Support Admin., Grants to states for special services
75-1504-0-1-506
Human development services
75-1636-0-1-506
National Council on Disability, S&E
95-3500-0-1-506
Department of HHS, Health resources and services (health care services)
75-0350-0-1-551
Health Care Financing Administration, program management (Health care services)
75-0511-0-1-551
Centers for Disease Control, Disease control, research and training (Health care services)
75-0943-0-1-551
Assistant Secretary for Health, Public Health service management (Health care services)
75-1101-0-1-551
Alcohol, Drug Abuse, and Mental Health Administration, Federal subsidy for Saint Elizabeths Hospital
75-1300-0-1-551
Alcohol, drug abuse, and mental health (Health care services)
75-1361-0-1-551
HCFA, Program management (Health research)
75-0511-0-1-552
National Institutes of Health, Natl. Library of Medicine (Health research)
75-0807-0-1-552
John E. Fogarty International Center
75-0819-0-1-552
Buildings and Facilities
75-0838-0-1-552
National Institute on Aging (Health research)
75-0843-0-1-552
Natl. Institute of Child Health and Human Development
75-0844-0-1-552

Office of the Director (Health Research)
75-0846-0-1-552
Research resources (Health research)
75-0848-0-1-552
National Cancer Institute (Health research)
75-0849-0-1-552
National Institute of General Medical Science (Health Research)
75-0851-0-1-552
National Institute of Environmental Health Sciences (Health research)
75-0862-0-1-552
National Heart, Lung and Blood Institute (Health research)
75-0872-0-1-552
National Institute of Dental Research (Health research)
75-0873-0-1-552
National Institute of Diabetes and Digestive and Kidney Disease
75-0884-0-1-552
National Institute of Allergy and Infectious Diseases (Health Research)
75-0885-0-1-552
National Institute of Neurological Disorders and Stroke (Health Research)
75-0886-0-1-552
National Eye Institute (Health research)
75-0887-0-1-552
National Institute of Arthritis and Musculoskeletal and Skin
75-0888-0-1-552
National Center for Nursing Research (Health Research)
75-0889-0-1-552
National Institute on Deafness and other Communicative Disorders
75-0890-0-1-552
National center for human genome research (Health research)
75-0891-0-1-552
Centers for Disease Control, Disease control, research, and training (Health Research)
75-0943-0-1-552
Assistant Secretary for Health, Public health management (Health Research)
75-1101-0-1-552
Scientific activities overseas (special foreign currency program)
75-1102-0-1-552
Medical treatment effectiveness
75-1105-0-1-552
ADAMHA, alcohol, drug abuse, and mental health (Health research)
75-1361-0-1-552
Agency for Health Care Policy and Research, Health Care Policy and Research
75-1700-0-1-552
Health resources and services (Education and training of health workers)
75-0350-0-1-553

National Library of Medicine (Education and training of health workers)
75-0807-0-1-553
National Institute on Aging (Educ. and training of health care workers)
75-0843-0-1-553
National Institute of Child Health & Human Dvlt. (Educ. and training of health workers)
75-0844-0-1-553
Office of the Director (Education and training of health care workers)
75-0846-0-1-553
Research resources (Education and training of health care workers)
75-0848-0-1-553
National Cancer Institute (Education and training of health care workers)
75-0849-0-1-553
National Institute of General Medical Sciences (Educ., etc.)
75-0851-0-1-553
National Institute of Environmental Health Sciences (Educ., etc.)
75-0862-0-1-553
National Heart, Lung and Blood Institute (Educ., etc.)
75-0872-0-1-553
National Institute of Dental Research (Educ., etc.)
75-0873-0-1-553
National Institute of Diabetes and Digestive and Kidney Disease (Educ., etc.)
75-0884-0-1-553
National Institute of Allergy and Infectious Diseases (Educ., etc.)
75-0885-0-1-553
National Institute of Neurological Disorders and Stroke (Educ., etc.)
75-0886-0-1-553
National Eye Institute (Educ., etc.)
75-0887-0-1-553
National Institute of Arthritis and Musculoskeletal and Skin
75-0888-0-1-553
National Center for Nursing Research (Educ., etc.)
75-0889-0-1-553
National Institute on Deafness and other Communicative Disorders
75-0890-0-1-553
National center for human genome research (Educ., etc.)
75-0891-0-1-553
ADAMHA, alcohol, drug abuse and mental health (Educ., etc.)
75-1361-0-1-553
Health Resources and Services Administration, nurse training fund
75-4306-0-3-553
Health education loans
75-4307-0-3-553
Department of Labor, Occupational Safety and Health Administration, S&E

