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RECONCILIATION (S. 2885)

and

SPECIAL RULES FOR ITS CONSIDERATION

together with the

REPORTS TO THE BUDGET COMMITTEE OF THE INSTRUCTED COMMITTEES

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

SEPTEMBER 15, 1980

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FOREWORD

On June 12, 1980, Congress completed action on the First Concurrent Resolution on the Budget for Fiscal Year 1981. That Resolution contained, for the first time in the history of the Congressional Budget Process, reconciliation instructions to eight separate committees. Those instructions require changes in existing law to save $4.95 billion in budget authority and $6.4 billion in outlays and to increase revenues by $4.2 billion.

On June 30, the Senate passed S. 2885, a bill to make reconciliation savings. Together with other Senate actions completed or underway, that bill would save $4.5 billion in budget authority and $7.2 billion in outlays on the basis of current estimates.

On July 23, the Senate passed S. 2939, a reconciliation bill to increase revenues by $4.2 billion during fiscal year 1981.

On September 4, the House of Representatives passed H.R. 7765, a bill to make reconciliation savings and to provide for the revenue increases mandated in the reconciliation instructions. Together with other House actions completed or underway, that bill would save $4.2 billion in budget authority and $5.7 billion in outlays on the basis of current estimates. It would also increase revenues by $3.9 billion.

This Senate Budget Committee print contains a legislative history of the savings and revenue changes reported by each of the eight Senate committees and adopted by the Senate in S. 2885 and S. 2939. In each case, the analyses of the respective committees are presented without revision. These materials previously appeared in the Congressional Record for June 26 at pages S8230 through S8340 and in the Congressional Record for July 2 at pages S9315 through S9326.

The Committee print is designed to provide a title-by-title analysis of the Senate-passed savings and revenue measures in order to facilitate the work of the House-Senate Conference on the reconciliation legislation and to make available in a single document an important part of the legislative history of the Senate legislation.

RECONCILIATION

Special Procedures

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

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

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

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

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

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

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

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

Seventh. Any amendment which achieves or maintains mathematical consistency is always in order.

Eighth. Amendments to the bill must be "germane to the provisions of" the legislation. The "germaneness rule" has been interpreted as prohibiting any amendment which introduces "new subject matter" and thus was not "germane to the provisions of" the bill to which it was offered.

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

TITLE-BY-TITLE ANALYSIS

The material reprinted hereafter was received from the various committees which have reported reconciliation legislation to the Senate. In each case, it is being included without revision in order to provide a legislative history of the savings legislation which has been reported.

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COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, D.C., June 25, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on the Budget, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed in accordance with the reconciliation instructions in the first concurrent resolution on the budget for fiscal year 1981 (H. Con. Res. 307) are the recommendations of the Committee on Agriculture, Nutrition, and Forestry for reducing spending under laws within its jurisdiction.

In accordance with the instructions, we have drafted (1) the legislative language to effect the reductions in spending authority required by the resolution, and (2) an explanation of those reductions for inclusion in your report on the reconciliation legislation. According to the Congressional Budget Office, our recommended changes in law would reduce both budget authority and outlays for the child nutrition programs in fiscal year 1981 by over $520 million.

Our Committee will be separately reporting S. 2675, the Child Nutrition Amendments of 1980. That bill, in addition to the reductions in spending authority that we are transmitting to you today, will contain provisions to improve the effectiveness and operations of the child nutrition programs and will extend all nonpermanently authorized child nutrition programs through fiscal year 1984. The programs that would otherwise expire at the end of fiscal year 1980 are summer food service program for children, food service equipment assistance reserve program, State administrative expenses program, and nutrition education and training program. The commodity distribution program and special supplemental food program (WIC) would otherwise expire at the end of fiscal year 1982.

S. 2675 will also effect additional outlay savings of approximately $30 million in Federal expenditures that are controlled by the appropriations process. We believe that such savings should properly be counted toward the reductions required by the first concurrent resolution. However, we understand that your Committee is of a different opinion. Accordingly, the enclosed legislative language does not contain the proposed reductions.

We remain committed to the child nutrition programs, and the reductions in spending authority contained in our recommendations would not impair the basic structure of the programs. The importance of the programs in helping to assure that no child or adult is deprived of his

or her opportunities for development due to a lack of a proper diet cannot be overemphasized.

With every good wish, I am

Sincerely,

HERMAN E. TALMADGE,
Chairman.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

SHORT EXPLANATION

In accordance with the requirements of the first concurrent resolution on the budget for fiscal year 1981, the Committee on Agriculture, Nutrition, and Forestry recommends amendments in the statutes authorizing the child nutrition programs that would reduce spending authority for fiscal year 1981 by over $520 million in both budget authority and outlays.

SUMMARY OF COMMITTEE RECOMMENDATIONS

The recommendations of the Committee on Agriculture, Nutrition, and Forestry would—

(1) reduce the general cash reimbursement rate for all categories of school lunches (free, reduced price, and paid) by 2½ cents, except in school districts where 60 percent or more of the lunches served were served free or at reduced-price during the second preceding school year (Sec. 101);

(2) reduce the rate of commodity assistance for the school lunch program by 2 cents (Sec. 102);

(3) change the eligibility standards for free and reduced-price school meals to 125 percent of the poverty level plus a standard deduction and 185 percent of the poverty level plus a standard deduction, respectively (Secs. 103(a), (2), (3) and 103(b));

(4) lower the income poverty guideline used in the child nutrition programs by removing the provision in existing law that updates the guideline by more current CPI data (Sec. 103(a)(1));

(5) remove the incentive for schools to offer reduced price lunches at less than 20 cents per lunch (Sec. 104(1));

(6) provide for adjustments in school lunch and breakfast reimbursement rates on an annual rather than semiannual basis (Secs. 104(2) and (3) and 109(1) and (2));

(7) exclude Job Corps centers funded by the Department of Labor from participation in the school lunch and breakfast programs (Secs. 105 and 110);

(8) limit the eligibility of private nonprofit institutions in the summer program, other than private nonprofit school food authorization camps, and those serving meals primarily to migrant children that acquire meals from vendors to those that daily serve no more than 2,000 children at no more than 20 sites (Sec. 106(a));

(9) limit meal service in the summer program to two meals (lunch and either breakfast or a supplement) daily, except in camps and serv-

ice institutions serving meals primarily to migrant children (Sec. 106(b));

(10) extend the summer program through fiscal year 1984 (Sec. 106(c));

(11) provide for adjustments in the child care program reimbursement rates for supplements on an annual rather than semi-annual basis (Secs. 107(a) (1) and (2));

(12) reduce equipment assistance in the child care program from $6 million to $4 million annually (Sec. 107(b));

(13) reduce the reimbursement rate for supplements served in the child care food program by 3 cents (Sec. 107(a) (3)); and

(14) reduce and freeze the reimbursement rate for milk served in the special milk program to paying children in schools, institutions, or camps that participate in one of the other child nutrition programs to 5 cents per half-pint (Sec. 108).

DESCRIPTION OF CHILD NUTRITION PROGRAMS

Working through State agencies, the Secretary of Agriculture provides Federal assistance in cash and commodities for use in preparing and serving nutritious meals to children while attending school, residing in service institutions, or participating in other organized activities away from home. This assistance is provided through the national school lunch, school breakfast, summer food service for children, and child care food programs. The purpose of this assistance is to help maintain the health and proper physical development of American children. Funds are also made available for food service equipment assistance, nutritional studies, nutrition education and training, and State administrative expenses.

The special supplemental food program (WIC) provides nutritional aid to low-income pregnant, postpartum, and breastfeeding women, infants, and children who are determined by competent health professionals to be at nutritional risk.

School lunch program: Assistance is provided to the States for service of lunches to all school children, regardless of family income, under section 4 of the National School Lunch Act. States must match some of the Federal cash grant from sources within the State. In fiscal year 1980, an estimated 4,420 million school lunches will receive assistance from this program including 2,453 million for children from middle and upper income families and 1,967 million for children from poor families. An estimated 26.8 million children are expected to particiapte in the program daily during the school year.

Special assistance: Additional assistance is provided to the States for serving lunches free or at reduced price to needy children under section 1 of the National School Lunch Act. Current eligibility standards are set at 125 percent of poverty for free lunches and 195 percent of poverty for reduced-price lunches. Pubic Law 95–627 changed the reimbursement for reduced-price lunches from 10 cents less than the free rate to 20 cents less than the free rate, except where a State-wide price for reduced-price lunches lower than 20 cents is in effect.

In 1980, the program will provide assistance for about 1,967 million lunches of which 1,680 million will be served free of charge and 287

million at reduced price. The special assistance program will benefit approximately 11.9 million needy children daily during the fiscal year.

School breakfast program: Federal reimbursement to the States is based on the number of breakfasts served free, at reduced price, or to paying children. Certain schools, designated in severe need, receive higher rates of reimbursement. Under Public Law 95–627, the expansion of the program is encouraged through reduction in accounting requirements, special consideration for equipment assistance, and a standard definition of the severe need category. In 1980, the program will serve an estimated total of 610 million breakfasts to 3.6 million participating children.

Summer food service program for children: Meals served free to children in poor areas (i.e., areas in which one-third of the children are eligible for free or reduced-price school meals) during the summer months are supported on a performance basis by Federal cash subsidies to State agencies. Funds are also provided for related State and local administrative expenses. During the summer of 1980, 122 million meals will be served to about 2.3 million children.

Child care food program: Preschool children receive year-round food assistance in child care centers and family and group day care homes. The program reimburses States agencies at varying rates for breakfasts, lunches, suppers, and meal supplements served. In 1980 approximately 417 million meals are expected to be served. Assistance is also provided to acquire or rent food service equipment and to offset State audit expenses related to the administration of the program.

Commodity procurement: Commodities are purchased for distribution to the school lunch, school breakfast, child care food, and summer food service programs. The commodity support rate for the school lunch program, mandated by law, is adjusted yearly to reflect changes in the Producer Price Index for Food Used in Schools and Institutions.

Special milk program: The special milk program, which was originally designed to encourage the consumption of milk by children in nonprofit schools of high school grade and under, summer camps, and similar institutions, is authorized under section 3 of the Child Nutrition Act of 1966.

Currently, funds are provided to State agencies to reimburse participating institutions for a part of the cost of the fluid milk consumed. Reimbursement is made for the full cost of milk served free to needy children. The rate for milk served to paying children is adjusted each school year, based on changes in the Producer Price Index for Fresh Processed Milk.

In 1980, the program will reimburse an estimated 1,770 million half-pints of milk. These include 1,550 million half-pints for paying children and 220 million for children who qualify for free milk. The eligibility standard for free milk is the same as the standard established for free lunches. As provided in Public Law 95–627, children who are eligible for a free lunch under the Secretary's income poverty guidelines will, at the option of the school involved, also be eligible for free milk.

Background and Need

School Lunch Program

Program summary

Financial and commodity assistance are provided under the National School Lunch Act to schools serving lunches meeting required nutritional standards. During the school year some 94,000 public and private schools participate in the program, making lunches available to 90 percent of the Nation's schoolchildren. Peak daily participation is more than 27 million students. More than 10 million students receive free or reduced-price meals according to nationally established income poverty guidelines.

Federal financial assistance for the school lunch program is provided to State educational agencies on the basis of the number of eligible meals served, or, for certain middle and secondary school students, the number of eligible meals offered. Reimbursement rates are adjusted twice yearly in January and July to reflect changes in the Consumer Price Index Series for All Urban Consumers for food away from home. Currently the national average reimbursement rates are 97.25 cents for free lunches, 77.25 cents for reduced-price lunches (up to 10 cents more is available for lunches if there is a statewide price that is less than the national maximum charge of 20 cents), and 17.75 cents for paid lunches. In fiscal year 1980, the Federal Government is providing total financial assistance for the school lunch program of more than $2.1 billion.

State educational agencies are also given commodities, or in some instances an equivalent cash payment, for each lunch served or offered. The value of these commodities is adjusted annually each July for changes in the Consumer Price Index for Food Used in Schools and Institutions. Currently, the value of these commodities is set at 15.75 cents for each free, reduced-price, and paid lunch. In fiscal year 1980, the Federal Government is providing commodities for the school lunch program valued at more than $700 million.

Department of Agriculture-donated commodities traditionally have been an integral part of the school lunch program. The earliest donations were made under section 32 of the Act of August 24, 1935, which permitted 30 percent of gross customs receipts to be used for purchasing agricultural surpluses and encouraging their domestic consumption. When the National School Lunch Act was enacted in 1946, it stipulated that certain money appropriated under section 6 of the Act, as well as section 32 funds, could be used by the Secretary of Agriculture to purchase commodities that schools were to use insofar as was practicable.

Yet another source of funding for commodities was added in section 416 of the Agricultural Act of 1949, which authorized the Commodity Credit Corporation to donate commodities it acquired under its price support program.

In recent years Congress has taken several steps to ensure that schools continue to benefit from this commodity legislation. In 1973, the National School Lunch Act was amended to require the Secretary of Agriculture to make cash grants in lieu of commodities for the un-

supplied balance in any year in which the Department was unable to provide at least 90 percent of the commodity assistance it had initially programmed. After 1977, such cash grants were required whenever the Department could not provide 100 percent of the assistance it had initially programmed. In 1974, another amendment set the guaranteed level of commodity assistance at not less than 10 cents per lunch. It further required that the commodity assistance level be adjusted each year for changes in the Consumer Price Index for food away from home. In 1978, this index was changed to the Price Index Food Used in Schools and Institutions. At least 75 percent of the value of this assistance must be in the form of donated foods. Finally, Congress has enacted a number of provisions designed to make commodity donations efficient and effective.

Need for legislation

In view of the need to reduce the Federal budget deficit to a minimum, the committee has recognized the importance of limiting the financial cost of the school lunch program. It has taken steps that will yield immediate savings in both budget authority and outlays in fiscal year 1981 and additional steps that will also result in significant savings in subsequent fiscal years. At the same time, the committee has avoided making legislative changes that would restrict substantially either the scope or the quality of the program.

Income poverty guidelines—The committee recommendations contain several changes affecting the income poverty guidelines that are used to determine participation in the school lunch program. These changes will also effect eligibility for the school breakfast, summer food, child care food, and WIC programs. Under current law the income eligibility level for free meals is 125 percent of the Secretary of Agriculture's income poverty guidelines, while the income eligibility level for reduced-price meals is 195 percent of those guidelines. The committee recommendations maintain the free meal eligibility level at 125 percent of poverty and lower the reduced-price eligibility level to 185 percent of poverty.

In addition, the recommendations change the procedure by which the Secretary's guidelines are updated. Current law provides that as of July 1 of each year the income poverty guidelines are to be adjusted on the basis of the average change in the Consumer Price Index for the period of the previous calendar year extended through March of the current calendar year. The recommendations eliminate the March extension, leaving the adjustments to be based on the change in the previous calendar year. As a consequence, at the time of the adjustment, the updated poverty levels wil be 6 months rather than 8 months behind changes in prices. A third change is the inclusion of a standard deduction to be used in calculating family income. The deduction, similar to the one used in the food stamp program, will replace the hardship deductions for excess housing, medical, and special education expenses currently allowed under regulations. Starting July 1, 1980, the standard deduction will be $80 per month; each subsequent July 1, it is to be adjusted to reflect annual changes in the Consumer Price Index for items other than food.

Reimbursement for reduced-price lunches.—The committee recommendations also achieve savings by amending the provision governing the reimbursement rate for reduced-price lunches. In 1978, Congres set that rate at 20 cents less than the rate for free lunches, with the exception, however, that if there was a uniform statewide price of less than 20 cents for reduced-price lunches, the reimbursement rate would be the lesser of either the free lunch rate minus 10 cents or the free lunch rate minus the price charged for reduced-price lunches. The recommendations delete this exception, thereby effectively setting the reduced-price reimbursement rate for all States at 20 cents less than the free lunch rate because the incentive for charging 10 cents would be removed.

According to the Department of Agriculture data, nearly all of the States and territories currently are receiving a higher rate of reimbursement under the exception to the rule. In 44 States, the District of Columbia, and Puerto Rico, the standard charge for each reduced-price lunch is 10 cents; in Hawaii, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, such lunches have no charge. All of these States and territories will receive less reimbursement under the committee recommendations.

In some cases the charge for a reduced-price lunch may be kept at less htan 20 cents by increased financial support from State or local educational agencies. In other cases the price may have to be raised to 20 cents. However, in most of the affected States and territories, reduced-price lunch charges have not been raised for the past six years, if not longer. Moreover, none of the increases would apply to children in families that are most needy.

Annual indexing.—The committee recommendations amend other reimbursement provisions in the school lunch program to create further savings. Under current law, the section 4 reimbursement rate for all lunches—free, reduced price, and paid—and the additional section 11 reimbursement rates for free and reduced-price lunches are adjusted semi-annually in January and July to reflect changes in the cost of operating a lunch program, as indicated by changes in the Consumer Price Index for All Urban Consumers for food away from home. Under the committee recommendations, beginning in fiscal year 1981, the adjustment will occur just once a year, on July 1. This change to annual indexing parallels similar changes being made in other Federal programs.

Section 4 reimbursement.—The committee recommendations contain an additional change in the section 4 reimbursement rate. Beginning in fiscal year 1981, this rate, which currently is 17.75 cents per lunch, would be updated annually and reduced by 2.5 cents per lunch in any school district in which during the second preceding school year less than 60 percent of the children participating in the program received free or reduced-price lunches.

The committee recognizes that even small reductions in reimbursements may cause great difficulty for economically poor school districts. It therefore has limited the scope of the section 4 reduction to districts in which fewer than 60 percent of the students participating in the lunch program received free or reduced-price lunches during the second preceding school year. However, the schools would still be

affected by the change from semiannual to annual adjustments in reimbursement rates.

Commodity assistance.—The committee recommendations further change the reimbursement provisions of the school lunch program effecting the value of commodity assistance. Under current law, State educational agencies are given commodities, or in some instances an equivalent cash payment, for each lunch served or offered. The national average value for these commodities was set for fiscal year 1975 at not less than 10 cents per lunch and since then has been adjusted annually each July for price increases. The current value of commodity assistance is 15.75 cents per lunch, though it is expected to be 17 cents after July 1, 1980. The bill would reduce the national average value for school lunch program commodities, or the equivalent cash payments, by 2 cents beginning in fiscal year 1981.

The committee recommendations also amend the definition of eligible "school" to exclude Job Corps Centers funded by the Department of Labor. Funds for meals served at these centers will instead be requested in the appropriation for the Department of Labor's Employment and Training Administration.

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Program summary—In 1968, Congress enacted P.L. 90–802, which included a provision creating the special food service program for children. The program was originally created as a 3-year pilot project to provide lunches to children in child care centers and summer recreation programs in low income areas and areas in which large numbers of mothers worked outside the home. The summer food component of the program was designed to provide a continuation of the school lunch meal service for needy children after the school year ended. In the first year of its implementation, an estimated 98,500 children participated in the summer program receiving 2.1 million meals at a Federal cost of $400,000. Expectations were for even greater participation in 1969 and 1970, and by the last year of the pilot project (1971) just over 460,000 children were participating. However, statistics showed that this number represented less than 8 percent of the number of children receiving free and reduced-price lunches under the school lunch program.

In 1971, Congress extended the program through fiscal year 1973, and made available an additional $35 million of section 32 [1] funds for fiscal year 1971 and a $100 million for the fiscal year 1972 program through the enactment of P.L. 92–32.

In 1972, P.L. 92–433 extended the program through fiscal year 1975 and included a provision encouraging the use of the existing food service facilities in public and private nonprofit schools. While the summer portion of the program had continued to grow to over a million children participating in 1973, this still represented only a small percentage of the needy children receiving free and reduced-price lunches under the school lunch program.

[1] Section 32, among other things, guarantees a permanent annual appropriation equal to 30 percent of gross customs receipts to be used by the Secretary for the removal of agricultural surpluses and food assistance.

A survey by the Department of Agriculture in 1973 and "An Appraisal of the Summer Food Service Program for Children" by the General Accounting Office (GAO) in 1974 precipiated congressional hearings on the summer program. This led to the first major legislative change in the summer food program. Largely in response to these recommendations, P.L. 94–105 included a provision for a separate summer food service program, thereby separating it from the year-round portion of the Special Food Service Program.

In addition, the summer program was extended through fiscal year 1977 and nonprofit residential summer camps were made eligible as sponsors. The changes also included definitions of eligibility, which provided that any eligible institution could enter the program upon request, and eligibility for children was expanded to include children from areas in which at least one-third of the children were eligible for free and reduced-price meals under other child feeding programs. Meals were to be provided at no cost, and reimbursement levels were established for food service operations, which included the cost of obtaining, preparing, and serving foods.

The 1975 amendments expanded eligibility for participation in the summer food program and had the effect of bringing many new sponsors and children into the program. Between 1975 and the summer of the transition quarter (1976), average daily participation in the program nearly doubled from 1.8 to 3.5 million children.

In April 1977, GAO released a report [2] on the problems and abuses in the summer food service program. Findings from this study indicated that there were significant abuses that included food waste caused by inadequate storage and spoilage; deliberate dumping; poor quality food; adult food consumption of offsite consumption by children; improper bidding procedures and indications of kickbacks and bribes; failure to meet meal pattern requirements; and overpayments for unserved meals.

To address these problems, the 1977 amendments (P.L. 95–166) included provisions designed to improve program administration and increase monitoring. The new law placed restrictions on the operation of programs using private food service management companies. These included requirements for vendor registration. In addition, the new law defined an "eligible sponsor" as one that demonstrates adequate administrative and financial capability; has not been seriously deficient in past program operations; is either a camp or conducts a regularly scheduled food service program in a low income area; and, except where needy children would otherwise not be served, provides ongoing year-round service to the community.

During fiscal year 1980, 2.3 million children are expected to participate in the summer program at a cost of approximately $127 million. Funding authority for this program expires September 30, 1980.

Need for legislation

The 2.3 million children expected to participate in the summer food service program for children during fiscal year 1980 represent less

[2] The Summer Feeding Program—How to Feed Children and Stop Program Abuses. Food and Nutrition Services, Department of Agriculture, General Accounting Office, CED 77–59, April 15, 1977.

than 14 percent of the needy children who participate in the free and reduced-price lunch program during the school year. In addition, statistics indicate that participation in the summer program has gone down over the last several years.

In the past few years, legislation has been enacted to expand and clarify eligibility for summer food service program participation and sponsorship. This has increased both the number of sponsors of such programs, and sites where meals are served. The Inspector General of the USDA has reported that "the capacity to bring a program from no activity one day to service of thousands of meals at hundreds of sites the next, requires considerable planning and monitoring," and has reported that difficulties in planning and monitoring have most-often occurred among large private sponsors using private vendors. In response to the Inspector General's report, the committee recommendation provide that nonprofit private nonself-preparation services institutions serving over 2,000 children at more than 20 sites be prohibited from operating the program.

The Department of Agriculture has testified that there is evidence of waste in the summer program because of multi-meal service that is not appropriate to the summer meal sites and the lack of adult supervision. Locations of sites in vacant lots, public housing projects, playgrounds, and other such locations together with limited supervision suggest enormous difficulty in handling several meals that are supposed to be served hours apart, but which often are delivered at the same time. This often results in significant waste and the taking of food offsite for consumption. For this reason, waste will be reduced by the provision in the committee recommendations that limits most institutions to two meal services per day—lunch and either breakfast or a supplement. Because of differing needs and food service environments, the proposal would not include meal limits on residential camps, day camps, and service institutions serving primarily migrant children.

In order to ensure continuous and orderly operation and administration of the summer program and protect the nutritional well-being of low-income children during the summer months, the recommendations provide for an extension of program authority through fiscal year 1984.

CHILD CARE FOOD PROGRAM

Program summary

The child care food program was originally part of the special food service program for children authorized under section 13 of the National School Lunch Act Amendments of 1968 (P.L. 90–302). This program provided for Federal grants-in-aid to State educational agencies for distribution to public and private nonprofit service institutions for the purpose of establishing meal programs similar to those operating in schools. The new program provided for two pilot programs, one to be operated for low-income school children in the summer months and the other to be operated year-round for children in day care centers or other nonresidential child care settings in areas in which poor economic conditions existed or in which there were high concentrations of working mothers.

In the first year of its operation, the child care segment of the special food service program for children provided $2.8 million in Federal funds for meals served to an average of 39,800 children daily. Federal funds provided through this program were to be used to reimburse the costs of obtaining food, although a special reimbursement not to exceed 80 percent of operating costs for the cost of obtaining, preparing, and serving, could be provided for programs that would have otherwise been unable to carry out an effective program. Meals were required to meet the minimum nutritional standards prescribed by the Secretary, and were to be served at no cost or reduced cost to children unable to pay the full cost. Programs were encouraged to use surplus and price-supported commodities, and the Secretary was authorized to donate such commodities to the program.

The 1970 amendments (P.L. 91–248) included a provision requiring that service institutions participating in the program determine and make public eligibilty criteria for participation in the free and reduced-price portion of their programs, and that such determinations be applied equitably.

By the end of fiscal year 1975, an average of 457,100 children were participating in the child-care portion of the program daily, and Federal funding for that year totaled $48.8 million.

In the 1975 amendments (P.L. 94–105), the child care and summer food components of the special food service program for children were separated, and a new section 17, the child care food program was created and extended through September 30, 1978.

For the first time, monthly reimbursement rates were to be provided to the State agency on the basis of reimbursement rates provided for paid, free, or reduced-price school lunches. Dinners were to be reimbursed at the rate provided for lunches, and a minimum snack reimbursement was established at a rate of 5 cents for paid, 15 cents free, and 10 cents for reduced-price snacks. All of the reimbursement rates were to be adjusted semiannually to reflect changes in the Consumer Price Index series for food away from home. In addition the new law provided for a minimum level of commodity assistance, which could be provided in cash if the State agency so requested. The law also provided for $3 million of the appropriation to be used for nonfood assistance, to be apportioned to the States on the basis of the relative number of needy children under age six in the State as compared to the total of such children in the United States.

In 1978, the child care food program was authorized permanently. The definition of eligible institution was expanded to include programs developed to provide day care outside of school hours and public or private nonprofit organizations sponsoring family or group day care homes. Except for family or group day care home sponsoring institutions, service institutions were required to have Federal, State, or local licensing or approval. If such licensing or approval was not available, service institutions could still qualify if they receive funds under title XX of the Social Security Act (this title provided funds to States for social services including child care centers that meet Federal Interagency Day Care requirements) or otherwise demonstrate ability to meet standards prescribed by the State or local government or the Secretary of the Department of

Health, Education, and Welfare (now the Department of Health and Human Services).

The most significant of the changes in the 1978 law provided for a simplification of sponsor claims through a three-tier system of reimbursement for meals served.

In fiscal year 1979, the child care food program grew by 13.4 percent above the 1978 level with 383.9 million meals being served to an average of 660,300 children daily. For fiscal year 1980, it is estimated that 700,000 children will participate in the program.

In an effort to respond to the growing demand for fiscal austerity, the committee has recommended a number of changes that will result in program savings. These include a reduction of 3 cents in the reimbursement rate for meal supplements (or snacks). The effect of this proposal would be to lower the Federal payment for snacks from the estimated fiscal year 1981 weighted average reimbursement rate of 30.96 cents for free, 23.28 cents for reduced-price and 7.74 cents for paid snacks. The proposed reduction in the paid reimbursement for school lunches and the change from semiannual to annual inflation adjustments contained in the bill will also apply to the reimbursement for paid meals served to children through the child care food program. These changes will not significantly affect program participation since most of the children participating are receiving meals at the free and reduced-price rate. Changes in income eligibility criteria for free and reduced-price meals under the school lunch program and the school breakfast program will also apply to the child care food program. These are expected to have minimal impact on this program because of the three-tier system or reimbursement, which in effect provides group reimbursement when there are significant proportions of eligibles in a child care center.

The recommendations also reduce the funding available for food service equipment assistance for the child care food program, since many States have not fully expended the level available to them. In fiscal year 1979, for example, total expenditures for food service equipment assistance were $3.26 million. The recommendations reduce the $6 million available from the appropriations for this program to $4 million.

SPECIAL MILK PROGRAM

Program summary

Prior to 1943, Federal assistance to schools for lunch and milk programs was dependent upon the existent of farm surpluses. With the passage of the 1943 amendments to the Act of August 24, 1935 (P.L. 78–129), a specific amounts of section 32 [3] funds were authorized for the school lunch and milk program without regard to the existence of farm surpluses.

Beginning September 1, 1954, and through fiscal year 1956, the Agricultural Act of 1954 (P.L. 83–690) authorized $50 million annually from Commodity Credit Corporation (CCC) funds to be used for the purpose of increasing fluid milk consumption for children in nonprofit elementary and secondary schools. When this legislation was

[3] Section 32, among other things, guaranteed a permanent annual appropriation equal to 30 percent of gross customs revenues to be used by the Secretary of Agriculture under broad guidelines for the purpose of removing agricultural surpluses and assisting low-income households in their food-related needs.

enacted, the CCC had been purchasing large amounts of dairy products and converting them for storage in order to boost sagging dairy prices. The 1954 act was intended to support milk prices and provide milk to school children rather than converting it and storing it in Government warehouses.

In 1956, this provision of the Agricultural Act of 1954 was amended by two Acts (P.L. 84–465 and P.L. 84–752). Public Law 84–465 increased the authorization for the program from $50 million to $75 million annually of CCC funds through fiscal year 1958 and expanded eligibility for participation in the milk program to include children in nonprofit child care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of underprivileged children on a public welfare or charitable basis. The enactment of P.L. 84–752 deleted reference to "underprivileged children . . . training or cared for on a public welfare or charitable basis." With this change Congress established that the milk program was not to be targeted solely for the milk consumption of needy children but rather to all children who could be served, without regard to family income, within the confines of the funding available.

In 1958, the milk program was extended at the same authorization level for an additional 3 years (through June 30, 1961). In addition, while funding was still to be provided from CCC funds, specific language was added to the law station that the amounts expended under the program were not be considered as expenditures for price support.

In 1959, legislation was enacted (P.L. 86–10) increasing the authorization for milk provided through CCC funds to $78 million for the fiscal year begining July 1, 1958, and $75 million for each of the fiscal years beginning July 1, 1959, and July 1, 1960. With the passage of additional legislation in 1959 (P.L. 86–163), the authorization levels were increased to $81 million for the fiscal year beginning July 1, 1959, and $84 million for the fiscal year beginning July 1, 1960. Again in 1960, authorizations were increased by P.L. 86–446 to a total of $85 million for the fiscal year beginning July 1, 1959, and $95 million for the fiscal year beginning July 1, 1960. In 1961, the program was extended for 1 year and the authorization increased to $105 million.

With the enactment of the Agricultural Act of 1961 (P.L. 87–128), Congress mandated that direct appropriations outside the CCC be provided for continued milk reimbursement. No limit was placed on the authorization and the program was extended through fiscal year 1966.

The Child Nutrition Act of 1966 incorporated the Special Milk program in section 3 of that Act. The new Act required the Secretary to administer the program in the same way as previously, and eligibility for participation remained the same. The program was to be available in the 50 States and the District of Columbia. The program was extended through fiscal year 1970 at authorization levels of $110 million for fiscal year 1967, $115 million for fiscal year 1968, and $120 million for fiscal year 1969 and 1970.

In 1967, the administration's budget included a proposal to limit Federal reimbursement for milk under the special milk program to schools with no food service program and to schools with high concentrations of low-income children. The proposed 80 percent reduction in funding accompanying such a change was rejected by Congress in

the 1967 agricultural appropriation act, which provided $104 million for the special milk program.

In 1970, the amendments to the Child Nutrition Act of 1966 (P.L. 91–295) included a provision making the special milk program permanent and authorizing appropriations up to $120 million for fiscal year 1970 and each succeeding fiscal year. In addition, this legislation, which was enacted over the President's veto, provided for program participation in Guam.

In 1973, in opposition to administration recommendations to cut back the special milk program, Congress passed amendments to the National School Lunch Act (P.L. 93–150) that included a provision allowing any nonprofit school or child care institution to participate in the program upon request. In addition, eligibility for free milk was provided under the program for children who qualified for free lunches under the National School Lunch Act.

Amendments to the Child Nutrition Act of 1966 enacted in 1974 (P.L. 93–347) included a provision establishing a minimum rate of reimbursement of 5 cents, annually adjusted to reflect changes in the food away from home series of the Consumer Price Index (CPI) for each half-pint of milk served. The new law also authorized such sums as may be necessary for that purpose.

In 1975, the National School Lunch Act and Child Nutrition Act of 1966 Amendments (P.L. 94–105) included a provision expanding program participation to Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territories of the Pacific Islands. The law also included a provision prohibiting reimbursement in amounts exceeding the cost of the milk served.

In 1977, it was brought to the attention of Congress that administrative problems were being encountered by some schools because of the free milk provision. Reports indicated that the provision of an additional free half-pint of milk to children receiving free lunches had led to public identification of needy children. In addition, there was some concern (although the later results of the special milk program study showed this not to be the case) that the addition of one-half pint of milk to that already provided through the meal service program might result in milk waste. In response to these problems, a number of schools had dropped the special milk program. In an effort to address these problems. Congress included a provision in the 1977 amendments (P.L. 95–166) requiring that free milk be provided at times other than meal service in facilities that operated the school lunch, breakfast, or child care food programs. Children not participating in the school lunch program were permitted to continue to receive milk under the special milk program during meal periods.

The Child Nutrition Amendments of 1978 (P.L. 95–627) included a change from the previous limitiation on reimbursement for free milk served at mealtimes. Under the new law, free milk could be served to eligible children at the option of the school and upon the request of the child. This change allows facilities to serve free milk at mealtimes, if they choose, while at the same time allowing the child the option of refusing the extra milk.

Although the new provision does not specifically include mention of nonresidential child care institutions, the Department of Agricul-

ture has interpreted the provision to include these facilities since the special milk program is also available to them under the law. In an effort to provide a better indicator of need adjustments in the minimum reimbursement rate, the new legislation also included a provision requiring the use of the Producer Price Index for Fresh Processed Milk (published by the Bureau of Labor Statistics of the Department of Labor) rather than the previously mandated Consumer Price Index series for food away from home.

For the period July 1, 1979, through June 30, 1980, the minimum Federal payment per half-pint of milk served under the special milk program is 7.75 cents. For the same period of time, the Federal payment for free milk served to needy children in schools that exercise the free milk option was approximately 14 cents per half-pint. The Department of Agriculture estimates that for this period 12.4 percent of the milk served will be served free to needy children and the remaining 87.6 percent of the milk will be served at the paid reimbursement rate.

NEED FOR LEGISLATION

During the course of the past 15 years, successive administrations have recommended the elimination of either the entire or a major part of the special milk program to accomplish budget savings. The committee has rejected such proposals because of concern over the effect that elimination of this program would have on those children who do not participate in the school lunch program but who purchase milk separately as part of an a la carte school lunch or to supplement a bag lunch brought from home. Study data on the special milk program has shown that 70 percent of the milk served through the program is served to children who do not participate in the school lunch program. The elimination of the special milk program could significantly affect the ability or willingness of these children to continue to purchase milk.

In an effort to respond to the current demands for fiscal austerity, the committee has proposed that the reimbursement for paid milk served in schools with a school meal service program be set at 5 cents for each half-pint. This reimbursement rate would not affect reimbursement for milk served in schools without a school meal service program or for milk served free to needy children in schools with a school meal service program.

The estimated effect of the committee recommendations would be to reduce the reimbursement for a half-pint of milk served to paying students by a little over 3 cents in fiscal year 1981. The committee expects that this change will provide substantial savings, will have a minimal effect on participating children, and will have no effect on needy children receiving free milk or those children in schools that do not have a school food service program. This proposal will not jeopardize the integrity of the special milk program because it will continue to be able to opreate in all schools wishing to participate.

SCHOOL BREAKFAST PROGRAM

Program summary

Initially authorized as a 2-year pilot project, the school breakfast program was established by the Child Nutrition Act of 1966 (P.L.

89–642). In the first year of operation, the program served 80,000 children at a Federal cost of $573,000. The original legislation provided that first consideration for program implementation would be given to schools in poor areas and areas where children had to travel a great distance to school. Funds were provided to local school districts through the State educational agencies to pay for a portion of the food used in the program, but not for labor costs. In cases of "severe need",[4] Congress permitted Federal reimbursement of up to 80 percent of all operating costs. In 1971, P.L. 90–302 provided that free and reduced price breakfast eligibility was to be based on the same income eligibility guidelines as used in the school lunch program.

In 1972, P.L. 92–433 extended the authorization for the breakfast program through fiscal year 1975. Funding for the program was changed to provide payment based on the number of breakfasts served and the Secretary was authorized to make payments directly for breakfasts served in nonprofit private schools in a manner similar to that used by State educational agencies administering programs in the public schools. The 1973 amendments to the Child Nutrition Act (P.L. 93–150) established a minimum 8-cent per meal Federal reimbursement for each paid breakfast, 15 cents for each reduced-price breakfast and 20 cents for each free breakfast. In cases of severe need, a maximum payment of 45 cents was authorized for free breakfasts.

In the 1975 amendments to the Child Nutrition Act (P.L. 94–105), the authorization for appropriations for the school breakfast program was made permanent. This legislation included a statement of congressional intent that the program "be made available in all schools where it is needed to provide adequate nutrition for children in attendance." The Secretary was required to report plans for breakfast program expansion and to undertake a program of information to further the intent of Congress.

The 1977 amendments (P.L. 95–166) increased the maximum reimbursement for free and reduced-price breakfasts in severe need schools to the higher of either 10 cents above the regular reimbursement for free breakfasts or 45 cents plus a semiannual adjustment based on the series of food away from home in the Consumer Price Index. For reduced-price breakfasts, the reimbursement rate was set at 5 cents below the maximium payments for free breakfasts.

By 1978, the program had grown to a Federal funding level of $184 million and was serving breakfasts to 2.8 million children in over 23,000 schools. While this was a significant increase over the early years, congressional enactment of the 1978 amendments (P.L. 95–627) suggested concern about the fact that so few (less than 30 percent) of the schools and needy children participating in the school lunch program were participating in the breakfast program. The 1978 amendments included provisions to encourage expansion of the breakfast program by providing additional financial assistance and food service equipment to local schools initiating breakfast programs.

The school breakfast program provides assitance to State to initiate, maintain or expand non-profit breakfast programs in the schools.

[4] Severe need schools are those in which breakfast service is mandated by State law and in which 40 percent or more of the lunches were served at free or reduced-price in the second preceding school year and the breakfast reimbursement is insufficient to cover costs.

Under this program, Federal payments are available for each breakfast served. In fiscal year 1980, the program operated in approximately 31,000 schools and is expected to serve an estimated 610 million breakfasts to some 3.6 million children. This represents about 30 percent of the 12 million children participating in the free and reduced-price lunch program, and about one-third of the 94,500 schools offering school lunches. The major portion of participants (almost 85 percent) are low-income children who receive free or reduced-price breakfasts. Income eligibility for such breakfasts is the same as that for the school lunch program.

For the period January 1 through June 30, 1980, the basic reimbursement rate for each breakfast served is 14 cents. An additional 26.5 cents (for a total of 40.5 cents) is provided for reduced-price breakfasts, and an additional 32.25 cents (for a total of 49.25 cents) is provided for free breakfasts. These rates are adjusted semiannually for changes in the Consumer Price Index series for food away from home. The Department of Agriculture currently provides three cents per breakfast in commodity assistance to the school breakfast program, although it is not required by law to do so.

Need for legislation

In an effort to respond to the budgetary constraints for spending in fiscal year 1981, the committee bill includes language that prohibits the Secretary of Agriculture from providing commodities to school breakfast programs in fiscal year 1981. However, this restriction would be operative only for one year. In subsequent fiscal years the Secretary could provide commodities to this program at a rate up to 3 cents per breakfast. Indexed for inflation. Other savings in the breakfast program will occur from the provisions that change the eligibility for free and reduced-price school lunches and require annual rather than semiannual adjustment of the reimbursement rates.

Section-by-Section Analysis

Section 101. School lunch program, general reimbursement:

Section 101 reduces the general cash reimbursement rate under section 4 of the National School Lunch Act for all categories of lunches served (free, reduced-price, and paid) by 2½ cents, except in school districts in which 60 percent or more of the lunches served were served free or at reduced-price during the second preceding school year. Under existing law, the section 4 cash reimbursement in fiscal year 1981 is estimated to be 19.14 cents per lunch. The 2½ cent reduction in the section 4 general cash reimbursement rate would not affect the amount of State administrative expense funds disbursed under section 7 of the Child Nutrition Act of 1966.

Section 102. Direct Federal expenditures, commodity assistance:

Section 102 amends section 6(e) of the National School Lunch Act to reduce commodity assistance in the school lunch program by 2 cents. Under existing law, commodity assistance in the school lunch program in fiscal year 1981 is estimated to be 17.1 cents per lunch.

Section 102 also amends section 6(e) of the National School Lunch Act to prohibit the Secretary of Agriculture, for the 1980–1981 school year, from offering commodity assistance to the States for the school

breakfast program. In subsequent school years, the Secretary could provide 3 cents in commodity assistance to States for the school breakfast program, which could be adjusted on an annual basis to reflect changes in the Consumer Price Index for Food Used in Schools and Institutions.

Section 103. Nutritional and other program requirements:

POVERTY GUIDELINE

Section 103(a) amends section 9(b)(1) of the National School Lunch Act to provide that the income poverty guidelines for the child nutrition programs will be the non-farm income poverty guidelines prescribed by the Office of Management and Budget for the forty-eight States adjusted annually.