16-0400-0-1-554
Mine Safety and Health Administration, S&E
16-1200-0-1-554
Occupational Safety and Health Review Commission, S&E
95-2100-0-1-554
Federal Mine Safety and Health Review Commission, S&E
95-2800-0-1-554
Medicare, HCFA, Federal supplementary medical insurance trust fund [2]
20-8004-0-7-571
Medicare, HCFA, Federal hospital insurance trust fund [2]
20-8005-0-7-571
Department of Labor, Pension Benefit Guaranty Corporation fund [2]
16-4204-0-3-601
Employment Standards Adm, Special workers' compensation expenses [2]
16-9971-0-7-601
Railroad Retirement Board, Federal windfall subsidy [2]
60-0111-0-1-601
Railroad social security equivalent benefit account [2]
60-8010-0-7-601
Rail Industry Pension Fund [2]
60-8011-0-7-601
Supplemental Annuity Pension Fund [2]
60-8012-0-7-601
Department of Labor, Employment and Training Administration, unemployment trust fund (unemployment compensation) [2]
20-8042-0-7-603
Department of HHS, Office of the Secretary, General Departmental Management
75-0120-0-1-609
Policy research
75-0122-0-1-609
Office of the Inspector General
75-0128-0-1-609
Social Security Administration, Supplemental security income program [3]
75-0406-0-1-609
Family Support Administration, Program administration
75-1500-0-1-609
Low income home energy assistance
75-1502-0-1-609
Refugee and entrant assistance
75-1503-0-1-609
Dept. of HHS, Social Security, Federal old-age and survivors insurance trust fund [2]
20-8006-0-7-651
Dept. of HHS, Social Security, Federal disability insurance trust fund [2]
20-8007-0-7-651
Department of Defense, Soldiers' and Airmen's Home, Operation and maintenance
84-8931-0-7-705

Capital outlays
84-8932-0-7-705
Department of HHS, Office of the Secretary, Office for Civil Rights
75-0135-0-1-751
Department of Education, Departmental Management, Office for Civil Rights
91-0700-0-1-751
Office of the Inspector General
91-1400-0-1-751
Legislative Branch, National Commission on Children
09-1050-0-1-801
United States Bipartisan Commission on Comprehensive Health
09-1100-0-1-801
National commission on acquired immune deficiency syndrome
09-1300-0-1-801
National Commission to Prevent Infant Mortality
48-1500-0-1-808

LEGISLATIVE BRANCH

Library of Congress, Copyright Office, S&E
03-0102-0-1-376
Copyright Royalty Tribunal: S&E
09-0310-0-1-376
Botanic Garden, S&E
09-0200-0-1-801
Library of Congress, S&E
03-0101-0-1-503
Books for the blind and physically handicapped, S&E
03-0141-0-1-503
Furniture and furnishings
03-0146-0-1-503
Senate: Mileage of the Vice President and Senators
00-0101-0-1-801
Expense allowances of the Vice President, President Pro Tempore
00-0107-0-1-801
Representation Allowances for the Majority and Minority Leaders
00-0108-0-1-801
Salaries, officers and employees
00-0110-0-1-801
Miscellaneous items
00-0123-0-1-801
Secretary of the Senate
00-0126-0-1-801
Sergeant at Arms and Doorkeeper of the Senate
00-0127-0-1-801
Inquiries and investigations
00-0128-0-1-801
Expenses of U.S. Senate Caucus on Intl. Narcotics Control
00-0129-0-1-801
Senators' official personnel and office expense account

00-0130-0-1-801
Stationery (revolving fund)
00-0140-0-1-801
Joint Item: Capitol Guide Service
00-0170-0-1-801
Senate: Office of Senate Legal Counsel
00-0171-0-1-801
Expense allowances of the Secretary of the Senate
00-0172-0-1-801
Joint Item: Joint Committee on Printing
00-0180-0-1-801
Joint Economic Committee
00-0181-0-1-801
Senate: Senate Policy Committees
00-0182-0-1-801
Office of the Legislative Counsel of the Senate
00-0185-0-1-801
Joint Item: Special Services office
00-0190-0-1-801
House of Representatives: Mileage of Members
00-0208-0-1-801
Salaries and expenses
00-0400-0-1-801
Joint Item: Office of the Attending Physician
00-0425-0-1-801
Joint Committee on Taxation
00-0460-0-1-801
Salaries, Capitol Police
00-0474-0-1-801
General expenses, Capitol Police
00-0476-0-1-801
Statements of appropriations
00-0499-0-1-801
Official mail costs
00-0825-0-1-801
Architect of the Capitol, S&E
01-0100-0-1-801
Alterations and improvements, buildings and grounds
01-0106-0-1-801
West central front of the Capitol
01-0109-0-1-801
Congressional cemetery
01-0110-0-1-801
Construction of an extension to the New Senate Office Building
01-0122-0-1-801
Modifications and enlargement, Capitol Power Plant
01-0136-0-1-801
Structural and mechanical care, Library of Congress
01-0155-0-1-801
Capitol complex security enhancements
01-0160-0-1-801
Library of Congress, Congressional Research Service, S&E
03-0127-0-1-801
Government Printing Office, Congressional printing and binding

04-0203-0-1-801
General Accounting Office, S&E
05-0107-0-1-801
Congressional Budget Office, S&E
08-0100-0-1-801
Legislative Branch Boards and Commissions: Biomedical ethics, S&E
09-0400-0-1-801
Office of Technology Assessment, S&E
09-0700-0-1-801
Commission on Railroad Retirement Reform
48-0850-0-1-801
GPO, Office of Superintendent of Documents, S&E
04-0201-0-1-808

AGRICULTURE, RURAL DEVELOPMENT, AND RELATED AGENCIES

Department of Agriculture, Rural Electrification Administration, S&E
12-3100-0-1-271
Rural electrification and telephone revolving fund [2]
12-4230-0-3-271

Direct Loans

Water resources, Soil Conservation Service, Watershed planning
12-1066-0-1-301
River basin surveys and investigations
12-1069-0-1-301
Watershed and flood prevention operations
12-1072-0-1-301
Conservation and land management, Conservation operations
12-1000-0-1-302
Resource conservation and development
12-1010-0-1-302
Great plains conservation program
12-2268-0-1-302
Agricultural Stabilization and Conservation Service, Agricultural conservation program
12-3315-0-1-302
Water Bank program
12-3320-0-1-302
Forestry incentives program
12-3336-0-1-302
Pollution control and abatement, Departmental Admin., Hazardous waste management
12-0500-0-1-304
ASCS, Colorado river basin salinity control program
12-3318-0-1-304
Rural clean water program
12-3337-0-1-304
Farm income stabilization, Federal Crop Insurance Corporation, Administrative and operating expenses
12-2707-0-1-351
ASCS, S&E

12-3300-0-1-351
Food and Nutrition Service, Temporary emergency food assistance program [3]
12-3635-0-1-351
Farmers Home Administration, Agricultural credit insurance fund [2] [3]
12-4140-0-3-351

Direct Loans

Guaranteed Loans

Farm Credit Administration, Revolving fund for administrative expenses [2]
78-4131-0-3-351
Department of Agriculture, Office of the Secretary
12-0115-0-1-352
Departmental Administration, Rental payments and building operations and maintenance
12-0117-0-1-352
Advisory committees
12-0118-0-1-352
Departmental Administration
12-0120-0-1-352
Office of public affairs
12-0130-0-1-352
National Agricultural Library
12-0300-0-1-352
Extension Service
12-0502-0-1-352
Departmental Administration, Office of budget and program analysis
12-0503-0-1-352
Office of the Inspector General
12-0900-0-1-352
Agricultural Research Service
12-1400-0-1-352
Buildings and facilities
12-1401-0-1-352
Office on International Cooperation and Development, Scientific activities overseas (foreign currency program)
12-1404-0-1-352
Cooperative State Research Service[2]
12-1500-0-1-352
Animal and Plant Health Inspection Service, S&E
12-1600-0-1-352
Buildings and facilities
12-1601-0-1-352
Economic Research Service
12-1701-0-1-352
National Agricultural Statistics Service
12-1801-0-1-352
World Agricultural Outlook Board
12-2100-0-1-352
Office of the General Counsel

12-2300-0-1-352
Federal Grain Inspection Service, S&E
12-2400-0-1-352
Agricultural Marketing Services
12-2500-0-1-352
Payments to states and possessions
12-2501-0-1-352
Packers and Stockyards Administration
12-2600-0-1-352
Office of Transportation
12-2800-0-1-352
Foreign Agricultural Service
12-2900-0-1-352
Agricultural Cooperative Service
12-3000-0-1-352
Office of International Cooperation and Development
12-3200-0-1-352
Human Nutrition Information Service
12-3501-0-1-352
Departmental Administration, working capital fund
12-4609-0-4-352
Ameriflora Conference[1]
12-8880-0-1-352
Farmers Home Administration, Compensation for construction defects
12-2071-0-1-371
Rural housing insurance fund[3] [2]
12-4141-0-3-371

Direct Loans

Guaranteed Loans

Commodity Futures Trading Commission
95-1400-0-1-376
Department of Agricutlure, FHA, S&E
12-2001-0-1-452
Rural development grants
12-2065-0-1-452
Rural water and waste disposal grants
12-2066-0-1-452
Rural community fire protection grants
12-2067-0-1-452
REA, Purchase of rural telephone bank capital stock
12-3102-0-1-452
FHA, rural development insurance fund[2] [3]
12-4155-0-3-452

Direct Loans

Guaranteed Loans

REA, rural telephone bank [2]
12-4231-0-3-452

Direct Loans

FHA, rural development loan fund
12-4233-0-3-452

Direct Loans

Pollution abatement grant [1]
Emergency community water assistance[1]
ASCS, Emergency conservation program
12-3316-0-1-453
Food Safety and Inspection Service, S&E
12-3700-0-1-554
Food and Drug Administration, Program expenses
75-0600-0-1-554
Buildings and Facilities
75-0603-0-1-554
Department of Agriculture, FHA, Rural housing voucher program
12-2002-0-1-604
Rural housing for domestic farm labor
12-2004-0-1-604
Mutual and self-help housing
12-2006-0-1-604
Very low income housing repair grants
12-2064-0-1-604
Rural housing preservation grants
12-2070-0-1-604
FNS, Food donations programs for selected groups[3]
12-3503-0-1-605554
Food program administration
12-3508-0-1-605
Special supplemental food program for women, infants, and children
12-3510-0-1-605
Commodity supplemental food program
12-3512-0-1-605

TRANSPORTATION SUBCOMMITTEE

Department of Transportation, Coast Guard, Offshore oil pollution compensation fund
69-5167-0-2-304
Environmental compliance and restoration
69-0320-0-1-304
Offshore and pollution compensation fund
69-5167-0-2-304
Deepwater port liability fund
69-5170-0-2-304
Interstate Commerce Commission, S&E
30-0100-0-1-401
Dept. of Transportation Federal Railroad Administration, Northeast corridor improvement program
69-0123-0-1-401
Federal Highway Administration, Motor carrier safety
69-0552-0-1-401