ELIGIBILITY GUIDELINES

Sections 103 (a) and (b) also change the eligibility guidelines for free and reduced price school meals from 125 percent and 195 percent of poverty, respectively, to 125 percent of poverty plus a standard deduction and 185 percent of poverty plus a standard deduction. The hardship deductions that are currently allowed under the Department of Agriculture regulations would be replaced by the standard deduction. By reducing the eligibility guideline for reduced price school meals, section 4(b) also reduces the maximum income eligibility for the special supplemental food program (WIC). The standard deduction would be the same as the standard deduction used in the food stamp program and is projected to be $80 per month when this provision is implemented.

Section 104. Special assistance:

Section 104(1) amends section 11(a) of the National School Lunch Act to remove the incentive for schools to offer reduced-price lunches at less than 20 cents per lunch. Under existing law, schools that charge less than 20 cents per reduced price lunch receive cash reimbursement equal to the free lunch reimbursement factor reduced by 10 cents, or the price charged for reduced price lunches in that State, whichever is greater.

Sections 104 (2) and (3) amend section 11(a) of the National School Lunch Act to replace the semiannual adustments in the school lunch program reimbursement rates with an annual adjustment made on July 1 of each year to reflect changes for the most recent 12 month period for which such data are available.

Section 105 Miscellaneous provisions and definitions, National School Lunch Act:

Section 105 specifically excludes Job Corps Centers funded by the Department of Labor from the definition of "school" in section 12(d) of the National School Lunch Act.

Section 106. Summer food service program for children Service institutions;

Section 106(a) amends section 13(a)(1) of the National School Lunch Act to preclude private nonprofit institutions other than camps that purchase meals from a food service management company and

that serve more than 2,000 children daily at more than 20 locations from participating in the program.

NUMBER OF MEALS

Section 106(b) amends section 13(b)(2) of the National School Lunch Act to limit meal service in the summer program to two meals (lunch and either breakfast or a supplement) daily, except in camps and service institutions serving meals primarily to migrant children.

AUTHORIZATION FOR APPROPRIATIONS

Section 106(c) amends section 13(p) of the National School Lunch Act to extend the authorization for appropriations for the summer program through fiscal year 1984. Under existing law, the authorization for appropriations for the summer program expires at the end of fiscal year 1980. The summer program is an entitlement program.

Section 107. Child care food program:

REIMBURSEMENT RATES

Sections 107(a) (1) and (2) amend sections 17(c) (1), (2), and (3) of the National School Lunch Act to provide that adjustments in the reimbursement rates for supplements will be made on an annual rather than semiannual basis.

Section 107(a) (3) provides that, beginning in fiscal year 1981, the Federal cash reimbursement rate for supplements served in the program will be reduced by 3 cents. It is currently estimated that in fiscal year 1981 the average reimbursement rate for paid supplements will be 7.74 cents, for reduced-price supplements 15.54 cents, and for free supplements 23.22 cents.

EQUIPMENT ASSISTANCE FUNDS

Section 107(b) amends section 17(n)(1) of the National School Lunch Act to reduce from $6 million to $4 million the amount available annually for providing equipment assistance to enable child care institutions to establish, maintain, and expand the program.

Section 108. Special milk program:

Section 108 further amends section 3 of the Child Nutrition Act of 1966 to reduce and freeze the reimbursement rate for milk served in the special milk program to paying children in schools, institutions. or camps that participate in one of the other child nutrition programs to 5 cents per half-pint. It is currently estimated that the reimbursement rate for paid milk in the special milk program in fiscal year 1981 under existing law would be 8.10 cents.

Section 109. School breakfast program:

MAXIMUM FREE BREAKFAST REIMBURSEMENT

Section 109 amends section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966 to provide for a maximum free breakfast reimbursement of the higher of (1) the national average payment established by the

Secretary, or (2) 45 cents, indexed annually rather than semiannually to reflect changes in the series for food away from home of the Consumer Price Index.

Section 110. Miscellaneous provisions and definitions, Child Nutrition Act of 1966:

Section 110 specifically excludes Job Corps centers funded by the Department of Labor from the definition of "school" in section 15(c) of the Child Nutrition Act of 1966.

Committee Consideration

COMMITTEE MARKUP

Pending bills.—Four bills containing spending cuts were before the Committee on Agriculture, Nutrition, and Forestry when it met to consider the reconciliation instructing in the first concurrent resolution on the budget for fiscal year 1981 at markup. S. 2675, introduced by the Chairman and ranking minority member of the Subcommittee on Nutrition, Senators McGovern and Dole, respectively, which was supported by the American School Food Service Association and a coalition of agricultural and public interest groups; S. 2799, introduced by the committee's ranking minority member, Senator Helms, and Senators Jepsen and Hayakawa; S. 2810, introduced by Senator Dole; immediately prior to the markup, and the administration's bill, which was printed as a committee print, although it was not introduced in the Senate.

The committee reached agreement early in the markup on six budget cuts that were in some or all four of the bills pending before the committee. They were: a reduction of 3 cents in the reimbursement for child care supplements; a reduction in food service equipment assistance for child care institutions; elimination of Job Corps Centers from the school lunch and breakfast programs; reducing and freezing the reimbursement rate under the special milk program for milk for paying children in schools in which there are other meal programs at 5 cents; and nonentitlement cuts in food service equipment assistance, breakfast commodities, and nutrition education and training.

Other spending cuts.—The major areas of disagreement on the manner of cuts involved the cash and commodity reimbursement rates, eligibility criteria for free and reduced price school lunches, the date for determining an annual reimbursement update, and the summer food service program for children.

General reimbursement rate for lunches.—S. 2675, the McGovern-Dole bill, calls for a reduction in the basic reimbursement rate (the "section 4" rate) for all meals by 2½ cents. This reduction would not apply to those school districts in which 75 percent or more of the children receive their lunches free or at reduced-price. S. 2810, Senator Dole's bill is identical to S. 2675 except that the "safety net" for school districts would be set at 60 percent rather than 75 percent. The administration proposed a 5-cent reduction in the section 4 reimbursement for paying children only, unless the participation rate of paying children dropped to or below 50 percent of all program participants. Sen-

ator Helms' bill contained no reduction in section 4 reimbursements. The committee adopted Senator Dole's proposal.

Eligibility criteria for free and reduced-price lunches.—Under current law, the income eligibility level is set at 125 percent of the Secretary's income poverty guidelines, which for fiscal year 1981 for a four-person family would be $10,250. The McGovern-Dole and Dole bills left eligibility for free meals at essentially the level of present law, $10,390 and $10,273, respectively, for fiscal year 1981. The Helms-Hayakawa-Jepsen bill lowered that level to $9,840, and the administration bill reduced the level even further to $9,160.

For reduced-price meals the variation among the proposals was greated. The McGovern-Dole bill, S. 2675, and the administration bill lowered eligibility for reduced-price almost $700 from the present law level of $15,990 to $15,310. The Dole bill lowered it approviately $1,200 from present law to $14,743, and the Helms bill by nearly $1,650 to $14,350.

The committee also considered and adopted the replacement of the hardship deductions permitted under present regulations with a standard deduction and elimination of the update for inflation to March 31 of the year in which the adjustment is to be made rather than using the Office of Management and Budget inflation adjustment based on the previous calendar year.

Along with adoption of a standard deduction and elimination of the March 31 update, the committee set the eligibility levels at 125 percent of poverty and 185 percent of poverty, respectively, for the free and reduced-price lunches. These combined changes have the effect of setting these eligibility standards at 125 and 180 percent of the current poverty level. The elimination of the March 31 update in the poverty guideline is consistent with a change made earlier this year in the food stamp program in P.L. 96–249. The committee also eliminated the incentive for schools to offer reduced-price lunches at less than 20 cents. These changes were all contained in Senator Dole's bill.

Annual adjustment of the school meals reimbursement rates.—All the proposals before the committee replaced the semiannual adjustment in the reimbursement rates for school meals with an annual adjustment. Two of the proposals, the McGovern-Dole and Dole bills, changed the date of calculation, beginning with the 1982–1983 school year, from May 31 to August 31, whereas the other proposals retained the May 31 date. The Committee adopted the May 31 date. This change results in fiscal year 1981 savings of $75 million.

Summer food service program for children.—Three types of proposals were made to achieve savings in the summer feeding program. S. 2799, the Helms-Hayakawa-Jepsen bill, proposed savings of $149 million through not reauthorizing the summer program beyond fiscal year 1980. Each of the other proposals would save $18 million by limiting the number of meals served in the program to two, other than in camps and programs primarily for migrant children.

The committee adopted a third means of achieving savings—limitation on participation by private sponsors who do not prepare their

own meals. The administration bill proposed to prohibit nonself-preparing-private sponsors, other than programs primarily for migrant children, serving more than 1500 children at more than 15 sites from participation in the program. S. 2810 proposed a similar limitation. S. 2675 eliminated the participation by such private sponsors unless no other sponsor had agreed to participate by March 15. The committee adopted a compromise proposal submitted by Senator Huddleston that removes the eligibility of non-self-preparing-private sponsors other than camps that serve meals to no more than two thousand children daily at no more than twenty locations. * * *

Level of commodity assistance.—S. 2675 and S. 2799 reduced the level of commodity assistance by 1 cent per lunch (savings: $45 million). S. 2810 reduced commodity assistance by 2 cents (savings: $90 million). The administration's proposal contained no comparable provision. The committee adopted a 2-cent reduction in commodity assistance for the school lunch program.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact that would be incurred in carrying out the Committee on Agriculture, Nutrition, and Forestry recommendations.

I

The committee recommendations make various changes in the school lunch and breakfast programs, the commodity distribution program, the summer food service program for children, the child care food program, and the special milk program.

The recommendations are not regulatory measures in the sense of improving Government-established standards or significant economic responsibilities on private individuals and businesses.

II

Participation in the child nutrition programs administered under the National School Lunch Act and the Child Nutrition Act of 1966 is voluntary on the part of States and institutions operating the programs and the children who receive program benefits.

The provisions of the recommendations will require modifications in existing child nutrition regulations. The changes necessary to implement the provisions in the recommendations will not be difficult to make since no degree of administrative discretion is involved; they are required by the provisions of the recommendation.

III

There would be no impact on the personal privacy of recipients in the child nutrition programs as a result of enacting the amendments recommended by the committee.

Cost Estimate

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee on Agriculture, Nutrition, and Forestry estimates that its recommendations would reduce spending authority for fiscal year 1981 by over $520 million in both budget authority and outlays. The recommended changes in law would also result in savings in subsequent fiscal years.

The committee's estimate is in accord with the cost estimate prepared by the Congressional Budget Office on S. 2675, which, as ordered reported by the committee, contains the identical reductions in spending authority. The estimate prepared by the Congressional Budget Office on S. 2675 reads as follows:

Congressional Budget Office,
Washington, D.C., June 24, 1980.

Hon. Herman E. Talmadge,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 2675, the Child Nutrition Amendments of 1980.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: S. 2675.
2. Bill title: Child Nutrition Amendments of 1980.
3. Bill status: Ordered reported from the Senate Committee on Agriculture, Nutrition, and Forestry; June 11, 1980.
4. Bill purpose: The purposes of the bill are: (1) to extend through fiscal year 1984 authorization for the summer food service program, the special supplemental food program (WIC), a commodity distribution program, and the child nutrition state administrative expenses (SAE) provisions, (2) to modify income eligibility provisions for determining meal reimbursements, (3) to reduce certain cash and commodity meal reimbursements rates, (4) to limit the summer food service program to certain sponsors, (5) to reduce the special milk reimbursement for non-needy students, (6) to replace the semi-annual meal reimbursement adjustments with an annual adjustment, (7) to reduce the authorization for appropriation levels in the food service equipment program, and (8) to make improvements in the programs' administration and outreach provisions.
5. Cost estimate: The cost of this bill falls in the Income Security function of the federal budget (function 600). The cost estimate assumes implementation of all provisions with the school year beginning in October 1980, therefore, fiscal year 1981.

5. COST ESTIMATE

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
NEW AUTHORIZATION					
Summer food program:					
Estimated authorization level	109	117	137	148	----------
Estimated total outlays	98	116	135	147	15
State administrative expense:					
Estimated authorization level	38	45	46	50	----------
Estimated total outlays	38	45	46	50	----------
Nutrition education and training program:					
Estimated authorization level	15	23	22	22	----------
Estimated total outlays	8	19	22	22	11
WIC program:					
Estimated authorization level	----------	[1] 130	1,275	1,485	----------
Estimated total outlays	----------	110	1,103	1,453	222
CHANGE IN AUTHORIZATION					
Equipment assistance:					
Estimated authorization level	−60	−45	−40	−35	−75
Estimated total outlays	−50	−42	−37	−32	−63
National school lunch program:					
Income eligibility:					
Change in estimated authorization	−130	−140	−151	−163	−176
Change in estimated outlays	−130	−140	−151	−163	−176
Sec. 4 reimbursement:					
Change in estimated authorization	−85	−87	−88	−90	−92
Change in estimated outlays	−85	−87	−88	−90	−92
Job Corp restriction:					
Change in estimated authorization	−15	−15	−16	−16	−17
Change in estimated outlays	−15	−15	−16	−16	−17
Commodity donation program:					
Change in estimated authorization	−90	−90	−90	−91	−92
Change in estimated outlays	−90	−90	−90	−91	−92
School breakfast program:					
Severe need:					
Change in estimated authorization	----------	+31	+35	+39	+43
Change in estimated outlays	----------	+31	+35	+39	+43
Breakfast commodity assistance:					
Change in estimated authorization	−19	+3	+5	+8	+10
Change in estimated outlays	−19	+3	+5	+8	+10
Special milk program:					
Change in estimated authorization	−57	−62	−66	−72	−78
Change in estimated outlays	−57	−62	−66	−72	−78
Child care food program:					
Change in estimated authorization	−8	−10	−11	−12	−14
Change in estimated outlays	−8	−10	−11	−12	−14
Annualization of reimbursement:					
Change in estimated authorization	−75	−81	−80	−80	−71
Change in estimated outlays	−75	−81	−80	−80	−71
Participation response to changes in reimbursement:					
Change in estimated authorization	−29	−31	−34	−37	−39
Change in estimated outlays	−29	−31	−34	−37	−39
BILL COST SUMMARY					
Total:					
Estimated authorization level	−406	−212	944	1,156	−601
Estimated outlays	−414	−234	773	1,216	−563
Change from current services base (entitlement provisions):					
Change in authorization level	−529	([2])	([2])	([2])	([2])
Change in outlays	−525	([2])	([2])	([2])	([2])

[1] Represents a change in authorization level for this fiscal year.
[2] Not applicable.

6. Basis for estimate: The estimated authorization levels in this cost estimate for the summer food service program, state administrative expenses, and the nutrition education and training program through fiscal year 1984 reflect the entire program costs, since these programs' authorizations expire at the end of fiscal year 1980. The equipment assistance program's maximum authorization levels are reduced in the bill from $75 million under current law, to $15 million in fiscal year 1981, and then increased to $40 million by 1984. The bill removes the

permanent authorization for the food service equipment program, and replaces it with an authorization expiring with fiscal year 1984. The WIC program's authorization expires at the end of fiscal year 1982, and therefore the cost estimate shows the estimated total authorization for fiscal years 1983 and 1984. The incremental costs resulting from legislative changes in the bill are shown for the WIC program for fiscal years 1981 and 1982. Outlays for these programs reflect current spending patterns.

Other provisions of the bill modify permanently authorized programs and therefore only the incremental costs resulting from the bill are shown for these programs. These include the national school lunch program, the school breakfast program, the commodity donation program, the special milk program, and the child care food program.

Methods and assumptions used to develop the cost estimate for each major bill provision follow.

Reauthorized or Extended Programs

SUMMER FOOD PROGRAM

The bill extends the summer food program through fiscal year 1984 with amendments. The bill limits eligibility of service institutions operating the program. Private nonprofit institutions that acquire meals from a food service management company are excluded from participating in the program unless the institution serves less than 2,000 children daily at no more than 20 locations. Further, participating summer day camp institutions are limited to serving two meals a day—a lunch and a breakfast or supplement. Under current procedures such institutions could serve four meals—lunch, supper, supplement, and breakfast.

The estimate assumes that the number of meals served in 1981 would be approximately 140 million under a simple extension of the program. With a weighted average meal reimbursement of approximately $1.06, the cost of the program would be about $150 million. An estimated 38 million meals, or approximately 28 percent of all meals served under the program, would have been provided through the non-profit institutions now excluded under the bill. Assuming that the mix of meals in these excluded institutions (breakfasts, lunches, and snacks) is in the same proportion as the meals served in all other service institutions, the bill would result in a saving of $42 million in 1981. It is assumed that new qualifying institutions do not replace the institutions excluded by this bill. It was also assumed that the proportion of meals served in the excluded institutions would not have changed over time for estimating out-year savings. Offsetting these savings is a provision that would make funds for conducting audits of all participating institutions available to states administering the program. An estimated $1.5 million would be made available to states to conduct these audits.

For fiscal year 1981, the estimated authorization level in the summer food program is $109 million and estimated outlays are $98 million. This is $40 million less than what would have been the cost of the program with a simple extension. By fiscal year 1984, the bill results in a reduced authorization level of $55 million from what would have been estimated with a simple extension of the program.

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STATE ADMINISTRATIVE EXPENSES

The bill extends the current formula for determining state administrative expenses (SAE) associated with the operation of the school lunch program, child care food program, special milk program, breakfast program, and food service equipment program. Currently, 1.5 percent of the federal funds expended for these programs in the second preceding fiscal year is authorized to be allocated to the states. The authorization level for fiscal year 1981 reflects the actual 1979 expenditure levels in these programs; similarly, the fiscal 1982 estimate reflects the estimated fiscal year 1980 program expenditures. The estimated fiscal year 1983 and 1984 authorization levels reflect the fact that certain provisions of this bill reduce expenditures in fiscal years 1981 and 1982 (excluding the 2.5 cent reduction in section 4 reimbursement discussed below). Specifically, fiscal years 1983 and 1984 federal funding for state administrative expenses is reduced by $2 million and $3 million respectively, because of other savings provisions in this bill. Estimated total outlays reflect a 100 percent spendout rate.

NUTRITION EDUCATION AND TRAINING

The bill would extend through fiscal year 1984. Section 19 of the Child Nutrition Act of 1966 that provides funding for nutrition education and training grants. For fiscal year 1981 the bill authorizes an appropriation of $15 million; for the remaining period, the bill establishes an entitlement program with appropriations set at the number of children enrolled in school multiplied by 50 cents.

The authorization level for fiscal years 1982 through 1984 is based on the National Center for Education Statistics, Projections of Education Statistics to 1986–87, using their intermediate projected enrollments. Spendout rates from these authorization levels were assumed to be 50 percent, based on past spending history.

WIC PROGRAM

The bill extends the authorization period for the WIC program through the end of fiscal year 1984. The program's current authorization expires at the end of fiscal year 1982. The bill would maintain the current law's $900 million authorization level for fiscal year 1981, but beginning with fiscal year 1982 the authorization level would be increased by the amount necessary to insure that participants increased an average of 300,000 persons per year. Based on current projections, participation in the program should average approximately 2.0 million persons in fiscal year 1981. Authorization levels for fiscal years 1982, 1983, and 1984 were based on the assumed average levels of participation of 2.3 million, 2.6 million, and 2.9 million, respectively. Including a factor for administrative costs and increased food prices, these increased participation levels would cause the current authorization level for fiscal year 1982 ($950 million) to increase by $130 million to $1,080 million. For the bill's newly authorized years, the estimated authorization level would be $1,275 million in fiscal year 1983, and $1,485 million in fiscal year 1984. The estimated total outlays for these years reflect the current spending pattern of 85 percent of authorization in the first year and the remainder in the second.

CHANGES IN PERMANENTLY AUTHORIZED PROGRAMS

NATIONAL SCHOOL LUNCH PROGRAM (NSLP)

The bill modifies income eligibility standards and cash reimbursement rates for the national school lunch program. These changes reduce program costs directly and indirectly through a potential reduction in program participation. It is difficult to determine precisely the magnitude of the indirect participation effects. CBO has chosen to adopt some of the Administration's assumptions concerning the participation effects that would result from lower federal subsidies that are assumed to be offset by higher meal charges to participants.

Section 4 Reimbursement. The bill reduces the general assistance (Section 4) meal reimbursement rate in the NSLP by 2.5 cents commencing with fiscal year 1981. Schools where more than 60 percent of the children receive free or reduced-price lunches would be unaffected by this provision. Under current law, the Section 4 reimbursement would average 19.1 cents per meal in fiscal year 1981. This provision alone would reduce the average Section 4 reimbursement to 16.6 cents per meal.

In fiscal year 1981, if all meals served (about 4.3 million) were reduced by 2.5 cents federal savings would reach $108 million. However, an estimated 21 percent of all meals served are in schools that would be excluded from this provision. Savings from this provision in fiscal year 1981 would, therefore, be $85 million. Savings would increase slightly in the future, due to a modest increase in the number of meals served.

Income Eligibility Modifications. The bill would eliminate a provision that updates the poverty guidelines to the beginning of the relevant fiscal year. The bill also would eliminate a provision permitting families to deduct from their incomes special hardship expenditures (for example, high medical and housing expenses) for determining the meal subsidy class. In place of the hardship deductions the bill would allow a standard deduction for all families, comparable to that used in the food stamp program. Finally, the bill would lower eligibility for reduced-price subsidies to 185 percent of non-updated poverty guidelines.

For this school year beginning this fall (fiscal year 1981) the income eligibility changes from current law are summarized below:

TABLE 1.—ANNUAL NET INCOME ELIGIBILITY LIMITS FOR MEAL SUBSIDIES UNDER CURRENT LAW AND UNDER S. 2675

	Current law[1]			S. 2675[2]			S. 2675/current law, ratio		
	Poverty	Free	Reduced	Poverty	Free	Reduced	Poverty	Free	Reduced
Family size:									
1	$4,800	$5,225	$8,151	$3,790	$5,690	$7,972	0.91	1.09	0.98
2	5,520	6,900	10,764	5,010	7,222	10,299	.91	1.05	.95
3	6,860	8,575	13,377	6,230	8,748	12,486	.91	1.02	.93
4	8,200	10,250	15,990	7,450	10,270	14,743	.91	1.00	.92
5	9,540	11,925	18,600	8,670	11,798	17,000	.91	.99	.91
6	10,880	13,600	21,216	9,890	13,322	19,322	.91	.98	.91

[1] Does not include potential hardship deductions.
[2] Includes a standard deduction of $80 per month per family.

On net, the income eligibility modifications do not alter eligibility for free meal subsidies significantly. Smaller size families, in fact, can qualify for free meals with a slightly higher income; larger size families, however, have a small reduction in income eligibility standards. Reduced price lunch eligibility standards decline by nearly 10 percent for large family sizes and by 2 percent for smaller family sizes. Since the average family size for school lunch participants is estimated to be 5.2 persons, the overall effect of these income eligibility changes is to result in cost savings.[1]

Based on CBO projected family income distributions for fiscal year 1980 that are family-size specific (using an adjusted March 1978 Current Population Survey), the effect of these income changes is to reduce by approximately 20 percent the number of children eligible for reduced-price meals. If it is assumed that a comparable reduction in reduced-price meals were to result, savings of approximately $80 million would be achieved. This assumes that half of the children moved from the reduced-price income category to the paid category drop out of the program. This savings estimate includes $70 million for the NSLP, and an additional $10 million for the child care and the school breakfast programs, since changes in the income eligibility standards also affect these latter programs.

Hardship Deduction. Elimination of hardship deductions is expected to result in savings of approximately $24 million according to the Administration. CBO has adopted this savings estimate.

Reduced-Price Lunch Charge. The bill increases the charge for a reduced-price meal from the current national average of 12 cents to 20 cents. This increase, in combination with the income eligibility changes discussed above, is estimated to result in savings of $26 million in fiscal year 1981.

Job Corps Restriction. The bill eliminates Job Corps Centers as institutions eligible for participation in the National School Lunch Program. This provision is estimated to save $15 million in fiscal year 1981.

COMMODITY DONATION PROGRAM

Beginning with the school year ending June 30, 1981 (fiscal year 1981), the national average value of donated foods would be reduced from the current projection of 17.1 cents to 15.1 cents, a reduction of 2 cents per meal. The provision would result in reduced commodity assistance or cash payments in lieu of commodities to both the school lunch and the child care food program. Approximately 4.5 million meals served in these programs would be affected, thereby resulting in a savings of $90 million in fiscal year 1981. The estimate assumes that increased government purchases of surplus commodities would not be required as a result of the reduced support provided to schools.

SCHOOL BREAKFAST PROGRAM

This bill changes state procedures for determining eligibility for severe need federal reimbursement. Currently, eligibility is determined the school level. The bill changes eligibility determination to the

[1] See: Congressional Budget Office, *Feeding Children: Federal Child Nutrition Policies in the 1980s* (May 1980).

school district level. This estimate assumes there will be a 5 percent increase in school participation since all schools serving 25 percent or more of their school lunches at free or reduced rates must participate in the school lunch program in order for the school district to receive the higher reimbursement. In addition, it is assumed that 20 percent of the current free and reduced meals served will become eligible for the higher reimbursement rates due to the school district's eligibility. This provision is not effective until the school year ending June 30, 1982 (fiscal year 1982).

In addition to the changes in severe need reimbursement calculations, the bill mandates that the historical commodity assistance to breakfast programs cease for the school year ending June 30, 1981 (fiscal year 1981). In fiscal year 1981, if the Secretary continued to provide commodity assistance to breakfast programs as he has in the past, commodity assistance would cost approximately $19 million. If it is assumed that appropriations would have been provided to meet this traditional level of commodity assistance, then the bill would result in $19 million of savings in fiscal year 1981.

The bill does provide that, beginning with the school year that starts in June 1981, the Secretary may donate foods valued in an amount equivalent to 3 cents per breakfast served, adjusted on an annual basis. The estimated authorization levels for fiscal year 1982 and beyond reflect only the increase in the costs over the 3 cents level assumed in current policy. Estimated total outlays reflect current program spending levels.

CHILD CARE FOOD PROGRAM

The bill reduces the average payment rate for supplements served in child care institutions by 3 cents beginning with fiscal year 1981. Federal savings are estimated to be approximately $6 million in fiscal year 1981. Changes in child care supplement reimbursements would be as follows:

[Cents per meal]

	Current law	S. 2675
Regular supplement	7.74	4.74
Reduced price supplement	23.28	20.28
Free supplement	30.96	27.96

Finally, the bill would lower by $2 million funds for providing equipment assistance to child care institutions.

In total, these changes would result in $23 million in savings in the child care program in fiscal year 1981. Out-year estimates assumed an absolute $2 million reduction in equipment assistance. All other fiscal year 1981 savings were adjusted for CBO projected changes in the CPI for food away from home in order to calculate in the out-year estimates.

SPECIAL MILK PROGRAM

S. 2675 would reduce the reimbursement rate for milk served to paying children to 5 cents in child care institutions and summer

camps participating in other federally funded nutrition programs. In fiscal year 1981, the estimated reimbursement rate for a half-pint of milk served a paying student would be reduced approximately 3.6 cents. This reimbursement reduction is estimated to save $57 million in fiscal year 1981. This estimate was adjusted in the out years for the CBO projected changes in the producer price index for milk.

ANNUALIZATION OF REIMBURSEMENT RATES

Under current law, reimbursement rates in the school lunch, breakfast and child care food programs are adjusted semiannually in January and July. The bill would establish an annual adjustment in reimbursement rates beginning in July 1980. This provision is estimated to save approximately $75 million in fiscal year 1981 and comparable amounts in future years.

CUMULATIVE PROVISIONS AFFECTING PARTICIPATION

Little program participation impact would be expected from any single change: the provision that reduces federal subsidies by 2.5 cents per meal under section 4, the provision that reduces commodity assistance by 2 cents, and the provision that eliminates the semiannual adjustment in reimbursement rates. However, cumulatively, these provisions would probably result in at least a 5 cent increase in the charge to students and, therefore, affect participation. Given that the reduced reimbursements affect all income groups, and given that schools would continue to be required to provide meals free or at a charge not to exceed 20 cents for about 43 percent of the participants, the charge to paying students could increase by about 10 cents. This increased charge could potentially result in a 6 percent reduction in participation for paying students at a savings of nearly $29 million in fiscal year 1981. This savings was adjusted for out years to reflect CBO projected changes in the CPI for food away from home series.

7. Estimate comparisons: The USDA has estimated that passage of S. 2675 would save $549 million in budget authority under the reconciliation instruction. Additional savings of $29 million are assumed to result from appropriation action following changes in authorization levels in S. 2675. Differences between the CBO estimate and the USDA estimate lie primarily in the use of different data bases for determining the impact of changes in income eligibility standards. CBO estimates were developed using a March 1978 Current Population Survey (CPS) aged both for economic and demographic factors to fiscal year 1980. Economic assumptions used in the aging process were developed by CBO in January 1979. USDA's underlying economic and demographic characteristics result from their use of the 1975 Survey of Income and Education (SIE). Some differences also occur in the estimates due to participation dropout assumptions.

8. Previous CBO estimate: Sections of H.R. 27, Child Nutrition Amendments of 1980. House Report No. 96–1030.

9. Estimate prepared by: G. William Hoagland, HRCD (225–1260), with the assistance of: Deborah Kalcevic, BAD (225–7766).

10. Estimate approved by: James L. Blum, Assistant Director, Budget Analysis Division, (225–5825).

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the committee's recommendations are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

National School Lunch Act

* * * * * * *

APPORTIONMENT TO STATES

Sec. 4. The sums appropriated for any fiscal year pursuant to the authorizations contained in section 3 of this Act, excluding the sum specified in section 5, shall be available to the Secretary for supplying agricultural commodities and other food for the program in accordance with the provisions of this Act. For each fiscal year the Secretary shall make food assistance payments, at such times as he may determine, from the sums appropriated therefor, to each State educational agency, in a total amount equal to the result obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary under subsection 9(a) of this Act) served during such fiscal year to children in schools in such State, which participate in the school lunch program under this Act under agreements with such State educational agency, by a national average payment per lunch for such fiscal year determined by the Secretary to be necessary to carry out the purposes of this Act: *Provided*, That in any fiscal year such national average payment shall not be less than 10 cents per lunch and that the aggregate amount of the food assistance payments made by the Secretary to each State educational agency for any fiscal year shall not be less than the amount of the payments made by the State agency to participating schools within the State for the fiscal year ending June 30, 1972, to carry out the purposes of this section 4.

For any school food authority in which less than 60 percent of the lunches served in the program were served free or at reduced-price during the second preceding school year, the national average payment under this section, after being adjusted in accordance with the provisions of section 11(a) of this Act, shall be reduced by 2½ cents. The amount of State administrative expense funds disbursed under section 7 of the Child Nutrition Act of 1966 shall not be reduced because of a reduction in the amount of Federal funds expended as a result of the preceding sentence.

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DIRECT FEDERAL EXPENDITURES

SEC. 6.

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LEVEL OF COMMODITY ASSISTANCE

[(e) For the fiscal year ending June 30, 1975, and subsequent school years, the national average value of donated foods, or cash payments in lieu thereof, shall not be less than 10 cents per lunch, and that amount shall be adjusted on an annual basis each school year after June 30, 1975, to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.]

(e) (1) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

(2) For the fiscal year ending June 30, 1975, and subsequent school years, the national average value of donated foods, or cash payments in lieu thereof, shall not be less than 10 cents per lunch. Such amount shall be adjusted on an annual basis through the school year ending June 30, 1979, to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. For the school year ending June 30, 1980, and subsequent school years, the amount specified by the first sentence of this paragraph, as adjusted for the school year ending June 30, 1979, in accordance with the second sentence of this paragraph, shall be adjusted on an annual basis to reflect changes in the Price Index for Food Used in Schools and Institutions, which shall be computed using five major food components in the Producer Price Index published by the Bureau of Labor Statistics of the Department of Labor (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 after the school year ending June 30, 1979, by the annual percentage change in the three-month simple average

value of the Consumer Price Index for Foods Used in Schools and Institutions for March, April, and May of each year. The adjustments required by this subsection shall be computed to the nearest one-fourth cent. Beginning with the school year ending June 30, 1981, the national average value of donated foods, or cash payments in lieu thereof, as established and adjusted in this subsection, shall be reduced by 2 cents. Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.

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NUTRITIONAL AND OTHER PROGRAM REQUIREMENTS

SEC. 9.

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(b) (1) No later than June 1 of each fiscal year, the Secretary shall issue revised income poverty guidelines for use during the subsequent 12-month period from July through June. [The income poverty guidelines shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget adjusted annually under section 625 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2971d): *Provided*, That the income poverty guidelines for the period commencing July 1, 1978, shall be made as up to date as possible by multiplying the nonfarm income poverty guidelines based on the average 1977 Consumer Price Index, by the change between the average 1977 Consumer Price Index and the Consumer Price Index of March 1978, using the most current procedures of the Office of Management and Budget. The income poverty guidelines for future periods shall be similarly adjusted.] *The income poverty guidelines shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget adjusted annually pursuant to section 625 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d) for the forty-eight States.* Any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served a free lunch. Following the announcement by the Secretary of the income poverty guidelines for each 12-month period, each State educational agency shall prescribe the income guidelines, by family size, to be used by schools in the State during such 12-month period in making determinations of those eligible for a free lunch as prescribed in this section. The income guidelines for free lunches shall be prescribed at 25 perecnt above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Each fiscal year, each State educational agency shall also prescribe income guidelines, by family size, to be used by schools in the State during the 12-month period from July through June in making determinations of those children eligible for a lunch at a reduced price, not to exceed 20 cents. Such income guidelines for reduced-price lunches shall be prescribed at [95] *85* per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Any child who is a member of a

household, if that household has an annual income which falls between (A) the applicable family size iincome level of the income guidelines for free lunches prescribed by the State educational agency and (B) [95] *98* per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary, shall be served a reduced price lunch at a price not to exceed 20 cents. Local school authorities shall publicly announce such income guidelines on or about the opening of school each fiscal year, and shall make determinations with respect to the annual incomes or any household solely on the basis of a statement executed in such form as the Secretary may prescribe by an adult member of such household: *Provided*, That such local school authorities may for cause seek verification of the data in such application. No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means. For purposes of this subsection, "Consumer Price Index" means the Consumer Price Index published each month by the Bureau of Labor Statistics of the Department of Labor.

(2) In computing household income in all States except Alaska, Hawaii, and Guam, the Secretary shall allow a standard deduction of $60 a month for each household. Such standard deduction shall be adjusted every July 1 to the nearest $5 to reflect changes in the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics for items other than food for the twelve months ending the preceding March 31. The first such adjustment shall be made on July 1, 1980, and shall reflect changes in the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics for items other than food for the period September 1977 through March 1980. The monthly standard deduction allowed in Alaska shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Alaska bear to the applicable income poverty guidelines for the contingous States. The monthly standard deduction allowed in Hawaii and Guam shall bear the same ratio to the standard deduction allowed in the contingous States as the applicable income poverty guidelines for Hawaii bear to the applicable income poverty guidelines for the contiguous States.

[(2)] (3) Any child who has a parent or guardian who (A) is responsible for the principal support of such child and (B) is unemployed shall be served a free or reduced price lunch, respectively, during any period (i) in which such child's parent or guardian continues to be unemployed and (ii) the income of the child's parents or guardians during such period of unemployment falls within the income eligibility criteria for free lunches or reduced price lunches, respectively, based on the current rate of income of such parents or guardians. Local school authorities shall publicly announce that such children are eligible for a free or reduced price lunch, and shall make determinations with respect to the status of any parent or guardian of any child under clauses (A) and (B) of the preceding sentence solely on the basis of a statement executed in such form as the Secretary may prescribe by such parent or guardian. No physical segrega-

tion of, or other discrimination against, any child eligible for a free or reduced price lunch under this paragraph shall be made by the school nor shall there be any overt identification of any such child by special tokens or tickets, announced or published lists of names, or by any other means.

* * * * * * *

SPECIAL ASSISTANCE

SEC. 11 (a) Except as provided in section 10 of this Act, in each fiscal year each State educational agency shall receive special-assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimium nutritional requirements prescribed by the Secretary pursuant to subsection 9(a) of this Act) served free to children eligible for such lunches in schools within that State during such fiscal year by the special-assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced-price lunches in schools within that State during such fiscal year by the special-assistance factor for reduced-price lunches prescribed by the Secretary for such fiscal year. In the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafer in this sentence referred to as the "first school year") are eligible for free lunches or reduced-price lunches, special-assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced-price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced-price lunches served during that year to other children determined for that year to be eligible for such lunches. In the case of any school that (1) elects to serve all children in that school free lunches under the school lunch program during any period of three successive shool years and (2) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this Act with respect to the number of lunches served during that period, special-assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special-assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced-price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced-price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments to determine on a more frequent basis the number of children eligible for free and reduced-price lunches who are served lunches during such period. For

the fiscal year beginning July 1, 1973, the Secretary shall prescribe a special-assistance factor for free lunches of not less than 45 cents and a special-assistance factor for reduced-price lunches which shall be 20 cents less than the special-assistance factor for free lunches [: *Provided*, That if in any State all schools charge students a uniform price for reduced-price lunches, and such price is less than 20 cents, the special assistance factor prescribed for reduced-price lunches in such State shall be equal to the special assistance factor for free lunches reduced by either 10 cents or the price charged for reduced-price lunches in such State, whichever is greater]. The Secretary shall prescribe on July 1 of each fiscal year [, and on January 1, of each fiscal year, semiannual adjustments] *an annual adjustment* in the national average rates for lunches served under section 4 of the National School Lunch Act and the special-assistance factor for the lunches served under section 11 of the National School Lunch Act, and the national average rates for breakfasts served under section 4 of the Child Nutrition Act of 1966, as amended, that shall reflect changes in the cost of operating a school lunch and breakfast program under these Acts, as indicated by the changes in the series for food away from home of the Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided*, That the initial such adjustment shall reflect the change in the series for food away from home during the period September 1973, through November 1973: *Provided further*, That each subsequent adjustment shall reflect the changes in the series for food away from home for the most recent [six-month] *twelve-month* period for which such data are available: *Provided further*, That such adjustments shall be computed to the nearest one-fourth cent. Notwithstanding the foregoing two sentences, (1) for the fiscal year beginning July 1, 1973, no special assistance factor under this section 11 shall, for any State, be less than the average reimbursement paid for each free lunch (in the case of the special assistance factor for free lunches), or for each reduced price lunch (in the case of the special assistance factor for reduced price lunches), in such State under this section in the fiscal year beginning July 1, 1972; and (2) adjustments required by the sentence immediately preceding this sentence shall be based on the special assistance factors for the fiscal year beginning July 1, 1973, as determined without regard to any increase required by the application of this sentence.

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MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 12.

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(d) For the purposes of this Act—

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(6) "School" means (A) any public or nonprofit private school of high school grade or under, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded *except Job Corps Centers funded by the Department of Labor*), and (C) with respect to

the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this paragraph, the term "nonprofit," when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954.

* * * * * * *

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

SEC. 13. (a)(1) The Secretary is authorized to carry out a program to assist States, through grants-in-aid and other means, to initiate, maintain, and expand nonprofit food service programs for children in service institutions. For purposes of this section, (A) "program" means the summer food service program for children authorized by this section; [(B) "service institutions" means nonresidential public or private nonprofit institutions, and residential public or private nonprofit summer camps, that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966;]

(B) "service institutions" means any of the following nonresidential institutions and residential summer camps that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966: (i) public institutions; (ii) private nonprofit institutions that use self-preparation facilities to prepare meals or that obtain meals from a public entity (such as a school district, public hospital, or State university); (iii) private nonprofit school food authorities, including colleges and universities; (iv) private nonprofit institutions that serve meals primarily to migrant children; (v) camps; and (vi) private nonprofit institutions that purchase meals from a food service management company and that serve meals to not more than two thousand children daily at not more than twenty locations;

* * * * * * *

(b).

* * * * * * *

[(2) Any service institution shall be permitted to serve up to three meals per day of operation if at least one of the three meals is a meal supplement, and any service institution that is a camp shall be permitted to serve up to four meals per days of operation, if the service institution has the administrative capability, and the food preparation and food holding capabilities (where applicable), to manage more than one meal service per day, and if the service period of different meals does not coincide or overlap. Such meals may include a breakfast, a lunch, a supper, and meal supplements.]

(2) Any service institution may serve lunch and either breakfast or a supplement during each day of operation, and any service insti-

tution that is a camp or that serves meals primarily to migrant children may serve up to four meals during each day of operation if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap. The meals that camps and migrant programs may serve shall include a breakfast, a lunch, a supper, and meal supplements.

* * * * * * *

(p) For the fiscal years beginning October 1, 1977, and ending [September 30, 1980], *September 30, 1984*, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

* * * * * * *

CHILD CARE FOOD PROGRAM

SEC. 17.

* * * * * * *

(c) The Secretary shall provide assistance to each State in the following manner:

(1) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where no less than two-thirds of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966;

(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 4 of this Act, and the national average payment rate for free lunches under section 11 of this Act; and

(C) (i) the total number of supplements served in the State in these institutions by (ii) the national averge payment rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 23.75 cents. For supplements served in these institutions thereafter, the Secretary shall prescribe adjustments to this national average payment rate on July 1 [and January 1] of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent [six-month] *twelve-month* period for which data are available, in the series for food away from home of the Consumer Price Index for all Urban Consumers. *The average payment rate for supplements served in such institutions shall be 3 cents lower than the*

adjusted rate prescribed by the Secretary in accordance with the adjustment formula contained in this paragraph.