Railroad-highway crossings demonstration projects
69-0557-0-1-401
National Highway Traffic Safety Administration, Operations and research
69-0650-0-1-401
Miscellaneous safety programs
69-0651-0-1-401
Federal Railroad Administration, Office of the Administrator
69-0700-0-1-401
Railroad safety
69-0702-0-1-401
Grants to National Railroad Passenger Corporation
69-0704-0-1-401
Amtrak corridor improvement loans
69-0720-0-1-401

Direct Loans

Railroad research and development
69-0745-0-1-401
Conrail commuter transition assistance
69-0747-0-1-401
Urban Mass Transportation Administration, Administrative expenses
69-1120-0-1-401
Research, training, and human resources
69-1121-0-1-401
Interstate transfer grants-transit
69-1127-0-1-401
Washington Metro
69-1128-0-1-401
Formula grants
69-1129-0-1-401
Federal Railroad Administration, Regional rail reorganization program
69-4100-0-3-401
Railroad rehabilitation and improvement financing funds [2]
69-4411-0-3-401
Federal Highway Administration, Trust fund share of other highway programs
69-8009-0-7-401
Baltimore-Washington Parkway
69-8014-0-7-401
National Highway Traffic Safety Admin., Operations and research (trust fund share)
69-8016-0-7-401
Federal Highway Administration, Highway safety research and development
69-8017-0-7-401
Highway-related safety grants [2]
69-8019-0-7-401
National Highway Traffic Safety Administration, Highway traffic safety grants [2]
69-8020-0-7-401
Federal Highway Administration, Motor carrier safety grants [2]

69-8048-0-7-401
University transportation centers
69-8056-0-7-401
Federal-aid highways [2]
69-8083-0-7-401
Urban Mass Transportation Administration, Discretionary grants [2]
69-8191-0-7-401
Federal Highway Administration, Right-of-way revolving fund (trust revolving fund)
69-8402-0-8-401

Trust fund

Direct Loans

Local rail service assistance [1]
Miscellaneous appropriations
69-9911-0-1-401
Urban Mass Transportation and Administration, Miscellaneous expired accounts
69-9913-0-1-401
Federal Highway Administration, Miscellaneous highway trust funds
69-9972-0-7-401
Air transportation, Office of the Secretary, Payments to air carriers, DoT
69-0150-0-1-402
Federal Aviation Administration, Operations
69-1301-0-1-402
Aviation insurance revolving fund
69-4120-0-3-402
Trust fund share of FAA operations
69-8104-0-7-402
Grants-in-aid for airports (Airport and airway trust fund) [2]
69-8106-0-7-402
Facilities and equipment (Aiport and airway trust fund)
69-8107-0-7-402
Research, engineering and development (Airport and airway trust fund)
69-8108-0-7-402
Water transportation, Coast Guard, Operating expenses
69-0201-0-1-403
Acquisition, construction, and improvements
69-0240-0-1-403
Reserve training
69-0242-0-1-403
Research, development, test, and evaluation
69-0243-0-1-403
Alteration of bridges
69-0244-0-1-403
Coast Guard supply fund
69-4535-0-4-403
Coast Guard yard fund
69-4743-0-4-403

Saint Lawrence Seaway Development Corporation, Operations and maintenance
69-8003-0-7-403
Coast Guard, Boat Safety
69-8149-0-7-403
Panama Canal Commission, Panama Canal revolving fund
95-4061-0-3-403
Department of Transportation, Office of the Sec., S&E
69-0102-0-1-407
Research and Special Programs Administration, Research and Special programs
69-0104-0-1-407
Office of Commercial Space Transportation, Operations and Research
69-0108-0-1-407
Office of the Inspector General, S&E
69-0130-0-1-407
Office of the Secretary, Transportation, planning, research and development
69-0142-0-1-407
Commission on aviation security and terrorism
69-1850-0-1-407
Working capital fund
69-4520-0-4-407
Research and Special Programs Administration, Pipeline safety
69-5172-0-2-407
National Transportation Safety Board, S&E
95-0310-0-1-407
Architectural and Transportation Barriers Compliance Board, S&E
95-3200-0-1-751
Financial Management Service, St. Lawrence Seaway toll rebate program
20-8865-0-7-808

TREASURY-POSTAL SERVICE

Payments to the Postal Service, Payment to the Postal Service fund
18-1001-0-1-372
Disaster relief and insurance, Funds Appropriated to the President, Unanticipated Needs, natural disasters
11-0033-0-1-453
Committee for Purchase from the Blind and other Severely Handicapped, S&E
95-2000-0-1-505
Health care services, Executive Office of the President, White House Conference for a Drug Free America, S&E
11-0212-0-1-551
Office of Personnel Management, Civil service retirement and disability fund [2]
24-8135-0-7-602
Department of the Treasury, Federal Law Enforcement Training Center, S&E

20-0104-0-1-751
Acquisitions, construction, improvements, and related expense
20-0105-0-1-751
United States Customs Service, S&E [2]
20-0602-0-1-751
U.S. Customs, Financial crimes enforcement [1]
Operation and maintenance, air interdiction program
20-0604-0-1-751
Bureau of Alcohol, Tobacco, and Firearms, S&E
20-1000-0-1-751
United States Secret Service, S&E
20-1408-0-1-751
Administrative Conference of the United States, S&E
95-1700-0-1-751
Federal litigative and judicial activities, U.S. Tax Court, S&E
23-0100-0-1-752
Executive direction and management, Funds Appropriated to the President, Unanticipated needs
11-0037-0-1-802
Executive Office of the President, Office of Administration, S&E
11-0038-0-1-802
Funds Appropriated to the President, Investment in Management Improvement
11-0061-0-1-802
Executive Office of the President, The White House Office, S&E
11-0110-0-1-802
National Critical Materials Council, S&E
11-0111-0-1-802
Office of Management and Budget, Office of Federal Procurement Policy, S&E
11-0201-0-1-802
Executive Residence at the White House, Operating expenses
11-0210-0-1-802
Official Residence of the Vice President, Operating expenses
11-0211-0-1-802
OMB, S&E
11-0300-0-1-802
Special Assistance to the President, S&E
11-1454-0-1-802
Office of National Drug Control Policy, S&E
11-1457-0-1-802
Council of Economic Advisers, S&E
11-1900-0-1-802
National Security Council, S&E
11-2000-0-1-802
Office of Policy Development, S&E
11-2200-0-1-802
Office of National Drug Control Policy, Special forfeiture fund
11-5001-0-2-802
General Services Administration, Allowances and office staff for former Presidents
47-0105-0-1-802
Department of the Treasury, Departmental Office, S&E
20-0101-0-1-803

Office of the Inspector General
20-0106-0-1-803
International affairs
20-0171-0-1-803
Bureau of the Public Debt, Administering the public debt
20-0560-0-1-803
Internal Revenue Service, Administration and management
20-0911-0-1-803
Processing tax returns and assistance
20-0912-0-1-803
Tax law enforcement
20-0913-0-1-803
IRS, information system
20-0919-0-1-803
United States Mint, S&E
20-1616-0-1-803
Financial Management Service, S&E
20-1801-0-1-803
Departmental Offices, Working capital fund
20-4501-0-1-803
Bureau of Engraving and Printing Fund
20-4502-0-4-803
United States Customs Service, Customs forfeiture fund
20-5693-0-2-803
United States Mint, Expansion and improvements
20-9911-0-1-803
General Services Administration, General Activities, Office of Inspector General
47-0108-0-1-804
General management and administration, salaries and expenses
47-0110-0-1-804
Personal Property Activities, Federal supply service
47-0116-0-1-804
Operating expenses, federal property resources service
47-0533-0-1-804
Real property relocation
47-0535-0-1-804
Operating expenses, information resources management service
47-0900-0-1-804
Real Property Activities, Federal buildings fund
47-4542-0-4-804
Information Resources Management Service, Information technology fund
47-4548-0-4-804
National Archives and Records Administration, operating expenses
88-0300-0-1-804
Central personnel management, OPM, S&E
24-0100-0-1-805
Office of the Inspector General
24-0400-0-1-805
Revolving fund
24-4571-0-1-805
Merit Systems Protection Board, S&E

41-0100-0-1-805
Federal Labor Relations Authority, S&E
54-0100-0-1-805
Office of Government Ethics, S&E
95-1100-0-1-805
Advisory Committee on Federal Pay, S&E
95-1800-0-1-805
Department of the Treasury, United States Customs Service, customs services at small airports
20-5694-0-2-808
Advisory Commission on Intergovernmental Relations, S&E
55-0100-0-1-808
Office of Special Counsel, S&E
62-0100-0-1-808
Federal Election Commission, S&E
95-1600-0-1-808

VETERANS', HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

National Science Foundation, Research and related activities
49-0100-0-1-251
Scientific activities overseas (special foreign currency program)
49-0102-0-1-251
Science and engineering education activities
49-0106-0-1-251
Academic research facilities
49-0150-0-1-251
U.S. Antarctic program activities
49-0200-01-1-251
U.S. Antarctic logistical support activities
49-0202-0-1-251
Office of the Inspector General
49-0300-0-1-251
Space Flight, National Aeronautics and Space Administration, Research and program management (Space Flight)
80-0103-0-1-253
Space flight, control, and data communications (Space Flight)
80-0105-0-1-253
Construction of facilities (Space Flight)
80-0107-0-1-253
Research and development (Space Flight)
80-0108-0-1-253
Space, science, applications, and technology, Research and program management (Space science, applications)
80-0103-0-1-254
Construction of facilities (Space, science, applications)
80-0107-0-1-254
Research and development (Space, science, applications)
80-0108-0-1-254
Supporting space activities, Research and program management (Supporting space activities)
80-0103-0-1-255

Space flight, control, and data communications (Supporting space activities) [2]
80-0105-0-1-255
Construction of facilities (Supporting space activities)
80-0107-0-1-255
Research and development (Supporting space activities)
80-0108-0-1-255
Office of the Inspector General
80-0109-0-1-255
Environmental Protection Agency, Research and development (Energy supply)
68-0107-0-1-271
Pollution control and abatement, Hazardous substance superfund
20-8145-0-7-304
Leaking underground storage tank trust fund
20-8153-0-7-304
Operations, research, and facilities
68-0100-0-1-304
Construction grants
68-0103-0-1-304
Scientific activities overseas (Special foreign currency program)
68-0104-0-1-304
Research and development (Pollution control and abatement)
68-0107-0-1-304
Abatement, control, and compliance
68-0108-0-1-304