(2) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where less than two thirds but not less than one-third of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966;

(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 4 of this Act and the national average payment rate for reduced-price under section 11 of this Act; and

(C) (i) the total number of supplements served in the State in these institutions by (ii) the national average payments rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall shall be 18 cents. The Secretary shall prescribe adjustments to this national average payments rate on July 1 [and January 1] of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent [six-month] *twelve-month* period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers. *The average payment rate for supplements served in such institutions shall be 3 cents lower than the adjusted rate prescribed by the Secretary in accordance with the adjustment formula.*

(3) For meals served to children in institutions, other than family or group day care home sponsoring organizations and institutions electing to use the optional reimbursement procedures under subsection (f) (3) of this section, where less than one-third of the enrolled children are members of families that satisfy the income standards for free reduced-price school meals under section 9 of this Act, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A) (i) the total number of breakfasts served in the State in these institutions by (ii) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966;

(B) (i) the total number of lunches and suppers served in the State in these institutions by (ii) the national average payment rate for lunches under section 4 of this Act; and

(C) (i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions

shall be 6 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 [and January 1] of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent [six-month] *twelve-month* period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers. *The average payment rate for supplements served in such institutions shall be 3 cents lower than the adjusted rate prescribed by the Secretary in accordance with the adjustment formula contained in this paragraph.*

* * * * * * *

(n) (1) Of the sums appropriated for each fiscal year to carry out the purposes of this section [$6,000,000] *$4,000,000* shall be available to the Secretary for the purpose of providing equipment assistance to enable institutions to establish, maintain, and expand the child care food program. The Secretary shall allocate among the States during each fiscal year the funds available under this subsection. Such allocation shall be based on the ratio of the number of children below the age of six in each State who are members of families that satisfy the income standards for free and reduced-price school meals under section 9 of this Act to the number of such children in all States. In making such allocation, the Secretary shall use the most recent data available.

* * * * * * *

CHILD NUTRITION ACT OF 1966

* * * * * * *

SPECIAL MILK PROGRAM AUTHORIZATION

SEC. 3. There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children. For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia. The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by Public Law 89–642, as amended, during the fiscal year ending June 30, 1969. Any school or nonprofit child care institution shall receive the special milk program upon their request. Children who qualify for free lunches under guidelines established by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) also be eligible for free milk upon their request. For the fiscal year ending

June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. *Notwithstanding the preceding two sentences, the rate of reimbursement per half-pint of milk, which is served to children who are not eligible for free milk and which is served in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act and this Act, shall be 5 cents.* Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

SCHOOL BREAKFAST PROGRAM AUTHORIZATION

SEC. 4.

* * * * * * *

APPORTIONMENT TO STATES

(b).

* * * * * * *

(2).

* * * * * * *

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents, which shall be adjusted [on a semiannual basis each July 1 and January 1] *on an annual basis each July 1* to the nearest one-fourth cent in accordance with changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the most recent [six-month] *twelve-month* period for which such data are available, except that the initial such adjustment shall be made on January 1, 1978, and shall reflect the change in the series of food away from home during the period November 1, 1976, to October 31, 1977.

* * * * * * *

MISCELLANEOUS PROVISIONS AND DEFINITIONS

SEC. 15. For the purpose of this Act—

* * * * * * *

(c) "School" means (A) any public or nonprofit private school of high school grade or under, including kindergarten and preschool programs operated by such school, (B) any public or licensed nonprofit private residential child care institution (including, but not limited to, orphanages and homes for the mentally retarded *except*

Job Corps Centers funded by the Department of Labor), and (C) with respect to the Commonwealth of Puerto Rico, nonprofit child care centers certified as such by the Governor of Puerto Rico. For purposes of clauses (A) and (B) of this subsection, the term "nonprofit", when applied to any such private school or institution, means any such school or institution which is exempt from tax under section 501 (c) (3) of the Internal Revenue Code of 1954.

* * * * * * *

TITLE I—AGRICULTURE, NUTRITION, AND FORESTRY

SCHOOL LUNCH PROGRAM, GENERAL REIMBURSEMENT

SEC. 101. Section 4 of the National School Lunch Act is amended by adding at the end thereof the following: "For any school food authority in which less than 60 percent of the lunches served in the program were served free or at reduced-price during the second preceding school year, the national average payment under this section, after being adjusted in accordance with the provisions of section 11(a) of this Act, shall be reduced by 2½ cents. The amount of State administrative expense funds disbursed under section 7 of the Child Nutrition Act of 1966 shall not be reduced because of a reduction in the amount of Federal funds expended as a result of the preceding sentence.".

DIRECT FEDERAL EXPENDITURES, COMMODITY ASSISTANCE

SEC. 102. Section 6 of the National School Lunch Act is amended to read as follows:

"(e) (1) Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products).

"(2) For the fiscal year ending June 30, 1975, and subsequent school years, the national average value of donated foods, or cash payments in lieu thereof, shall not be less than 10 cents per lunch. Such amount shall be adjusted on an annual basis through the school year ending June 30, 1979, to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. For the school year ending June 30, 1980, and subsequent school years, the amount specified by the first sentence of this paragraph, as adjusted for the school year ending June 30, 1979, in accordance with the second sentence of this paragraph, shall be adjusted on an annual basis to reflect changes in the Price Index for Food Used in Schools and Institutions, which shall be computed using five major food components in the Producer Price Index published by the Bureau of Labor Statistics of the Department of Labor (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 after the school year ending June 30, 1979, by the annual percentage change in the three-month

simple average value of the Consumer Price Index for Foods Used in Schools and Institutions for March, April, and May of each year. The adjustments required by this subsection shall be computed to the nearest one-fourth cent. Beginning with the school year ending June 30, 1981, the national average value of donated foods, or cash payments in lieu thereof, as established and adjusted in this subsection, shall be reduced by 2 cents. Notwithstanding any other provision of this section, not less than 75 percent of the assistance provided under this subsection shall be in the form of donated foods for the school lunch program.".

NUTRITIONAL AND OTHER PROGRAMS REQUIREMENTS

SEC. 103. (b) Section 9(b)(1) of the National School Lunch Act is amended by—

(1) striking out the second and third sentences and inserting in lieu thereof the following: "The income poverty guidelines shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget adjusted annually pursuant to section 625 of the Economic Oportunity Act of 1964 (42 U.S.C. 2971d) for the forty-eight States.";

(2) striking out in the eighth sentence "95" and inserting in lieu thereof "85";

(3) striking out in the ninth sentence "95" and inserting in lieu thereof "85".

(c) Section 9(b) of the National School Lunch Act is amended by redesignating paragraph (2) thereof as paragraph (3) and inserting the following new paragraph after paragraph (1):

"(2) In computing household income in all States except Alaska, Hawaii, and Guam, the Secretary shall allow a standard deduction of $60 a month for each household. Such standard deduction shall be adjusted every July 1 to the nearest $5 to reflect changes in the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics for items other than food for the twelve months ending the preceding March 31. The first such adjustment shall be made on July 1, 1980, and shall reflect changes in the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics for items other than food for the period September 1977 through March 1980. The monthly standard deduction allowed in Alaska shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Alaska bear to the applicable income poverty guidelines for the contiguous States. The monthly standard deduction allowed in Hawaii and Guam shall bear the same ratio to the standard deduction allowed in the contiguous States as the applicable income poverty guidelines for Hawaii bear to the applicable income poverty guidelines for the contiguous States.".

SPECIAL ASSISTANCE

SEC. 104. Section 11(a) of the National School Lunch Act is amended by—

(1) striking out in the fifth sentence ": *Provided*, That if in any State all schools charge students a uniform price for reduced-

price lunches, and such price is less than 20 cents, the special assistance factor prescribed for reduced-price lunches in such State shall be equal to the special assistance factor for free lunches reduced by either 10 cents or the price charged for reduced-price lunches in such State, whichever is greater";

(2) striking out in the sixth sentence ", and on January 1, of each fiscal year, semi-annual adjustments" and inserting in lieu thereof "an annual adjustment"; and

(3) striking out in the second proviso in the sixth sentence "six-month" and inserting in lieu thereof "twelve-month".

MISCELLANEOUS PROVISIONS AND DEFINITIONS, NATIONAL SCHOOL LUNCH ACT

SEC. 105. Section 12(d) of the National School Lunch Act is amended by inserting in paragraph (6) "except Job Corps Centers funded by the Department of Labor" after "retarded".

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

SEC. 106. (a) Section 13(a)(1)(B) of the National School Lunch Act is amended to read as follows: "(B) 'service institutions' means any of the following nonresidential institutions and residential summer camps that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this Act or the school breakfast program under the Child Nutrition Act of 1966: (i) public institutions; (ii) private nonprofit institutions that use self-preparation facilities to prepare meals or that obtain meals from a public entity (such as a school district, public hospital, or State university); (iii) private nonprofit school food authorities, including colleges and universities; (iv) private nonprofit institutions that serve meals primarily to migrant children; (v) camps; and (vi) private nonprofit institutions that purchase meals from a food service management company and that serve meals to not more than two thousand children daily at not more than twenty locations;".

(b) Section 13(b) of the National School Lunch Act is amended by amending paragraph (2) to read as follows:

"(2) Any service institution may serve lunch and either breakfast or a supplement during each day of operation, and any service institution that is a camp or that serves meals primarily to migrant children may serve up to four meals during each day of operation if (A) the service institution has the administrative capability and the food preparation and food holding capabilities (where applicable) to serve more than one meal per day, and (B) the service period of different meals does not coincide or overlap. The meals that camps and migrant programs may serve shall include a breakfast, a lunch, a supper, and meal supplements.".

(c) Section 13(p) of the National School Lunch Act is amended by striking out "September 30, 1980" and inserting in lieu thereof "September 30, 1984".

CHILD CARE FOOD PROGRAM

SEC. 107. (a) Section 17(c) of the National School Lunch Act, is amended by—

(1) striking out "and January 1" each place it appears in paragraphs (1), (2), and (3);

(2) striking out "six-month" the second time it appears in each of paragraphs (1), (2), and (3) thereof and inserting in lieu thereof "twelve-month"; and

(3) inserting the following at the end of paragraphs (1), (2), and (3): "The average payment rate for supplements served in such institutions shall be 3 cents lower than the adjusted rate prescribed by the Secretary in accordance with the adjustment formula contained in this paragraph.".

(b) Section 17(n)(1) of the National School Lunch Act is amended by striking out "$6,000,000" and inserting in lieu thereof "$4,000,000".

SPECIAL MILK PROGRAM

SEC. 108. Section 3 of the Child Nutrition Act of 1966 is amended by inserting the following after the seventh sentence: "Notwithstanding the preceding two sentences, the rate of reimbursement per half-pint of milk, which is served to children who are not eligible for free milk and which is served in schools, child care institutions, and summer camps participating in meal service programs under the National School Lunch Act and this Act, shall be 5 cents.".

SCHOOL BREAKFAST PROGRAM

SEC. 109. Section 4(b)(2)(B)(ii) of the Child Nutrition Act of 1966 is amended by—

(1) striking out "on a semiannual basis each July 1 and January 1" and inserting in lieu thereof "on an annual basis each July 1"; and

(2) striking out "six-month" and inserting in lieu thereof "twelve-month".

MISCELLANEOUS PROVISIONS AND DEFINITIONS, CHILD NUTRITION ACT OF 1966

SEC. 110. Section 15(c) of the Child Nutrition Act of 1966 is amended by inserting "except Job Corps Centers funded by the Department of Labor" after "retarded".

COMMITTEE ON ARMED SERVICES

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., June 25, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Senate Budget Committee,
Washington, D.C.

DEAR SENATOR HOLLINGS: In accordance with your request, I am providing a copy of the bill language and report language contained in HR 6974, the Fiscal Year 1981 Defense Authorization bill as recommended to the Senate by the Armed Services Committee. This section of the bill provides a once a year cost-of-living increase in military retired pay contingent on a similar change in current law for Federal civilian retirees. Savings achieved by this provision are estimated to be $408 million in FY 1981. This provision meets the so-called reconciliation instructions contained in the First Concurrent Budget Resolution as finally adopted. I understand that this is all that is necessary to comply with the Budget Committee request relating to reconciliation.

It is likely that the Defense Authorization bill will be taken up this week, and no budget problems are now anticipated If the Budget Committee includes the same provision on cost-of-living adjustments for military retired pay in its separate reconciliation bill, I am concerned that any differences in the provisions in the final bills of the two conference committees be avoided to prevent confusion.

Sincerely,

JOHN C. STENNIS, *Chairman.*

[From Senate Report No. 96-826, June 20, 1980]

Sec. 317. Committee amendment to provide a once yearly cost-of-living increase in military retired pay contingent on a similar change in current law for Federal civilian retirees.

Under current law, military retired and retainer pay is adjusted semiannually on March 1 and September 1 of each year by the percentage increase that has occurred in the consumer price index over a preceding six-month period. The adjustment effective March 1 reflects a percentage increase in the index from the preceding June to December. Correspondingly, the September 1 adjustment is the percentage increase of the preceding June consumer price index over the preceding December index. This procedure was established by law effective October 1, 1976.

The committee amendment would continue the direct link between changes in military retired pay and changes in the cost of living as measured by the consumer price index. The percentage increase would be measured over a December to December time frame rather than the December to June and June to December periods under present law.

The annual adjustment would become effective on March 1 of each year. The committee amendment provides for a similar change in retirement programs for the Central Intelligence Agency, the Public Health Service and the National Oceanographic and Atmospheric Administration. However, this amendment provides for no changes to retired pay adjustments unless similar changes are made for Federal civilian retirees.

DEPARTMENTAL RECOMMENDATIONS ON COST OF LIVING INCREASES IN MILITARY RETIRED PAY

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, D.C., April 10, 1980.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a legislation proposal "To amend title 10, United States Code, to provide for annual adjustments of retired and retainer pay to reflect changes in the Consumer Price Index." The proposal is submitted as part of the Administration's Legislative Program for the 96th Congress. The Office of Management and Budget has advised that the enactment of the proposal would be in accord with the program of the President.

Under current law, military retired and retainer pay is adjusted semi-annually on March 1 and September 1 of each year by the percentage increase that has occurred in the Consumer Price Index over a preceding six month period. The adjustment effective March 1 reflects the percentage increase in the index from the preceding June to December. Correspondingly, the September 1 adjustment is the percentage increase of the preceding June Consumer Price Index over the preceding December Index. This procedure was established by Public Law 94–440, effective October 1, 1976.

This legislative proposal is part of the President's reduction proposals designed to assist in controlling inflation by balancing the Federal budget. The proposal would amend the semi-annual military retired pay adjustment mechanism to one that is annual. The amount of the adjustment would continue to be directly linked to the percentage increase in the cost-of-living as measured by the Consumer Price Index. As proposed, the percentage increase would be measured over a December to December time frame rather than the December to June and June to December periods as the present law authorizes. This annual adjustment would become effective on March 1 of each year. By such a simplified mechanism, retired and retainer pay continues to be protected from the economic pressure of inflation by an annual adjustment. Additionally, the purchasing power of retired and retainer pay is preserved in direct relation to fluctuations in the cost-of-living. This reduction is a cost-avoidance for the government that will assist in reducing outyear costs and reaffirm the Administration's commitment to strict fiscal discipline. A similar proposal is being made with respect to the civil service retirement system.

The savings to be achieved by this amendment are significant. Assuming its enactment in time to eliminate the September 1980 ad-

justment, estimated savings from the proposed shift of the CPI adjustments from semi-annual to annual are:

Fiscal year:	Millions
1980	$77.0
1981	417.2
1982	247.0
1983	198.5
1984	143.1
1985	100.5

The Department of Defense, on behalf of the Administration, recommends that the proposal be favorably considered by the Congress at the earliest possible time. Rapid consideration and passage would result in cost savings during the current fiscal year and contribute to the effort of the Administration and the Congress to balance the Federal budget.

Sincerely,

TOGO D. WEST, JR.

[Enclosed: Legislative proposal.]

A BILL to amend title 10, United States Code, to provide for annual adjustments of retired and retainer pay to reflect changes in the Consumer Price Index

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Armed Forces Retired Pay Amendments Act of 1980."

SEC. 2. Section 104a(b) of title 10, United States Code, is amended to read as follows:

"(b) The Secretary of Defense shall on January 1 of each year, or within a reasonable time thereafter, determine the percent change in the index published for December of the preceding year over the index published for December of the year prior to the preceding year.

"(2) If in any year the percent change determined under paragraph (b)(1) indicates a rise in the index, then effective March 1 of such year, the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before such March 1 shall be increased by the percent change computed under paragraph (b)(1), adjusted to the nearest 1/10 of one percent."

SEC. 3. The amendment made by section 2 shall apply to any retired or retained pay increase effective on or after the date of enactment.

SECTIONAL ANALYSIS

Section 1 provides that the Act may be cited as the "Armed Forces Retired Pay Amendments Act of 1980."

Section 2 amends section 1401a(b) of title 10, United States Code, striking out that subsection in its entirety and inserting a new section 1401a(b).

Paragraph (1) of the new subsection provides that the Secretary of Defense shall determine annually on January 1, or within a reasonable time, the percent change in the Consumer Price Index for December of the preceding year over the Consumer Price Index for December of the year prior to the preceding year.

Paragraph (2) of the new subsection provides that, effective March 1 of each year, the retired and retainer pay of members and

former members of the armed forces who became entitled to that pay before such March 1 shall be increased by the percent change computed under section 1401a(b)(1), adjusted to the nearest 1/10 of one percent.

Section 3 prescribes the effective date of the amendment as on or after the date of enactment.

[From Senate bill H.R. 6974, June 20, 1980]

ONCE A YEAR ADJUSTMENT OF RETIRED PAY AND RETAINER PAY TO REFLECT CHANGES IN THE CONSUMER PRICE INDEX

SEC. 317. (a) Section 1401a(b) of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

"(b) Each time that an increase in annuities is made under section 8340(b) of title 5, the Secretary of Defense shall increase the retired pay and retainer pay of members and former members of the armed forces by the same percentage figure by which annuities are increased under such section and the increase in such retired pay and retainer pay shall be effective on the same date as the effective date for the increase in annuities under such section 8340(b). An increase under this subsection shall be applicable in the case of the retired pay and retainer pay of members and former members of the armed forces who become entitled to that pay before the effective date of the increase.".

(b)(1) The amendment made by subsection (a) shall not become effective unless legislation is enacted which provides for a once-a-year adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the armed forces and with respect to the cost-of-living adjustment of annuities paid under the Central Intelligence Agency Act of 1964 for Certain Employees at the same time that the once-a-year adjustment of annuities paid under chapter 83 of title 5, United States Code, becomes effective.

(2) The provisions of paragraph (1) relating to legislation which provides for a once-a-year adjustment of the retired pay and retainer pay of members and former members of the armed forces shall be applicable to cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

U.S. SENATE, COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION,
Washington, D.C., June 25, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on the Budget,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Under the reconciliation procedures of the First Concurrent Budget Resolution, H. Con. Res. 307, the Committee on Commerce, Science, and Transportation is required to make recommendations to the Senate Budget Committee which will result in reductions in budget authority of $300 million and outlays of $150 million for programs within its jurisdiction.

The recommendation which the Committee is submitting to the Budget Committee today will achieve $300 million in budget authority and from $255 to $260 million in outlays for fiscal year 1981, $105 to $110 million more in outlays than requested. These proposed reductions in spending programs are discussed in the enclosed recommendations and summarized in the attached table.

If you have any questions, please feel free to contact us or Edwin K. Hall, of the Committee staff at 224–0411.

Sincerely,

HOWARD W. CANNON,
Chairman.

BOB PACKWOOD,
Ranking Minority Member.

Enclosures.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION, UNITED STATES SENATE

BUDGET RECONCILIATION RECOMMENDATIONS PURSUANT TO H. CON. RES. 307

On June 12, 1980, the Senate adopted House Concurrent Resolution 307 which provides for a balanced budget for fiscal year 1981. Section 3(a)(13) of this resolution provides that "the Senate Committee on Commerce, Science, and Transportation shall recommend program reductions in laws or in reported bills or resolutions within its jurisdiction or changes in laws or in reported bills or resolutions within its jurisdiction which provide spending authority described in section 401(c)(2)(C) of the Budget Act to reduce spending for fiscal year

1981 by $300,000,000 in budget authority and $150,000,000 in outlays;".

The Senate Committee on Commerce, Science, and Transportation recognizes the need for balancing the revenues and expenditures for spending programs within its jurisdiction, and makes the following recommendations to comply with the reconciliation instructions in H. Con. Res. 307:

(1) At the time the Budget Resolution was under consideration in the Senate, the Commerce Committee recommended, and the Congress enacted, an amendment to the Rail Passenger Service Act of 1970, to delete the authority for advance quarterly payments for Amtrak capital programs (P.L. 96-254, Section 208). The Congressional Budget Office estimated this action will result in a savings in outlays of $207 million for fiscal year 1981, $57 million *more* than the $150 million required by H. Con. Res. 307.

(2) The Committee recommends that S. 1648, the Airport and Airway System Development Act of 1979, which was adopted by the Senate on February 5, 1980, and is currently pending in the House of Representatives, be amended in conference to reduce the budget authority for airport development and planning grants for fiscal year 1981 from $825 million to $650 million.

The Committee's recommendation would reduce the fiscal year 1981 budget authority for this program to the level requested by the President in his first budget message. A level of $1.05 billion for airport development and planning grants *plus* facilities and equipment complies with the assumptions made for this program by the House and Senate Budget Committees in formulating the First Concurrent Budget Resolution for fiscal year 1981. Because the Committee on Commerce, Science, and Transportation believes that $400 million should be allocated for facilities and equipment for fiscal year 1981 (which is $50 million dollars over the President's request), the Committee has recommended that budget authority for airport development grants for fiscal year 1981 be cut to $650 million (which is $50 million less than the President's request).

This action will result in a reduction in budget authority of $175 million for fiscal year 1981, with a corresponding savings in outlays for fiscal year 1981 of $25 to $30 million. The Committee's recommendation can be effected by amending S. 1648 as follows: "at page 13, line 9, strike $825,000,000 and insert in lieu thereof $650,000,000."

(3) The Committee recommends that S. 2530, be amended to limit the amount authorized to be expended for the railroad rehabilitation and improvement financing program established under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, to $180 million in fiscal year 1981. S. 2530 (Calendar No. 836) reported by the Committee recommended an increase in the authorization level of $400 million for the purchase of redeemable preference shares over a two-year period until September 30, 1982. By limiting the amount authorized to be appropriated for this program during fiscal year 1981 to $180 million, and the balance for fiscal year 1982, the Committee's recommendation will result in an anticipated savings in budget authority of $70 million in fiscal year 1981, as instructed by H. Con. Res. 307. This budget authority savings of $70 million can

be accomplished by the following amendment to S. 2530 as follows: "at page 47, immediately after line 2, insert the following new subsection '(c) of the funds authorized to be appropriated pursuant to the provisions of this title, not more than $180,000,000 is authorized to be appropriated in fiscal year 1981.'"

(4) The Committee recommends a reduction of the funds authorized to be appropriated out of the highway trust fund to carry out the purposes of section 402 of Title 23 United States Code relating to highway safety programs. The Committee feels that a reduction from $200 to $150 million in the funds authorized to be expended in fiscal year 1981 for highway safety programs reflects the level of the President's budget request for the National Highway Traffic Safety Administration's budget for these purposes and will result in a direct savings in budget authority of $50 million. This would require an amendment to section 402 of Title 23 (relating to highway safety programs) by amending Section 202(1) of Public Law 95–599, the Highway Safety Act of 1978, by striking "and $200,000,000 per fiscal year for each of the fiscal years ending September 30, 1981, and September 30, 1982.", and inserting in lieu thereof the following: "and $150,000,000 for the fiscal year ending September 30, 1981, and $200,000,000 for the fiscal year ending September 30, 1982."

(5) The Committee recommends amending S. 1159 in conference to reduce the level of funding for the National Highway Traffic Safety Administration for general operations in fiscal year 1981 from $70 million to $53,800,000. This figure is very close to the $52 million recommended in the President's budget. The slightly higher figure of $53,800,000 will leave room for unanticipated contingencies. This will result in a $5 million savings in budget authority for fiscal year 1981 and will require amending Section 1 of S. 1159 by striking "$70,000,000 for the fiscal year ending September 30, 1981," and inserting in lieu thereof "$53,800,000 for the fiscal year ending September 30, 1981,".

SPENDING REDUCTIONS UNDER COMMERCE COMMITTEE PROPOSALS FOR RECONCILIATION PROCESS FOR FISCAL YEAR 1981 BUDGET RESOLUTION

[In millions of dollars]

	Budget authority	Outlays
Legislation already enacted: Deletion of authority for advance quarterly payments for Amtrak capital programs (Public Law 96–254)		−207
Proposed changes in authorization bills or laws:		
Reduction in airport development and planning grant authority (S. 1648)	−175	−25–30
Limitation on funds available in fiscal year 1981 from redeemable preference share program in title V of the 4R Act (S. 2530)	−70	−11
Reduction in authorization of funds from the highway trust fund for the highway safety grant program	−50	−12
Reduction of National Highway Traffic Safety Administration authorization in S. 1159	−5	
Total savings	−300	−255–260

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE,
ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C., June 26, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Senate Budget Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: The Senate Committee on Environment and Public Works, on June 25, transmitted to you its proposal to reconcile $300 million in budget authority for fiscal year 1981 pursuant to the provisions of H. Con. Res. 307. The Committee wishes to amend that submission and propose in lieu thereof that the $300 million reconciliation be made by rescinding budget authority created by the 1978 Federal-aid Highway Act for the Interstate construction program.

The Committee would suggest the attached language be included in the reconciliation bill reported by the Senate Budget Committee.

With kind regards, I am

Truly,

JENNINGS RANDOLPH, *Chairman.*

Attachment.

Section 108(b) of the Federal-aid Highway Act of 1956, as amended, is amended by striking out "the additional sum of $3,500,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "the additional sum of $3,200,000,000 for the fiscal year ending September 30, 1982".

COMMITTEE ON FINANCE

SPENDING REDUCTIONS: RECOMMENDATIONS OF THE COMMITTEE ON FINANCE REQUIRED BY THE RECONCILIATION PROCESS IN SECTION 3(a)(15) OF H. CON. RES. 307, THE FIRST BUDGET RESOLUTION FOR FISCAL YEAR 1981

FOREWARD

The Congressional Budget Act provides for the adoption of May 15 of each year of a First Concurrent Budget Resolution setting an overall budgetary framework within which the Congress will operate as it considers revenue and spending legislation for the upcoming fiscal year. The revenue and spending totals in the First Budget Resolution are not binding under the usual rules of the Budget Act. In the Fall of each year a binding Second Concurrent Budget Resolution is adopted to reaffirm or revise the budgetary totals which were incorporated in the First Budget Resolution. The Congressional Budget Act provides for a "reconciliation" procedure under which the Second Budget Resolution may include instructions directing specified House and Senate committees promptly to report out legislation raising revenues or reducing spending in programs within their jurisdiction by specific amounts. The Congressional Budget Act does not provide for a reconciliation procedure under the First Budget Resolution. However, the act does permit the inclusion in that Resolution of any "procedure which is considered appropriate to carry out the purposes of this Act."

The First Concurrent Budget Resolution for fiscal year 1981 (H. Con. Res. 307) does include reconciliation instructions to the Committee on Finance and several other committees of the Senate and House. In the case of the Finance Committee, the resolution includes both revenue and spending instructions. The committee is directed by the resolution to recommend reductions in outlays for spending programs under its jurisdiction totaling $2.2 billion for fiscal year 1981, decreases in budget authority totaling $0.9 billion, and increases in revenues for that year totaling $4.2 billion.

The revenue changes will be incorporated in a separate document. This committee print incorporates committee report language and bill language relating to the outlay and budget authority reduction provisions required of the Finance Committee, assuming that these provisions will appear as title VI of the overall reconciliation bill in the Senate.

I. SUMMARY OF FINANCE COMMITTEE RECOMMENDATIONS

The recommendations of the Committee on Finance for amendments to reduce spending in programs under its jurisdiction for fiscal year

1981 pursuant to the reconciliation instructions of House Concurrent Resolution 307 have been drafted as a separate title V. References in this summary and in the following general discussion of title V to "the committee" should be considered as references to the Committee on Finance.

LEGISLATION ALREADY ENACTED INTO LAW

At the time the Budget Resolution was under consideration in the Senate, two Finance Committee bills were awaiting final action—H.R. 3236, the Social Security Disability Amendments of 1980, and H.R. 3434, the Adoption Assistance and Child Welfare Act of 1980. Both of these measures have now been enacted into law. The $225 million of savings in these two new laws is creditable towards the $2.2 billion required under the reconciliation instructions.

UNEMPLOYMENT COMPENSATION PROVISIONS

Elimination of national trigger.—Under present law States generally pay unemployment benefits for a maximum of 26 weeks. In times of high unemployment, however, the Federal-State extended unemployment compensation program becomes effective. Under the extended benefits program an additional 13 weeks of benefits are payable. Half the cost of these extended benefits is borne by the Federal unemployment tax and half is borne by State unemployment taxes. The extended benefits program goes into effect on a State-by-State basis if the State insured unemployment rate reaches a level of 4 percent and is also 20 percent higher than the rate during the comparable period of the 2 previous years. At State option, the program can also become effective whenever the State insured unemployment rate is 5 percent or higher regardless of how it compares with the rate in the 2 prior years. In addition to these "State triggers," the program becomes effective in all States whenever the national unemployment rate reaches a level of 4.5 percent. (For both State and national triggers, the rate is measured over a moving period of 13 consecutive weeks.) The committee provision would eliminate the national trigger so that the program would go into effect only in those States where one of the State triggers applies. No savings are now estimated for this item for fiscal year 1981 because the national trigger would not have been reached this year under the CBO assumptions which were used to develop the budget resolution. In fact, however, it now seems likely that CBO reestimates later this year will indicate that the national trigger level will be reached. At that time, the provision will represent a savings of several hundred million dollars for fiscal year 1981. This provision was previously approved by the committee and passed by the Senate as an amendment to H.R. 4612.

Waiting period for benefits.—Under present law, some States pay unemployment benefits starting with the first week of unemployment while other States provide that benefits will become available only after the unemployed individual has served a "waiting week." (In some cases, States which have a waiting-week provision pay benefits retroactively for the waiting week after the individual has experienced a specified duration of unemployment.) The committee amend-

ment would eliminate the Federal 50 percent matching share for the first week of extended unemployment compensation in any State which does not have a waiting week for regular benefits. (The elimination of Federal matching for the first week of extended benefits would also apply to States which have a waiting week which is subject to retroactive payment when the worker completes a certain duration of unemployment.) This provision is also included in H.R. 4612, as previously approved by the committee and the Senate. The provision is estimated to save $25 million in fiscal year 1981.

Optional State trigger.—Under present law, States must implement the extended benefit program when the State insured unemployment rate is both 4 percent or higher and 20 percent above the level prevailing in the State in the 2 prior years. When the "20 percent higher" factor is not met, States may at their option provide for the program to become effective when the State insured unemployment rate is at least 5 percent. If States choose this option, the trigger point for the program must be set at 5 percent. In other words, States may not provide that the program will become effective only if the rate is at least 5½ percent or 6 percent. The committee amendment would modify the optional State trigger provision so that States could specify any rate of insured unemployment which is 5 percent or higher as the optional trigger point (that is, the point at which the extended benefit program would become effective in the absence of the "20 percent higher" factor). This provision is also included in H.R. 4612. It would reduce program costs in fiscal 1981 by $30 million.

Unemployment benefits for ex-servicemen.—Under present law federally funded unemployment benefits are provided to former servicemen upon their separation from military service. To qualify, an individual is required to have served on active duty for a period of at least 90 days and to be separated under other than dishonorable or bad-conduct circumstances. The 90-day requirement does not apply where separation results from a service-incurred injury or disability. The committee amendment would require that, except in cases of service-incurred disability or injury, individuals must have served a minimum of 1 year before unemployment benefits would be payable. This provision is also in H.R. 4612. It would save $43 million in fiscal 1981.

Unemployment benefits for Federal employees.—Under present law, a Federal employee who suffers unemployment may qualify for unemployment compensation under the same rules as apply to employees of private businesses in the State in which he was last employed. The costs of benefit payments to former Federal employees are reimbursed to the State paying benefits by the Federal Government. At present, all such costs are funded through a single appropriation account within the budget of the Department of Labor rather than being charged to the appropriations of the employing agencies. The committee amendment would establish a special account within the Unemployment Trust Fund from which States would be reimbursed for the costs of unemployment benefits based on Federal employment. Each agency would be required to reimburse that account from its appropriations for the costs attributable to its employees. This provision was also included in H.R. 4612. It is esti-

mated to reduce Federal expenditures in fiscal year 1981 by $11 million.

Limitation on extended benefits for nonresidents.—Under present law, States are required to pay unemployment benefits to individuals who meet the State qualifying requirements even if they are or become residents of another State. If an individual works and qualifies for benefits in a State in which the extended unemployment program is in effect, that State will be required to pay him such benefits (so long as he meets the requirements for them) even if he has changed his residence to a State in which the extended program is not in operation (because the new State of residence has a lower rate of insured unemployment). The committee amendment would limit benefits in the case of persons who change their State of residence. If an individual changes his State of residence after the beginning of a period of unemployment during which he would otherwise qualify for extended benefits, no extended benefits will be payable if the new State of residence is one in which the extended benefits program is not triggered on. This limitation would not apply to the first 2 weeks after the individual takes up residence in the new State. This same provision was included in H.R. 4612. It is estimated to reduce expenditures in fiscal 1981 by $46 million.

Extended benefits not payable on the basis of less than 20 weeks of employment.—Under existing law, most States pay regular unemployment benefits for a maximum of 26 weeks. In times of high unemployment, benefits are payable for an additional period of up to 13 weeks under the extended benefits program. The committee amendment would require that benefits not be paid under the extended benefits program to any individual who has less than 20 weeks of qualifying employment in the base period. It is estimated that this provision will reduce benefit costs by $120 million in fiscal 1981.

Extended benefits not payable to persons who lease jobs voluntarily or for misconduct.—When an unemployed worker has voluntarily left his job without good cause, has been discharged for misconduct, or has refused what the State agency considers a suitable job offer for him, he becomes ineligible for benefits. However, in many States the disqualification is lifted after a period of time. Other States continue the disqualification for the duration of unemployment. The committee has included a provision under which an individual who had been disqualified for one of these reasons could not be paid extended benefits (even though he may have been reinstated to regular State benefit status because his State provides for only a limited period of disqualification). This provision will result in benefit savings of $32 million in fiscal year 1981.

Extended benefits not payable to persons refusing any reasonable job offer.—Generally, a worker qualified for up to 26 weeks of benefits if he was laid off from work for reasons other than his own misconduct or his own voluntary decision to quit and if he remains ready, willing, and able to accept new employment. Newly unemployed workers are not required to take any available job but are permitted to seek a job which matches their previous experience, training, and earnings level. After seeking such work unsuccessfully for a reasonable period of time, however, individuals may be required to seek jobs not meeting

their full qualifications as a condition of continued benefit eligibility. The committee amendment would establish a requirement that, as a condition of eligibility for extended unemployment benefits, the unemployed individual must be willing at that point to accept any job which meets minimum standards of acceptability (such as basic health and safety standards, compliance with the Federal minimum wage, and other existing Federal standards). This provision will reduce program costs by $94 million in fiscal year 1981.

SUPPLEMENTAL SECURITY INCOME (SSI) PROVISION

Limit SSI eligibility for individuals who dispose of resources.—Under current law, the disposal or transfer of a resource prior to the filing of an SSI application does not preclude eligibility, even though the individual would be ineligible if he retained the resource. This is true with respect to cash and real or personal property although the resource may have been sold for less than its market value. The committee provision would delay SSI eligibility in the case of applicants who dispose of resources for less than current market value if retaining such resources would make them ineligible for benefits. The provision would make an individual ineligible to the extent that within the two years prior to application he disposed of assets for substantially less than their fair market value. This amendment would result in estimated savings of $15 million in fiscal year 1981.

SOCIAL SERVICES PROVISION

Federal day care regulations.—When the Social Security Act was amended in 1974 to establish a new title XX social services program, a provision was included requiring that day care services provided under State social services plans must meet the 1968 Federal Interagency Day Care Requirements, with some modifications. However, because of the controversial nature of those requirements, the Congress also included a provision requiring the Secretary of Health and Human Services to make a study of the appropriateness of the standards imposed by the legislation, and to submit a report of his findings together with recommendations to the Congress prior to July 1, 1977.

In response to the concern expressed by a number of States that they could not meet certain staffing requirements, which were to become effective October 1, 1975, the Congress enacted temporary legislation delaying their implementation and providing, instead, that day care provided with Federal funds must meet the staffing standards of the State. This temporary legislation was extended several times.

On March 19, 1980, the Department of Health and Human Services issued final rules for day care, to become effective September 19, 1980. These regulations are to apply to services funded under title XX and title IV (WIN and child welfare services). A number of States have expressed concern about the cost and effect of implementing the new standards. In view of this concern, the committee has included a provision to defer implementation of the new regulations for purposes of Social Security Act programs until October 1, 1981, providing instead that child care provided prior to that date would be subject

to State standards. Savings are estimated at $20 million in fiscal year 1981.

TERRITORIAL PROVISION

Public assistance payments to territorial jurisdictions.—Under the Social Security Act there is a dollar ceiling on Federal matching for costs of cash assistance, administration and social services provided under the programs of aid to families with dependent children and aid to the aged, blind and disabled in the jurisdiction of Puerto Rico, Guam and the Virgin Islands. The permanent ceiling under prior law was $24 million for Puerto Rico, $1.1 million for Guam, and $0.8 million for the Virgin Islands. The jurisdictions were limited to 50 percent Federal matching. For fiscal year 1979, under temporary legislation enacted in November 1978, the ceiling on Federal funds for the jurisdictions was tripled, from $26 million to $78 million, and the Federal matching percentage was raised from 50 percent to 75 percent.

H.R. 3434, as recently enacted, includes a provision which would make permanent, beginning with 1980, the increases provided for the jurisdictions in the earlier temporary legislation, that is, a tripling of dollar ceiling amounts. The committee amendment would defer the implementation of the full amount of these increases. Under the amendment, the amount of the increase would be limited to one-fourth of the total for fiscal year 1980 ($13 million rather than $52 million, to allow some increase in the last quarter of 1980) and to one-half the total for fiscal year 1981 ($26 million rather than $52 million). The full amount of the increased funding would thus become effective beginning with October 1, 1981. Estimated savings would be $39 million in 1980 and $26 million in 1981.

SOCIAL SECURITY PROVISIONS

Three-month limit on retroactive benefits.—Individuals who apply for benefits under the social security program are now allowed to backdate their applications by as much as 1 year to claim benefits for months prior to the actual date of application. The committee amendment would limit retroactivity of applications to a period of 3 months. The 3-month period (as is the case with the present 12-month period) would run from the date the application is filed and not from the date on which a decision is made on the claim. It is estimated to reduce fiscal year 1981 Federal expenditures by $150 million.

Social security benefits for prisoners.—Under present law individuals who are inmates of penal institutions or other incarcerated persons, such as the criminally insane who are confined to mental institutions, may become entitled to social security benefits if they can meet the several conditions required for benefits. The committee amendment would restrict the payment of benefits to persons convicted of crimes. Under the provisions, benefits would not be payable to convicted felons except as specifically provided for by a court of law during their participation in an approved program of rehabilitation which is expected to result in their return to productive employment. The amendment would also provide that a person may not be con-

sidered a full-time student for purposes of student benefits while he is incarcerated. Moreover, any disabling condition arising in the commission of a crime would not be considered in determining whether an individual was under a disability for benefit purposes. A disabling condition which arises while an individual is imprisoned could not qualify him for disability benefits for so long as he remains in prison. This proposal is estimated to reduce benefit costs by $16 million in fiscal year 1981.

Reallocation of OASDI taxes between OASI and DI trust funds.—The optimum level of reserve in the social security trust funds has generally been considered to be an amount equal to approximately 1-year's benefit payments. Because of high inflation and other factors, the funds in recent years have fallen far below these optimum levels. The old-age and survivors insurance fund in particular has fallen to a level at which possible cash-flow problems could occur sometime in 1981. However, under current estimates, sufficient funds can be made available to assure continuing cash flow capability for the cash benefit trust funds through the end of 1981 and into 1982 from the existing cash benefit tax rate. To accomplish this, however, it is necessary to reallocate the distribution of that tax rate for 1980 and 1981 between the two cash benefit trust funds. While a reallocation of the social security cash benefit tax rate does not have any direct budgetary impact, the absence of such action would necessitate some other means of providing adequate financing to maintain cash flow in the OASI trust fund. Regardless of what funding source was used, any such alternative method of meeting the cash flow requirements (e.g. a general fund appropriation or an additional social security tax) would result in an increase in budget authority at a time when the committee is under reconciliation instructions to reduce budget authority. On this basis, the committee has included an amendment to reallocate the OASDI tax.

PROVISIONS RELATING TO MEDICARE AND MEDIAID

Hospital rountine cost limits.—The bill would establish a new method of reimbursement for routine operating costs for hospitals under the medicare and medicaid programs. The new mechanism, to be effective July 1, 1980, would provide for incentive reimbursement rewarding hospitals whose routine operating costs are below average, and penalizing hospitals whose routine operating costs are substantially above average. The bill requires the Secretary to appoint a Health Facilities Costs Commission to recommend refinements in medicare and medicaid hospitals reimbursement.