Direct loans

Buildings and facilities
68-0110-0-1-304
Office of the Inspector General
68-0112-0-1-304
Salaries and expenses
68-0200-0-1-304
Resolution Trust Corporation, OIG
22-1500-0-1-371
Mortgage credit and deposit insurance, National Credit Union Administration, Central liquidity facility
25-4470-0-3-371

Direct loans

Department of Housing and Urban Development, FHA mutual mortgage and cooperative housing insurance funds [2] [3]
86-4070-0-3-371

Direct Loans

Guaranteed Loans

FHA general and special risk insurance funds [2] [3]
86-4072-0-3-371

Direct Loans

Guaranteed Loans

Housing for the elderly or handicapped fund
86-4115-0-3-371

Direct Loans

GNMA, Guarantees of mortgage-backed securities [2]
86-4238-0-3-371

Secondary Loan Guarantees

General Services Administration, General Activities, Consumer information center fund
47-4549-0-3-376
Payment to the National Institute of Building Sciences
95-3601-0-1-376
National Aeronautics and Space Administration (research and program management—Air transportation
80-0103-0-1-402
Construction of facilities (air transportation)
80-0107-0-1-402
Research and development (air transportation)
80-0108-0-1-402

Payment to the Neighborhood Reinvestment Corporation
82-1300-0-1-451
Department of Housing and Urban Development, Policy Development and Research, Research and technology
86-0108-0-1-451
Management and Administration, S&E
86-0143-0-1-451
Community development grants
86-0162-0-1-451

Guaranteed Loans

Subsidized Housing programs (community development)
86-0164-0-1-451
Urban Development action grants
86-0170-0-1-451
Urban homesteading
86-0171-0-1-451
Rental rehabilitation grants
86-0182-0-1-451
Rental housing assistance for the homeless
86-0187-0-1-451
Management and Administration, Office of the Inspector General
86-0189-0-1-451
Community Planning and Development, Rehabilitation loan fund
86-4036-0-3-451

Direct Loans

Urban Renewal Project Proceeds [1]
Federal Emergency Management Agency, S&E (disaster relief and insurance)

58-0100-0-1-453
Emergency management planning and assistance
58-0101-0-1-453
Disaster relief
58-0104-0-1-453
Office of the Inspector General
58-0300-0-1-453
Points of Light Foundation
11-0055-0-1-506
National Service Agency [1]
Department of Health and Human Services, Office of the Secretary, Office of Consumer Affairs
75-0137-0-1-506
Department of HUD, Housing counseling assistance
86-0156-0-1-506
Consumer Product Safety Commission, S&E
61-0100-0-1-554
Interagency Council on the Homeless
48-1300-0-1-604
Department of HUD, Management and Administration, S&E
86-0143-0-1-604
Public and Indian Housing Programs, payments for operation of low income housing projects
86-0163-0-1-604
Subsidized housing programs (housing assistance)
86-0164-0-1-604
Congregate services program
86-0178-0-1-604
Community Planning and Development, Emergency shelter grants program
86-0181-0-1-604
Transitional housing program
86-0188-0-1-604
Section 8 moderate rehabilitation, single room occupancy
86-0195-0-1-604
Home ownership and opportunity for people everywhere
86-0196-0-1-604
Drug elimination grants, low income housing
86-0197-0-1-604
Nonprofit sponsor assistance
86-4042-0-3-604

Direct Loans

Flexible subsidy fund
86-4044-0-3-604

Direct Loans

Nehemiah housing opportunity fund
86-4071-0-1-604

Direct Loans

Public Housing Commission
86-7888-0-1-604
Native American Housing Commission

86-7880-0-1-604
FEMA, emergency food and shelter program
58-0103-0-1-605
Department of Veterans Affairs, veterans job training
36-0103-0-1-702
Vocational rehabilitation revolving fund
36-4114-0-3-702
Education loan fund
36-4118-0-3-702
Construction, major projects
36-0110-0-1-703
Construction, minor projects
36-0111-0-1-703
Grants to the Republic of the Philippines
36-0144-0-1-703
Medical administration and miscellaneous operating expenses
36-0152-0-1-703
Medical care
36-0160-0-1-703
Medical and prosthetic research
36-0161-0-1-703
Grants for construction of state extended care facilities
36-0181-0-1-703
Nursing home revolving fund
36-4013-0-3-703
Parking garage revolving fund
36-4538-0-3-703
Veterans housing, direct loan revolving fund
36-4024-0-3-704

Direct Loans

Cemeterial expenses, Army, S&E
21-1805-0-1-705
Departmental Administration, General operating expenses
36-0151-0-1-705
Office of the Inspector General
36-0170-0-1-705
Grants for the construction of State veterans cemeteries
36-0183-0-1-705
American Battle Monuments Commission, S&E
74-0100-0-1-705
Court of Veterans Appeals, S&E
95-0300-0-1-705
Department of HUD, Management and Administration, S&E
86-0143-0-1-751
Fair Housing activities
86-0144-0-1-751
Executive Office of the President, National Space Council, S&E
11-0020-0-1-802
Council on Environmental Quality and Office of Environmental
11-1453-0-1-802
Office of Science and Space Technology Policy, S&E
11-2600-0-1-802
Department of the Treasury, Office of Revenue Sharing, S&E
20-0107-0-1-806

TITLE XIV—OTHER

INVESTMENT

There is a clear need for greater investment in the areas of education, health, housing, science and low-income programs. The House Democratic leadership believes that every effort must be made to advance legislatively in budget resolutions, authorizing bills and appropriation bills funding levels which will achieve the goals set forth for the following functions:

INTERNATIONAL AFFAIRS (150)

Increases over current services provided for under this function should reach, at least, $1.8 billion in Budget Authority and $1.7 billion in Outlays by FY 1993 and, to the degree possible, be targeted for Southern African Development Assistance, Ethiopia/Sudan Famine Relief, the PL480 program and Refuge Assistance programs.