Closure and conversion of underutilized facilities.—The bill would provide for including in short-term hospitals, reimbursement payments for increased operating costs and, in the case of nonprofit institutions, for increased capital costs, associated with the closing down or conversion to approved use of underutilized bed capacity or services.

Coordinated audits.—The bill would provide for medicare, medicaid, and the maternal and child health programs to share findings from a single audit where these programs reimburse the same entity on the basis of its reasonable costs.

Apportionment of provider costs.—The bill provides that medicare would not reimburse any institution for a disproportionately high share of costs until evidence is produced which justifies a specific adjustment under given circumstances for given facilities. The effect of this amendment would be to make such modifications, effective April 1, 1980, in the 8½ percent routine nursing cost differential that medicare now pays to hospitals the modification will be determined on the basis of a study to be carried out by GAO and will represent a more equitable method of reimbursing for routine nursing costs.

Inappropriate hospital services.—The bill would provide that in certain cases medicare and medicaid payments to hospitals be made at the average skilled nursing facility, intermediate care facility or detoxification facility payment rate (as appropriate), rather than the higher hospital rate, for patients medically determined by PSRO reviewers to need the lower level of care rather than acute hospital care. The bill would also authorize that benefits be provided and payment be made under medicare to qualified nonhospital inpatient detoxification facilities.

PSRO review of hospital admissions routine tests and preoperative stays.—The bill would direct PSRO's to review areas of frequent overutilization (such as diagnostic tests routinely provided on admission without a physician's order and weekend elective admissions and preoperative stays for elective procedures in excess of 1 day) to assure that payment is made under medicare and medicaid only where such services are medically appropriate.

Ambulatory surgery.—The bill would permit medicare reimbursement to be made to free-standing ambulatory surgical centers and physicians performing surgery in their offices for the use of surgical facilities needed to perform a listed group of surgical procedures. Such procedures include those which are often provided on an inpatient basis but can, consistent with sound medical practice, be performed on an ambulatory basis. Financial incentives to provide and use this type of services are included.

Criteria for determining reasonable charge for physician services.—The bill would modify existing medicare criteria for determining reasonable charges for physician services. It would require calculation of statewide median charges (in any State with more than one locality) in addition to the local prevailing charges. To the extent that any prevailing charge in a locality was more than one-third higher than the statewide median charge for a given service, it would not be automatically increased each year.

Procedures for determining reasonable cost and charge (hospital-based physician services and business services).—The bill would provide, except under certain specified circumstances, that compensation paid to contractors, employees or related organizations, consultants, and subcontractors at any tier would not be recognized for medicare-medicaid reimbursement purposes where the payments (in whole or part, in cash or kind) are based upon percentage arrangements. Percentage arrangements involving payment to hospital based physicians would nevertheless be recognized if the amount of reimbursement does not exceed an amount that would reasonably have been paid under an approved relative value schedule which takes into consideration the physician's time and effort.

Outpatient services charge limit.—The bill would require the newly established Health Facilities Cost Commission to give priority to the development of limitations on reimbursement for hospital outpatient service costs. Further, the Secretary would be required to issue regulations providing for the establishment of such limitations.

Medicare liability in accident cases.—The bill would provide that medicare not be the payor of first resort in cases where the patient was involved in an accident and his care could be paid for under liability coverage of the individual who was at fault or under no-fault insurance.

Access to and purchase of medicaid services.—The bill gives the States greater discretion in arranging for care and services for medicaid recipients through cost-effective arrangements. Provision would be made to assure that beneficiaries have reasonable access to services (including emergency and elective services) that fully meet program standards of quality. In addition, provision would be made to avoid having an adverse effect on appropriate and necessary use of hospitals with graduate medical education programs.

Medicare hospital reimbursement: periodic interim payments (PIP).—The bill amends the medicare periodic interim payment (PIP) procedure for hospitals so that payment would be withheld during September 1981, in order to increase the lag between rendition of of a service and payment for it to about six weeks, the delay experienced by hospitals that use the standard billing method. The deferred payments would be paid to the hospitals in October 1981.

Disallowance of State claims for Federal medicaid funds.—At present, when a State's claim for medicaid matching funds is disallowed by the Federal Government, the State may appeal the decision and retain the funds that are in dispute until a final determination is made. The bill authorizes the Secretary of HHS to offset amounts in dispute from other medicaid funds due the State until the appeals process has been exhausted. If the final decision is in the State's favor, the Federal Government would repay the money to the State with interest.

Reimbursement under medicaid for skilled nursing facilities and intermediate care facilities.—The bill amends section 249 of the Social Security Amendments of 1972, which requires States to pay skilled nursing facilities (SNF's) and intermediate care facilities (ICF's) on a reasonable cost-related basis. This provision would be amended to permit States, effective October 1, 1980, to develop their own payment systems for skilled nursing facility and intermediate care facility services. The State would have to assure the Secretary of HHS that its rates are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities in providing care and services in conformity with applicable State and Federal laws and regulations. A State, at its option, could include as part of its rate reasonable allowances in the form of incentive payments related to efficient performance and to attract investments necessary to assure the reasonable availability of services.

Home health agency reimbursement limits.—The bill limits allowable costs for home health agency services under medicare to amounts not in excess of the 75th percentile of weighted average audited costs. These limits would be applied separately to each type of visit, rather

than on an aggregate basis, when revisions in the existing cost reporting procedures make this possible. The allowable cost of skilled nursing visits and home health aide visits may not exceed medicaid skilled nursing facility per diem rates, hospital-based facility rates in the case of hospital-based home health agencies and other skilled nursing facility rates in the case of non-hospital-related agencies.

Calculating medicare reasonable charges.—Medicare reasonable charges are updated in July of each year to keep pace with economic changes. All bills that the medicare carrier receives after the charges are updated are paid at the higher rate. In effect, the amount of the medicare payment often depends on how long the claimant delays billing rather than on the charge levels in effect when the medical service was provided. To eliminate this inequity, the bill contains a provision under which the medicade reasonable charges that are payable would depend on the date the medical service was rendered rather than the date the medicare claim was processed.

FUND TRANSFER PROVISION

Transfer from general funds to trust funds.—The social security and medicare programs are funded through earmarked payroll taxes paid into the Treasury. Amounts exactly equal to the tax collections are appropriated out of the General Treasury and into the social security and medicare trust funds under a permanent standing appropriation in the Social Security Act. Under the accounting system used for purposes of the Budget Act, budget authority for trust fund programs is considered to arise at the moment when the tax receipts are appropriated into the trust funds. As a result, the various savings provisions approved by the committee in trust fund programs will not result in a reduction in the 1981 budget authority for those programs although they do result in 1981 outlay reductions and do reduce the amount of budget authority that will ultimately be needed to operate the programs. In order to meet the reconciliation requirements for fiscal 1981 budget authority reductions, the committee agreed to a provision under which $0.6 billion in social security and medicare tax receipts which would otherwise be transferred to the trust funds at the end of September 1981 will instead be transferred to the trust funds after the end of that month. This will reduce budget authority for fiscal 1981 by that same amount.

SPENDING REDUCTIONS UNDER FINANCE COMMITTEE PROPOSALS FOR RECONCILIATION PROCESS FOR FISCAL YEAR 1981 BUDGET RESOLUTION

[In millions of dollars]

	Budget authority	Outlays
Social security disability amendments (H.R. 3236)	−12	−133
Social services amendments (H.R .3434)	−92	−92
A. Unemployment compensation provisions:		
Sec. 601: Elimination of national trigger		(1)
Sec. 602: Waiting period for benefits		−25
Sec. 603: Optional State trigger		−30
Sec. 604: Unemployment benefits for ex-servicemen	−43	−43
Sec. 605: Unemployment benefits for Federal employees	−11	−11
Sec. 606: Limit on extended benefits for nonresidents		−46
Sec. 607: Extended benefits:		
Not payable on the basis of less than 20 weeks of employment		−1.0
Not payable to persons who leave jobs voluntarily or for misconduct		−32
Not payable to persons refusing any reasonable job		−94

SPENDING REDUCTIONS UNDER FINANCE COMMITTEE PROPOSALS FOR RECONCILIATION PROCESS FOR FISCAL YEAR 1981 BUDGET RESOLUTION—Continued

[In millions of dollars]

	Budget authority	Outlays
B. Sec. 611: Limit SSI eligibility for individuals who dispose of resources	−15	−15
C. Sec. 621: Temporary suspension of Federal day care regulations	−20	−20
D. Sec. 631: Public assistance payments to territorial jurisdictions	−26	−26
E. Social security provisions:		
Sec. 641: Reallocation of OASDI taxes between OASI and DI	(2)	
Sec. 642: 3-mo limit on retroactive benefits	+5	−150
Sec. 643: Social security benefits for prisoners	+1	−16
F. Health provisions:		
Sec. 651: Hospital routine cost limits	−10	−70
Sec. 652: Closure/conversion of underutilized facilities		−2
Sec. 653: Coordinated audits	−4	−4
Sec. 654: Apportionment of provider costs	+3	−75
Sec. 655: Inappropriate hospital services	−33	−151
Sec. 656: PSRO review of hospital admissions routine tests and preoperative stays	−1	−25
Sec. 657: Ambulatory surgery		−5
Sec. 658: Criteria for determining reasonable charge for physician services	+1	−15
Sec. 659: Procedures for determining reasonable cost/charge (hospital-based physician and business services)	−3	−25
Sec. 660: Outpatient services charge limit	−2	−23
Sec. 661: Medicare liability in accident cases	+1	−14
Sec. 662: Access to and purchase of medicaid services	−91	−91
Sec. 663: Medicare hospital reimbursement: periodic interim payments (PIP)	+2	−675
Sec. 664: Disallowance of certain State medicaid claims		−147
Sec. 665: Reimbursement under medicaid for skilled nursing and intermediate care facilities	−2	−2
Sec. 666: Home agency reimbursement limits	+3	−73
Sec. 667: Calculating medicare reasonable charges	+6	−147
G. Sec. 671: Transfer of funds to trust funds	−600	
Total	−943	−2,397

[1] Based on economic assumptions used in First Budget Resolution; anticipated reestimates will result in savings.
[2] Without reallocation, increase in budget authority would be required.

Source: Congressional Budget Office.

II. General Discussion of Finance Committee Amendments

A. Provisions Related to Unemployment

(Part A of Title V)

ELIMINATION OF NATIONAL TRIGGER UNDER THE EXTENDED BENEFITS PROGRAM

(Section 501 of the Bill)

Present law.—In most States, unemployment benefits are payable under the regular State program of unemployment compensation for a maximum of 26 weeks. The costs of these regular benefits are financed entirely from State unemployment taxes. In times of high unemployment, however, the Federal-State Extended Unemployment Compensation program becomes operative. This program provides for an additional benefit duration for workers who have exhausted their entitlement to regular State benefits. Benefits are payable under the extended program for half as many weeks as benefits were payable under the regular program. In other words, when the extended program is in effect, unemployed persons can receive up to 13 additional weeks of benefits for an overall maximum of 39 weeks. Half of the cost of extended benefits is paid for from State unemployment taxes and half of the cost is borne by the Federal Unemployment Tax.

Present law provides for the extended benefit program to be operative in any State when the insured unemployment rate (the number of persons receiving unemployment benefits as a percentage of persons working in jobs covered by the program) is sufficiently high under any one of three tests or "triggers." Under the basic State trigger, the program is in operation when the insured unemployment rate for the State is at least 4 percent and that State's insured unemployment rate is at least 20 percent higher than the average insured unemployment rate in that State during the comparable period in the two prior years. If the State insured unemployment rate is not at least 20 percent above the rate for the 2 prior years, a State may nevertheless elect to have the extended benefit program become effective whenever the State insured unemployment rate reaches a trigger level of 5 percent. In addition to the basic and optional State trigger provisions, present law also includes a national trigger. When the national insured unemployment rate is at a level of 4.5 percent or higher, the extended benefits program must be operated by all States.

Committee amendment.—The committee amendment would eliminate the national trigger for paying extended unemployment benefits. Unemployment benefits are provided in order to protect workers against the involuntary loss of income that occurs when they lose their jobs and for the period thereafter while they are trying to obtain new employment. In times of high unemployment, the availability of jobs is curtailed and the competition for them is increased. At such times, it is likely that an unemployed worker will need more time to find a new job. This relationship between the overall level of unemployment and the amount of time it takes to find a new job is the basic justification for a program of extended benefit duration. The committee believes, however, that that relationship is more properly reflected in the State triggers than in the national trigger. When a worker becomes unemployed, the question of how long he will have to search for new employment is dependent upon the availability of, and competition for, jobs in the area where he resides, not upon the national average unemployment situation.

When the extended unemployment compensation program was originally enacted in 1970, extended benefits could be triggered on for an individual State only if the State insured unemployment rate was both 4 percent and was at least 20 percent higher than in the 2 preceding years. In the case of a prolonged national recession, States would be unable to meet the "20 percent higher" requirement even though they might be experiencing a very high level of insured unemployment. For this reason, the national trigger did serve as an important safeguard under that original legislation. In the 1976 amendments, however, the law was changed to provide for an optional alternative State trigger based on an absolute State insured unemployment rate of 5 percent. The committee believes that that change in the law eliminated the need for a national trigger.

The elimination of the national trigger for extended benefits is effective as of October 1, 1980. No savings are now estimated for this item for fiscal year 1981 because the national trigger would not have been reached this year under the CBO assumptions which were used to develop the budget resolution. In fact, however, it now seems likely

that CBO reestimates later this year will indicate that the national trigger level will be reached. At that time, the provision will represent a savings of several hundred million dollars for fiscal year 1981. This provision was previously approved by the committee and passed by the Senate as an amendment to H.R. 4612.

WAITING PERIOD FOR BENEFITS

(Section 502 of the Bill)

Present law.—Although there are certain Federal requirements which State unemployment compensation programs must meet, States have broad discretion to determine qualifying requirements, benefit amounts, and duration of regular benefits. Most State unemployment compensation laws provide that no benefits will be payable for the first week in which the worker is unemployed and otherwise eligible. Twelve States, however, do not now provide for such a "waiting week." These are: Alabama, Connecticut, Delaware, Iowa, Kentucky, Maine, Maryland, Michigan, Nevada, New Hampshire, Pennsylvania, and Wisconsin. Three other States (New York, Rhode Island, and Georgia) have a waiting week but will pay benefits for that waiting week in some circumstances, and nine States (Hawaii, Illinois, Louisiana, Minnesota, Missouri, New Jersey, Ohio, Texas, and Virginia) pay compensation for the waiting week retroactively after the worker has experienced a specified duration of compensable unemployment.

Committee amendment.—The committee recognizes that eligibility and benefit provisions of the unemployment compensation program have, with relatively few exceptions, been left to State discretion, and the committee does not wish to depart from that general practice by requiring that all States establish a waiting week for benefits. At the same time, the committee notes that a large majority of States do have a waiting week and most States do not make exceptions or pay retroactively for the waiting week. The existence of a waiting week does not impose an undue hardship since most workers will have some resources to fall back on for the very early stages of their unemployment. It does, however, have a very important positive effect in that it gives the unemployed worker a stronger financial incentive to seek reemployment immediately. The committee feels that most States have properly concluded that the system should convey the message that the priority is: 1) look for a new job and 2) apply for unemployment benefits, rather than the reverse.

Under present law, the Federal statute actually tends to reward States which have elected not to have a waiting period. In such States, 50 percent Federal funding for extended unemployment benefits begins with the 27th week of a worker's unemployment, while in States with a waiting period such funding begins with the 28th week of a worker's unemployment. The committee believes that this fiscal incentive should be modified so as to favor States which do utilize the waiting week rather than States which do not. The committee amendment provides that there will be no Federal matching of extended unemployment compensation for the first week in which such compensation is payable unless the State law provides for a waiting week (and does not make payment for the waiting week on a retroactive basis). (The

same rule would apply to the first week of sharable regular compensation in States which provide more than 26 weeks of regular benefits.) In other words, if a State pays benefits for the first week of unemployment (on either a current or retroactive basis), the first week of extended benefits after the worker exhausts his regular benefit eligibility would be funded entirely from State funds and Federal matching would apply to the second through the thirteenth week of extended benefit eligibility.

This provision is also included in H.R. 4612, as previously approved by the committee and the Senate. The provision, which is effective October 1, 1980, is estimated to save $25 million in fiscal year 1981.

STATE OPTION AS TO CRITERIA FOR STATE "ON" AND "OFF" INDICATORS

(Section 503 of the Bill)

Present law.—As explained in the description of section 601 above, one of the three "trigger" situations in which extended benefits may be payable is the optional State insured unemployment rate of 5 percent. Prior to the 94th Congress, permanent law provided for extended benefits to be payable on a State-by-State basis only under the mandatory trigger of a State insured unemployment rate of 4 percent or more which was also at least 20 percent above the rate which the State had experienced during a comparable period in the 2 prior years. Because that requirement prevents benefits from being payable in States with high but persistent levels of unemployment, temporary legislation had been enacted on several occasions to waive the "20 percent higher" requirement. To meet this problem on a permanent basis, the law was amended to give each State the option of triggering into the program at a 5 percent insured unemployment rate without regard to how that level of unemployment compared with prior years.

Committee amendment.—Inasmuch as the 5 percent State trigger is optional with the States, the committee sees no reason why States should not be given the additional flexibility to set the trigger level at whatever level of insured unemployment which the State may find appropriate so long as it is at least 5 percent. At the time the optional 5 percent State trigger was under consideration by the Congress, there was disagreement as to the most appropriate level and the Senate version of that legislation provided for a trigger level of 6 percent. Since the question of whether to pay benefits at all under this trigger has been left to the States, it seems reasonable to give the States this additional flexibility to set the trigger at 5, 5½, 6 or whatever percent they find most appropriate.

This provision is also included in H.R. 4612. It would reduce program costs in fiscal 1981 by $30 million. It would be effective with respect to weeks of unemployment beginning after October 1, 1980.

FEDERAL SERVICE OF EX-SERVICEMEN

(Section 504 of the Bill)

Present law.—Under a special provision of Federal law, States pay unemployment benefits to recently discharged servicemen. These

benefits are fully reimbursed to the States out of Federal general revenues. Benefits are payable provided that the discharge was not dishonorable or for bad conduct and provided that the individual completed at least 90 days of active service (unless discharged earlier because of a service-incurred injury or disability).

Committee amendment.—The committee understands that benefits are being paid under this provision in a very substantial number of instances in which individuals are leaving military service after quite short periods of service—well below the ordinary term of an enlistment. While there are a variety of reasons why enlistments are terminated early, the committee believes that compensation for ex-servicemen is primarily intended to be available to those who have completed more substantial periods of service. The committee amendment would modify existing law to extend from 90 days to one year the minimum length of service generally required to qualify for federally funded compensation payments. It would be effective October 1, 1980.

This provision is also in H.R. 4612. It would save $43 million in fiscal 1981.

BENEFITS ON ACCOUNT OF FEDERAL SERVICE TO BE PAID BY EMPLOYING FEDERAL AGENCY

(Section 505 of the Bill)

Present law.—Under present law, individuals who are terminated from Federal employment (or partially terminated) may apply for benefits with the State agency of the State in which their Federal employment was located. Unemployment benefits are payable to such individuals under the same rules and procedures as apply to individuals in that State who lose jobs in private employment. To the extent that benefits are based on Federal employment, the State is reimbursed by the Federal Government (out of appropriated funds) for the benefit costs. The Federal cost of benefits for former employees are appropriated into a single account as a part of the annual Labor-HHS Appropriations Act.

Committee amendment.—An important element in the unemployment compensation program in the States is the experience-rating system which provides a strong incentive for employers to avoid unnecessary employee turnover and to monitor claims for unemployment to assure that awards are not being made by the State agency to persons not entitled to benefits. Under existing laws this same type of incentive does not exist for Federal agencies since they have no fiscal stake in the question of whether or how much unemployment compensation is paid to their employees. The cost of such compensation is borne by a government-wide account which is not reflected in individual agency budgets and therefore not subject to any effective review by the appropriations subcommittees responsible for monitoring these budgets.

The committee amendment would modify this arrangement by providing that the budget account from which States are reimbursed would receive its funding not from a single direct appropriation but rather from payments made by each agency out of that agency's ap-

propriation. This should make each agency more aware of the need to monitor, and in appropriate cases contest, benefit claims of former employees in order to avoid excessive costs which would have to be absorbed from other parts of the agency's budget.

Under the committee amendment, a separate account for Federal employee benefits would be established. This account would be placed within the Unemployment Trust Fund but would be funded entirely from general revenues. It would operate on a revolving fund basis starting with a transfer to the account on September 30, 1980, of the amounts that have already been appropriated to pay for Federal employee unemployment benefits. Starting on that same date, States would be reimbursed out of this account for their benefit payments to Federal employees. The employing agencies would, in turn, be required to reimburse the account out of their individual appropriations. Additional appropriations could be made to the account to assure an adequate working balance and any excess amounts in the account would be transferred back to the general fund of the Treasury.

Although the change becomes effective as of October 1, 1980, the committee recognizes that it will take some time and effort for the Labor Department to begin making determinations as to the amounts owed the account by each agency and for the readjustment of budgets to accommodate this change. For this reason, the amendment is intentionally drawn in a manner which does not mandate a particular time limit within which determinations and reimbursements must be made. The amendment provides that agencies will make transfers to the account on a quarterly basis reflecting what they owe the account on the basis of Labor Department determinations which have been completed as of the start of that quarter. While this does provide great leeway to the Department in implementing this provision, the committee intends that the Department should move as quickly as feasible to begin implementation and should assure that agencies are promptly made aware of the fact and purpose of this change in the law.

This provision was included in H.R. 4612. It would result in estimated savings of $11 million in fiscal year 1981.

LIMITATION ON EXTENDED BENEFITS FOR NONRESIDENTS

(Section 506 of the Bill)

Present law.—Under present law, States are required to pay unemployment benefits to individuals who meet the State qualifying requirements even if they are or become residents of another State. If an individual works and qualifies for benefits in a State in which the extended unemployment program is in effect, that State will be required to pay him such benefits (so long as he meets the requirements for them) even if he has changed his residence to a State in which the extended program is not in operation (because the new State of residence has a lower rate of insured unemployment).

Committee amendment.—The committee amendment would limit benefits in the case of persons who change their State of residence. If

an individual changes his State of residence after the beginning of a period of unemployment during which he would otherwise qualify for extended benefits, no extended benefits will be payable if the new State of residence is one in which the extended benefit program is not triggered on.

Extended benefits are intended to allow individuals additional time to find new employment inasmuch as employment opportunities are more difficult to find in States where there is a high level of unemployment. When an individual moves from such a State into a State with a relatively lower level of unemployment, the justification for continued payment of extended benefits would seem to be eliminated. In many cases, such a move would be premised precisely on the availability of employment in the new State. To allow some period of transitional readjustment, however, the committee provision would not apply to the first two weeks after the individual takes up residence in the new State. This same provision was included in H.R. 4612. It would be effective October 1, 1980, and is estimated to save $46 million in fiscal year 1981.

LIMITATION ON PAYMENT OF EXTENDED UNEMPLOYMENT BENEFITS

(Section 507 of the Bill)

Present law.—Under existing law, regular State unemployment benefits are payable out of State unemployment payroll taxes to workers who are involuntary unemployed and who are willing and available to accept employment which is consistent with their abilities and prior work experience. Generally, States pay benefits for a maximum of 26 weeks. In times of high unemployment, an extended benefits program becomes effective. Under this program up to 13 additional weeks of benefits are payable. The benefits are funded half from State payroll taxes and half from the Federal unemployment tax. Under present law, each State establishes the qualifying requirements for regular benefits and individuals who meet those requirements are automatically eligible for Federal-State extended benefits if the extended benefits program is in effect.

All States establish certain prior employment requirements to establish eligibility for benefits. While some States have established rules that allow benefits only for persons with a substantial earnings history, other States require much less previous work. This can result in extended benefits being paid to an individual who has qualified on the basis of a minimal period of employment.

When an unemployed worker has voluntarily left his job without good cause, has been discharged for misconduct, or has refused what the State agency considers a suitable job offer for him, he becomes ineligible for benefits. However, in many States the disqualification is lifted after a period of time. Other States continue the disqualification for the duration of unemployment. A recent research study by SRI International concluded that the average length of unemployment tends to be lower in States which impose disqualification for the duration of unemployment.

Generally, a worker qualifies for benefits if he was laid off from work for reasons other than his own misconduct or his own voluntary decision to quit and if he remains ready, willing, and able to accept

new employment. For the benefit of both the worker and the labor market, newly unemployed workers are not required to take any available job but are permitted to seek a job which matches their previous experience, training, and earnings level. After seeking such work unsuccessfully for a reasonable period of time, however, individuals may be required to seek jobs not meeting their full qualifications as a condition of continued benefit eligibility.

Committee amendment.—The amendment proposed by the Committee on Finance would establish certain limitations on the payment of Federal-State extended benefits to unemployed workers. For the most part, Federal law has left to the States the discretion of establishing benefit qualification rules since regular unemployment benefits are entirely financed from taxes imposed by State legislatures. However, in recent years, very substantial costs have been incurred to pay extended benefits. Half the cost of these benefits is borne from the Federal unemployment tax which is paid by all employers including those in States where the extended benefits program is not in operation. A very significant part of the cost of the extended benefits program has also been paid from interest-free loans from the Federal Treasury to a number of States that have not fully funded the heavy benefit costs of recent years. For these reasons and because benefits payable for a period in excess of six months have a somewhat different character from benefits payable during the first few weeks after unemployment occurs, the committee recommends an amendment designed to better target these long-term benefits to individuals who become unemployed after substantial attachment to the work force and who are clearly making all reasonable efforts to return to work.

The first part of the committtee provision would require that benefits not be paid under the extended benefit program to any individual who has less than 20 weeks of qualifying employment in the base period. It is estimated that this provision will reduce benefit costs by $120 million in fiscal 1981.

Under another part of this provision, extended benefits would not be payable to an individual who had been disqualified for refusing employment or because he quit voluntarily or lost his job by reason of his own misconduct (even though he may have been reinstated to regular State benefit status because his State provides for only a limited period of disqualification). This change will result in benefit savings of $32 million in fiscal year 1981.

The committee amendment would also establish a requirement that, as a condition of eligibility for extended unemployment benefits, the unemployed individual must be willing at that point to accept any job which meets minimum standards of acceptability.

For the purposes of the extended benefits program, any work would be considered suitable if it:

Was within the capabilities of the claimant;

Met the conditions of present Federal law;

Met the conditions of State law and practices pertaining to suitable or disqualifying work that are not inconsistent with the provisions of this section, such as not requiring an individual to take a job that involves traveling an unreasonable distance to work or poses an unreasonabe threat to the individual's morals, health or safety;

Paid wages at least equal to the Federal or, if higher, any applicable State or local minimum wage;

Paid gross average weekly remuneration equal to the individual's weekly unemployment compensation benefit, plus any "Supplemental Unemployment Benefits" (SUB) to which the individual might be entitled because of agreements with previous employers; and

Was listed with the State employment service or offered in writing. (A written job offer would involve a written statement as to the availability of the job and the hours and wages it involved. It would not have to include other details such as a description of fringe benefits.)

State agencies would be required to refer claimants of emergency benefits to any job that would be considered suitable for the individual under the provisions of this section.

If, however, an individual furnishes satisfactory evidence to the State agency that his or her prospects for obtaining work within a reasonably short period in his customary occupation are good, the determination of whether any work is suitable for the individual would be made in accordance with State law and practices pertaining to suitable or disqualifying work rather than the provisions of this section pertaining to suitable work. An example of the type of evidence required would be a recall notice from a former employer.

A similar requirement was previously enacted in the legislation extending the now-expired Emergency Unemployment Compensation Act of 1974. This provision will reduce program costs by $94 million in fiscal year 1981.

B. Supplemental Security Income Provisions (Part B of Title V)

LIMIT ON DISPOSAL OF ASSETS FOR PURPOSES OF SSI ELIGIBILITY

(Section 511 of the Bill)

Present law.—Under current law, the disposal or transfer of a resource prior to the filing of an application for benefits under the supplemental security income program does not preclude eligibility, even though the individual would be ineligible if he retained the resource. This is true with respect to cash and real or personal property although the resource may have been sold for less than its market value or even given away.

The committee has been told that transfers of this type frequently occur, particularly in cases where an aged individual may face substantial medical expenses. For example, in connection with protracted nursing home care, by transferring assets to a relative, the individual qualifies not only for SSI but also for medicaid. Moreover, under certain court decisions, the absence of an SSI provision in this area has been found to lead to similar problems in connection with the medically needy segment of the medicaid program. (The committee does not intend that its recognition of the existence of these court decisions should be construed as agreement that they are correct.)

Committee amendment.—The committee believes that it is inappropriate for the public assistance programs to be burdened with the assumption of the support and medical care of individuals who have ample personal resources. For this reason, the committee amendment would require that any resources which an individual has given away or sold for less than fair market value would still be considered as

available for his support, during the 2 years following the transfer of the asset. The amount considered to be available for support would be the value of the transferred asset less any compensation received for it. The committee recognizes that there may be cases in which such a transaction takes place in good faith and unforeseen circumstances subsequently require an individual to apply for assistance. The committee believes that such a situation would be quite rare; however, the provision would allow the rebuttal of the presumption that a transfer of assets was made in order to qualify for benefits or assistance. The burden of proof in such cases would be on the individual and would require a clear showing that at the time the transfer took place there could not have been reasonable expectation that SSI or medicaid benefits would be needed.

The committee is aware, as indicated above, that certain courts have held that the absence of a provision of this type in the SSI statute precludes States from applying such a rule in "medically needy" cases. The adoption of this provision will remedy the problems this has created for the States. However, the committee does not intend that its adoption of this rule for SSI recipients should require States to apply exactly the same provisions in "medically needy" cases. States that determine medicaid eligibility on the basis of January 1972 plans could also apply this limitation.

C. Social Services Provision (Part C of Title V)

FEDERAL DAY CARE REGULATIONS

(Section 521 of the bill)

Present law.—A provision was included in the original title XX legislation to require that day care services provided under State social services plans must meet the 1968 Federal Interagency Day Care Requirements, with some modifications. However, because of the controversial nature of those requirements, the Congress also included a provision requiring the Secretary of Health and Human Services to make a study of the appropriateness of the standards imposed by the legislation, and to submit a report of his findings together with recommendations to the Congress prior to July 1, 1977.

In response to the concern expressed by a number of States that they could not meet certain staffing requirements, which were to become effective October 1, 1975, the Congress enacted temporary legislation delaying their implementation and providing, instead, that day care provided with Federal funds must meet the staffing standards of the State. This temporary legislation was extended several times.

On March 19, 1980, the Department of Health and Human Services issued final rules for day care, to become effective September 19, 1980. These regulations are to apply to services funded under title XX and title IV (WIN and child welfare services). The regulations contain requirements which cover the following areas: program of activities, health and safety, physical environment, staff training, group composition (including staffing requirements), parent involvement, social services, nutrition, and the role of State agency administration. According to the Department, the estimated average cost of care provided in a child care center under the new regulations is $3,500 per child

year. This includes direct costs of providing care as well as administrative, training, medical, and other costs related to the provision of care.

Committee amendment.—A number of States have expressed concern about the cost of implementing the new standards, indicating that they believe that their enforcement will result in reducing the available supply of care, particularly for low income families, who are the primary recipients of Health and Human Services funded care. It has also been observed that some States are already experiencing difficulties in finding day care centers to serve children, and that without money to pay for stricter requirements, the difficulties of finding care will be increased. The result could be to force AFDC mothers to forego employment, and increase the likelihood that they will remain on welfare. In addition, some States are apparently giving consideration to eliminating the use of Federal funds for day care services in order not to be required to meet the new standards.

In view of these concerns, the committee agreed to defer implementation of the new regulations for purposes of Social Security Act programs until October 1, 1981. The committee amendment provides instead that child care provided prior to that date would be subject to State standards. This would allow time for further consideration of legislation to modify the proposed standards or to provide additional resources to enable States to meet those standards. Savings are estimated at $20 million in 1981.

D. Provision Relating to Funding of Territorial Programs (Part D of Title V)

PUBLIC ASSISTANCE PAYMENTS TO THE TERRITORIES

(Section 531 of the Bill)

Present law.—Under existing law there is a dollar ceiling on Federal matching for costs of cash assistance, administration and social services provided under the programs of aid to families with dependent children and aid to the aged, blind and disabled in the jurisdictions of Puerto Rico, Guam and the Virgin Islands. The annual permanent ceiling is $24 million for Puerto Rico, $1.1 million for Guam, and $0.8 million for the Virgin Islands. The jurisdictions are limited to 50 percent Federal matching.

For fiscal year 1979, under temporary legislation enacted in November 1978, the ceiling on Federal funds for the jurisdictions was tripled, from $26 million to $78 million, and the Federal matching percentage was raised from 50 percent to 75 percent. As can not result in a general increase in welfare be seen from the table, these increases did not result in a general increase in welfare payment standards. Instead, statistics show that special payments were made to individuals who were already receiving welfare. Puerto Rico, for example, amended its State plan to provide a special allowance for furniture, household replacement, and personal items, including clothing, not in the basic allowance. This resulted in a 652 percent increase over the prior month in the AFDC average payment per family in June 1979, and an increase of 1,548 percent in the month of September for persons who were already on the AFDC rolls. Puerto Rico's average payment per family for September was $756.79, compared with a national average per family of

$277.48. The average payment amount declined to former levels beginning with the first month in fiscal year 1980.

AFDC PAYMENTS IN PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS, APRIL–NOVEMBER 1979

Month	Number of families	Amount of assistance: Average payment per family	Amount of assistance: Percent increase over prior month
A. Puerto Rico:			
April	41,597	$46.71	----------
May	41,247	46.21	(1)
June	40,572	347.62	+652
July	40,281	47.98	(1)
August	40,201	45.93	(1)
September	40,530	756.79	+1,548
October	40,978	55.85	(1)
November	43,834	47.23	(1)
B. Virgin Islands:			
April	964	158.69	----------
May	964	325.29	+105
June	968	152.97	(1)
July	964	150.77	(1)
August	956	195.87	+30
September	951	194.36	(1)
October	954	147.24	(1)
November	959	146.38	(1)
C. Guam:			
April	1,244	204.03	----------
May	1,268	203.17	(1)
June	1,295	203.35	(2)
July	1,286	203.58	(2)
August	1,260	204.49	(2)
September	1,258	206.46	+1
October	1,295	207.30	(2)
November	1,292	206.96	(1)

[1] Decrease.
[2] Less than ½-percent increase.

ASSISTANCE PAYMENTS TO THE AGED, BLIND, AND DISABLED IN PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS, APRIL–NOVEMBER 1979

Month	Number of recipients	Amount of assistance: Average payment per recipient	Amount of assistance: Percent increase over prior month
A. Puerto Rico:			
April	37,684	$17.59	----------
May	37,703	17.62	(2)
June	38,091	82.86	+370
July	37,815	17.75	(2)
August	37,655	17.32	(1)
September	37,495	201.91	+1,066
October	37,704	17.93	(2)
November	38,802	17.52	(1)
B. Virgin Islands:			
April	415	76.75	----------
May	412	176.00	+129
June	419	75.27	(1)
July	413	74.94	(1)
August	416	95.99	+28
September	406	94.97	(1)
October	405	72.47	(1)
November	403	72.15	(1)
C. Guam:			
April	870	76.70	----------
May	882	76.94	(2)
June	886	77.36	(2)
July	897	77.49	(2)
August	895	77.69	(2)
September	889	77.89	(2)
October	884	77.86	(1)
November	898	77.66	(1)

[1] Decrease.
[2] Increase less than 1 percent.

Committee amendment.—H.R. 3434, as recently enacted, included a provision to make permanent, beginning with 1980, the increases provided for the jurisdictions in the earlier temporary legislation, that is, a tripling of dollar ceiling amounts. The committee amendment would defer the implementation of the full amount of the increases. Under the committee agreement, the increase would be one-fourth of the total for fiscal year 1980 ($13 million rather than $52 million, to allow some increase in the last quarter of 1980), and one-half the total for fiscal year 1981 ($26 million rather than $52 million). The full amount of the increased funding would thus become effective beginning with October 1, 1981. This would give these jurisdictions time to develop a plan to provide for an equitable distribution of their increased funds. Estimated savings would be $39 million in 1980 and $26 million in 1981.

E. Provisions Relating to Old-Age, Survivors, and Disability Insurance Programs (Part E of Title V)

REALLOCATION OF OASDI TAXES BETWEEN OASI AND DI TRUST FUNDS

(Section 541 of the Bill)

Present law.—The optimum level of reserve in the social security trust funds has generally been considered to be an amount equal to approximately 1 year's benefit payments. Because of high inflation and other factors, the funds in recent years have fallen far below these optimum levels. Although the 1977 amendments sought to restore somewhat the financial condition of the funds, adverse economic conditions have caused the reserve levels to continue to decline. The old-age and survivors insurance fund in particular has fallen to a level at which possible cash-flow problems could occur sometime in 1981.

Committee amendment.—The financing of the social security program will require detailed review next year. Under current estimates, sufficient funds will be available to assure continuing cash flow capability for the cash benefit trust funds through the end of 1981 and into 1982 from the existing cash benefit tax rate. However, it will be necessary to reallocate the distribution of that tax rate for 1980 and 1981 between the two cash benefit trust funds. (This reallocation would have no impact on the medicare trust funds.) While a reallocation of the social security cash benefit tax rate does not have any direct budgetary impact, the absence of such action would necessitate some other means of providing adequate financing to maintain cash flow in the OASI trust fund. Regardless of what funding source was used, any such alternative method of meeting the cash flow requirements (e.g. a general fund appropriation or an additional social security tax) would result in an increase in budget authority at a time when the committee is under reconcilliation instructions to reduce budget authority. The committee therefore has included a reallocation of the OASDI tax as shown below.

CASH BENEFITS SOCIAL SECURITY TAX RATES—EMPLOYER AND EMPLOYEE, EACH

[In percent]

Year	Present law			Committee amendment		
	OASI	DI	Total tax	OASI	DI	Total tax
1980	4.33	0.75	5.08	4.52	0.56	5.08
1981	4.525	.825	5.35	4.70	.65	5.35

CASH BENEFITS SOCIAL SECURITY TAX RATES—SELF-EMPLOYED PERSONS

[In percent]

Year	Present law			Committee amendment		
	OASI	DI	Total tax	OASI	DI	Total tax
1980	6.01	1.04	7.05	6.2725	0.7775	7.05
1981	6.7625	1.2375	8.00	7.025	.975	8.00

END-OF-YEAR CASH BENEFIT FUND BALANCES

[As a percent of following year outgo]

Year	Present law			Committee amendment		
	OASI	DI	Combined funds	OSAI	DI	Combined fund
1980	15	44	18	18	20	18
1981	6	61	12	12	13	12

Note: Estimated by Social Security Administration actuaries.

LIMIT RETROACTIVE BENEFITS TO 3 MONTHS

(Section 542 of the Bill)

Present law.—Individuals who apply for benefits under the social security program are now allowed to effectively backdate their applications by as much as 1 year to claim benefits for months prior to the actual date of application.

Committee amendment.—In the last Congress, the administration submitted a recommendation with its fiscal 1979 budget to change this provision so as to limit retroactivity of applications to a period of 3 months. The old-age, survivors, and disability insurance program is intended to provide a source of monthly income for persons whose support in the form of wages of an insured worker is reduced because of that worker's death, disability, or retirement. Ordinarily, individuals who may be eligible for benefits apply for benefits promptly upon becoming eligible or even some months in advance of eligibility. In some instances, however, an individual may not file an application until after eligibility has already existed for some time. A period of retroactivity prior to the month of application is provided to protect against loss of benefits based on delayed filing which may have resulted from circumstances beyond the individual's control. The committee believes that a retroactivity period of 3 months prior to the month of application should provide ample opportunity for individuals to meet the program's filing requirements. The 3-month period

would run from the date the application is filed and not from the date on which a decision is made on the claim. The committee amendment includes this provision. It is estimated to reduce fiscal year 1981 Federal expenditures by $150 million.

SOCIAL SECURITY BENEFITS FOR PRISONERS

(Section 543 of the Bill)

Present law.—Individuals who are inmates of penal institutions or other incaracerated persons, such as the criminally insane who are confined to mental institutions, may become entitled to social security benefits if they can meet the several conditions required for benefits. The fact that they have been convicted of crimes and are incarcerated or are otherwise institutionalized does not interfere with their rights to benefits. This is in contrast to the old public assistance programs of the act (titles I, X, XIV) and the new supplemental security income program (title XVI), all of which explicity deny payments to an inmate of a "public institution." (That exclusion applies to prison inmates and also to other individuals who are residing voluntarily or involuntarily in institutions maintained by public funds.)

Two related social security provisions of current law and regulation, however, do authorize the withholding of benefits to persons convicted of certain crimes. One originated as an amendment to the Social Security Act in 1956, which allows a judge, as part of a sentence, to deny payment of social security benefits of any type to an individual convicted of subversive crimes against the U.S. Government (espionage, sabotage, treason, sedition, etc.).

The second provision, provided for by regulation, precludes paying benefits to people convicted of killing a relative, and then claiming benefits based on the earnings record of the person they killed.

The data on the number of incarcerated persons receiving social security benefits is limited. Data from the 1970 census showed that approximately 4,000 prisoners in Federal, State and local penal institutions were receiving some form of social security benefits. A recent rough analysis of Federal prison inmates performed by GAO showed that 224 such inmates out of 17,000 who had known social security numbers were receiving benefits (approximately 1.3 percents). Another 5,000 inmates appeared not to have social security numbers, or their numbers were not known. Based on these data, the actuaries estimate that approximately 6,000 prisoners are now receiving social security benefits.

Committee amendment.—The committee believes that the basic purposes of the social security program are not served by the unrestricted payment of benefits to individuals who are in prison or whose eligibility arises from the commission of a crime. The disability program exists to provide a continuing source of monthly income to those whose earnings are cut off because they have suffered a severe disability. The need for this continuing source of income is clearly absent in the case of an individual who is being maintained at public expense in prison. The basis for his lack of other income in such circumstances must be considered to be marginally related to his impairment at best. The com-

mittee provision therefore would require the suspension of benefits to any individual who would otherwise be receiving them on the basis of disability while he is imprisoned by reason of a felony conviction. This suspension would apply except to the extent that a court of law specifically provides to the contrary as a part of its approval of a plan of vocational rehabilitation services for that individual, and only for so long as the individual continues to participate satisfactory in an approved vacational rehabilitation programs, which is expected to result in his return to subtantial gainful employment. The committee amendment would also provide that an individual may not be considered to be a full-time student for purposes of social security student benefits while he is incarcerated. In addition, the amendment provides that disabilities to the extent that they arise from or are aggravated during the commission of a crime may not be considered in determining whether or not an individual qualifies for social security benefits. Impairments not arising from the commission of a crime but occurring while an individual is in prison could not be considered for purposes of disability eligibility so long as the individual remains in prison. This provision is estimated to reduce benefit costs by $16 million in fiscal year 1981.

F. Health Provisions

(*Part F of Title V*)

CRITERIA FOR DETERMINING REASONABLE COST OF HOSPITAL SERVICES

(Section 551 of the Bill)

Expenditures for hospital care have been increasing at double-digit rates for many years. Preliminary estimates for calendar year 1978 indicate that hospital expenditures for that year were 12 percent higher than 1977. Expenditures for hospital care, $76 billion in 1978, represent 40 percent of all national health expenditures. Hospital expenditures in fiscal year 1978 represent 3.6 percent of the GNP and $341 per capita. Historically, hospital costs per patient-day have risen much more rapidly than consumer prices in the economy as a whole.

This rapid growth in the costs of hospital care has focused increasing attention on hospitals and the present methods currently used to reimburse hospitals. Cost-based reimbursement in particular has been the subject of widespread criticism. There is little in the way of pressure on hospitals so paid to contain their costs, since any increases are simply passed along to the third parties that reimburse on a cost basis. The present "reasonable costs" procedures under the medicare program are not only inherently inflationary—because there are no effective limits on what costs will be recognized as reasonable—but also contain neither incentives for efficient performance nor true disincentives to inefficient operation.

In a nongovernmental attempt to moderate the rate of increase in overall hospital expenditures, the American Hospital Association, the American Medical Association, and the Federation of American Hospitals and other health care associations are leading a cost containment activity at the State level. This so-called "Voluntary Effort" should

not be discouraged or impaired by Federal agencies through legal or other means before it has had reasonable opportunity to demonstrate success or failure.

The bill does not seek to replace the Voluntary Effort but rather to reform the method of reimbursement for hospitals under the medicare and medicaid programs. Under the new method, to be effective with hospital reporting periods that begin after June 30, 1980, reimbursement for most of a hospital's inpatient routine costs (essentially costs other than ancillary expenses such as laboratory, X-ray, pharmacy, etc.) would be related to a target rate based on similar costs incurred by comparable hospitals. Hospitals whose routine operating costs were below the average for comparable hospitals would be rewarded with incentive payments, and payments to hospitals with routine operating costs which are substantially above the average would be reduced.

This initial system, described more fully below, would be studied and extended on an as-ready basis. The committee expects that the new system will be extended to hospitals' ancillary costs and other costs that are excluded initially as soon as adjustments for patient-population differences and other methodological prerequisites are developed. Based on recommendations of a proposed Health Facilities Cost Commission, a permanent system would be developed over time which would establish payment rates and provide incentive payments with respect to all hospital costs and to costs of other institutions and organizations which are reimbursed on a cost basis. Continuing efforts would be made by the Commission to refine and improve the system of classification and comparison so as to achieve the greatest equity possible. The Secretary would appoint the members of the new Health Facilities Cost Commission on or before October 1, 1980. The Commission would consist of 15 persons who are expert in the health facilities reimbursement area. At least five of the members would be representatives of hospitals (and other providers which are subject to the new reimbursement method); at least five would be representatives of public (Federal, State, and local) health benefits programs; and the remainder would be persons who, through training, experience or attainments, are particularly and exceptionally well qualified to serve in carrying out the Commission's functions.

The method of reimbursement established by the bill for routine hospital costs would be as follows. Comparisons among hospitals would be made by:

1. Classifying hospitals in groups by bed size, type of hospital, rural or urban location, or other criteria established by the Secretary; and
2. Comparing the routine costs (as defined for purposes of applying the medicare routine cost limits under present law) of the hospitals in each group, except for the following routine variable costs: capital and related costs; cost of approved education and training programs for health care personnel; costs of interns, residents and nonadministrative physicians; energy costs, and malpractice insurance costs.

When classifying hospitals by type, hospitals which are primary affiliates of accredited medical schools would be a separate category. The Health Facilities Cost Commission should give priority to the

development and evaluation of alternative definitions and classifications for this category of medical schools. The Commission should insure that the treatment of these medical center/tertiary care/teaching hospitals accurately reflects the hospital's role as a referral center for tertiary care patient services, as a source for the development and introduction of new diagnostic and treament technologies, and/or as the source of care for a high concentration of patients needing unusually extensive or intensive patient care services provided in routine service cost centers. In addition, these hospitals generally provide a broad range of graduate medical education programs and undergraduate medical clerkships. The committee recognizes that some medical schools, because of their organization and objectives, have more than one primary affiliate, and the primary affiliate classification should provide for the possibility of including more than one hospital in unusual situations. The primary affiliates category should not include affiliated hospitals which are not primary affiliates within the meaning of the concept described above.

A per diem target rate for routine operating costs would be determined for each hospital by:

1. Calculating the average per diem routine operating cost for each group of hospitals under the classification system (excluded would be newly-opened hospitals and hospitals which have significant cost differentials because they do not fully meet the standards and conditions of participation as providers of services); and

2. Determining the per diem rate for each hospital in the group by adjusting the labor cost component of the group's average per diem routine costs for area wage differentials. In the first year of the program only, an adjustment would be allowed where the hospital can demonstrate that the wages paid to its employees are significantly higher than the wages other employees in the area are paid for reasonably comparable work (as compared to the ratio for other hospitals in the same group and their areas).

The Secretary would adjust the per diem target rates by adding an annual estimated percentage increase in the cost of routine goods and services hospitals purchase, with an adjustment for actual changes at the end of a hospital's accounting year.

The committee recognizes that all the data for precise determination of routine operating costs and the labor and nonlabor components of such costs may not be available from cost reports for accounting years that begin in and prior to, 1980. To the extent necessary, the Secretary will be expected to make reasonable estimates on the basis of the data available to him. That is reasonably related to actual hospital cost experience.

Hospitals whose actual routine operating costs fall below their target rate would receive their actual costs plus one-half of the difference between their costs and their target rate with the bonus payments limited to 5 percent of their target rate. In the first year, hospitals whose actual costs exceed their target rate, but are no more than 115 percent of that rate, would be paid their actual costs. Those with costs above 115 percent of their target rate would have their reimbursement limited to 115 percent of the target rate.

In the second and subsequent years of the program, the hospital's maximum payment rate would be increased by the actual dollar increase in the average target rate for its group during the preceding year. In calculating the group averages, one-half of costs found excessive would be excluded from the calculation.

To ease transition of the program, only one-half of the bonuses and penalties would be applied during the first 2 years.

Adjustments to a hospital's target rate would be made for changes in the hospital's classification. Hospitals which manipulate their patient mix or patient flow, reduce services, or have a large proportion of routine nursing services provided by private-duty nurses would also be subject to an adjustment. Also, a hospital would qualify for any higher target rate that is applicable to the hospitals placed in the bed-size category which contains hospitals closest in bed size to its actual bed size. The target rate for hospitals which have average lengths-of-stay which are less than other hospitals in the same category could be calculated by multiplying the average reimbursement per patient stay for the hospital's category by the number of patient stays for that hospital, not to exceed its actual routine costs.

Adjustments would be made to the target rates of hospitals which demonstrate that their costs exceed their target rates because of (1) unusually high standby costs justified by low utilization in underserved areas; (2) atypical cost patterns of newly opened hospitals; (3) services changed for such reasons as consolidation, sharing, and approved addition of services (e.g., costs associated with low utilization of a new wing); and (4) greater intensity of patient care than other hospitals in the same category. Some hospitals have consistently shorter lengths of stay in treating patients than their group average for a reasonably similar mix of patients with comparable diagnoses. To the extent that a hospital can demonstrate that the shorter stays result from an "intensity" of service which makes it necessary for the hospital to incur additional costs, such additional costs per day would be recognized under the "intensity" exception provision, except where a hospital has had its target rate calculated on the cost-per-stay basis (to take into account shorter lengths of stay).

Hospitals would be exempted from the proposed cost limits if: (a) the hospital is located in a State which has established a hospital reimbursement control system which applies at least to the same hospitals and kinds of costs as are subject to the proposed Federal reimbursement reform system and (b) the State requests use of its own system and demonstrates to the satisfaction of the Secretary that, using the State's system, total medicare and medicaid reimbursement costs for hospitals in the State will be no greater than if the Federal system had been applicable. If the reimbursement system were not established by the State but in all other respects it meets the criteria for an exemption under the provisions of the bill, the reimbursement system would be considered to be established by the State if the State elects to have it so treated.

A State which exceeds, in the aggregate, the costs which would otherwise have been paid under the Federal programs for any two-year period would be covered under the Federal limits beginning with the subsequent year. The amount of the excessive payments would be

recouped over subsequent periods through appropriate reduction (not in excess of 1 percent annually) in the cost limits otherwise applicable.

States which obtain a waiver would be reimbursed for the medicare program's proportionate share of the costs the State incurs in operating the State reimbursement control system. The State's medicaid program would pay its proportionate share of costs, which would be matchable with Federal funds as an administrative expense.

Medicare and medicaid would also pay a proportionate share of startup costs incurred by a State following approval of State reimbursement control systems. The Federal share of the startup costs would be the same proportion as the Federal payment for inpatient hospital costs in the State bears to the total inpatient hospital costs which are subject to the State system. For example, if the Federal Government pays, through medicare and medicaid, 40 percent of the total hospital costs in the State that are subject to the State system, it would be liable for 40 percent of the State program's startup costs.

The committee expressed concern over the possibility that the new limits on reimbursement might lead to increased costs for other payors. The new Health Facilities Cost Commission should review the operation of the new medicare-medicaid hospital reimbursement system and report on the extent, if any, to which hospitals bill other payors to cover costs disallowed by medicare and medicaid.

The Commission is expected to also report to the Congress when, in its opinion, a State has, under its approved ratemaking system, established reimbursement under medicare and medicaid at levels so much below what would otherwise be payable in the absence of the State system, as to actually impair the ability of the hospitals to provide necessary care at reasonable cost.

If the HEW Secretary proposes to modify the method of reimbursement for reasonable costs under titles V, XVII, and XIX of the Social Security Act, he must submit such proposals to the Health Facilities Cost Commission. If the Commission disagrees with the proposals, regulations implementing such proposals must be submitted to the Congress and may not become effective for 60 days. In addition, section 660 of this bill requires the Commission to give priority to studying and recommending to the Secretary limits on reasonable costs and charges for outpatients services.

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

(Section 552 of the Bill)

Studies have pointed to a national surplus of short-term general hospital beds ranging as high as 100,000 beds. Excess capacity contributes significantly to hospital costs since the initial construction and financing expenses have to be recovered by the hospital. In addition there are the continuing expenses associated with maintenance, and nonpatient services involved in keeping an empty bed ready for use. Surplus beds contribute to cost escalation in other less obvious ways. Unnecessary or underutilized hospital facilities can drain scarce manpower and generate scarcities of trained personnel, which in turn drive

up salaries and may even threaten the quality of care. Coupled with the availability of hospitalization insurance, bed surpluses tend to generate pressures to use high cost hospital beds rather than less expensive alternative forms of care. The development of alternatives to inpatient facilities, such as primary care and community home care programs, suffers when investment is needlessly diverted to underutilized hospital bed capacity. Estimates of the savings that would accrue from closure or conversion of unused or underutilized facilities range from $2 billion to $4 billion annually, depending on whether the change involves closure or conversion of a particular service department as opposed to a whole hospital.

The bill provides for including in hospital reasonable cost payments, reimbursement for capital and increased operating costs associated with the closing down or conversion to approved use of underutilized bed capacity or services in nonprofit short-term hospitals. A hospital could apply for such payments *before or after* the conversion or closing takes place. In the case of for-profit short-term hospitals, reimbursement would be limited to increased operating costs. This would include costs which might not be otherwise reimbursable because of payment "ceilings", severance pay, "moth-balling" and related expenses. In addition, payment could be continued for reasonable capital costs in the form of depreciation allowances, or reimbursement for interest payments which would ordinarily be applied toward payment of outstanding debt which had been incurred in connection with the terminated beds. In the case of complete closing down of a hospital, payments would continue toward repayment of any debt, to the extent previously recognized by the program, and actually outstanding.

The Secretary would establish a Hospital Transitional Allowance Board which would consider requests for such payments. Appropriate safeguards would be developed to forestall any abuse or speculation. Prior to January 1, 1983, not more than 50 hospitals could be paid a transitional allowance in order to permit full development of procedures and safeguards. This limited application will also provide Congress with an opportunity to assess the effectiveness and economic effect of this approach in encouraging hospitals to close or modify excess and costly capacity without suffering severe financial penalty. The Secretary of HHS is required to report to the Congress, on or before January 1, 1982, an evaluation of the effectiveness of the program and any recommendations.

The committee recognizes that a facility which is generally underutilized, and which would therefore be potentially eligible for a transitional allowance to finance a facility conversion, may be the sole or primary source of care for needed health services in the community. It is the intent of this committee that the availability of a transitional allowance not encourage the conversion of a facility that is needed in the community. Therefore, it will be necessary for the Hospital Transitional Allowance Board to determine that the facility conversion will not have an adverse impact on access to needed health care services before the Board may recommend that the Secretary establish a transitional allowance for the hospital. Only in those cases in which reasonable access to needed health care services will not be jeopardized may a transitional allowance be recommended.

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

(Section 535 of the Bill)

The bill provides for the coordinated use of audit findings in the administration of medicare, medicaid and the maternal and child health program.

The committee has been concerned that the duplication of identical or similar auditing procedures used for the purpose of determining reimbursement under various Federal health benefit programs is costly to both the programs and the entity (such as a hospital, skilled nursing facility, or home health agency) participating in the program.

The committee bill therefore requires that, if an entity provides services reimbursable on a cost-related basis under title XVIII and titles XIX or V, audits of books, accounts, and records of that entity for purposes of the State Federal programs are to be coordinated through common audit procedures. Ordinarily, it is expected that the common audit would be performed for the purposes of reimbursement under title XVIII. However, in those cases where the Secretary finds, in the interest of efficiency and economy, that a State audit would be more appropriate, the State could, if it agrees to do so, perform the common audit for the three programs.

When a State declines to participate in a common audit, the Secretary is to reduce payments that would have been made to the State under title V or XIX by the amount attributable to the duplicative State audit activity. A State participating in the common audit procedure would continue to receive Federal matching for administrative costs associated with any additional or supplemental audit data or audits that may be necessary under their medicaid and maternal and child health programs. The committee expects that the common audits will be carried out in timely fashion in order to expedite the interprogram coordination.

APPORTIONMENT OF PROVIDER COST

(Section 554 of the Bill)

Under a policy that medicare adopted in July 1969, hospitals are reimbursed for a disproportionately large share of the costs of routine nursing care on the theory that older hospital patients require an above-average amount of routine nursing services per day. This inpatient routine nursing salary cost differential is 8½ percent of the inpatient routine nursing salary cost. However, there was no objective, convincing evidence that this "plus factor" was warranted at that time, either in the case of individual hospitals or in the aggregate. Since July 1969, when the inpatient routine nursing salary cost differential became effective, there have been changes in medicare law, changes in the way services are furnished, and changes in the way medicare reimburses for routine services that make the cost differential even less tenable today. One argument against the cost differential is that the increase in the number of below-age-65 population beneficiaries has made an average routine per diem amount for all beneficiaries (excluding recognition of any differential) more appro-

priate. Also, with the growth of special-care beds (intensive care, coronary care, etc.), there has been a shift of the intensely ill from general routine-care areas to these special-care units. There has been greater utilization of these special-care units than of routine care areas by medicare beneficiaries. More intensive nursing care is now being given in these special-care units, making the nursing cost differential for routine services unnecesary.

The bill provides that no medicare payments may be made if the payment exceeds the proportional share of the cost, as measured by days of utilization or provider charges, until such time as evidence can be produced which, in the judgment of the Comptroller General, and concurred in by the Secretary of HHS, justifies a specific plus factor as warranted under particular circumstances for certain facilities.

Under the bill, the routine nursing cost differential would be retained through March 1981. During this time, GAO would conduct a study to determine which hospitals (classified, as appropriate, by type, size, location, patient characteristics, average length of stay, types and availability of nursing service, etc.) might be entitled to a nursing cost differential and the amount that was warranted. During the second half of fiscal year 1981, payment of the nursing cost differential would be suspended while the results of the GAO study are translated into new, more equitable nursing cost differential payment regulations. These new regulations would become effective in October 1981 and would apply not only prospectively but also retroactively, where applicable, to services furnished during the latter half of fiscal year 1981. It is the committee's intent that the Comptroller General will initiate the required studies without delay.

REIMBURSEMENT FOR INAPPROPRIATE INPATIENT HOSPITAL SERVICES

(Section 555 of the Bill)

Professional Standards Review Organization (PSRO's) have found thousands of medicare and medicaid patients being kept in costly acute-care hospital beds instead of being appropriately placed in nursing facilities home care programs or detoxification units. The situation occurs most frequently in those areas where there is a surplus of hospital beds and a shortage of long-term care beds.

To prevent this wasteful expenditure of public funds and encourage a more rational use of health resources, the bill provides that, effective October 1, 1980, medicare and medicaid payments to hospitals would be made at the average skilled nursing facility (SNF), intermediate care facility or detoxification facility payment rate (as may be appropriate) in the State, rather than the much higher hospital rate, for patients medically determined by PSRO reviewers to need care in such a lower-cost facility home care program. (In no case, however, could a facility that has a unit that can provide the appropriate level of care be paid more under this provision than it could be paid if it had placed the patient in the appropriate unit.) For example, if the PSRO determined that a hospitalized medicare patient could more appropriately be cared for in a SNF, and that he would be eligible for medicare benefits if he were an inpatient in such a fa-

cility, medicare payments for his hospital care would be paid at the SNF rate. Days of care paid by medicare at the reduced, SNF rate woupld be counted against the patient's eligibility for skilled nursing facility benefits, and the skilled nursing facility benefit coinsurance rates would also be applicable. To prevent undue hardship, the limitation would not apply in those geographic areas where the appropriate State of local planning agencies certify that there is no general excess of hospial beds (adjusted for patients in hospital beds who do not need that level of care) and there is a shortage of long-term care beds.

In addition, the bill provides for payment to be made under medicare for inpatient detoxification services in a freestanding facility that is no a hospital. The "detoxification facility services" to be covered would be the same as those that are reimbursable when provided in a hospital. The term "detoxification facility" means a public or nonprofit facility other than a hospital which (a) is engaged in furnishing the above services to inpatients; (b) is either accredited by the Joint Commission on Accreditation of Hospitals as meeting its Accreditation Program for Psychiatric Facilities standards (1979 edition) or found by the Secretary to meet such standards; (c) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring services not available at the facility; and (d) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by the facility.

A physician (qualified to make such determinations) who has examined the patient prior to initiation of detoxification must certify that he needs to be detoxified on an inpatient basis.

Reimbursement for detoxification services would be made under medicare—Part A, on a reasonable cost basis, with no deductible or coinsurance.

The Secretary shall study and make recommendations, within 18 months of enactment, concerning the appropriateness of extending coverage to post-detoxification rehabilitation and to outpatient detoxification. The Health Facilities Cost Commission would review and recommend a method of classifying and comparing de oxification facilities in time to permit application of the reimbursement methodology within 2 years of enactment.

PSRO's would be directed to review the appropriateness of the services furnished by detoxification facilities for which medicare reimbursement is claimed. The committee understands that 3–5 days will ordinarily be sufficient for patients to complete the detoxification process.

PSRO REVIEW OF HOSPITAL ADMISSIONS, ROUTINE TESTING AND PREOPERATIVE STAYS

(Section 556 of the Bill)

Present policies direct PSRO's to review the appropriateness of hospital services received by medicare and medicaid patients. This review has been limited largely to a review of the need for the patient to be admitted to the hospital and on the appropriateness of the length

of the stay. Because of inadequate appropriations, PSRO's have generally been unable to undertake the review of the ancillary and outpatient services that hospitals provide, as required by existing law. PSRO studies and testimony before the committee have amply demonstrated the extent to which unnesessary or avoidable utilization occurs with respect to certain hospital practices that have not been subject to general across-the-board review, including: diagnostic tests routinely provided on admission without a physician's order; weekend elective admissions (i.e., Friday and Saturady admissions) to hospitals which are not equipped or staffed to provide needed diagnostic services on weekends; and preoperative stays for elective procedures of more than one day without justification for the additional days.

The bill directs PSRO's that are able to do so to give priority to reviewing these areas of relatively frequent overutilization to assure that payment is made under the public programs only when the routine tests and unusually long preoperative stays and weekend admissions for elective conditions are medically appropriate.

For example, as it now the case in some PSRO's elective admissions for surgery that involve preoperative stays of more than 1 day would require specific PSRO approval in order to be reimbursable. Similarly, weekend admissions for elective conditions would be reimbursable only where the PSRO finds that the hospital is equipped and staffed to provide necessary services over the weekend.

The committee recognizes the need for additional funds for the PSRO program to engage in these reviews and expects that such funds will be made available.

CERTAIN SURGICAL PROCEDURES PERFORMED ON AN AMBULATORY BASIS

(Section 557 of the Bill)

Currently, medicare can reimburse the physician for his professional services in any setting. Also, the institutional costs of ambulatory surgery in a hospital outpatient department can be reimbursed. However, a charge for the use of special surgical facilities in a physician's private office or a free-standing surgical facility that is not hospital affiliated is not reimbursable.

Under the bill the physician performing certain listed surgical procedures in his office would be compensated for his special, surgical overhead through an all-inclusive rate if he accepts an assignment; there would be no deductible and coinsurance applied in such cases. Such procedures would include those which are often provided on an inpatient hospital basis but can, consistent with sound medical practice, be performed on an ambulatory basis. The rate would encompass reimbursement for the facility, physician related services, including normal pre-and post-operative visits and routine laboratory and other diagnostic tests usually associated with the procedure.

The list of procedures eligible for such reimbursement would be specified by the Secretary following consultation with the National Professional Standards Review Council and appropriate medical organizations including specialty groups. Subsequently, procedures could be added or deleted as experience dictated.

Normal review of such claims by Professional Standards Review Organizations, carriers and other present review mechanisms should work to safeguard against inappropriate or indiscriminate performance of procedures on an ambulatory basis.

Similarly, reimbursement would be provided for the use of the facilities in an ambulatory surgical center, without deductible or coinsurance, where the center accepts assignment. In the case of an ambulatory surgical center the payment could take the form of an all-inclusive rate, covering the facility overhead and physicians' fees or, alternatively, the overhead allowance could be paid directly to the center and the profesisonal fee could be paid directly to the surgeon and to other physicians who provide services in connection with the procedure. The deductible and coinsurance would also be waived for the physician for services performed in connection with listed surgical procedures in hospital outpatient departments and other ambulatory surgical centers where the physicians accept assignment.

The overhead factor is expected to be calculated on a prospective basis (and periodically updated) utilizing sample survey and similar techniques to develop reasonable estimated overhead allowances for each of the listed procedures which take account of volume (within reasonable limits). The committee does not intend that individual financial records be audited in order to determine a physician's or a center's specific overhead allowance. What is intended is a reasonable estimate of such costs of performing such procedures generally.

The committee expects that this provision will encourage performance of surgery in generally lower cost ambulatory settings, where appropriate, instead of the more expensive hospital inpatient setting. It anticipates that States will want to monitor the effectiveness of the new benefit with a view toward making similar modifications in their medicaid programs.

The committee is concerned that in some cases, a patient's stay in a hospital is unnecessarily protracted because it is less expensive to the medicare patient to receive diagnostic tests while in the hospital than prior to being admitted. The bill eliminates the financial incentives to unnecessary utilize hospital care in cases where needed diagnostic services are provided in the hospital's outpatient department within the 7-day period prior to the patient's admission. The Secretary, in consultation with the National Professional Standards Review Council, would be required to specify those preoperative medical and other health services which could safely be performed on an outpatient as well as inpatient basis. A physician performing a listed service on an outpatient basis within the 7-day period prior to the patient's admission for surgery (to which the service relates) would receive reimbursement equal to 100 percent of medicare's reasonable charge if he agreed to accept such payment as payment in full.

CRITERIA FOR DETERMINING REASONABLE CHARGE FOR PHYSICIANS' SERVICES

(Section 558 of the Bill)

Medicare currently utilizes more than 200 different "localities" throughout the country for purposes of determining part B "reason-

able" charges. For example, one State has 28 different localities. The committee notes that this has led in many instances to marked and unjustified disparities in areas of the same State in the prevailing charges for the same service. Additionally, under present law, increases in prevailing charges are limited to levels justified by changes in the costs of practice and wage levels. The committee is concerned that the effect of present law is to further widen the dollar gap between prevailing charges in different localities.

The bill provides for the calculation of statewide median charges (in any State with more than one locality) in addition to prevailing charges in the locality. To the extent that any prevailing charge in a locality was more than one-third higher than the statewide median charge for a given service, it would not be automatically increased each year. This provision would not reduce any prevailing charges currently in effect. However, it would operate, to the extent given charges exceed the statewide average by more than one-third, to preclude automatically increasing those charges.

Under existing law, medicare allows a new doctor to establish his customary charges at not greater than the 50th percentile of prevailing charges in the locality.

The bill would permit new physicians in localities which are designated by the Secretary as physician shortage areas, to establish their customary charges at the 75th percentile of prevailing charges (rather than the 50th) as a means of encouraging doctors to move into these communities. It would also permit doctors presently practicing in shortage areas to move up to the 75th percentile on the basis of their actual fee levels.

PROCEDURES FOR DETERMINING REASONABLE COST AND REASONABLE CHARGE

(Section 559 of the Bill)

The bill provides, except under certain specified circumstances, that reimbursement to contractors, employees or related organizations, consultants, or subcontractors at any tier would not be recognized where compensation or payments (in whole or part, in cash or kind) are based upon percentage arrangements.

Percentage arrangements can take several forms. For example, some involve business contracts for support services, such as computer and data processing, financial and management consulting, or the furnishing of equipment and supplies to providers of health services, such as hospitals. Charges for such services are subsequently incorporated into the cost base against which medicare and medicaid make their payment determinations.

The contracts for these support services specify that the remuneration to the suppliers of the services shall be based on a percentage of the gross or net billings of the health care facilities or of individual departments. Other examples involve landlords receiving a percentage of provider gross (or net) income in return for office space, equipment, shared waiting rooms, laboratory services, custodial and office help and administrative services. Such arrangements can be highly inflationary and add costs to the programs which may not reflect actual efforts expended or costs incurred.

The prohibition against percentage arrangements contained in this section of the bill would include payment of commissions and/or finders' fees and lease or rental arrangements on a percentage basis. It would also apply to management or other service contracts or provision of services by collateral suppliers such as pharmacies, laboratories, etc. The percentage prohibition would flow both ways either from the supplier or service agency back to the provider or organization, or from the original provider or organization to the supplier or service agency.

The committee does not, however, intend this provision to interfere with certain types of percentage arrangements which are customarily considered normal commercial business practices such as the commission paid to a salesman. Further, the bill does not prohibit reimbursement for certain percentage arrangements such as a facility management contract where the Secretary finds the arrangement contributes to efficient and economical operation.

For example, under some existing management contracts, the contractor receives both a percentage of operating expenses as a base management fee, and a share of the net revenues of the institution after all costs have been met. Where the contractor's percentage share of net revenues exceeds the percentage on which the base management fee is calculated, the contractor could have a strong incentive to contain operating expenses. Of course, under such circumstances, the reasonableness of the percentages applicable to the operating expenses would have to be considered in terms of comparison with the costs incurred in the management and/or operation of reasonably comparable facilities which do not utilize such contracts.

In the case of hospital-based physicians, on the other hand, the bill would permit recognition of percentage arrangements if the amount of reimbursement does not exceed an amount which would reasonably have been paid to the physician under relative value schedule approved for this purpose by the Secretary. Under such an approved relative value schedule, the charges of a given physician would be subject to a test of reasonableness in terms of that physician's usual contribution of time and effort in the provision of the services for which he bills.

Percentage arrangements entered into by hospitals and hospital-based physicians before January 1, 1979, could be recognized subject to the same tests of reasonableness as were prescribed by regulations in effect on such date until such time as the hospital is able to unilaterally terminate such arrangement, or January 1, 1982, whichever is earlier.

The bill directs the Secretary to conduct a study of hospital-based physician reimbursement and the impact of alternative reimbursement methods on providers, patients, physicians, and third-party payers. He must submit his findings, together with legislative recommendations within two years of enactment.

The committee recommends that HHS adopt as its policy under existing law those provisions relating to the reimbursement of anesthesiologists' services which were included in S. 505, which contained the predecessor of this provision. That provision would provide that full fees could be paid to an anesthesiologist only where he personally performed all the professionally appropriate pre- and post-anesthetic services and carried out the most demanding procedures in connection with administration of the anesthesia for no more than

two patients. Payments equal to one-half of the full fee for each patient could be made where the anesthesiologist personally directed other individuals in carrying out the most demanding procedures, provided the anethesiologist personnally performed the other pre- and post-anethetic services and was resopnsible for no more than four patients during the course of anesthesia administration.

LIMITATION ON REASONABLE COST AND REASONABLE CHARGE FOR OUTPATIENT SERVICES

(Section 560 of the Bill)

The bill requires the newly established Health Facilities Cost Commission to give priority to the development of limitations on hospital outpatient and clinic costs. Further, the Secretary is required to issue regulations providing for the establishment of such limitations.

As a result of various limits placed by public agencies and others on inpatient hospital expenditures, some hospitals have sought to have a disproportionately large share of their total costs financed by the revenues from their outpatient departments. In addition, reimbursement to community health centers and similar freestanding clinics which are presently paid on a cost-related basis, have, according to the General Accounting Office sometimes proved to be excessive.

The bill therefore requires the Health Facilities Cost Commission (established under Section 202 of this bill) to give immediate priority to making a study and submitting recommendations to the Secretary with respect to setting limitations on costs or charges for outpatient services. Further, the Secretary is required to issue regulations establishing such limitations with respect to services provided on an outpatient basis by hospitals, community health centers, or clinics (other than rural health clinics) and by physicians using such facilities.

MEDICARE LIABILITY WHERE PAYMENTS CAN BE MADE UNDER LIABILITY INSURANCE

(Section 561 of the Bill)

The bill provides that medicare would not be the payor of first resort in cases where the patient is involved in an accident and his care can be paid for under liability insurance of the individual who was at fault or under a no-fault insurance plan.

Under present law, medicare is ordinarily the payor of first resort except in certain cases, e.g., where the patient has no legal obligation to pay, or where workmen's compensation is responsible for payment for the patient's care.

The bill provides that where the medicare patient is involved in an accident and his care can be paid for under the insurance of the individual who was at fault (or under a no-fault plan), medicare would have residual and not primary liability. Under this provision, medicare would pay for the patient's care in the usual manner and then seek to be reimbursed by private insurance after, and to the extent that, liability has been determined. The bill leaves to the discretion of the Secretary an evaluation of the probability of recovery

and the minimum amounts estimated as recoverable, so as to avoid the administrative cost and effort of pursuing minor recoveries or situations where there is little likelihood of ultimate recovery.

ACCESS TO AND PURCHASE OF CERTAIN MEDICAID SERVICES

(Section 562 of the Bill)

The bill allows a State to arrange for a purchase services for its medicaid population through cost-effective arrangements, for services that meet applicable State and Federal laws, regulations and standards.

Under present law, medicaid recipients are permitted to choose from among hospitals and other suppliers of health care that are covered by the State program.

While this well-intentioned provision was designed to permit medicaid patients to choose among any qualified supplier of covered services, in the same manner as the patients, it has met with only partial success. On the other hand, it has in some instances led to the inefficient expenditure of often limited medicaid funds by depriving the State of discretion to purchase or arrange for medicaid services, equipment and supplies prudently and economically. In some cases, this inability to negotiate with the health care community has required States to pay the top dollar for some services—especially institutional services—while at the same time shortages of funds make it necessary for the State to impose harsh restrictions on the kinds of health services it covers and the number of low income people who can qualify for aid.

The bill would allow States greater discretion in arranging for hospital and other institutional services, clinic services, laboratory services and medical supplies and equipment for Medicaid recipients through cost-effective arrangements. However, the State could not pay less for inpatient hospital services under this provision than the cost that is found to be reasonable and necessary in the efficient delivery of hospital services in the geographic area where the hospital is located.

Provision would be made to assure that beneficiaries have reasonable access to services (including emergency services) that fully meet program standards of quality. In addition, provision would be made to avoid having a substantially adverse effect on appropriate and necessary use of hospitals with graduate medical education programs.

The Secretary is expected to carefully monitor the effects, if any, of operation of this section upon appropriate and necessary graduate medical education. If a pattern is found indicating serious impairment of such graduate education the Secretary is expected to require appropriate corrective modification by a State.

MEDICARE HOSPITAL PERIODIC INTERIM PAYMENTS (PIP)

(Section 563 of the Bill)

Medicare currently offers hospitals two payment procedures. First, there is a procedure under which payments are made to the hospital

on the basis of bills which state what covered services have been furnished during the billing period. On the average, there is a 6 week lag between the rendition of a service and the receipt by the hospital of the payment. (Only about 10 to 14 days of this lag is attributable to time taken by the medicare intermediary in processing the bill.)

Under the alternative procedure, hospitals receive, "periodic interim payments" (PIP) which are not directly tied to the receipt of bills. On the average, this procedure produces only a three week lag between rendition of the service and receipt of payment.

The bill would amend the PIP payment procedure for hospitals by providing for payment to be withheld during September 1981 so that the lag would be increased to the average of about six weeks delay experienced by hospitals that use the standard method. The deferred payments would be paid to the hospitals in October 1981.

DISALLOWANCE OF STATE CLAIMS FOR FEDERAL MEDICAID FUNDS

(Section 564 of the Bill)

At present, when a State's claim for Medicaid matching funds is disallowed by the Federal Government, the State may appeal the decision and retain the funds that are in dispute until a final determination is made. A decision on an appealed disallowance can take as long as two years, and during this period the Federal Government loses interest on the disputed funds whether or not the appeal is settled in its favor.

The bill authorizes the Secretary of HHS to offset amounts in dispute from other Medicaid funds due the State until the appeals process has been exhausted. If the final decision is in the State's favor, the Federal Government would repay the money to the State with interest.

REIMBURSEMENT RATES UNDER MEDICAID FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

(Section 565 of the Bill)

Present law requires States participating in medicaid to pay skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) on a reasonable cost-related basis. This requirement, added by Section 249(a) of the Social Security Amendments of 1972, was designed to assure that payment rates would more closely reflect the reasonable cost necessary to provide nursing home services of adequate quality. Section 249(a) gives States the option of using medicare's reasonable cost reimbursement formula for purposes of reimbursing SNFs and ICFs or developing other reasonable cost-related methods of reimbursement acceptable to the Secretary.

States have argued that the complex and long-delayed Federal regulations implementing the statutory requirement of section 249 (a) have unduly restrained their administrative and fiscal discretion and that the Federal approval process has forced States to rely heavily on medicare principles of reimbursement. Neither of these consequences was intended when section 249(a) was enacted.

The committee continues to believe that States should have flexibility in developing methods of payment for their medicaid programs and that application of the reasonable cost reimbursement principals of the medicare program for long-term care facility services is not entirely satisfactory. These principals are inherently inflationary and contain no incentives for efficient performance.

The committee bill deletes the present language of section 1902(a)(13)(E) of the act (which was added by section 249(a) of the 1972 legislation) and substitutes language which gives the States flexibility and discretion, subject to the statutory requirements of this section and the existing requirements of section 1902(a)(30) and section 1121 of the Act, to formulate their own methods and standards of payment.

Under the bill, States would be free to establish rates on a statewide or other geographic basis, a class basis, or an institution-by-institution basis, without reference to medicare principles of reimbursement. The flexibility given the States is not intended to encourage arbitrary reductions in payment that would adversely affect the quality of care. Under the bill, the State would be required to find, and make assurances satisfactory to the Secretary, that the payment rates, taking into account projected economic conditions during the period for which the rates are set, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations and standards. The State would also be required to assure the Secretary that it has provided for the filing by the facilities of uniform cost reports and for their periodic audit by the State.

The Congress expects that the Secretary will keep regulatory and other requirements to that minimum necessary to assure proper accountability, and not to overburden the States and facilities with marginal but massive paperwork requirements. It is expected that the assurances made by the States will be considered satisfactory in the absence of a formal finding to the contrary by the Secretary.

In establishing rates, a State, at its option, could include incentive allowances designed to encourage cost containment through efficient performance, as well as incentives to attract investment where such investments would serve to alleviate demonstrated shortages of long-term care services. In addition, States would continue to have the option provided in current Federal Regulations to adjust rates downward for facilities with deficiencies where facilities are classed by quality of service or level of care.

The Secretary would be expected to continue to apply current regulations which require that payments made under State plans do not exceed amounts which would be determined under the medicare principles of reimbursement. Since States would be free under the bill to establish payment rates without reference to medicare principles of reimbursement, the Secretary would only be expected to compare the average rates paid to SNF's participating in medicare with the average rates paid to SNF's participating in medicaid in applying this limitation.

LIMITS ON REIMBURSEMENT FOR HOME HEALTH VISITS UNDER MEDICARE

(Section 566 of the Bill)

On June 5, 1980, the Department of HHS published in the Federal Register the revised schedule of limits on home health agency costs that may be reimbursed under medicare for cost reporting periods that begin during the 12-month period that will begin July 1, 1980. The limits, which are authorized under legislation enacted in 1972, expressed as costs per visit. Although separate limits are established by type of service, they are applied to each agency as a single aggregate limit, based on the agency's number of visits for each type of service. The schedule of limits was based on (1) a classification of home health agencies according to their location within a Standard Metropolitan Statistical Area (SMSA), a New England County Metropolitan Area (NECMA) or a non-SMSA; (2) limits set at the 80th percentile; and (3) an estimated inflation factor. The limits, which are presented below, are adjusted to take account of local wage differentials when applied to the individual agency—

Type of visit	SMSA (NECMA) location	Non-SMSA location
Freestanding agencies:		
Skilled nursing care	42.67	44.75
Physical therapy	42.42	49.62
Speech pathology	44.04	48.35
Occupational therapy	45.24	57.30
Medical social services	48.79	43.46
Home health aide	32.26	31.49
Provider-based agencies:		
Skilled nursing care	54.17	47.23
Physical therapy	47.87	46.37
Speech pathology	47.52	(1)
Occupational therapy	49.94	(1)
Medical social services	54.54	(1)
Home health aide	47.36	42.95

[1] Insufficient data—Use basic services limits for free standing non-SMSA agencies.

The committee believes that these limits are set at an unrealistically high level. In part, this is because the limits are based on unaudited cost reports which include inflated costs. More important, in averaging the costs per visit, the costs of a large agency were given no more weight than those of a small agency. The result of these problems in the calculation and others is that medicare is now prepared to pay more in some instances for a single visit to the patients home than is paid for an entire day of room and board and skilled care at a nursing home.

High payment ceilings are particularly troublesome in the home health area because many of the private agencies are organized primarily to serve medicare patients. For such agencies there is little incentive to hold down costs so long as they are reimbursable under medicare.

The bill would limit allowable costs for home health agency services under medicare to amounts not in excess of the 75th percentile of

weighted average audited costs. These limits would be applied separately to each type to visit, rather than on an aggregate basis, when revisions in the existing cost reporting procedures make this possible. (This methodology is similar to that used in calculating allowable charges for physicians' services.) In addition, the allowable cost of skille nursing visits and home health aide visits would not exceed medicaid skilled nursing facility per diem rates, hospital-based facility rates in the case of hospital-based home health agencies and other skilled nursing facility rates in the case of nonhospital-related agencies.

The bill also makes changes of a technical nature that are intended only to make home health payment limits more equitable by assuring that nursing service costs and visits are properly accounted for. These changes would in no way affect beneficiaries eligibility for home health benefits. One of these changes provides that visits that are required by regulation to assure that home health aides' services are being properly performed would be recognized for reimbursement purposes as visits. They are now treated as part of the agencies' overhead. Similar treatment would be provided for home health assessment visits which are necessary to determine whether a referred patient is suitable for home health services and eligible for medicare. For an assessment visit to qualify for visit status (even though the beneficiary was determined ineligible), the referral would have to be made by a hospital discharge planner, a physician or other person who has knowledge of the patient's health care needs and the home health benefit requirements and who believes that the patient should be eligible for covered services.