GENERAL SCIENCE, SPACE AND TECHNOLOGY (250)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $400 million in Outlays by FY 1993 and, to the degree possible, be targeted for Science and Technology programs for Historically Black Colleges and Universities.

ENERGY (270)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $400 million in Outlays by FY 1993 and, to the degree possible, be targeted for Hispanic and Historically Black Colleges and Universities consortia agreements with the Department of Energy.

COMMERCE AND HOUSING CREDIT (370)

Increases over current services provided for under this function should reach, at least, $2 billion in Budget Authority and $2 billion in Outlays by FY 1993 and, to the degree possible, be targeted for the programs of the Gonzalez, Dellums and Conyers housing bills (H.R. 5157, 1122 and 969)

COMMUNITY AND REGIONAL DEVELOPMENT (450)

Increases over current services provided for under this function should reach, at least, $2.6 billion in Budget Authority and $300 million in Outlays by FY 1993 and, to the degree possible, be targeted for the programs of the Urban Homesteading Act (H.R. 1181)

EDUCATION AND TRAINING (500)

Increases over current services provided for under this function should reach, at least, $2.4 billion in Budget Authority and $2.0 billion in Outlays by FY 1993 and, to the degree possible, be targeted to fund the Carl D. Perkins Vocational Education Act, the School Lunch and Nutrition Act, Head Start and Handicapped Education,

to create Educational R&D Districts for educational research and development, Youth Incentive, Employment, Drop-Out Prevention and Anti-Gang Violence programs, and to create a new government guaranteed bond program to raise capital improvement fund for private Historically Black Colleges and Universities

INCOME SECURITY (600)

Increases over current services provided for under this function should reach, at least, $1.5 billion in Budget Authority and $1.5 billion in Outlays by FY 1993 and, to the degree possible, be targeted to fund WIC, School Breakfast and Child Care Food programs, AFDC Assistance and Community Food Nutrition, AFDC Work Activities, Job Opportunities and Basic Skills (JOBS) Training and Snack to Child Care and Temporary Emergency Food Assistance programs

VETERANS BENEFITS AND SERVICES (700)

Increases over current services provided for under this function should reach, at least, $500 million in Budget Authority and $500 million in Outlays by FY 1993 and, to the degree possible, be targeted for expanding Education, Training, and Rehabilitation and for increases in Veterans Housing, Hospital and Medical benefits.

We look forward to working with the Congressional Black Caucus on this important matter.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference, and as exclusive conferees with respect to any proposal to report in total disagreement:

LEON E. PANETTA,
RICHARD GEPHARDT,
BILL FRENZEL,

As additional conferees from the Committee on the Budget, for consideration of title XIV of the House bill, and all other provisions of the House bill and the Senate amendment on which conferees from more than one of the other standing committees of the House are appointed, and modifications committed to conference:

ED JENKINS,

From the Committee on Agriculture, for consideration of title I and subtitle B of title V of the House bill, and title I and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

E DE LA GARZA,
JERRY HUCKABY,
TOM COLEMAN,

From the Committee on Banking, Finance and Urban Affairs, for consideration of title II of the House bill, and title II of the Senate amendment, and modifications committed to conference:

HENRY GONZALEZ,
MARY ROSE OAKAR,
CHALMERS P. WYLIE,

From the Committee on Education and Labor, for consideration of title III and sections 12403 and 13323 of the House bill, and subtitle F of title VI, part 4 of subtitle D of title VII, title X, and section 6401 of the Senate amendment, and modifications committed to conference:

GUS HAWKINS,
WILLIAM D. FORD,

From the Committee on Energy and Commerce [health] for consideration of subtitles A and B of title IV and subtitles B, C, and D of title XII of the House bill, and part 2 of subtitle B and subtitle C of title VI of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (transportation), for consideration of sections 4511, 4521, and 4522 of the House bill, and sections 3002 and 3003 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
THOMAS A. LUKEN,
NORMAN F. LENT,

From the Committee on Energy and Commerce (energy), for consideration of sections 4501, 4502, 5101, and 10002 of the House bill, and subtitle B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
NORMAN F. LENT,

From the Committee on Government Operations, for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
HENRY A. WAXMAN,
BARNEY FRANK,
HOWARD C. NIELSON,

From the Committee on Interior and Insular Affairs, for consideration of title V and sections 4502 and 10002 of the House bill, and subtitles A and B of title IV and section 502 of the Senate amendment, and modifications committed to conference:

MORRIS K. UDALL,
GEORGE MILLER,

From the Committee on the Judiciary, for consideration of title VI of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
BOB KASTENMEIER,
CARLOS J. MOORHEAD,

From the Committee on Merchant Marine and Fisheries (tonnage duties, coast guard fees, and cargo preference), for consideration of sections 7101 and 7102 of the House bill, and section 3001 of the Senate amendment, and modifications committed to conference:

WALTER B. JONES,
BILLY TAUZIN,

From the Committee on Merchant Marine and Fisheries (EPA fees), for consideration of section 7103 of the House bill, and modifications committed to conference:

WALTER B. JONES,
GERRY E. STUDDS,
ROBERT W. DAVIS,

From the Committee on Merchant Marine and Fisheries (coastal zone management), for consideration of subtitle B of title VII of the House bill, and modifications committed to conference:

WALTER B. JONES,
DENNIS M. HERTEL,
ROBERT W. DAVIS,

From the Committee on Post Office and Civil Service, for consideration of title VIII of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

BENJAMIN A. GILMAN,

From the Committee on Public Works and Transportation (aviation) for consideration of subtitles B and C of title IX of the House bill, and subtitle B of title III of the Senate amendment, and modifications committed to conference:

GLENN M. ANDERSON,
JAMES L. OBERSTAR,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (transportation trust funds), for consideration of subtitle A of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Public Works and Transportation (EPA fees), for the consideration of subtitle D of title IX of the House bill, and modifications committed to conference:

GLENN M. ANDERSON,
HENRY J. NOWAK,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Rules, for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
ANTHONY C. BEILENSON,
MARTIN FROST,
JAMES H. QUILLEN,
CHARLES PASHAYAN, Jr.,

From the Committee on Science, Space, and Technology, for consideration of title X of the House bill, and subtitle B of title IV and sections 3004 and 3024 of the Senate amendment, and modifications committed to conference:

ROBERT A. ROE,
MARILYN LLOYD,

From the Committee on Veterans' Affairs, for consideration of title XI (except section 11051) of the House bill, and title XI of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
DOUGLAS APPLEGATE,
BOB STUMP,

From the Committee on Ways and Means (revenues and debt ceiling), for consideration of title XIII, subtitles E and F of title XII, and sections 3102, 3121, 7101, and 11051(a) of the House bill, and title VII (except subtitle C), and subtitles D and E of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,

From the Committee on Ways and Means (Medicare), for consideration of subtitles A through D of title XII and subtitle A of title IV of the House bill, and subtitle B of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,

From the Committee on Ways and Means (Social Security), for consideration of part 5 of subtitle A of title VI of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
ANDREW JACOBS, Jr.,

From the Committee on Ways and Means (child care and human resources), for consideration of parts 1 through 4 of subtitle A and subtitle F of title VI and subtitle C of title VII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
THOMAS J. DOWNEY,

As an additional conferee for consideration of subtitle B of title V of the House bill, and subtitle A of title IV of the Senate amendment, and modifications committed to conference:

R.J. MRAZEK,

As an additional conferee for consideration of part 1 of subtitle A and subtitles B through E (except section 14302) of title XIV of the House bill, and corresponding provisions of the Senate amendment, and modifications committed to conference:

SILVIO O. CONTE,

As an additional conferee for consideration of part 2 of subtitle A of title XIV and section 14302 of the House bill,

and corresponding provisions of the Senate amendment, and modifications committed to conference:

CARL D. PURSELL,
Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,
DAVID PRYOR,
RICHARD G. LUGAR,
BOB DOLE,
THAD COCHRAN,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
ALAN CRANSTON,
CHRISTOPHER J. DODD,

From the Committee on the Budget:

JIM SASSER,
PETE V. DOMENICI,

From the Committee on Commerce, Science, and Transportation:

DANIEL K. INOUYE,
WENDELL FORD,
JOHN BREAUX,
JOHN D. ROCKEFELLER IV,
JOHN C. DANFORTH,
BOB PACKWOOD,
TED STEVENS,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,
JAMES A. MCCLURE,
PETE V. DOMENICI,

From the Committee on Environment and Public Works:

QUENTIN N. BURDICK,
DANIEL PATRICK MOYNIHAN,
GEORGE MITCHELL,
MAX BAUCUS,
BOB GRAHAM,
JOHN H. CHAFEE,

From the Committee on Finance:

LLOYD BENTSEN,
DANIEL PATRICK MOYNIHAN,
D.L. BOREN,
GEORGE MITCHELL,
DAVID PRYOR,
JOHN D. ROCKEFELLER IV,
BOB PACKWOOD,
BOB DOLE,
JOHN C. DANFORTH,
JOHN H. CHAFEE,

From the Committee on Governmental Affairs:
JOHN GLENN,
JIM SASSER,
DAVID PRYOR,
From the Committee on the Judiciary:
DENNIS DECONCINI,
PATRICK LEAHY,
ORRIN HATCH,
From the Committee on Labor and Human Resources for the Child Care and Development Block Grant Act:
EDWARD M. KENNEDY,
CHRISTOPHER J. DODD,
ORRIN G. HATCH,
From the Committee on Labor and Human Resources:
EDWARD M. KENNEDY,
CLAIBORNE PELL,
HOWARD M. METZENBAUM,
CHRISTOPHER J. DODD,
From the Committee on Labor and Human Resources for pension provisions (reversions and retiree health transfers):
EDWARD M. KENNEDY,
HOWARD M. METZENBAUM,
From the Committee on Veterans' Affairs:
ALAN CRANSTON,
DENNIS DECONCINI,
JOHN D. ROCKEFELLER IV,
Managers on the Part of the Senate.

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