The committee is also concerned that a given home health agency may have to incur substantially more travel costs, compared to the agencies with which it is classified, in order to provide needed care to distant patients. The committee believes that the Secretary should provide for exceptions to be made for agencies that exceed the payment limits because of necessary, substantially atypical travel costs (including both transportation costs and the cost of salaries to personnel while traveling).

DETERMINATION OF REASONABLE CHARGES UNDER MEDICARE

(Section 567 of the Bill)

Medicare reasonable charges are updated in July of each year to keep pace with certain economic changes. All bills that the medicare carrier receives after the charges are updated are paid at the higher rate. In effect, the amount of the medicare payment often depends on how long the claimant delays billing rather than on the charge levels in effect when the medical service was provided. To eliminate this inequity, the bill includes a provision under which the medicare reasonable charges that are payable would depend on the date the medical service was rendered rather than the date the medicare claim was processed.

G. Fund Transfer Provision

(*Part G of Title V*)

DEFERRED TRANSFER OF CERTAIN FUNDS TO TRUST FUNDS

(Section 571 of the Bill)

Present law.—The social security and medicare programs are funded through earmarked payroll taxes. These taxes are paid into the Treasury by employers, employees, and self-employed persons. Amounts exactly equal to the tax collections are then appropriated out of the general Treasury and into the social security and medicare trust funds under a permanent standing appropriation in the Social Security Act. Under the accounting system used for purposes of the Budget Act, budget authority for trust fund programs is considered to arise at the moment when the tax receipts are appropriated into the trust funds. As a result, the various savings provisions approved by the committee in trust fund programs will not result in a reduction in the 1981 budget authority for those programs although they do result in 1981 outlay reductions and do reduce the amount of budget authority that will ultimately be needed to operate the programs.

Committee amendment.—In order to meet the reconciliation requirements for fiscal 1981 budget authority reductions, the committee amendment provides that $0.6 billion in social security and medicare tax receipts which would otherwise be transferred to the trust funds at the end of September 1981 will instead be transferred to the trust funds after the end of that month. This will reduce budget authority for fiscal 1981 by that same amount.

III. Regulatory Impact of Finance Committee Amendments

In conformance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate the following Finance Committee evaluation is made of the regulatory impact which would be incurred in carrying out title VI of the bill.

A. UNEMPLOYMENT COMPENSATION PROVISIONS

The sections in Part A of title V of the bill modify a number of aspects of the unemployment compensation programs. Sections 501 and 503, dealing with extended benefit trigger levels, should reduce the Federal regulatory impact on the States inasmuch as they increase State flexibility by removing an existing-law mandatory provision and increase the scope of flexibility under an existing-law optional provision. Ultimately the economic impact of these provisions is likely to be a reduction in the unemployment tax burden on employers reflecting a similar reduction in benefits to individuals. The level of this impact is indicated in the budgetary impact section of this report.

Section 502 is intended to affect State benefit rules concerning payment of benefits for the first week of unemployment. These rules may require some regulatory activity by the Department of Labor to ex-

plain and monitor the carrying out of these provisions. No significant amount of paperwork is anticipated.

Section 504 simply changes a qualifying service requirement from one period of time to another (90 days to one year).

Section 505 relates essentially to the method of accounting within Federal agencies for an existing expenditure item and except for the impact within those agencies should have no regulatory effects.

Sections 506 and 507 establish certain new limits on the payment of extended unemployment compensation benefits. As such, the provisions can be expected to (and are intended to) have an impact on individuals who would otherwise receive benefits under this program. However, those affected would be a relatively small proportion of the total population extended benefit recipients. The implementation of these provisions will involve some regulatory impact on applicants and on the State agencies that administer the program inasmuch as these provisions will require somewhat different eligibility rules for the extended benefit program than those that apply to the regular program (except to the extent that States choose to implement these rules in their regular programs). However, the regulatory impact is not expected to be excessive since States already receive information concerning nonresident beneficiaries and the prior wage history of applicants. The provision barring extended benefit payments to persons who have left jobs voluntarily or for misconduct is based on existing State findings and should therefore involve minimal new regulatory impact. The provision denying extended benefits to individuals refusing any reasonable job offer does differ from existing State programs in most jurisdictions and will therefore involve additional regulatory measures. However, an identical provision was previously in force under the now-expired Emergency Unemployment Compensation Act of 1974. Consequently, the procedures to carry out this provision should not be excessively difficult to develop and implement.

The Committee on Finance believes that none of the provisions of part A of title V will have any substantial paperwork impact and that none of them can be expected to affect the personal privacy of individuals.

B. SSI PROVISION

Section 511 of the bill is intended to eliminate an abusive situation in which individuals with disqualifying assets intentionally divest themselves of those assets in order to qualify for cash and medical assistance. The provision will require some additional paperwork and some disclosure of personal information concerning property transactions which SSI applicants engaged in during the two years prior to application for benefits. This is, however, consistent with and similar in nature to other informational requirements of existing law concerning the economic status and resources of applicants for assistance. The information will be utilized solely for purposes of program administration. For the great majority of SSI recipients, this requirement will have no economic impact. It will, however, have an adverse economic impact on those individuals who would otherwise attempt to qualify for benefits by disposing of assets.

C. TEMPORARY SUSPENSION OF DAY CARE REGULATIONS

Section 521 of the bill will postpone until October 1, 1981 the implementation of regulations recently promulgated by the Department of Health and Human Services governing child care for which Federal funding is claimed under title XX of the Social Security Act. This provision will defer the substantial regulatory impact of those regulations on providers and recipients in order to allow time for Congress to further examine that impact and to determine whether the regulations should be implemented and, if so, whether additional Federal resources are required.

D. PUBLIC ASSISTANCE PAYMENTS TO TERRITORIAL JURISDICTIONS

Section 531 of the bill will plhase-in the increased funding for territorial public assistance programs which was provided for in Public Law 96-272 (H.R. 3434). Under this section, the additional funding for fiscal 1980 will be reduced from $52 to $13 million and for fiscal 1981 from $52 to $26 million. Thereafter, the permanent increase of $52 million will be effective. This should not affect the long-term economic situation of individuals although it will have some economic impact in fiscal years 1980 and 1981. The provision should require no additional regulatory activity and no impact on paperwork or privacy.

E. SOCIAL SECURITY PROVISIONS

Section 541 of the bill is an accounting transaction between two social security trust funds which has no impact of a regulatory nature. Section 542 simply reduces an existing law limit on the retroactivity of benefits from 12 months to 3 months prior to the month of application. It should have no impact of a regulatory, paperwork, or privacy nature and should affect only those relatively few applicants who do not file for benefits until some months after they have become eligible for them. Section 543 places limitations on the payment of benefits to prisoners and to persons who become disabled in the commission of criminal actions. Because of the relatively small number of individuals affected, the Committee believes that this provision has no significant regulatory impact. It is estimated that about 6,000 persons are now receiving benefits while in prison. For those affected, there will be some impact on economic status and on privacy (in that the Social Security Administration will be required to determine that they are in prison and that their disabilities arose in the commission of crimes). The Finance Committee does not consider these impacts to be inappropriate.

F. HEALTH PROVISIONS

In implementing the various provisions of Part F of title VI there will be some increase in Federal regulatory activity. It is not anticipated, however, that the legislation would impose an unusual or burdensome regulatory effect. Several provisions will, in fact, decrease regulatory activity and associated paperwork.

Section 551 of the bill would generate the most significant new regulatory activity since a new method of reimbursement under medicare

and medicaid is required. Revised regulations will be necessary to implement a procedure for determining hospital "target" rates, as well as implement a procedure for determining exceptions to those rates. In addition, the Secretary would be required to implement procedures to evaluate State ratemaking programs for the purpose of determining exemptions from the Federal program.

The authorization for payments under the legislation to promote closing and conversion of underutilized facilities establishes a new procedure that would also require implementing regulations.

A provision that directs PSRO's to review certain questionable utilization practices would incease PSRO's review activities.

Provisions that will decrease regulations and paperwork include the provision for coordinated audits under titles V, XVIII, and XIX; and authority for States to arrange for the cost-effective purchase of certain services and certain medical devices under medicaid.

G. FUND TRANSFER PROVISION

Section 571 of the bill is an internal Treasury accounting provision which has no regulatory impact.

IV. Budgetary Impact of Finance Committee Amendments

In conformance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and with sections 308 and 403 of the Congressional Budget Act of 1974, the following statements are made relative to the budgetary impact of the Finance Committee amendments included in title V of the bill.

The Finance Committee estimates the budgetary impact of the provisions of title V to be as shown in the following table. These estimates were made after consultation with the Congressional Budget Office.

The estimates of the Congressional Budget Office on the provisions of title V appear in Appendix B.

OUTLAY REDUCTIONS UNDER FINANCE COMMITTEE PROPOSALS FOR RECONCILIATION PROCESS FOR FISCAL YEAR 1981 BUDGET RESOLUTION, FISCAL YEARS 1981-85

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Legislation already enacted:[1]					
Social security disability amendments (H.R. 3236)	−133	−374	−656	−972	−1,269
Social services amendments (H.R. 3434)	−92	−88	−96	−104	−112
A. Unemployment compensation:					
Sec. 501:—Elimination of national trigger	(2)	−300	(2)	(2)	(2)
Sec. 502:—Waiting period	−25	−27	−30	−32	−33
Sec. 503:—Optional State trigger	−30	−30	−30	−30	−30
Sec. 504:—Unemployment benefits for ex-servicemen	−43	−47	−51	−55	−57
Sec. 505:—Unemployment benefits for Federal employees	−11	−12	−13	−14	−15
Sec. 506:—Limit extended benefits for non-residents	−46	−30	−28	−19	−15
Sec. 507:—Extended benefits:					
Not payable on the basis of less than 20 weeks of employment	−120	−180	−90	−35	−20
Not payable to persons who leave jobs voluntarily or for misconduct	−32	−49	−24	−10	−6
Not payable to persons refusing any reasonable job	−94	−145	−72	−29	−16

See footnotes at end of table.

OUTLAY REDUCTIONS UNDER FINANCE COMMITTEE PROPOSALS FOR RECONCILIATION PROCESS FOR FISCAL YEAR 1981 BUDGET RESOLUTION, FISCAL YEARS 1981–85—Continued

[In millions of dollars]

	Fiscal year—				
	1981	1982	1983	1984	1985
Legislation already enacted: [1]—Continued					
Social security disability amendments (H.R. 3236)—Continued					
Social services amendments (H.R. 3434)—Continued					
B. Sec. 511:—Limit SSI eligibility for individuals who dispose of resources	−15	−31	−40	−49	−55
C. Sec. 521:—Temporary suspension of Federal day care regulations	−20				
D. Sec. 531:—Public assistance payments to territorial jurisdictions	−26				
E. Social security provisions:					
Sec. 541:—Reallocation of OASI taxes between OASI and DI					
Sec. 542: 3-mo limit on retroactive benefits	−150	−250	−260	−270	−280
Sec. 543: Social security benefits for prisoners	−16	−17	−19	−21	−24
F. Health provisions:					
Sec. 151: Hospital routine cost limits	−70	+134	+46	−283	−521
Sec. 552: Closure/conversions of underutilized facilities	−2	−9	−23	−44	−72
Sec. 553: Coordinated audits	−4	−5	−6	−6	−7
Sec. 554: Apportionment of provider costs	−75	(2)	(2)	(2)	(2)
Sec. 555: Inappropriate hospital services	−151	−230	−262	−297	−339
Sec. 556: PSRO review of hospital admissions routine tests and preoperative stays	−25	−65	−86	−102	−119
Sec. 557: Ambulatory surgery	−5	−15	−20	−25	−25
Sec. 558: Criteria for determining reasonable charge for physican services	−15	−20	−25	−25	−25
Sec. 559: Procedures for determining reasonable cost charge (hospital-based physician and business services)	−25	−70	−91	−114	−140
Sec. 560: Outpatient services charge limit	−23	−26	−31	−36	−41
Sec. 561: Medicare liability in accident cases	−14	−32	−75	−135	−156
Sec. 562: Access to and purchase of medicaid services	−91	−227	−273	−314	−363
Sec. 563: Medicare hospital reimbursement: periodic interim payments (PIP)	−675	+682			
Sec. 564: Disallowance of certain State medicaid claims	−147	−83	−16	−18	−20
Sec. 565: Reimbursement under medicaid for skilled nursing and intermediate care facilities	−2	−2	−2	−2	−2
Sec. 567: Home health agency reimbursement limits	−73	−86	−99	−114	−131
Sec. 568: Calculating medicare reasonable charges	−147	−226	−231	−250	−279
G. Sec. 571: Transfer of funds to trust funds					
Total	−2,397	−1,860	−2,603	−3,405	−4,172

[1] Consistent with the reconciliation accounting system, the amounts shown for H.R. 3236 and H.R. 3434 are the gross savings of benefit reduction provisions rather than the net budgetary impact of the bills.
[2] No savings under First Budget Resolution economic assumptions.
[3] No estimate available.

V. Changes in Existing Law Made by Finance Committee Amendments

In conformance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Finance Committee amendments included in title V of the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic type, existing law in which no change is proposed is printed in roman type) :

SOCIAL SECURITY ACT, AS AMENDED

* * * * * * *

TITLE II—FEDERAL OLD-AGE SURVIVORS, AND DISABILITY INSURANCE BENEFITS

FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND

Section 201. (a) * * *

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1), and of such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, and (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, [(H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported] *(H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported*, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2) (A) 3/8 of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, and (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, [(H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989,] *(H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989,* which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

* * * * * * *

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS

OLD-AGE INSURANCE BENEFITS

SEC. 202. (a) * * *

CHILD'S INSURANCE BENEFITS

(d) (1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding which ever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22,

but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, or, subject to section 223(e), the termination month (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by

application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity, or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shal, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 223(a), or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full time student or is under a disability (as defined in section 223(d)), and (ii) had not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability.

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time student, or (ii) the month in which he attains the age of 22, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22.

(7) For the purposes of this subsection—

(A) A "full-time student" is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the institutions involved, except that no individual shall be considered a "full-time student" if he is paid by his employer while attending an educational institution at the request, or pursuant to a requirement, of his employer. *An individual shall not be considered a "full-time student" for the purpose of this section while that in-*

dividual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the date of the enactment of this paragraph) which constituted a felony under applicable law.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an educational institution immediately following such period.

(C) An "educational institution" is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three intitutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(D) A child who attains age 22 at a time when he is a full-time student (as defined in subparagraph (A) of this paragraph and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a degree from a four-year college or university shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the educational institution (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) An individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits.

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be

deemed not to meet the requirements of clause (i) or (iii) of paragraph (1) (C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) (i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States.

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists as the time of adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or the month in which such individual became entitled to disability insurance benefit, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

(9) (A) A child who is a child of an individual under clause (3) of the first sentence of section 216(e) and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1) (C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such indivdual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

* * * * * * *

APPLICATION FOR MONTHLY INSURANCE BENEFITS

(j)(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he field application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to the end of the [twelfth] *third* month immediately succeeding such month. Any benefit under this title for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205 (b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary.

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) for any month prior to the month in which he or she files an application for benefits under that subsection if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q), the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed.

(B)(i) If the individual applying for retroactive benefits is applying for such benefits under subsection (a), and there are one or more

other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) not subject to reduction under subsection (q), then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) If the individual applying for retroactive benefits is a widow, surviviing divorced wife, or widower and is under a disability (as defined in section 223(d)), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as as disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such months or any subsequent month.

(iii) If the individual applying for retroactive benefits has excess earnings (as defined in section 203(f)) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(iv) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled or a month prior to the month in which application for such benefits is filed.

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OTHER DEFINITIONS

SEC. 216. * * *

DISABILITY; PERIOD OF DISABILITY

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (3), (4), [and (5)] *(5), and (6)* of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

DISABILITY INSURANCE BENEFIT PAYMENTS

DISABILITY INSURANCE BENEFITS

SEC. 223. (a) * * *

DEFINITION OF DISABILITY

(d) (1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f) shal be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual) "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country;

(B) a widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in sub-

paragraph (D) thereof. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require.

Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

(6)(A) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with the commission of a crime by an individual (committed after the date of the enactment of this paragraph) for which such individual is subsequently convicted, or which is aggravated in connection with such a crime (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after the date of the enactment of this paragraph) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) No benefit shall be payable under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 15-month period following the end of his trial work period determined by application of section 222(c)(4)(A).

SUSPENSION OF BENEFITS FOR INMATES OF PENAL INSTITUTIONS

(f)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section, or under section 202(d) by reason of being under a disability, to any individual for any month

during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this title on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section.

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TITLE V—MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

* * * * * * *

APPROVAL OF STATE PLANS

SEC. 505. (a) * * *

(14) provides that acceptance of family planning services provided under the plan shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or the receipt of any service under the plan; [and]

(15) provides—

(A) that the State health agency, or other appropriate medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of services under the plan and, where applicable, for providing guidance with with respect thereto to the other State agency referred to in paragraph (2); and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform the function of determining whether institutions and agencies meet the requirements for participation in the program under the plan under this title[.]*; and*

(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for

purposes of such part, and (C) for payment of the portion of costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have other wise been incurred in an audit of the program established under title XVIII.

(b) The Secretary shall aprove any plan which meets the requirements of subsection (a).

PAYMENTS

SEC. 506. (a) From the sums appropriated therefor and the allotments available under section 503(1) or 504(1), as the case may be, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing July 1, 1968, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan with respect to maternal and child health services and services for crippled children, respectively.

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installations as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) The Secretary shall also from time to time make payments to the States from their respective allotments pursuant to section 503(2) or 504(2). Payments of grants under sections 503(2), 504(2), 508, 509, 510, and 511, and of grants, contracts, or other arrangements under section 512, may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the section involved.

(d) The total amount determined under subsections (a) and (b) and the first sentence of subsection (c) for any fiscal year ending after June 30, 1968, shall be reduced by the amount by which the sum expended (as determined by the Secretary) from non-Federal sources for maternal and child health services and services for crippled chil-

dren for such year is less than the sum expended from such sources for such services for the fiscal year ending June 30, 1968. In the case of any such reduction, the Secretary shall determine the portion thereof which shall be applied, and the manner of applying such reduction, to the amounts otherwise payable from allotments under section 503 or section 504.

(e) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder from the allotments under section 503 or section 504 for any period after June 30, 1968, unless the State makes a satisfactory showing that it is extending the provisions of services, including services for dental care for children and family planning for mothers, to which such State's plan applies in the State with a view to making such services available by July 1, 1975 to children and mothers in all parts of the State.

(f) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder—

(1) with respect to any amount paid for items or services furnished under the plan after December 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under [the fourth and fifth sentences of section 1842(b)(3)] *subparagraphs (B)(ii), (B)(iii), (C), and (F) of section 1842(b)(4); or*

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b)(2); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirement imposed by section 1861(k) for purposes of title XVIII; and if such hospital has in effect such a utilization review plan for purposes of title XVIII, such plan shall service as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title; the Secretary is authorized to waive the requirements of this paragraph in any State if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1861(k).

(g) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(*h*) *For additional exclusions from reasonable charge see section 1134.*

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TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY

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FEDERAL ADVISORY COUNCIL

SEC. 908. (a) The Secretary of Labor shall establish a Federal Advisory Council, of not to exceed 16 members including the chairman, for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations to him for improvement of the system.

(b) The Council shall be appointed by the Secretary without regard to the civil service laws and shall consist of men and women who shall be representatives of employers and employees in equal numbers, and the public.

(c) The Secretary may make available to the Council an Executive Secretary and secretarial, clerical, and other assistance, and such pertinent data prepared by the Department of Labor, as it may require to carry out its functions.

(d) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703(b) for persons in government service employed intermittently.

(e) The Secretary shall encourage the organization of similar State advisory councils.

(f) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sum, not to exceed $100,000, as may be necessary to carry out the purposes of this section.

FEDERAL EMPLOYEES COMPENSATION ACCOUNT

Sec. 909. There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5, United States Code.

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TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

PART A—GENERAL PROVISIONS

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LIMITATION ON PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM

SEC. 1108. (a) Except as provided in 2002(a)(2)(C), the total amount certified by the Secretary of Health, Education and Welfare under title I, X, XIV, and XVI, and under parts A and E of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—

(1) for payment to Puerto Rico shall not exceed—
(A) $12,500,000 with respect to the fiscal year 1968,
(B) $15,000,000 with respect to the fiscal year 1969,
(C) $18,000,000 with respect to the fiscal year 1970,
(D) $21,000,000 with respect to the fiscal year 1971,
(E) $24,000,000 with respect to each of the fiscal years 1972 through 1978, [or]
[(F) $72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;]
(F) $72,000,000 with respect to the fiscal year 1979.
(G) $38,000,000 with respect to the fiscal year 1980,
(H) $48,000,000 with respect to the fiscal year 1981, or
(I) $27,000,000 with respect to the fiscal year 1982 and each fiscal year thereafter;

(2) for payment to the Virgin Islands shall not exceed—
(A) $425,000 with respct to the fiscal year 1968,
(B) $500,000 with respect to the fiscal year 1969,
(C) $600,000 with respect to the fiscal year 1970,
(D) $700,000 with respect to the fiscal year 1971,
(E) $800,000 with respect to each of the fiscal years 1972 through 1978, [or]
[(F) $2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;]
(F) $2,400,000 with respect to the fiscal year 1979,
(G) $1,200,000 with respect to the fiscal year 1980,
(H) $1,600,000 with respect to the fiscal year 1981, or
(I) $27,000,000 with respect to the fiscal year 1982 and each fiscal year thereafter;

(3) for payment to Guam shall not exceed—
(A) $575,000 with respect to the fiscal year 1968,
(B) $690,000 with respect to the fiscal year 1969,
(C) $825,000 with respect to the fiscal year 1970,
(D) $960,000 with respect to the fiscal year 1971,
(E) $1,100,000 with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979, [or]
[(F) $3,300,000 with respect to the fiscal year 1979;]
(F) $3,300,000 with respect to the fiscal year 1979,
(G) $1,650,000 with respect to the fiscal year 1980,
(H) $2,200,000 with respect to the fiscal year 1981, or
(I) $3,300,000 with respect to the fiscal year 1982 and each fiscal year thereafter.

(b) The total amount certified by the Secretary under part A of title IV, on account of family planning services and services provided under section 402(a)(19) with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $2,000,000.

(2) for payment to the Virgin Islands shall not exceed $65,000, and

(3) for payment to Guam shall not exceed $90,000.

(c) The total amount certified by the Secretary under title XIX with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $30,000,000.

(2) for payment to the Virgin Islands shall not exceed $1,000,000, and

(3) for payment to Guam shall not exceed $900,000.

(d) Notwithstanding the provisions of section 52(a) and 512(a) of this Act, and the provisions of sections 421, 503(1), and 504(1) of this Act as amended by the Social Security Amendments of 1967 and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam, American Samoa, and the Trust Territory of the Pacific Islands as he may deem appropriate.

* * * * * * *

ADJUSTMENT OF RETROACTIVE BENEFITS UNDER TITLE II ON ACCOUNT OF SUPPLEMENTAL SECURITY INCOME BENEFITS

SEC. 1127. Nothwithstanding any other provision of this Act in any case where an individual—

(1) makes application for benefits under ttile II and is subsequently determined to be entitled to those benefits, and

(2) was an individual with respect to whom supplemental security income benefits were paid under title XVI (including State supplementary payments which were made under an agreement pursuant to section 1616(a) or an administration agreement under section 212 of Public Law 93–66) for one or more months during the period beginning with the first month for which a benefit described in paragraph (1) is payable and ending with the month before the first month in which such benefit is paid pursuant to the application referred to in paragraph (1),

the benefits (described in paragraph (1)) which are otherwise retroactively payable to such individual for months in the period described in paragraph (2) shall be reduced by an amount equal to so much of such supplemental security income benefits (including State supplementary payments) described in paragraph (2) for such month or months as would not have been paid with respect to such individual or his eligible spouse if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively; and from the amount of such reduction the Secretary shall reimburse the State on behalf of which such supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the period involved exceeded the expenditures which the State would have made (for such period) if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

HEALTH FACILITIES COSTS COMMISSION

Sec. 1128. (a) There is established a commission to be known as the Health Facilities Costs Commission (hereinafter in this section referred to as the "Commission").

(b) (1) The Commission shall be composed of fifteen members appointed by the Secretary—

(A) at least five of whom shall be individuals who are representatives of providers;

(B) at least five of whom shall be individuals who represent public (including Federal, State, and local) health benefit programs; and

(C) the remainder of whom shall be, as a result of training, experience, or attainments, particularly and exceptionally well qualified to assit in serving and carrying out the functions of the Commission.

One of the members of the Commission, at the time of appointment, shall be designated as Chairman of the Commission. The Secretary shall first appoint members to the Commission no later than October 1, 1980.

(2) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(4) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(5) Members of the Commission shall be appointed for a term of four years, except that the Secretary shall provide for such shorter terms for some of the members first appointed so as to stagger the date of expiration of members' terms of office.

(6) No individual may be appointed to serve more than two terms as a member of the Commission.

(7) Each member of the Commission shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per diem equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties vested in the Commission, and all members of the Commission shall be allowed, while away from their homes or regular places of business in the performance of service for the Commission, travel expenses (including per diem in lieu of subsistence) in the same manager as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(8) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(c) (1) It shall be the duty and function of the Commisison to conduct a continuing study, investigation, and review of the reimburse-

ment of hospitals for care provided by them to individuals covered under title XVIII or under State plans approved under title XIX, with particular attention to the criteria established by section 186(bb) with a view to devising additional methods for reimbursing hospitals for all other costs, and for reimbursing all other entities which are reimbursed on the basis of reasonable cost. These methods shall provide for appropriate classification and reimbursement systems designed to ordinarily permit comparisons of (A) the cost centers of one entity, either individually or in the aggregate, with cost centers similar in terms of size and scale of operation, (B) prevailing wage levels, (C) the nature, extent, and appropriate volume of the services furnished, and (D) other factors which have a substantial impact on hospital costs. The Commission shall also develop procedures for appropriate exceptions. The Commission shall submit to the Congress reports on its progress in addressing these issues at least once every six months during the three-year period following the date of the enactment of this section.

(2) The Commission shall study appropriate methods for classifying and comparing hospitals which, with respect to any accounting year, derive 75 percent or more (as estimated by the Secretary) of their inpatient care revenues from one or more health maintenance organizations. The Commission shall consider recommending the classification and comparison of such hospitals as a separate category in recognition of the differences in the nature of their operations as compared with other hospitals.

(3)(A) The Secretary, taking account of the proposals and advice of the Commission, shall by regulation make appropriate modifications in the method of reimbursement under titles V, XVIII, and XIX for routine hospital costs, other hospital costs, and costs of other entities which are reimbursed on the basis of reasonable costs.

(B) In any case in which the Secretary proposes to make such modifications, he shall first submit such proposal to the Commission. If the Commission disagrees with such proposal, final regulations implementing such proposal shall be submitted to Congress by the Secretary, and such regulations may not become effective until at least 60 days after they were submitted to Congress.

(4) The Commission shall review and make recommendations with respect to a method of classifying and comparing detoxification facilities so as to provide that such method may be used for reimbursement purposes for such facilities within two years after the date of the enactment of this section.

(5) The Commission shall give immediate priority to making a study and submitting recommendations to the Secretary with respect to the setting of limitations on reasonable costs and reasonable charges for outpatient services as provided in section 1134 (c).

(d) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Commission may need.

(e) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(f) There are authorized to be appropriated such sums as may be necessary to carry out this section.

(g) Section 14 of the Federal Advisory Committee Act shall not apply to the Commission.

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

Sec. 1129. (a)(1)(A) Before the end of the third full month following the month in which this section is enacted, the Secretary shall establish a Hospital Transitional Allowance Board (hereinafter in this section referred to as the "Board"). The Board shall have five members, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, who are knowledgeable about hospital planning and hospital operations.

(B) Members of the Board shall be appointed for three-year terms, except some initial members shall be appointed for shorter terms to permit staggered terms of office.

(C) Members of the Board shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per diem equivalent at the time the service involved is rendered for grade GS–18 under section 5332 of title 5, United States Code.

(D) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Board may need.

(2) The Board shall receive and act upon applications by hospitals, certified for participation (other than as "emergency hospitals") under titles XVIII and XIX, for transitional allowances.

(b) For purposes of this section—

(1) The term "transitional allowance" means an amount which—

(A) shall, solely by reason of this section, be included in a hospital's reasonable cost for purposes of calculating payments under the programs authorized by titles V, XVIII, and XIX of this Act; and

(B) in accordance with this section, is established by the Secretary for a hospital in recognition of a reimbursement detriment (as defined in paragraph (3)) experienced because of a qualified facility conversion (as defined in paragraph (2)).

(2) The term "qualified facility conversion" means closing, modifying, or changing the usage of an underutilized hospital facility which is expected to benefit the programs authorized under title V, title XVIII, and title XIX by (A) eliminating excess bed capacity, (B) discontinuing an underutilized service for which there are adequate alternative sources, or (C) substituting for the underutilized service some other service which is needed in the area and which is consistent with the findings of an appropriate health planning agency.

(3) A hospital which has carried out a qualified facility conversion and which continues in operation will be regarded as having experienced a "reimbursement detriment"—

(A) to the extent that, solely because of the conversion, there is a reduction in that portion of the hospital's costs

attributable to capital assets which are taken into account in determining reasonable cost for purposes of determining amount of payment to the hospital under title V, title XVIII, or a State plan approved under title XIX;

(B) if the conversion results, on an interim basis, in increased operating costs, to the extent that operating costs exceed amounts ordinarily reimbursable under title V, title XVIII, and the State plan approved under title XIX; or

(C) in the case of complete closure of a private nonprofit hospital, or local governmental hospital, other than for replacement of the hospital, to the extent of actual debt obligations previously recognized as reasonable for reimbursement, where the debt remains outstanding, less any salvage value.

(c)(1) Any hospital may file an application with the Board (in such form and including such data and information as the Board, with the approval of the Secretary, may require) for a transitional allowance with respect to any qualified conversion which is formally initiated after September 30, 1980. The Board, with the approval of the Secretary, may also establish procedures, consistent with this section, by means of which a finding of a reimbursement detriment may be made prior to the actual conversion.

(2) The Board shall consider any application filed by a hospital, and if the Board finds that—

(A) the facility conversion is a qualified facility conversion, and

(B) the hospital is experiencing or will experience a reimbursement detriment because it carried out the qualified facility conversion,

the Board shall transmit to the Secretary its recommendation that the Secretary establish a transitional allowance for the hospital in amounts reasonably related to prior or prospective use of the facility under titles V and XVIII and the State plan approved under title XIX, for a period, not to exceed twenty years as specified by the Board, and, if the Board finds that the criteria in subparagraphs (A) and (B) are not met, it shall advise the Secretary not to establish a transitional allowance for that hospital. For an approved closure under subsection (b)(3)(C) the Board may recommend or the Secretary may approve, a lump-sum payment in lieu of periodic allowances, where such payment would constitute a more efficient and economic alternative.

(3)(A) The Board shall notify a hospital of its findings and recommendations.

(B) A hospital dissatisfied with a recommendation may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in the form and within a time period established by the Secretary) and a request for a hearing.

(4)(A) Within thirty days after receiving a recommendation from the Board respecting a transitional allowance or, if later, within thirty days after a hearing, the Secretary shall make a final determination whether, and if so in what amount and for what period of time, a transitional allowance will be granted to a hospital. A final determination of the Secretary shall not be subject to judicial review.

(B) The Secretary shall notify a hospital and any other appropriate parties of the determination.

(C) Any transitional allowance shall take effect on a date prescribed by the Secretary, but not earlier than the date of completion of the qualified facility conversion. A transitional allowance shall be included as an allowable cost item in determining the reasonable cost incurred by the hospital in providing services for which payment is authorized under this Act, except that the transitional allowance shall not be considered in applying limits to costs recognized as reasonable pursuant to the third sentence of section 1861(v)(1) and section 1861(bb) of this Act, or in determining the amount to be paid to a provider pursuant to section 1814(b), section 1833(a)(2), section 1903(i)(3), and section 506(f)(3) of this Act.

(d) In determining the reasonable cost incurred by a hospital with respect to which payment is authorized under a State plan approved under title V or title XIX, any transitional allowance shall be included as an allowable cost item.

(e)(1) The Secretary is authorized to establish transitional allowances only as provided in paragraphs (2) and (3).

(2) Prior to January 1, 1983, the Secretary is authorized to establish a transitional allowance for not more than fifty hospitals.

(3) On and after January 1, 1983, the Secretary is authorized to establish a transitional allowance for any hospital which qualifies for such an allowance under the provisions of this section.

(4) On or before January 1, 1982, the Secretary shall report to the Congress evaluating the effectiveness of the program established under this section including appropriate recommendations.

COORDINATED AUDITS

SEC. 1130. If an entity provides services reimbursable on a cost-of the program established under title XVIII. Where the Secretary related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall apportion to the program established under title V or XIX that part of the cost of coordinated audits which is attributable to each such program and which would not have otherwise been incurred in an audit of te program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be the amount that represents the duplication of costs resulting from such State's failure to participate in the common audit.

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EXCLUSION OF CERTAIN ITEMS IN DETERMINING REASONABLE COST AND REASONABLE CHARGE

SEC. 1134. (a) Except as otherwise provided in subsection (b), in determining the amount of any payment under title XVIII, under a program established under title V, or under a State plan approved

under title XIX of this Act, when the payment is based upon the reasonable cost or reasonable charge, no element comprising any part of the cost or charge shall be considered to be reasonable if, and to the extent that, such element is—

(1) a commission, finder's fee, or for a similar arrangement, or

(2) an amount payable for any facility (or part or activity thereof) under any rental or lease arrangement,

which is, directly or indirectly, determined, wholly or in part as a percentage, fraction, or portion of the charge or cost attributed to any health service (other than the element) or any health service including, but not limited to, the element.

(b)(1) The Secretary shall by regulations establish exceptions to the provisions of subsection (a) with respect to any element of cost or charge which consists of payments based on a percentage arrangement, if such element is otherwise reasonable and the percentage arrangement—

(A) is a customary commercial business practice, or

(B) provides incentives for the efficient and economical operation of the health service.

(2) The provisions of subsection (a) shall not be applicable to compensation payable to a physician under a percentage arrangement (including an arrangement that relates to compensation for supervisory, executive, educational, or research activity) between a physician and a hospital if the physician shows (to the satisfaction of the Secretary) that compensation under such arrangement does not exceed, on an annual basis, an amount which would reasonably have been paid to the physician under a relative value schedule which takes into consideration such physician's time and effort, consistent with the inherent complexity of the procedures and services.

(c) The Secretary shall issue regulations that provide for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals, community health centers, or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be based upon the reasonableness of such costs or charges in relation to the reasonable charges of physicians in the same area for similar services provided in their offices.

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PART B—PROFESSIONAL STANDARDS REVIEW

DUTIES AND FUNCTIONS OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

SEC. 1155. (a)(1) Notwithstanding any other provision of law, but consistent with the provisions of this part, it shall be the duty and function of each Professional Standards Review Organization for any area to assume, at the earliest date practicable, responsibility for the review of the professional activities in such area of physicians and

other health care practitioners and institutional and noninstitutional providers of health care services (except as provided in paragraph (7)) in the provision of health care services and items for which payment may be made (in whole or in part) under this Act for the purpose of determining whether—

(A) such services and items are or were medically necessary;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided on an outpatient basis or more economically in an inpatient health care facility of a different type.

In carrying out the provisions of this paragraph such organization shall give priority to making such determinations with respect to routine hospital admission testing, preoperative hospital stays in excess of one day, and elective admissions on weekends or other times when services are not available.

(2) Each Professional Standards Review Organization shall have the authority to determine, in advance, in the case of—

(A) any electric admission to a hospital, or other health care facility, or

(B) any other health care service which will consist of extended or costly courses of treatment,

whether such service, if provided, or if provided by a particular health care practitioner or by a particular hospital or other health care facility, organization, or agency, would meet the criteria specified in clauses (A) and (C) of paragraph (1).

(3) Each Professional Standards Review Organization shall, in accordance with regulations of the Secretary, determine and publish, from time to time, the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order most effectively to carry out the purposes of this part, exercise the authority conferred upon it under paragraph (2).

(4) Each Professional Standards Review Organization shall be responsible for the arranging for the maintenance of and the regular review of profiles of care and services received and provided with respect to patients, utilizing to the greatest extent practicable in such patient profiles, methods of coding which will provide maximum confidentiality as to patient identity and assure objective evaluation consistent with the purposes of this part. Profiles shall also be regularly reviewed on an ongoing basis with respect to each health care practitioner and provider to determine whether the care and services ordered or rendered are consistent with the criteria specified in clauses (A), (B), and (C) of paragraph (1).

(5) Physicians assigned responsibility for the review of hospital care may be only those having active hospital staff privileges in at least one of the participating hospitals in the area served by the Professional Standards Review Organization.

(6) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services, or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

For purposes of this paragraph, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(7)(A) Except as provided in subparagraph (B), a Professional Standards Review Organization located in a State has the function and duty to assume responsibility of the review under paragraph (1) of professional activities in intermediate care facilities (as defined in section 1905(c)) and in public institutions for the mentally retarded (described in section 1905(d)(1)) only if (i) the Secretary finds, on the basis of such documentation as he may require from the State, that the single State agency which administers or supervises the administration of the State plan approved under title XIX for that State is not performing effective review of the quality and necessity of health care services provided in such facilities and institutions, or (ii) the State requests such organization to assume such responsibility.

(B) A Professional Standards Review Organization located in a State has the function and duty to assume responsibility for the review under paragraph (1) of professional activities in intermediate care facilities in the State that are also skilled nursing facilities (as defined in section 1861(j)), to the extent that the Secretary finds that the performance of such function by the single State agency (described in subparagraph (A)) for that State is inefficient.

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(h) Any Professional Standards Review Organization which has assumed responsibility under this section for review of inpatient hospital services in an area shall also assume responsibility in such area for review of detoxification facility services.

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REQUIREMENT OF REVIEW APPROVAL AS CONDITION OF PAYMENT OF CLAIMS

SEC. 1158. (a) Except as provided for in section 1159 and [subsection (d)] *subsections (d) and (e)*, no Federal funds appropriated under any title of this Act (other than title V) for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such title or any program established pursuant thereto, of any claim for the provision of such services or items, unless the Secretary, pursuant to regulation determines that the claimant is without fault if—

(1) the provision of such services or items is subject to review under this part by any Professional Standards Review Organization, or other agency; and

(2) such organization or other agency has, in the proper exercise of its duties and functions under or consistent with the purposes of this part, disapproved of the services or items giving rise to such claim, and has notified the practitioner or provider who provided or proposed to provide such services or items and the individual who would receive or was proposed to receive such services or items of its disapproval of the provision of such services or items.

(b) Whenever any Professional Standards Review Organization, in the discharge of its duties and functions as specified by or pursuant to this part, disapproves of any health care services or items furnished or to be furnished by any practitioner or provider, such organization shall, after notifying the practitioner, provider, or other organization or agency of its disapproval in accordance with subsection (a), promptly notify the agency or organization having responsibility for acting upon claims for payment for or on account of such services or items.

(c) Where a Professional Standards Review Organization (Whether designated on a conditional basis or otherwise) has been found competent by the Secretary to assume review responsibility with respect to specified types of health care services or specified providers or practitioners of such services and is performing such reviews, determinations made pursuant to paragraphs (1) and (2) of section 1155(a) in connection with such reviews shall constitute the conclusive determination on those issues (subject to sections 1159, 1171(a)(1), and 1171(d)(3)) for purposes of payment under this Act, and no reviews with respect to those determinations shall be conducted, for purposes of payment, by agencies and organizations which are parties to agreements entered into by the Secretary pursuant to section 1816, carriers which are parties to contracts entered into by the Secretary pursuant to section 1842, or single agencies administering or supervising the administration of State plans approved under title XIX.

(d) [In any case] *(1) Except as provided in subsection (e) and paragraph (2) of this subsection, in any case* in which a Professional Standards Review Organization disapproves (under subsection (a)) of inpatient hospital services or posthospitals extended care services, payment may be made for such services furnished before the second day after the day on which the provider received notice of such disapproval, or, if such organization determines that more time is required in order to arrange postdischarge care, payment may be made for such services furnished before the fourth day after the day on which the provider received notice of such disapproval.

(2) A Professional Standards Review Organization shall not disapprove (under subsection (a)) of inpatient hospital services provided under a title of this Act to an individual on the grounds that such individual could receive appropriate and necessary medical nursing, or other care more economically in an inpatient facility or home care program of another type for which payment can be made under such title (but shall maintain and make public a quarterly report to the Secretary by hospital and area as to the number of cases and hospital days which except for this paragraph, would have otherwise been disapproved) if—

(A) there is no excess of inpatient hospital beds adjusting for patients occupying hospital beds who do not need that level of care) in the geographic area in which the hospital is located (certified by the State or local health planning agency or health systems agency); and

(B) there is no such other type of facility or home care program available to such individual to provide appropriate care for which payment can be made under such title.

(e)(1) If, for purposes of payment under a title of this Act as described in subsection (a), the Professional Standards Review Organization disapproves (under subsection (a)) of inpatient hospital services provided by a hospital to an individual on the grounds that such individual could receive appropriate and necessary medical, nursing, or other care more economically in an inpatient facility of another type or home care program, and such organization finds that—

(A) payment is authorized to be made under or pursuant to such title of this Act (as described in subsection (a)) with respect to services furnished to such individual in such other type of facility or home care program; and

(B) there is no such other type of facility or home care program available to such individual,

then payment, from funds described in subsection (a), to such hospital may continue to be made (but at a rate determined under paragraph (2)) for days (in a continuous period of days which begins with the day following the last day for which payment may be made, with application of subsection (d), for such inpatient hospital services furnished to such individual) with respect to which such individual meets the conditions specified in subparagraphs (A) and (B).

(2)(A) The rate at which payment may be continued under paragraph (1) shall be a rate equal to the estimated average rate per patient-day paid for services provided in such other type of facility under the State plan approved under title XIX of the State in which such hospital is located, or, if less, the reasonable reimbursement allowed to such hospital for services of the type provided in such other type of facility (if such hospital has a unit which provides such other type of services).

(B) In the case of a State that does not have a State plan approved under title XIX, the rate at which payment may be continued under paragraph (1) shall be a rate equal to the estimated average rate per patient-day for services provided in such other type of facility under title XVIII in the State in which such hospital is located, or, if less, the rate in effect for such hospital for services of the type provided in such other type of facility (if such hospital has a unit which provides such other type of services).

(3) Any day on which an individual receives inpatient hospital services for which payment is made at a lower rate on account of the provisions of this subsection shall, for purposes of this Act, be deemed to be a day on which he received the type of services provided by such other type of facility or home care program.

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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RESOURCES

EXCLUSIONS FROM RESOURCES

SEC. 1613. (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable;

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 7 (h) and section 8(c) of the Alaska Native Claims Settlement Act; and

(6) assistance referred to in section 1612(b)(11) for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of the paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1612(b)(12).

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value, except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

DISPOSITION OF RESOURCES

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

DISPOSAL OF RESOURCE FOR LESS THAN FAIR MARKET VALUE

(c) (1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than the fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

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TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

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PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

DESCRIPTION OF PROGRAM

SEC. 1811. The insurance program for which entitlement is established by sections 226 and 226A provides basic protection against the costs of hospital and related post-hospital services in accordance with this part for (1) individuals who are age 65 or over and are entitled to retirement benefits under title II of this Act or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under title II of this Act or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

SCOPE OF BENEFITS

SEC. 1812. (a) The benefit provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

(1) inpatient hospital services for up to 150 days during any spell of illness minus one day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services for up to 100 days during any spell of illness; [and]

(3) post-hospital home health services for up to 100 visits (during the one-year period described in section 1861(n)) after the beginning of one spell of illness and before the beginning of the next [.]; *and*

(*4*) *detoxification facility services.*

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CONDITIONS OF AND LIMITATIONS ON PAYMENT FOR SERVICES

REQUIREMENT OF REQUESTS AND CERTIFICATIONS

SEC. 1814. (a) Except as provided in subsections (d) and (g) and in section 1876, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition noncommunicable;

(C) in the case of post-hospital extended care services, such services are or were required to be given because the indi-

vidual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and which he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(D) in the case of post-hospital home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861 (m)(7)) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) or post-hospital extended care services; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; [or]

(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such dental services; *or*

(F) in the case of detoxification facility services, such services are required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of detoxification);

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were

furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility); and

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1861 (k)(4), including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization to review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding. To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), (D), or (E) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations.

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USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS

SEC. 1842. (a) * * *

(b)(1) * * *

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under Section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870(f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f) and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1862, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title;

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is $100 or more when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part: [and]

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part; *and*

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered in a particular month is on a charge basis, such payment shall be determined on the basis of the charge that is determined to be reasonable for such month in accordance with this part (except that in the case of a service which was rendered prior to the beginning of the calendar year preceding the year in which the bill is submitted, or request for payment is made, with respect to such service, payment shall be determined on the basis of the charge that is determined to be reasonable in accordance with this part for the first month of such preceding year;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. [In

determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.]

[No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the twelve-months period (beginning July 1 of each year) in which the bill is submitted or the request for payment is made. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Nothwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on July 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.]

(4)(A) In determining the reasonable charge for services for purposes of paragraph (3) (including the services of any hospital-associated physicians), there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

(B)(i) Except as otherwise provided in clause (iii), no charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (I) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (II) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the [fiscal year in which the bill is submitted or the request for payment is made] fiscal year in which the service is rendered.

(ii) In the case of physician services, the prevailing charge level determined for purposes of clause (i)(II) for any fiscal year beginning after June 30, 1973, may not (except as otherwise provided in clause (iii)) exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. Moreover, for any twelve-month period beginning on July 1 of any year (beginning with 1980), no prevailing charge level for physicians' services shall be increased to the extent that it would exceed by more than one-third the statewide prevailing charge level (as determined under subparagraph (E)) for that service.

(iii) Notwithstanding the provisions of clauses (i) and (ii) of this subparagraph, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such clauses for the fiscal year beginning July 1, 1975, shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.

(C) In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under circumstances specified by the Secretary. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

(D) The requirement in paragraph (3)(B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply of (i) failure to submit the bill or request the

payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected.

(E) The Secretary shall determine separate statewide prevailing charge levels for each State that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 50 percent of percent of the customary charges made for similar services in the State during the last preceding calendar year elapsing prior to the start of the [fiscal year in which the bill is submitted or the request for payment is made] fiscal year in which the service is rendered. In States with more than one carrier, the statewide prevailing charge level shall be the weighted average of the fiftieth percentiles of the customary charges of each carrier.

(F) Notwithstanding any other provision of this paragraph, any charge for any particular service or procedure performed by a doctor of medicine or osteopathy shall be regarded as a reasonable charge if—

(i) the service or procedure is performed in an area which the Secretary has designated as a physical shortage area,

(ii) the physician has a regular practice in the physician shortage area,

(iii) the charge does not exceed the prevailing charge level as determined under subparagraph (B), and

(iv) the charge does not exceed the amount generally charged by such physician for similar services.

(G) For additional exclusions from reasonable cost and reasonable charge see section 1134.

[(4)](*5*) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

[(5)](*6*) No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (B) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service. No payment which under the preceding sentence may be made directly to the

physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) or (B) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

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APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND CONTINGENCY RESERVE

SEC. 1844. (a) There are authorized to be appropriated from time to time out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) A Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1839(c)(1) for such month, minus the dollar amount of the premium per enrollee for such month as determined under section 1839(c)(3), to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1839(c)(4) for such month, minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(c)(3), to

(ii) the dollar amount of the premium per enrollee for such month.

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end

of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayment advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

SPECIAL PROVISIONS RELATING TO CERTAIN SURGICAL AND PREOPERATIVE PROCEDURES PERFORMED ON AN AMBULATORY BASIS

SEC. 1845 (a) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify those surgical procedures which can be safely and appropriately performed either in a hospital on an inpatient basis or on an ambulatory basis—

(1) in a physician's office; or

(2) in an ambulatory surgical center or hospital.

(b)(1) If a physician performs in his office a surgical procedure specified by the Secretary pursuant to subsection (a)(1) on an individual insured for benefits under this part, he shall, notwithstanding any other provision of this part, be entitled to have payment made under this part equal to—

(A) 100 percent of the reasonable charge for the services involved with the performance of such procedure (including all pre- and post-operative physicians' services performed in connection therewith), plus

(B) the amount established by the Secretary pursuant to paragraph (2),

but only if the physician agrees with such individual to be paid on the basis of an assignment under the terms of which the reasonable charge for such services is the full charge therefor.

(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(1), an amount established with a view to according recognition to the special costs, in excess of usual overhead, which physicians incur which are attributable to securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and to assuring that the performance of such procedure in the physician's office will involve substantially less total cost than would be involved if the procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical pro-

cedure periodically shall be reviewed and revised and may be adjusted, when appropriate, by the Secretary to take account of varying conditions in different areas.

(c)(1) Payment under this part may be made to an ambulatory surgical center for ambulatory facility services furnished in connection with any surgical procedure, specified by the Secretary pursuant to subsection (a)(2), which is performed on an individual insured for benefits under this part in an ambulatory surgical center, which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, if such surgical center agrees to accept, in full payment of all services furnished by it in connection with such proedure, the amount established for such procedure pursuant to paragraph (2).

(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2), a reimbursement amount which is payable to an ambulatory surgical center for its services furnished in connection with such procedure. The amount established for any such surgical procedure shall be established with a view to according recognition to the costs incurred by such centers generally in providing the services involved in connection with such procedure, and to assuring that the performance of such procedure in such a center involves less cost than would be involved if such procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(3) If the physician, performing a surgical procedure (specified by the Secretary under subsection (a)(2)), in a hospital on an outpatient basis or in an ambulatory surgical center with respect to which payment is authorized under the preceding provisions of this subsection, or a physician performing physicians' services in such center or hospital directly related to such surgical procedure, agrees to accept as full payment for all services performed by him in connection with such procedure (including pre- and post-operative services) an amount equal to 100 percent of the reasonable charge for such services, he shall be paid under this part for such services an amount equal to 100 percent of the reasonable charge for such services.

(d)(1) The Secretary is authorized by regulations to provide that in case a surgical procedure specified by the Secretary pursuant to subsection (a)(2) is performed on an individual insured for benefits under this part in an ambulatory surgical center which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, there shall be paid with respect to the services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to paragraph (2), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(2) In implementing this subsection, the Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount

so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted, when appropriate, to take account of varying conditions in different areas.

(e)(1) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify those preoperative medical and other health services which can be safely and appropriately performed in a hospital on both an inpatient and outpatient basis.

(2) If a physician, performing a preoperative service (specified by the Secretary under paragraph (1)) in a hospital on an outpatient basis, within seven days prior to admission on an inpatient basis for the surgery to which such service relates, agrees to accept as full payment for such service an amount equal to 100 percent of the reasonable charge for such service, he shall be paid under this part for such service an amount equal to 100 percent of the reasonable charge for such service.

(f) The provisions of section 1833 (a) and (b) shall not be applicable to expenses attributable to services to which subsection (b) is applicable, to ambulatory facility services (furnished by an ambulatory surgical center) to which the provisions of subsections (c) (1) and (2) are applicable, or to services to which the provisions of subsection (c)(3), (d), or (e) are applicable.

PART C—MISCELLANEOUS PROVISIONS

DEFINITION OF SERVICES, INSTITUTIONS, ETC.

SEC. 1861. * * *

PROVIDER OF SERVICES

(u) The term "provider of services" means a hospital, skilled nursing facility, home health agency, *detoxification facility*, or, for purposes of section 1814(g) and section 1835(e), a fund.

REASONABLE COST

(v)(1)(A) [The] *Subject to subsection (bb)*, the reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for deter-

mination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items of services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this title, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this title) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A, but only if

(I) payment for such services as furnished under such arrangement would be made under part A to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of

subsection (b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B) (i) and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the uses of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under title XIX (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this title not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State; except that the foregoing provisions of this subparagraph shall not apply to any skilled nursing facility in such State if—

(i) such facility is a distinct part of or directly operated by a hospital, or

(ii) such a facility operates in a close, formal satellite relationship (as defined in regulations of the Secretary) with a participating hospital or hospitals.

Notwithstanding the previous provisions of this paragraph in the case of a facility specified in clause (ii) of this subparagraph, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection shall not exceed 150 percent of the costs determined by the application of this subparagraph (without regard to such clause (ii)).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 121(a) in accordance with the uniform reporting system (established under such section) for that type of provider.

(G) No payment with respect to a cost attributable to the program established by this title shall be made to a provider of services to the extent that such payment exceeds the proportional share of such cost, as measured by days of utilization or provider charges, until such time as evidence can be produced which, in the judgment of the Comptroller General and concurred in by the Secretary, justifies payment of such a higher proportional share as warranted under particular circumstances for certain facilities, and such payments may then be made only to the extent so justified.

(H)(i) Such regulations shall provide that the cost per visit for each of the different types of visits a home health agency provides

shall not be considered to be reasonable to the extent that it exceeds an amount that would cover 75 percent of the average per visit costs for such visits (weighted on the basis of the number of visits rendered) incurred by home health agencies which are determined to be comparable by the Secretary.

(ii) Such regulations shall require that in the case of visits by a skilled nurse or home health aide, the costs incurred by a health agency for such visits shall not be considered reasonable to the extent that the cost of any such visit exceeds the per diem rate paid, in the State where such agency is located, under the State's plan approved under title XIX of this Act for skilled nursing facility services in the area. In making such determination, in the case of a hospital-based home health agency, the comparison shall be made to the per diem rate for hospital-based skilled nursing facilities, and in the case of other home health agencies the comparison shall be made to the per diem rate for nonhospital-based skilled nursing facilities. In the case of a State which does not have a plan approved under title XIX, the per diem rate for skilled nursing facilities under this title shall be used in lieu of the per diem rate under such a State plan.

(iii) Any supervisory visit which is specifically required by regulations shall be reimbursable as a home health aide visit (but shall not count as a visit for purposes of determining a particular beneficiary's eligibility for visits). Any initial patient assessment visit shall be a reimbursable visit notwithstanding a determination of ineligibility following such visit, if there was a reasonable basis for assuming potential eligibility, such as a referral from a discharge planner, physician, or other source qualified as being knowledgeable with respect to the beneficiary and the program under this title.

(iv) Such regulations may provide for appropriate exceptions and adjustments on an agency by agency basis where warranted by unusual circumstances.

CERTIFICATION AND APPROVAL OF SKILLED NURSING FACILITIES

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this title with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this title furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpa-

tient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1866(a)(2)(B)(ii), the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organizations, specified in the first sentence of section 1861(p) the amount included in any payment to such provider or other organization under this title as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of section 1861(p) requires the services of a therapist on a limited part-time basis, or only to perform intermittent services, the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

(7) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(8) *For additional requirements applicable to determination of reasonable cost, see subsection (bb) and section 1128(c)(3).*

(9) *For additional exclusions from reasonable cost and reasonable charge see section 1134.*

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CRITERIA FOR DETERMINING REASONABLE COST OF HOSPITAL SERVICES

(bb)(1) It is the purpose of this subsection to set forth initial methods and criteria for determining reimbursement based upon reasonable cost, but such methods and criteria shall be subject to appropriate modification by the Secretary as provided in section 1128. In order more fairly and effectively to determine reasonable costs incurred in providing hospital services, the Secretary shall, not later than September 1, 1980, after consulting with appropriate national organizations, establish a system of hospital classification under which hospitals furnishing services will be classified on a national basis initially.

(A) by size, with each of the following groups of hospitals being classified in separate categories: (i) those having more than 5, but fewer than 25, beds, (ii) those having more than 24 but fewer than 50, beds, (iii) those having more than 49, but fewer than 100, beds, (iv) those having more than 99, but fewer than 200, beds, (v) those having more than 199, but fewer than 300, beds, (vi) those having more than 299, but fewer than 400, beds, (vii) those having more than 399, but fewer than 500, beds, and (viii) those having more than 499 beds;

(B) by type of hospital with (i) short-term general hospitals being in a separate category, (ii) hospitals which are primary affiliates of accredited medical schools being in one separate category, and (iii) psychiatric, geriatric, maternity, pediatric, or other specialty hospitals being in the same or separate categories, as the Secretary may determine appropriate, in light of any differences in specialty which significantly affect the routine costs of the different types of hospitals;

(C) as rural or urban; and

(D) according to such other criteria as the Secretary finds appropriate, including modification of bed-size categories;

but the system of hospital classification shall not differentiate between hospitals on the basis of ownership.

(2) The term "routine operating costs" used in this subsection does not include—

(A) capital and related costs,

(B) direct personnel and supply costs of approved hospital education and training programs,

(C) costs of interns, residents, and nonadministrative physicians,

(D) energy costs,

(E) malpractice insurance expense, or

(F) ancillary service costs,

(3)(A) During the calendar quarter beginning on January 1 of each year, beginning with 1981 (and in the case of 1980, as soon as possible), the Secretary shall determine, for the hospitals in each category of the system established under paragraph (1), an average per diem routine operating cost amount which shall (except as otherwise provided in this subsection) be used in determining payments to hospitals.

(B) The determination shall be based upon the amount of the hospitals' routine operating costs for the most recent accounting year ending prior to October 1, of the calendar year preceding the calendar year in which the determination is made. If, for any accounting year which starts on or after July 1, 1980, a hospital's actual routine operating costs are in excess of the amount allowed for purposes of determining payment to the hospital pursuant to this subsection and subsection (v), only one-half of such excess shall be taken into account in making any determination which the Secretary shall make under this paragraph. Such amount as determined under the preceding sentences of this subparagraph shall be adjusted to reflect the percentage increase in the cost of the mix of goods and services (including personnel and nonpersonnel costs) comprising routine operating costs, based on an index composed of appropriately weighted indicators of changes in the economy in wages and prices which are representative of services and goods included in routine operating costs, during the period from the end of the accounting year referred to in the first sentence of this subparagraph to the end of the quarter in which the determination is being made.

(C) In making a determination, the routine operating costs of hospitals in each category shall be divided into personnel and nonpersonnel components.

(D)(i) The personnel and nonpersonnel components of routine operating costs for hospitals in each category (other than for those excluded under clause (ii)) shall be divided by the total number of days of routine care provided by such hospitals to determine the average per diem routine operating cost for such category.

(ii) In making the calculations required by subparagraph (A) the Secretary shall exclude any newly opened hospital (as defined in the second sentence of paragraph (4)(F)), and any hospital which he determines is experiencing significant cost differentials resulting from failure of the hospital fully to meet the standards and conditions of participation as a provider of services.

(E) There shall be determined for each hospital in each category a per diem target rate for routine operating costs. Such target rate shall equal the average per diem routine operating cost amount for the category in which the hospital is expected to be classified during the subsequent accounting year, except that the personnel component shall be adjusted using a wage index based upon general wage levels for reasonably comparable work in the areas in which the hospitals are located. If the Secretary finds that, in an area where a hospital in any category is located for the most recent twelve-month period for which data with respect to such wage levels are available, the wage level for such hospital is significantly higher than such general wage level in that area (relative to the relationship within the same hospital group between hospital wages and such general wages in other areas), then

such general wage level in the area shall be deemed equal to the wage level for such hospital, but only with respect to the hospital's first accounting year beginning on or after July 1, 1980 and prior to July 1, 1981.

(4)(A)(i) The term "adjusted per diem target rate for routine operating costs" means the per diem target rate for routine operating costs plus the percentage increase in costs determined under the succeeding provisions of this subparagraph.

(ii) In determining the adjusted per diem target rate, the Secretary shall add an estimated precentage increase in the cost of the mix of goods and services (including personnel and nonpersonnel costs) comprising routine operating costs, based on an index composed of appropriately weighted indicators of changes in the economy in wages and prices which are representative of services and goods included in routine operating costs, during the period from the end of the quarter in which the determination is made under paragraph (3)(A) to the end of the hospital's accounting year. Where actual changes in such weighted index are significantly different (at least one-half of 1 percentage point) from those estimated, the Secretary shall issue corrected target rates on a quarterly basis. At the end of the hospital's accounting year, the target rate shall be adjusted to reflect the actual changes in such weighted index. Adjustments shall also be made to take account of changes in the hospital's classification.

(B) For purposes of payment, the amount of routine operating costs incurred by a hospital for any accounting year which begins on or after July 1, 1980, shall be deemed to be equal—

(i) in the case of a hospital which has actual routine operating costs equal to or greater than that hospital's adjusted per diem target rate for routine operating costs, to the greater of—

(I) the hospital's actual routine operating costs, but not exceeding—

(a) in the case of the first accounting year of any hospital which begins on or after July 1, 1980, and prior to July 1, 1981, an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs, plus (2) 15 percent of the amount described in clause (1), plus (3) one-half of the difference between the hospital's actual routine operating costs and the sum of the amounts determined under clauses (1) and (2),

(b) in the case of the first accounting year of any hospital which begins on or after July 1, 1981, and prior to July 1, 1982 (or if earlier, the second accounting year of such hospital which begins on or after July 1, 1980, and prior to July 1, 1982), an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs for such year, plus (2) a dollar amount equal to the dollar amount determined under clause (a)(2) for the category of such hospital, plus (3) one-half of the difference between the hospital's actual routine operating costs and the sum of the amounts determined under clauses (1) and (2), and

(c) in the case of any accounting year after the accounting year described in clause (b), an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs for such year, plus (2) a dollar amount equal to the dollar amount determined under clause (b)(2) for the category of such hospital, or

(II) the amounts determined for the hospital under division (I) if it had been classified in the bed-size category which contains hospitals closest in bed-size to such hospital's bed-size (with a hospital which has a bed-size that falls halfway between two such categories being considered in the category which contains hospitals with the greater number of beds), but not exceeding the hospital's actual routine operating costs; or

(III) in the case of a hospital having an average length-of-stay per patient which is less than the average length-of-stay per patient for hospitals classified in the same category, for any accounting year, an amount equal to the average reimbursement for routine operating costs per patient stay for hospitals in the same category, multiplied by the number of patient stays for such hospital during that accounting year, but not exceeding the actual routine operating costs for such hospital; and

(ii) in the case of a hospital which has actual routine operating costs which are less than that hospital's adjusted per diem target rate for routine operating costs, to (I) the amount of the hospital's actual routine operating costs, plus (II) the smaller of (a) 5 percent (2.5 percent with respect to any accounting year which begins on or after July 1, 1980, and prior to July 1, 1982) of the hospital's adjusted per diem target rate for routine operating costs, or (b) 50 percent with respect to any accounting year which begins on or after July 1, 1980, and prior to July 1, 1982) of the amount by which the hospital's adjusted per diem target rate for routine operating costs exceeds the hospital's actual routine operating costs.

(C) Any hospital (other than a newly opened hospital) excluded by the Secretary under paragraph (3)(D)(ii), shall be reimbursed for routine operating costs on the basis of the lesser of (i) actual costs or (ii) the reimbursement determined under this subsection.

(D) On or before April 1 (or in the case of 1980, as soon as possible) of the year in which the Secretary determines the amount of the average per diem operating cost for each hospital category and the adjusted per diem target for each hospital, the Secretary shall publish the determinations, and he shall notify the hospital administrator and the administrative governing body of each hospital with respect to all aspects of the determination which affect the hospital.

(E) If a hospital is determined by the Secretary to be—

(i) located in an underserved area where hospital services are not otherwise available,

(ii) certified as being currently necessary by an appropriate planning agency, and

(iii) underutilized,

the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the underutilized capacity.

(F) If a newly opened hospital is determined by the Secretary to have greater routine operating costs as a result of the cost patterns associated with newly opened hospitals, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such patterns. For purposes of this subparagraph a "newly opened hospital" means a hospital which has not satisfied the requirements of paragraph (1) and (7) of subsection (e) of this section (under present or previous ownership) for at least twenty-four months prior to the start of such hospital's accounting year.

(G) If a hospital is determined by the Secretary to have greater routine operating costs as a result of changes in service on account of consolidation, sharing, or addition of services, where such consolidation, sharing, or addition has been approved by the appropriate State health planning and development agency or agencies, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such changes in service.

(H)(i) If a hospital satisfactorily demonstrates to the Secretary that, in the aggregate, its patents require a substantially greater intensity of care than generally is provided by the other hospitals in the same category, resulting in unusually greater routine operating costs, then the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the greater intensity of care required.

(ii) To the extent that a hospital can demonstrate that it experiences routine operating costs in excess of such costs for hospitals having a reasonably similar mix of patients on account of consistently shorter length-of-stay in such hospital, which result from the greater intensity of care provided by such hospital, the excess routine operating costs shall be considered attributable to the greater intensity of care required, but this clause shall not apply in the case of a hospital whose routine operating costs are determined under subparagraph (B)(i)(III).

(I) The Secretary may further increase the adjusted per diem target rate applicable in Alaska and Hawaii to reflect the higher prices prevailing in such States.

(J) Where the Secretary finds that a hospital has manipulated its patient mix, or patient flow, or provides less than the normal range and extent of patient services, or that an usually large proportion of routine nursing service is provided by private-duty nurses, the routine operating costs of that hospital shall be deemed equal to the lesser of (i) the amount determined without regard to this subsection, or (ii) the amount determined under subparagraph (B).

(5) Where any provisions of this subsection are inconsistent with subsection (v), this subsection supersedes subsection (v).

(6)(A) Notwithstanding any other provision of this Act, in the case of any State which has established a reimbursement system for hospitals, hospital reimbursement in that State under this title and under the State plan approved under title XIX shall, with respect to the services covered by such system, be based on that State system, if the Secretary finds that—

(i) the State has a reimbursement system and it at least applies to the same hospitals in the State, and to the same costs, as the Federal reimbursement reform program established by this subsection;

(ii) every hospital in the State with which there is a provider agreement under this title or under the State plan approved under title XIX conforms to the accounting and uniform reporting requirements of section 1121 of this Act, and furnishes any appropriate reports that the Secretary may require; and

(iii) such State demonstrates to his satisfaction that the total amount payable, with respect to inpatient hospital costs, in the State under this title and under the State plan approved under title XIX will be equal to or less than an amount equal to (I) the amount which would otherwise be payable for such costs under this title and such State plan without regard to the incentive payments provided by subparagraph (B)(ii) of paragraph (4), plus (II) the amount of any incentive payments which are allowed under the State's reimbursement system in recognition of demonstrated efficiencies (but not to exceed the amount of the incentive payments which would be allowed under paragraph (4)(B)(ii)).

If the Secretary finds that any of the above conditions in a State which previously met them have not been met for a two-year period, the Secretary shall, after due notice, reimburse hospitals in that State according to the provisions of this Act (other than this paragraph) unless he finds that unusual, justifiable, and nonrecurring circumstances led to the failure to comply.

(B) If the Secretary finds that, during any two-year period during which hospital reimbursement under this title and under the State plan approved under title XIX was based on a State system as provided in subparagraph (A), the amount payable by the Federal Government under such titles for inpatient hospital costs in such State was in excess of the amount which would have been payable for such costs in such State if reimbursement had not been based on the State system (as estimated by the Secretary), the adjusted per diem target rate for routine operating costs (as determined under the preceding paragraphs of this subsection) for hospitals in such State shall be reduced (by not more than 1 percent in any year) until the Federal Government has recouped an amount equal to such excess payment amount.

(C)(i) The Secretary shall pay to any State in which hospital reimbursement under this title is based on a State system as provided in subparagraph (A), an amount which bears the same ratio to the total cost incurred by such State of administering the approved State system (including the cost of initially putting the system into operation) as the amount paid by the Federal Government under this title in such State for inpatient hospital costs bears to the total amount of inpatient hospital costs in such State which are subject to the State system.

(ii) Payments under clause (i) shall be made from funds in the Federal Hospital Insurance Trust Fund.

(iii) An amount which bears the same ratio to the total cost incurred by such State of administering the approved State system (including the cost of initially putting the system into operation) as the amount

paid under the State plan approved under title XIX in such State for inpatient hospital costs bears to the total amount of inpatient hospital costs in such State which are subject to State system, shall, for purposes of title XIX, be considered to be an amount expended for the administration of such State plan.

(D) If there is in effect in a State a reimbursement system for hospitals which the Secretary finds meets the criteria prescribed in subparagraph (A) except that such system was not established by the State, at the election of the State, such system shall for purposes of this paragraph be considered to be a reimbursement system for hospitals established by such State.

DETOXIFICATION FACILITY SERVICES

(cc)(1) The term "detoxification facility services" means services provided by a detoxification facility in order to reduce or eliminate the amount of toxic agent in the body, but only to the extent that such services would be covered under subsection (b) if furnished as an inpatient service by a hospital, or are physician services covered under subsection (s).

(2) The term "detoxification facility" means a public or voluntary community based nonprofit facility, other than a hospital, which—

(A) is engaged in furnishing to inpatients the services described in paragraph (1);

(B) is accredited by the Joint Commission on the Accreditation of Hospitals as meeting the Accreditation Program for Psychiatric Facilities standards (1979 edition), or is found by the Secretary to meet such standards;

(C) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring services not available at the facility; and

(D) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by the facility.

EXCLUSIONS FROM COVERAGE

SEC. 1862. (a) * * *

(b) Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State, *or under liability insurance of the person at fault, or under no-fault liability insurance.* Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under such a law or a plan, *or under such liability insurance. The Secretary may waive the provisions of this subsection with respect to liability insurance if he determines that the probability of recovery or amount involved does not warrant the pursuing of the claim.*

* * * * * * *

AGREEMENTS WITH PROVIDERS OF SERVICES

SEC. 1866. (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)), and

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this title because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9), but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title, and

(C) to make adequate provision for return (or other disposition, in accordance with regulations) or any moneys incorrectly collected from such individual or other person, and

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this title), with respect to the provider[.], *and*

(E) not to increase amounts due from any individual, organization, or agency in order to offset reductions made under section 1861(bb) in the amount paid, or expected to be paid, under this title.

* * * * * * *

STATE PLANS FOR MEDICAL ASSISTANCE

SEC. 1902. (a) A State plan for medical assistance must—

* * * * * * *

(13) provide—

(A)(i) for the inclusion of some institutional and some noninstitutional care and services, and

(ii) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing facility services, and

(B) in the case of individuals receiving aid or assistance under any plan of the State approved until 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, for the inclusion of at least the care and services listed in clauses (1) through (5) of section 1905(a), and

(C) in the case of individuals not included under subparagraph (B) for the inclusion of at least—

(i) the care and services listed in clauses (1) through (5) of section 1905(a) or

(ii) (I) the care and services listed in any 7 of the clauses numbered (1) through (16) of such section and (II) in the event the care and services provided under the State plan include hospital or skilled nursing facility services, physicians' services to an individual in a hospital or skilled nursing facility during any period he is receiving hospital services from such hospital or skilled nursing facility services from such home, and

(D) for payment of the reasonable cost of inpatient hospital services provided under the plan, as determined in accordance with methods and standards, consistent with section 1122, which shall be developed by the State and reviewed and approved by the Secretary and (after notice of approval by Secretary) included in the plan, except that the reasonable cost of any such services as determined under such methods and standards shall not exceed the amount which would be determined under section 1861(v) as the reasonable cost of such services for purposes of title XVIII; and]

(D) for payment of the reasonable cost of inpatient hospital services provided under the plan, applying the methods specified in section 1861(v) and section 1861(bb), which are consistent with section 1122; and

[(E) effective July 1, 1976, for payment of the skilled nursing facility and intermediate care facility services provided under the plan on a reasonable cost related basis, as determined in accordance with methods and standards which shall be developed by the State on the basis of cost-finding methods approved and verified by the Secretary; and]

(E) for payment of the skilled nursing facility and intermediate care facility services provided under the plan through the use of rates, determined in accordance with methods and standards developed by the State, which the State finds, and make assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports; and

(F) for payment for services described in section 1905(a)(2)(B) provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1833(a)(3), or, in the case of services to

which those regulations do not apply, on such tests of reasonableness as the Secretary may prescribed in regulations under this subparagraph;

* * * * * * *

[(23) except in the case of Puerto Rico, the Virgin Islands, and Guam, provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services; and a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or paragraph (1) or (10) solely by reason of the fact that the State (or any political subdivision thereof) has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic;]

(23) provide that limitations or restrictions elected by a State with respect to choice by recipients of medical assistance provided for by the State—

(A) may apply only to institutional providers (including clinics), laboratory services, and medical devices;

(B) must be cost-effective arrangements which provide for reasonable payment based upon comparisons of costs at which services of proper quality may be obtained and are actually available (and for this purpose the plan may provide that such arrangements need not be in effect in all political subdivisions of the State notwithstanding the provisions of paragraph (1)), and must provide that in the case of inpatient hospital services, payment to a hospital shall not be deemed to be reasonable for purposes of paragraph (13)(D) if it is less than the cost that is found reasonable and necessary in the efficient and economical delivery of such needed services in the geographic area in which such hospital is located;

(C) must assure that such recipients shall have reasonable access to services (taking into account geographic location and reasonable travel time) for which they are eligible (including emergency services and provisions for timely referral and transfer to other providers when medically appropriate) through providers which meet all applicable standards under the State plan and whose services are available to such recipients; and

(D) must provide that, subject to the provisions of subparagraph (B) there will not be a resulting substantially adverse effect on the access of recipients to qualified hospitals having graduate medical education programs that undertake to provide such care;

* * * * * * *

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, [and] (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request, *and (C) not to increase amounts due from any individual, organization, or agency in order to offset reductions made pursuant to the requirements contained in section 1902(a)(13)(D) in the amount paid, or expected to be paid under the State plan;*

* * * * * * *

(39) provide that, subject to subsection (g), whenever the single State agency which administers or supervises the administration of the State plan is notified by the Secretary under section 1862(e)(2)(A) that a physician or other individual practitioner has been suspended from participation in the program under title XVIII, the agency shall promptly suspend such physician or practitioner from participation in the plan for not less than the period specified in such notice, and no payment may be made under the plan with respect to any item or service furnished by such physician or practitioner during the period of the suspension under this title;

(40) require each health service facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1121(a) to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization; [and]

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary of such action [.]; *and*

(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related part A of title XVIII will be coordinated and conducted jointly to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such title, and (C) for payment of the portion of the costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have otherwise been incurred in an audit of the program established under title XVIII[.]; *and*

(43) provide that any laboratory services (other than such services provided in a physician's office) paid for under such plan

must be provided by a laboratory which meets the requirements of section 1861(e)(9) and paragraphs (10) and (11) of section 1861(s), or, in the case of a rural health clinic, section 1861(aa)(2)(G).

* * * * * * *

PAYMENT TO STATES

SEC. 1903. (a) * * *

(d)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarters, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25).

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5)(A) In any case in which the Secretary estimates that there has been an overpayment to a State on the basis of a claim by such State that has been disallowed by the Secretary, and such State disputes such disallowance, the amount of the Federal payment in controversy shall not be paid to such State until such time as a final determination has been made with respect to such amount. If such final determination is to the effect that an amount is owed to such State, such amount shall be increased by an amount equal to the amount which would have been paid on the amount otherwise owed, at the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund, during the period beginning on the date that the State disputed such disallowance and ending on the date that payment is made to the State.

* * * * * * *

(i) Payment under the proceding provisions of this section shall not be made—

(1) with respect to any amount paid for items or services furnished under the plan after December 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under [the fourth and fifth sentences of section 1842(b)(3)] *subparagraphs (B)(ii), (B)(iii), (C), and (F) of section 1842(b)(4);* or

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause (D), (E), or (F) of section 1866(b)(2), or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1866(b)(2) or under section 1902(a)(38); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital or skilled nursing facility unless such hospital or skilled nursing facility has in effect a utilization review plan which meets the requirements imposed by section 1861(k) for purposes of title XVIII; and if such hospital or skilled nursing facility has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1861(k).

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(q) or the purposes of this section, the term "State medicaid fraud control unit" means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for

the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this title to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this title.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this title.

(4) The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan to health care facilities and that are discovered by the entity in carrying out its activities.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(*r*) *For additional exclusions from reasonable cost and reasonable charge see section 1134.*

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TITLE XX—GRANTS TO STATES FOR SERVICES

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PAYMENTS TO STATES

SEC. 2002. (a) (1) * * *

(9) (A) No payment may be made under this section with respect to any expenditure in connection with the provision of any child day care service, unless—

(i) in the case of care provided in the child's home, the care meets standards established by the State which are reasonably in accord with recommended standards of national standard-setting organizations concerned with the home care of children, or

(ii) in the case of care provided outside the child's home, the care meets the Federal interagency day care requirements as approved by the Department of Health, Education, and Welfare and the Office of Economic Opportunity on September 23, 1968; except that (I) subdivision III of such requirements with respect to educational services shall be recommended to the States and not required, and staffing standards for school-age children in day care centers may be revised by the Secretary, (II) the staffing standards imposed with respect to such care in the case of children under age 3 shall conform to regulations prescribed by the Secretary, (III) the staffing standards imposed with respect to such care in the case of children aged 10 to 14 shall require at least one adult for each 20 children, and in the case of school-aged children under age 10 shall require at least one adult for each 15 children, (IV) the State agency may waive the staffing standards otherwise applicable in the case of a day care center or group day care home in which not more than 20 per centum of the children in the facility (or, in the case of a day care center, not more than 5 children in the center) are children whose care is being paid for (wholly or in part) from funds made available to the State under this title, if such agency finds that it is not feasible to furnish day care for the children, whose care is so paid for, in a day care facility which complies with such staffing standards, and if the day care facility providing care for such children complies with applicable State standards, and (V) in determining whether applicable staffing standards are met in the case of day care provided in a family day care home, the number of children being cared for in such home shall include a child of the mother who is operating the home only if such child is under age 6, except as provided in subparagraph (B).

(B) The Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives, after December 31, 1976, and prior to April 1, 1978, an evaluation of the appropriateness of the requirements imposed by subparagraph (A), together with any recommendations he may have for modification of those requirements. No earlier than ninety days after the submission of that report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph (A) as he determines are appropriate.

(C) The requirements imposed by this paragraph are in lieu of any requirements that would otherwise be applicable under section 522(d) of the Economic Opportunity Act of 1964 to child day care services with respect to which payment is made under this section.

(D) The requirements imposed by this paragraph or by any regulations promulgated by the Department of Health and Human Services to carry out this paragraph shall be inapplicable to child day care services provided after June 30, 1980 and prior to October 1, 1981 which meet applicable standards of State and local law.

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EXCERPTS FROM TITLE 5 U.S.C.—GOVERNMENT ORGANIZATION AND EMPLOYEES

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Chapter 85.—UNEMPLOYMENT COMPENSATION

SUBCHAPTER I—EMPLOYEES GENERALLY

* * * * * * *

§ 8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the 'Account') in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the account based on Federal service performed by employees of such agency after September 30, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1980) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in clause (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

SUBCHAPTER II—EX-SERVICEMEN

§ 8521. Definitions; Application.

(a) For the purpose of this subchapter—

(1) "Federal service" means active service, including active duty for training purposes, in the armed forces which either began after January 31, 1955, or terminated after October 27, 1958, if—

(A) that service was continuous for [90 days] *one year* or more, or was terminated earlier because of an actual service-incurred injury or disability; and

(B) with respect to that service, the individual—

(i) was discharged or released under conditions other than dishonorable; and

(ii) was not given a bad conduct discharge, or, if an officer, did not resign for the good of the service;

(2) "Federal wages" means all pay and allowances, in cash and in kind, of Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim of compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.[1]

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[1] Paragraph (3) was amended by section 116(e)(4) of Public Law 94–566.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

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FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT, AS AMENDED

EXCERPT FROM PUBLIC LAW 91-373, AUGUST 10, 1970

* * * * * * *

TITLE II—FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SHORT TITLE

SEC. 201. This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970".

PAYMENT OF EXTENDED COMPENSATION

STATE LAW REQUIREMENTS

SEC. 202. (a)(1) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide that payment of extended compensation shall be made, for any week of unemployment which begins in the individual's eligibility period, to individuals who have exhausted all rights to regular compensation under the State law and who have no rights to regular compensation with respect to such week under such law or any other State unemployment compensation law or to compensation under any other Federal law and are not receiving compensation with respect to such week under the unemployment compensation law of Canada. For purposes of the preceding sentence, an individual shall have exhausted his rights to regular compensation under a State law (A) when no payments of regular compensation can be made under such law because such individual has received all regular compensation available to him based on employment or wages during his base period, or (B) when his rights to such compensation have terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(2) Except where inconsistent with the provisions of this title, the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for extended compensation and to the payment thereof.

(3) Notwithstanding the provisions of paragraph (2), payment of extended compensation shall not be made to an individual for any week of unemployment in such individual's eligibility period (as defined in section 203(c)) during which such individual resides in a State in which there is not a State "on" indicator for such week, if such individual took up residence in such State after the beginning of the period of unemployment with respect to which extended benefits would otherwise be payable; except that the preceding provisions of this para-

graph shall not apply with respect to the first two weeks during which such individual resides in such State.

(4)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—

(i) if such individual had less than 20 weeks of covered employment during his base period;

(ii) if such individual is unemployed because he voluntarily left employment, was discharged for misconduct, or refused suitable employment as determined under State law;

(iii) durng which he fails to accept any offer of suitable work (as defined in subparagraph (B)) or fails to apply for any suitable work to which he was referred by the State agency; or

(iv) during which he fails to actively engage in seeking work.

(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (iii) or (iv) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(i) begins with the week follwing the week in which such failure occurs, and

(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C)) for his benefit year.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

(D) Extended compensation shall not be denied under clause (iii) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C) for his benefit year, plus

(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week:

(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State laws to the extent that such provisions are not inconsistent with the provisions of subparagraphs (C) and (E); or

(iv) if the position pays wages less than the higher of—

(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(II) any applicable State or local minimum wage.

(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide for referring applicants for benefits under this Act to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.

INDIVIDUALS' COMPENSATION ACCOUNTS

(b)(1) The State law shall provide that the State will establish, for each eligible individual who files an application therefor, an extended compensation account with respect to such individual's benefit year. The amount established in such account shall be not less than whichever of the following is the least:

(A) 50 per centum of the total amount of regular compensation (including dependents' allowances payable to him during such benefit year under such law.

(B) thirteen times his average weekly benefit amount, or

(C) thirty-nine times his average weekly benefit amount, reduced by the regular compensation paid (or deemed paid) to him during such benefit year under such law;

except that the amount so determined shall (if the State law so provides) be reduced by the aggregate amount of additional compensation paid (or deemed paid) to him under such law for prior weeks of unemployment in such benefit year which did not begin in an extended benefit period.

(2) For purposes of paragraph (1), an individual's weekly benefit amount for a week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

EXTENDED BENEFIT PERIOD

BEGINNING AND ENDING

SEC. 203. (a) For purposes of this title in the case of any State, an extended benefit period—

[(1) shall begin with the third week after whichever of the following weeks first occurs:

[(A) a week for which there is a national "on" indicator, or

[(B) a week for which there is a State "on" indicator; and

[(2) shall end with the third week after the first week for which there is both a national "off" indicator and a State "off" indicator.]

(1) shall begin with the third week after the week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is a State "off" indicator.

SPECIAL RULES

(b) (1) In the case of any State—

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin by reason of a State "on" indicator before the fourteenth week after the close of a prior extended benefit period with respect to such State.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State [or all the States)], the Secretary shall cause notice of such determination to be published in the Federal Register.

ELIGIBILITY PERIOD

(c) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

NATIONAL "ON" AND "OFF" INDICATORS

[(d) For purposes of this section—

[(1) There is a national "on" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States equaled or exceeded 4.5 per centum (determined by reference to the average monthly covered employment for the first four or the most recent six calendar quarters ending before the close of such period).

[(2) There is a national "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all States was less than 4.5 per centum (determined by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period).]

STATE "ON" AND "OFF" INDICATORS

(e) For purposes of this section—

(1) There is a State "on" indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 4 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately proceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied. Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law) the State may by law provide that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and [(ii) the figure "4" contained in subparagraph (B) thereof were "5"; except] *(ii) the figure "4" contained in subparagraph (B) thereof were "5" (or such number, or percentage of a number, which exceeds 5, as is specified by the State law); except* that, notwithstanding any such provision of State law, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

RATE OF INSURED UNEMPLOYMENT; COVERED EMPLOYMENT

(f)(1) For purposes of [subsections (d) and (e)] *subsection (e)*, the term "rate of insured unemployment" means the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by [all State agencies (or, in the case of subsection (e), by the State agency)] *the State agency* to the Secretary, by

(B) the average monthly covered employment for the specified period.

[(2) Determinations under subsection (d) shall be made by the Secretary in accordance with regulations prescribed by him.]

[(3)](*2*) Determinations under subsection (e) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

PAYMENTS TO STATES

AMOUNT PAYABLE

SEC. 204. (a)(1) There shall be paid to each State an amount equal to one-half of the sum of—

(A) the sharable extended compensation, and

(B) the sharable regular compensation, paid to individuals under the State law.

(2) No payment shall be made to any State under this subsection in respect to compensation (*A*) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, *or* (*B*) *paid for the first week of compensable unemployment*

in an individual's eligibility period, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an indiivdual for his first week of otherwise compensable unemployment.

[(3) In the case of compensation which is sharable extended compensation or sharable regular compensation by reason of the provision contained in the last sentence of section 203(d), the first paragraph of this subsection shall be applied as if the words "one-half of" read "100 per centum of" but only with respect to compensation that would not have been payable if the State law's provisions as to the State "on" and "off" indicators omitted the 120 percent factor as provided for by Public Law 93-368 and by section 106 of this Act.]

[(4)](*3*) The amount which, but for this paragraph, would be payable under this subsection to any State in respect of any compensation paid to an individual whose base period wages include wages for services to which section 3306(c)(7) of the Internal Revenue Code of 1954 applies shall be reduced by an amount which bears the same ratio to the amount which, but for this paragraph, would be payable under this subsection to such State in respect of such compensation as the amount of the base period wages attributable to such services bears to the total amount of the base period wages.

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APPENDIX A: TEXT OF FINANCE COMMITTEE AMENDMENTS RECOMMENDED UNDER RECONCILIATION PROCESS

TITLE V—PROVISIONS REDUCING SPENDING IN PROGRAMS WITHIN JURISDICTION OF SENATE COMMITTEE ON FINANCE

PART A—UNEMPLOYMENT COMPENSATION PROVISIONS

ELIMINATION OF "NATIONAL TRIGGER" UNDER THE EXTENDED BENEFITS PROGRAM

SEC. 501. (a)(1) Paragraphs (1) and (2) of section 203(a) of the Federal-State Extended Unemployment Compensation Act of 1970 are amended to read as follows:

"(1) shall begin with the third week after the week for which there is a State 'on' indicator; and

"(2) shall end with the third week after the first week for which there is a State 'off' indicator.".

(2) Section 203(b)(2) of such Act is amended by striking out "(or all the States)".

(3) Section 203 of such Act is further amended by striking out subsection (d) thereof.

(4) Section 203(f) of such Act is amended—

(A) in paragraph (1), by—

(i) striking out "subsections (d) and (e)" and inserting in lieu thereof "subsection (e)", and

(ii) striking out "all State agencies (or, in the case of subsection (e), by the State agency)" and inserting in lieu thereof "the State agency",

(B) by striking out paragraph (2), and

(C) by redesignating paragraph (3) a paragraph (2).

(b)(1) Section 204(a) of such Act is amended—

(A) by striking out paragraph (3), and

(B) by redesignating paragraph (4) as paragraph (3).

(c) The amendments made by this section shall take effect on October 1, 1980.

WAITING PERIOD FOR BENEFITS

SEC. 502. (a) Section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended—

(1) by inserting "(a)" after "compensation", and

(2) by inserting immediately before the period the following: ", or (B) paid for the first week of compensable unemployment in an individual's eligibility period, if the State law of such State provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment".

(b) The amendments made by this section shall be applicable in the case of extended compensation paid to individuals during eligibility periods beginning on or after October 1, 1980.

STATE OPTION AS TO CRITERIA FOR STATE "ON" AND "OFF" INDICATORS

SEC. 503. (a) Section 203(e) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended, in the first sentence following paragraph (2) thereof, by striking out the matter beginning with "(ii)" and ending with "except", and inserting in lieu thereof the following: "(ii) the figure '4' contained in subparagraph (B) thereof were '5' (or such number, or percentage of a number, which exceeds 5, as is specified by the State law); except".

(b) The amendment made by this section shall be effective with respect to weeks of unemployment beginning after October 1, 1980.

FEDERAL SERVICE OF EXSERVICEMEN

SEC. 504. (a) Section 8521(a)(1)(A) of title 5, United States Code, is amended by striking out "90 days" and inserting in lieu thereof "one year".

(b) The amendment made by this subsection shall be applicable with respect to determinations of Federal service in the case of individuals filing claims for unemployment compensation on or after October 1, 1980.

BENEFITS ON ACCOUNT OF FEDERAL SERVICE TO BE PAID BY EMPLOYING FEDERAL AGENCY

SEC. 505. (a) Title IX of the Social Security Act is amended by adding at the end thereof the following new section:

"FEDERAL EMPLOYEES COMPENSATION ACCOUNT

"SEC. 909. There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5, United States Code.".

(b) Subchapter I of chapter 85, title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 8509. Federal Employees Compensation Account

"(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the 'Account') in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

"(1) funds appropriated to or transferred thereto, and

"(2) amounts deposited therein pursuant to subsection (c).

"(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

"(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

"(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after September 30, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

"(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

"(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1980) the Secretary of Labor shall estimate—

"(1) the amount of expenditures which will be made from the Account during such year, and

"(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in clause (2) is in excess of the amount necessary—

"(3) to meet the expenditures described in paragraph (1), and

"(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

"(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

"(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.".

(c) All funds, appropriated for the fiscal year beginning October 1, 1979 and which are available for the making of payments to agreements entered into under chapter 85 of title 5, United States Code, or for the making of payments after such date of compensation under such chapter in States which do not have in effect such an agreement, shall be transferred on October 1, 1980 to the Federal Employees Compensation Account established by section 909 of the Social Security Act. On and after such date, all payments described in the preceding sentence shall be made from such Account as provided by section 8509 of title 5, United States Code.

CESSATION OF EXTENDED BENEFITS WHEN INDIVIDUAL MOVES TO STATE IN WHICH TRIGGER IS NOT "ON"

SEC. 506. (a) Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following paragraph:

"(3) Notwithstanding the provisions of paragraph (2), payment of extended compensation shall not be made to an individual for any week of unemployment in such individual's eligibility period (as defined in section 203(c) during which such individual resides in a State in which there is not a State 'on' indicator for such week, if such individual took up residence in such State after the beginning of the period of unemployment with respect to which extended benefits would otherwise be payable; except that the preceding provisions of this paragraph shall not apply with respect to the first two weeks during which such individual resides in such State.".

(b) The amendment made by this section shall be effective with respect to weeks of unemployment beginning on or after October 1, 1980.

LIMITATION ON EXTENDED UNEMPLOYMENT COMPENSATION PROGRAM

SEC. 507. (a) Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new paragraph:

"(4)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his eligibility period—

"(i) if such individual had less than 20 weeks of covered employment during his base period;

"(ii) if such individual is unemployed because he voluntarily left employment, was discharged for misconduct, or refused suitable employment as determined under State law;

"(iii) during which he fails to accept any offer of suitable work (as defined in subparagraph (B) or fails to apply for any suitable work to which he was referred by the State agency; or

"(iv) during which he fails to actively engage in seeking work.

"(B) If any individual is ineligible for extended compensation for any week by reason of a failure described in clause (iii) or (iv) of subparagraph (A), the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

"(i) begins with the week following the week in which such failure occurs, and

"(ii) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C) for his benefit year.

"(C) For purposes of this paragraph, the term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the applicable State law.

"(D) Extended compensation shall not be denied under clause (iii) of subparagraph (A) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

"(i) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

"(I) the individual's average weekly benefit amount (as determined for purposes of subsection (b)(1)(C) for his benefit year, plus

"(II) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

"(ii) if the position was not offered to such individual in writing and was not listed with the State employment service;

"(iii) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of subparagraph (C) and (E); or

"(iv) if the position pays wages less than the higher of—

"(I) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

"(II) any applicable State or local minimum wage.

"(E) For purposes of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if—

"(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

"(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

"(F) For purposes of section 3304(a)(11) of the Internal Revenue Code of 1954, a State law shall provide for referring applicants for benefits under this Act to any suitable work to which clauses (i), (ii), (iii), and (iv) of subparagraph (D) would not apply.".

(b) The amendments made by this section shall be effective with respect to weeks of unemployment beginning on or after October 1, 1980.

CERTIFICATION OF STATE UNEMPLOYMENT LAWS

SEC. 508. On October 31 of any taxable year after 1979, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1954, which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this part to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

PART B—PROVISIONS RELATING TO SSI

DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE

SEC. 511. (a) Section 1613 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Disposal of resources for less than fair market value

"(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than the fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

"(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

"(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest

at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.".

(b) The amendment made by subsection (a) shall be effective with respect to applications for benefits under title XVI of the Social Security Ac filed on or after October 1, 1980.

PART C—PROVISIONS RELATING TO SOCIAL SERVICES

FEDERAL DAY CARE REGULATIONS

SEC. 521. Section 2002(a)(9) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(D) The requirements imposed by this paragraph or by any regulations promulgated by the Department of Health and Human Services to carry out this paragraph shall be inapplicable to child day care services provided after June 30, 1980 and prior to October 1, 1981, which meet applicable standards of State and local law.".

(b) The provisions of section 3(f) of Public Law 93–647 shall not apply with respect to child day care services provided after June 30, 1980 and prior to October 1, 1981 which meet applicable standards of State and local law.

PART D—PUBLIC ASSISTANCE PAYMENTS TO TERRITORIAL JURISDICTIONS

SEC. 531. (a) Section 1108(a)(1) of the Social Security Act is amended—

(1) by striking out "or" at the end of subparagraph (E); and

(2) by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) $72,000,000 with respect to the fiscal year 1979,

"(G) $36,000,000 with respect to the fiscal year 1980,

"(H) $48,000,000 with respect to the fiscal year 1981, or

"(I) $72,000,000 with respect to the fiscal year 1982 and each fiscal year thereafter;".

(b) Section 1108(a)(2) of such Act is amended—

(1) by striking out "or" at the end of subparagraph (E); and

(2) by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) $2,400,000 with respect to the fiscal year 1979,

"(G) $1,200,000 with respect to the fiscal year 1980,

"(H) $1,600,000 with respect to the fiscal year 1981, or

"(I) $3,300,000 with respect to the fiscal year 1982 and each fiscal year thereafter;".

(c) Section 1108(a)(3) of such Act is amended—

(1) by striking out "or" at the end of subparagraph (E); and

(2) by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) $3,300,000 with respect to the fiscal year 1979,

"(G) $1,650,000 with respect to the fiscal year 1980,

"(H) $2,200,000 with respect to the fiscal year 1981, or

"(I) $3,300,000 with respect to the fiscal year 1982 and each fiscal year thereafter.".

PART E—PROVISIONS RELATING TO OASDI

REALLOCATION OF OASDI TAXES

SEC. 541. (a) Section 201(b)(1) of the Social Security Act is amended by striking out clauses (H) through (K) and inserting in lieu thereof the following: "(H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1985, and so reported, (L), 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported.".

(b) Section 201(b)(2) of such Act is amended by striking out clauses (H) through (K) and inserting in lieu thereof the following: "(H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989.".

LIMIT ON RETROACTIVE BENEFITS

SEC. 542. (a) Section 202(j)(1) of the Social Security Act is amended by striking out "twelfth" and inserting in lieu thereof "third".

(b) The amendment made by subsection (a) shall be effective with respect to applications filed on or after September 1, 1980.

BENEFITS FOR CERTAIN PRISONERS

SEC. 543. (a)(1) Section 223(d) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(6)(A) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with the commission of a crime by an individual (committed after the date of the enactment of this paragraph) for which such individual is subsequently convicted, or which is aggravated in connection with such a

crime (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

"(B) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after the date of the enactment of this paragraph) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.".

(2) The third sentence of section 216(i)(1) of such Act is amended by striking out "and (5)" and inserting in lieu thereof "(5), and (6)".

(b) Section 202(d)(7)(A) of such Act is amended by adding at the end thereof the following: "An individual shall not be considered a 'full-time student' for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the date of the enactment of this paragraph) which constituted a felony under applicable law.".

(c) Section 223 of such Act is amended by adding at the end thereof the following new subsection:

"Suspension of Benefits for Inmates of Penal Institutions

"(f)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section, or under section 202(d) by reason of being under a disability, to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

"(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this title on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section.".

(d) The amendments made by this section shall be effective with respect to benefits payable for months beginning on or after October 1, 1980.

PART F—PROVISIONS RELATING TO MEDICARE AND MEDICAID

CRITERIA FOR DETERMINING REASONABLE COST OF HOSPITAL SERVICES

SEC. 551. (a)(1) The first sentence of section 1861(v)(1)(A) of the Social Security Act is amended by striking out "The" and inserting "Subject to subsection (bb), the".

(2) Section 1861(v) of such Act is further amended by adding at the end thereof the following new paragraph:

"(8) For additional requirements applicable to determination of reasonable cost, see subsection (bb) and section 1128(c)(3).".

(b) Section 1861 of such Act is amended by adding after subsection (aa) the following new subsection:

"Criteria for Determining Reasonable Cost of Hospital Services

"(bb)(1) It is the purpose of this subsection to set forth initial methods and criteria for determining reimbursement based upon reasonable cost, but such methods and criteria shall be subject to appropriate modification by the Secretary as provided in section 1128. In order more fairly and effectively to determine reasonable costs incurred in providing hospital services, the Secretary shall, not later than September 1, 1980, after consulting with appropriate national organizations, establish a system of hospital classification under which hospitals furnishing services will be classified on a national basis initially—

"(A) by size, with each of the following groups of hospitals being classified in separate categories: (i) those having more than 5, but fewer than 25, beds, (ii) those having more than 24, but fewer than 50 beds, (iii), those having more than 49, but fewer than 100, beds, (iv) those having more than 99, but fewer than 200 beds, (v) those having more than 199, but fewer than 300 beds, (vi) those having more than 299, but fewer than 400, beds, (vii) those having more than 399, but fewer than 500, beds, and (viii) those having more than 499 beds;

"(B) by type of hospital, with (i) short-term general hospitals being in a separate category, (ii) hospitals which are primary affiliates of accredited medical schools being in one separate category, and (iii) psychiatric, geriatric, maternity, pediatric, or other specialty hospitals being in the same or separate categories, as the Secretary may determine appropriate, in light of any differences in specialty which significantly affect the routine costs of the different types of hospitals;

"(C) as rural or urban; and

"(D) according to such other criteria as the Secretary finds appropriate, including modification of bed-size categories;

but the system of hospital classification shall not differentiate between hospitals on the basis of ownership.

"(2) The term 'routine operating costs' used in this subsection does not include—

"(A) capital and related costs,

"(B) direct personnel and supply costs of approved hospital education and training programs,

"(C) costs of interns, residents, and nonadministrative physicians,

"(D) energy costs,

"(E) malpractice insurance expense, or

"(F) ancillary service costs.

"(3)(A) During the calendar quarter, beginning on January 1 of each year, beginning with 1981 (and in the case of 1980, as soon as

possible), the Secretary shall determine, for the hospitals in each category of the system established under paragraph (1), an average per diem routine operating cost amount which shall (except as otherwise provided in this subsection) be used in determining payments to hospitals.

"(B) The determination shall be based upon the amount of the hospitals' routine operating costs for the most recent accounting year ending prior to October 1 of the calendar year preceding the calendar year in which the determination is made. If, for any accounting year which starts on or after July 1, 1980, a hospital's actual routine operating costs are in excess of the amount allowed for purposes of determining payment to the hospital pursuant to this subsection and subsection (v), only one-half of such excess shall be taken into account in making any determination which the Secretary shall make under this paragraph. Such amount as determined under the preceding sentences of this subparagraph shall be adjusted to reflect the percentage increase in the cost of the mix of goods and services (including personnel and nonpersonnel costs) comprising routine operating costs, based on an index composed of appropriately weighted indicators of changes in the economy in wages and prices which are representative of services and goods included in routine operating costs, during the period from the end of the accounting year referred to in the first sentence of this subparagraph to the end of the quarter in which the determination is being made.

"(C) In making a determination, the routine operating costs of hospitals in each category shall be divided into personnel and nonpersonnel components.

"(D)(i) The personnel and nonpersonnel components of routine operating costs for hospitals in each category (other than for those excluded under clause (ii) shall be divided by the total number of days of routine care provided by such hospitals to determine the average per diem routine operating cost for such category.

"(ii) In making the calculations required by subparagraph (A) the Secretary shall exclude any newly opened hospital (as defined in the second sentence of paragraph (4)(F)), and any hospital which he determines is experiencing significant cost differentials resulting from failure of the hospital fully to meet the standards and conditions of participation as a provider of services.

"(E) There shall be determined for each hospital in each category a per diem target rate for routine operating costs. Such target rate shall equal the average per diem routine operating cost amount for the category in which the hospital is expected to be classified during the subsequent accounting year, except that the personnel component shall be adjusted using a wage index based upon general wage levels for reasonably comparable work in the areas in which the hospitals are located. If the Secretary finds that, in an area where a hospital in any category is located for the most recent twelve-month period for which data with respect to such wage levels are available, the wage level for such hospital is significantly higher than such general wage level in that area (relative to the relationship within the same hospital group between hospital wages and such general wages in other areas), then such general wage level in the area shall be deemed equal to the wage

level for such hospital, but only with respect to the hospital's first accounting year beginning on or after July 1, 1980 and prior to July 1, 1981.

"(4)(A)(i) The term 'adjusted per diem target rate for routine operating costs' means the per diem target rate for routine operating costs plus the percentage increase in costs determined under the succeeding provisions of this subparagraph.

"(ii) In determining the adjusted per diem target rate, the Secretary shall add an estimated percentage increase in the cost of the mix of goods and services (including personnel and nonpersonnel costs) comprising routine operating costs, based on an index composed of appropriately weighted indicators of changes in the economy in wages and prices which are representative of services and goods included in routine operating costs, during the period from the end of the quarter in which the determination is made under paragraph (3)(A) to the end of the hospital's accounting year. Where actual changes in such weighted index are significantly different (at least one-half of 1 percentage point) from those estimated, the Secretary shall issue corrected target rates on a quarterly basis. At the end of the hospital's accounting year, the target rate shall be adjusted to reflect the actual changes in such weighted index. Adjustments shall also be made to take account of changes in the hospital's classification.

"(B) For purposes of payment, the amount of routine operating cost incurred by a hospital for any accounting year which begins on or after July 1, 1980, shall be deemed to be equal—

"(i) in the case of a hospital which has actual routine operating costs equal to or greater than that hospital's adjusted per diem target rate for routine operating costs, to the greater of—

"(I) the hospital's actual routine operating costs, but not exceeding—

"(a) in the case of the first accounting year of any hospital which begins on or after July 1, 1980, and prior to July 1, 1981, an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs, plus (2) 15 percent of the amount described in clause (1), plus (3) one-half of the difference between the hospital's actual routine operating costs and the sum of the amounts determined under clauses (1) and (2),

"(b) in the case of the first accounting year of any hospital which begins on or after July 1, 1981, and prior to July 1, 1982 (or if earlier, the second accounting year of such hospital which begins on or after July 1, 1980, and prior to July 1, 1982), an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs for such year, plus (2) a dollar amount equal to the dollar amount determined under clause (a)(2) for the category of such hospital. plus (3) one-half of the difference between hospital's actual routine operating costs and the sum of the amounts determined under clauses (1) and (2), and

"(c) in the case of any accounting year after the accounting year described in clause (b), an amount equal to the aggregate of (1) 100 percent of the hospital's adjusted per diem target rate for routine operating costs for such year, plus (2) a dollar amount equal to the dollar amount determined under clause (b) (2) for the category of such hospital, or

"(II) the amounts determined for the hospital under division (I) if it had been classified in the bed-size category which contains hospitals closest in bed-size to such hospital's bed-size (with a hospital which has a bed-size that falls halfway between two such categories being considered in the category which contains hospitals with the greater number of beds), but not exceed the hospital's actual routine operating costs; or

"(III) in the case of a hospital having an average length-of stay per patient which is less than the average length-of-stay per patient for hospitals classified in the same category, for any accounting year, an amount equal to the average reimbursement for routine operating costs per patient stay for hospitals in the same category, multiplied by the number of patient stays for such hospital during that accounting year, but not exceeding the actual routine operating costs for such hospital; and

"(ii) in the case of a hospital which has actual routine operating costs which are less than that hospital's adjusted per diem target rate for routine operating costs, to (I) the amount of the hospital's actual routine operating costs, plus (II) the smaller of a (a) 5 percent (or 2.5 percent with respect to any accounting year which begins on or after July 1, 1980, and prior to July 1, 1982) of the hospital's adjusted per diem target rate for routine operating costs, or (b) 50 percent (or 25 percent with respect to any accounting year which begins on or after July 1, 1980, and prior to July 1, 1982) of the amount by which the hospital's adjusted per diem target rate for routine operating costs exceeds the hospital's actual routine operating costs.

"(C) Any hospital (other than a newly opened hospital) excluded by the Secretary under paragraph (3)(D)(ii), shall be reimbursed for routine operating costs on the basis of the lesser of (i) actual costs or (ii) the reimbursement determined under this subsection.

"(D) On or before April 1 (or in the case of 1980, as soon as possible) of the year in which the Secretary determines the amount of the average per diem operating cost for each hospital category and the adjusted per diem target rate for each hospital, the Secretary shall publish the determinations, and he shall notify the hospital administrator and the administrative governing body of each hospital with respect to all aspects of the determination which affect the hospital.

"(E) If a hospital is determined by the Secretary to be—

"(i) located in an underserved area where hospital services are not otherwise available,

"(ii) certified as being currently necessary by an appropriate planning agency, and

"(iii) underutilized,

the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the under-utilized capacity.

"(F) if a newly opened hospital is determined by the Secretary to have greater routine operating costs as a result of the cost patterns associated with newly opened hospitals, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such patterns. For purposes of this subparagraph a 'newly opened hospital' means a hospital which has not satisfied the requirements of paragraphs (1) and (7) of subsection (e) of this section (under present or previous ownership) for at least twenty-four months prior to the start of such hospital's accounting year.

"(G) If a hospital is determined by the Secretary to have greater routine operating costs as a result of changes in service on account of consolidation, sharing, or addition of services, where such consolidation, sharing, or addition has been approved by the appropriate State health planning and development agency or agencies, the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to such changes in service.

"(H) (i) If a hospital satisfactorily demonstrates to the Secretary that, in the aggregate, its patients require a substantially greater intensity of care than generally is provided by the other hospitals in the same category, resulting in unusually greater routine operating costs, then the adjusted per diem target rate shall not apply to that portion of the hospital's routine operating costs attributable to the greater intensity of care required.

"(ii) To the extent that a hospital can demonstrate that it experiences routine operating costs in excess of such costs for hospitals having a reasonably similar mix of patients on account of consistently shorter lengths-of-stay in such hospital, which result from the greater intensity of care provided by such hospital, the excess routine operating costs shall be considered attributable to the greater intensity of care required, but this clause shall not apply in the case of a hospital whose routine operating costs are determined under subparagraph (B) (i) (III).

"(I) The Secretary may further increase the adjusted per diem target rate applicable in Alaska and Hawaii to reflect the higher prices prevailing in such States.

"(J) Where the Secretary finds that a hospital has manipulated its patient mix, or patient flow, or provides less than the normal range and extent of patient services, or that an unusually large proportion of routine nursing service is provided by private-duty nurses, the routine operating costs of that hospital shall be deemed equal to the lesser of (i) the amount determined without regard to this subsection, or (ii) the amount determined under subparagraph (B).

"(5) Where any provisions of this subsection are inconsistent with subsection (v), this subsection supersedes subsection (v).

"(6) (A) Notwithstanding any other provision of this Act, in the case of any State which has established a reimbursement system for hospitals, hospital reimbursement in that State under this title and under the State plan approved under title XIX shall, with respect to the services covered by such system, be based on that State system, if the Secretary finds that—

"(i) the State has a reimbursement system and it at least applies to the same hospitals in the State, and to the same costs, as the Federal reimbursement reform program established by this subsection;

"(ii) every hospital in the State with which there is a provider agreement under this title or under the State plan approved under title XIX conforms to the accounting and uniform reporting requirements of section 1121 of this Act, and furnishes any appropriate reports that the Secretary may require; and

"(iii) such State demonstrates to his satisfaction that the total amount payable, with respect to inpatient hospital costs, in the State under this title and under the State plan approved under title XIX will be equal to or less than an amount equal to (I) the amount which would otherwise be payable for such costs under this title and such State plan without regard to the incentive payments provided by subparagraph (B)(ii) of paragraph (4), plus (II) the amount of any incentive payments which are allowed under the State's reimbursement system in recognition of demonstrated efficiencies (but not to exceed the amount of the incentive payments which would be allowed under paragraph (4)(B)(ii).

If the Secretary finds that any of the above conditions in a State which previously met them have not been met for a two-year period, the Secretary shall, after due notice, reimburse hospitals in that State according to the provisions of this Act (other than this paragraph) unless he finds that unusual, justifiable, and nonrecurring circumstances led to the failure to comply.

"(B) If the Secretary finds that, during any two-year period during which hospital reimbursement under this title and under the State plan approved under title XIX was based on a State system as provided in subparagraph (A), the amount payable by the Federal Government under such titles for inpatient hospital costs in such State was in excess of the amount which would have been payable for such costs in such State if reimbursement had not been based on the State system (as estimated by the Secretary), the adjusted per diem target rate for routine operating costs (as determined under the preceding paragraphs of this subsection) for hospitals in such State shall be reduced (by not more than 1 percent in any year) until the Federal Government has recouped an amount equal to such excess payment amount.

"(C)(i) The Secretary shall pay to any State in which hospital reimbursement under this title is based on a State system as provided in subparagraph (A), an amount which bears the same ratio to the total cost incurred by such State of administering the approved State system (including the cost of initially putting the system into operation) as the amount paid by the Federal Government under this title in such State for inpatient hospital costs bears to the total amount of inpatient hospital costs in such State which are subject to the State system.

"(ii) Payments under clause (i) shall be made from funds in the Federal Hospital Insurance Trust Fund.

"(iii) An amount which bears the same ratio to the total cost incurred by such State of administering the approved State system (including the cost of initially putting the system into operation) as

the amount paid under the State plan approved under title XIX in such State for inpatient hospital costs bears to the total amount of inpatient hospital costs in such State which are subject to the State system, shall, for purposes of title XIX, be considered to be an amount expended for the administration of such State plan.

"(D) If there is in effect in a State a reimbursement system for hospitals which the Secretary finds meets the criteria prescribed in subparagraph (A) except that such system was not established by the State, at the election of the State, such system shall for purposes of this paragraph be considered to be a reimbursement system for hospitals established by such State.".

(c) Part A of title XI of the Social Security Act is amended by adding after section 1127 the following new section:

"HEALTH FACILITIES COSTS COMMISSION

"SEC. 1128. (a) There is established a commission to be known as the Health Facilities Costs Commission (hereinafter in this section referred to as the 'Commission').

"(b) (1) The Commission shall be composed of fifteen members appointed by the Secretary—

"(A) at least five of whom shall be individuals who are representatives of providers;

"(B) at least five of whom shall be individuals who represent public (including Federal, State, and local) health benefit programs; and

"(C) the remainder of whom shall be, as a result of training, experience, or attainments, particularly and exceptionally well qualified to assist in serving and carrying out the functions of the Commission.

One of the members of the Commission, at the time of appointment, shall be designated as Chairman of the Commission. The Secretary shall first appoint members to the Commission not later than October 1, 1980.

"(2) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

"(4) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

"(5) Members of the Commission shall be appointed for a term of four years, except that the Secretary shall provide for such shorter terms for some of the members first appointed so as to stagger the date of expiration of members' terms of office.

"(6) No individual may be appointed to serve more than two terms as a member of the Commission.

"(7) Each member of the Commission shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per diem equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual per-

formance of duties vested in the Commission, and all members of the Commission shall be allowed, while away from their homes or regular places of business in the performance of service for the Commission, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

"(8) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

"(c)(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of the reimbursement of hospitals for care provided by them to individuals covered under title XVIII or under State plans approved under title XIX, with particular attention to the criteria established by section 1861(bb) with a view to devising additional methods for reimbursing hospitals for all other costs, and for reimbursing all other entities which are reimbursed on the basis of reasonable cost. These methods shall provide for appropriate classification and reimbursement systems designed to ordinarily permit comparisons of (A) the cost centers of one entity, either individually or in the aggregate, with cost centers similar in terms of size and scale of operation, (B) prevailing wage levels, (C) the nature, extent, and appropriate volume of the services furnished, and (D) other factors which have a substantial impact on hospital costs. The Commission shall also develop procedures for appropriate exceptions. The Commission shall submit to the Congress reports on its progress in addressing these issues at least once every six months during the three-year period following the date of the enactment of this section.

"(2) The Commission shall study appropriate methods for classifying and comparing hospitals which, with respect to any accounting year, derive 75 percent or more (as estimated by the Secretary) of their inpatient care revenues from one or more health maintenance organizations. The Commission shall consider recommending the classification and comparison of such hospitals as a separate category in recognition of the differences in the nature of their operations as compared with other hospitals.

"(3)(A) The Secretary, taking account of the proposals and advice of the Commission, shall by regulation make appropriate modifications in the method of reimbursement under titles V, XVIII, and XIX for routine hospital costs, other hospital costs and costs of other entities which are reimbursed on the basis of reasonable costs.

"(B) In any case in which the Secretary proposes to make such modifications, he shall first submit such proposal to the Commission. If the Commission disagrees with such proposal, final regulations implementing such proposal shall be submitted to Congress by the Secretary, and such regulations may not become effective until at least 60 days after they were submitted to Congress.

"(d) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Commission may need.

"(e) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

"(f) There are authorized to be appropriated such sums as may be necessary to carry out this section.

"(g) Section 14 of the Federal Advisory Committee Act shall not apply to the Commission.".

(d) (1) Section 1866(a) (1) of the Social Security Act is amended—

(A) by striking out the period at the end of subparagraph (D) and inserting in lieu thereof ", and "; and

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

"(E) not to increase amounts due from any individual, organization, or agency in order to offset reductions made under section 1861(b) in the amount paid, or expected to be paid, under this title.".

(2) Section 1902(a) (27) of the Social Security Act is amended by striking out "and" at the end of clause (A) and by inserting before the semicolon at the end of clause (B) the following: ", and (C) not to increase amounts due from any individual, organization, or agency in order to offset reductions made pursuant to the requirements contained in section 1902(a) (13) (D) in the amount paid, or expected to be paid under the State plan".

(e) Section 1902(a) (13) (D) of the Social Security Act is amended to read as follows:

"(D) for payment of the reasonable cost of inpatient hospital services provided under the plan, applying the methods specified in section 1861(v) and section 1861(bb), which are consistent with section 1122; and".

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

SEC. 552. (a) Part A of title XI of the Social Security Act is amended by adding after section 1128 (as added by section 551 of this Act) the following new section:

"PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED FACILITIES

"SEC. 1129. (a) (1) (A) Before the end of the third full month following the month in which this section is enacted, the Secretary shall establish a Hospital Transitional Allowance Board (hereinafter in this section referred to as the 'Board'). The Board shall have five members, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, who are knowledgeable about hospital planning and hospital operations.

"(B) Members of the Board shall be appointed for three-year terms, except some initial members shall be appointed for shorter terms to permit staggered terms of office.

"(C) Members of the Board shall be entitled to per diem compensation at rates fixed by the Secretary, but not more than the current per

diem equivalent at the time the service involved is rendered for grade GS–18 under section 5332 of title 5, United States Code.

"(D) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Board may need.

"(2) The Board shall receive and act upon applications by hospitals, certified for participation (other than as 'emergency hospitals') under title XVIII and XIX, for transitional allowances.

"(b) For purposes of this section—

"(1) The term 'transitional allowance' means an amount which—

"(A) shall, solely by reason of this section, be included in a hospital's reasonable cost for purposes of calculating payments under the programs authorized by titles V, XVIII, and XIX of this Act; and

"(B) in accordance with this section, is established by the Secretary for a hospital in recognition of a reimbursement detriment (as defined in paragraph (3)) experience because of a qualified facility conversion (as defined in paragraph (2)).

"(2) The term 'qualified facility conversion' means closing, modifying, or changing the usage of an underutilized hospital facility which is expected to benefit the programs authorized under title V, title XVIII, and title XIX by (A) eliminating excess bed capacity, (B) discontinuing an underutilized service for which there are adequate alternative sources, or (C) substituting for the underutilized service some other service which is needed in the area and which is consistent with the findings of an appropriate health planning agency.

"(3) A hospital which has carried out a qualified facility conversion and which continues in operation will be regarded as having experienced a 'reimbursement detriment'—

"(A) to the extent that, solely because of the conversion, there is a reduction in that portion of the hospital's costs attributable to capital assets which are taken into account in determining reasonable cost for purposes of determining amount of payment to the hospital under title V, title XVIII, or a State plan approved under title XIX;

"(B) if the conversion results, on an interim basis, in increased operating costs, to the extent that operating costs exceed amounts ordinarily reimbursable under title V, title XVIII, and the State plan approved under title XIX; or

"(C) in the case of complete closure of a private nonprofit hospital, or local governmental hospital, other than for replacement of the hospital, to the extent of actual debt obligations previously recognized as reasonable for reimbursement, where the debt remains outstanding, less any salvage value.

"(c)(1) Any hospital may file an application with the Board (in such form and including such data and information as the Board, with the approval of the Secretary, may require) for a transitional allowance with respect to any qualified conversion which is formally initiated after September 30, 1980. The Board, with the approval of the Secretary, may also establish procedures, consistent with this section,

by means of which a finding of a reimbursement detriment may be made prior to the actual conversion.

"(2) The Board shall consider any application filed by a hospital, and if it finds that—

"(A) the facility conversion is a qualified facility conversion, and

"(B) the hospital is experiencing or will experience a reimbursement detriment because it carried out the qualified facility conversion,

the Board shall transmit to the Secretary its recommendation that the Secretary establish a transitional allowance for the hospital in amounts reasonably related to prior or prospective use of the facility under titles V and XVIII and the State plan approved under title XIX, for a period, not to exceed twenty years as specified by the Board, and if the Board finds that the criteria in subparagraphs (A) and (B) are not met, it shall advise the Secretary not to establish a transitional allowance for that hospital. For an approved closure under subsection (b)(3)(C) the Board may recommend or the Secretary may approve, a lump-sum payment in lieu of periodic allowances, where such payment would constitute a more efficient and economic alternative.

"(3)(A) The Board shall notify a hospital of its findings and recommendations.

"(B) A hospital dissatisfied with a recommendation may obtain an informal or formal hearing, at the discretion of the Secretary by filing (in the form and within a time period established by the Secretary) a request for a hearing.

"(4)(A) Within thirty days after receiving a recommendation from the Board respecting a transitional allowance or, if later, within thirty days after a hearing, the Secretary shall make a final determination whether, and if so in what amount and for what period of time, a transitional allowance will be granted to a hospital. A final determination of the Secretary shall not be subject to judicial review.

"(B) The Secretary shall notify a hospital and any other appropriate parties of the determination.

"(C) Any transitional allowance shall take effect on a date prescribed by the Secretary, but not earlier than the date of completion of the qualified facility conversion. A transitional allowance shall be included as an allowable cost item in determining the reasonable cost incurred by the hospital in providing services for which payment is authorized under this Act, except that the transitional allowance shall not be considered in applying limits to costs recognized as reasonable pursuant to the third sentence of section 1861(v)(1) and section 1861(bb) of this Act, or in determining the amount to be paid to a provider pursuant to section 1814(b), section 1833(a)(2), section 1903(i)(3), and section 506(f)(3) of this Act.

"(d) In determining the reasonable cost incurred by a hospital with respect to which payment is authorized under a State plan approved under title V or XIX, any transitional allowance shall be included as an allowable cost item.

"(e)(1) The Secretary is authorized to establish transitional allowances only as provided in paragraphs (2) and (3).

"(2) Prior to January 1, 1983, the Secretary is authorized to establish a transitional allowance for not more than fifty hospitals.

"(3) On and after January 1, 1983, the Secretary is authorized to establish a transitional allowance for any hospital which qualifies for such an allowance under the provisions of this section.

"(4) On or before January 1, 1982, the Secretary shall report to the Congress evaluating the effectiveness of the program established under this section including appropriate recommendations."

(b) The amendments made by subsection (a) shall apply only to services furnished by a hospital during any accounting year beginning on or after October 1, 1980.

COORDINATED AUDITS UNDER THE SOCIAL SECURITY ACT

SEC. 553. (a) Title XI of the Social Security Act is amended by inserting after section 1129 (as added by section 552 of this Act) the following new section:

"COORDINATED AUDITS

"SEC. 1130. If an entity provides services reimbursable on a cost-related basis under title V or XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title V or XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall apportion to the program established under title V or XIX that part of the cost of coordinated audits which is attributable to each such program and which would not have otherwise been incurred in an audit of the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title V or XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be the amount that represents the duplication of costs resulting from such State's failure to participate in the common audit.".

(b) Section 1902(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (40);

(B) by striking out the period at the end of paragraph (41) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (41) the following new paragraph:

"(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such title, and (C) for

payment of the portion of the costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have otherwise been incurred in an audit of the program established under title XVIII.".

(c) Section 505(a) of the Social Security Act is amended—

(A) by striking out "and" at the end of paragraph (14);

(B) by striking out "and" at the end of paragraph (15) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (15) the following new paragraph:

"(16) provides (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under part A of title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part, and (C) for payment of the portion of costs of each such common audit of such an entity equal to the portion of the cost of the common audit which is attributable to the program established under this title and which would not have otherwise been incurred in an audit of the program established under title XVIII.".

(d)(1) The amendments made by subsections (b) and (c) shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title V or title XIX of the Social Security Act, on or after the first day of the first calendar quarter which begins more than 30 days after the date of enactment of this Act.

(2) In the case of a State plan under title V or title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b) or (c), 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 which begins after the date of enactment of this Act.

(e) The Secretary shall report to Congress, not later than March 31, 1981, on actions the Secretary has taken (1) to coordinate the conduct of institutional audits and inspections which are required under the programs funded under title V, XVIII, or XIX of the Social Security Act and (2) to coordinate such audits and inspections with those conducted by other cost payers, and he shall include in such report recommendations for such legislation as he deems appropriate to assure the maximum feasible coordination of such institutional audits and inspections.

APPORTIONMENT OF PROVIDER COSTS

SEC. 554. (a) Section 1861(v)(1) of the Social Security Act is amended by adding at the end thereof the following new subparagraph:

"(G) No payment with respect to a cost attributable to the program established by this title shall be made to a provider of services to the extent that such payment exceeds the proportional share of such cost, as measured by days of utilization or provider charges, until such time as evidence can be produced which, in the judgment of the Comptroller General and concurred in by the Secretary, justifies payment of such a higher proportional share as warranted under particular circumstances for certain facilities, and such payments may then be made only to the extent so justified.".

(b)(1) The amendment made by this section shall be effective with respect to costs attributable to services provided on or after April 1, 1981.

(2) The Comptroller General shall undertake a study to determine those providers (classified, as appropriate, on the basis of type, size, location, patient characteristics, average length of stay, types of nursing services, or other relevant criteria) for which payment of any differential is justified under section 1861(v)(1)(G) of the Social Security Act, and the extent to which such payments are justified. The Comptroller General shall submit the results of such study to the Secretary of Health and Human Services prior to April 1, 1981, and the Secretary shall issue regulations with respect to such payments prior to October 1, 1981.

(3) In the case of any provider with respect to which it is determined under the regulations issued under paragraph (2) that such payments are justified, reimbursement to such provider shall include such payments, and retroactive reimbursement of such payments shall be made, after October 1, 1981, for services provided on or after April 1, 1981 and before October 1, 1981.

REIMBURSEMENT FOR INAPPROPRIATE INPATIENT HOSPITAL SERVICES

SEC. 555. (a)(1) Section 1158 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(e)(1) If, for purposes of payment under a title of this Act as described in subsection (a), the Professional Standards Review Organization disapproves (under subsection (a)) of inpatient hospital services provided by a hospital to an individual on the grounds that such individual could receive appropriate and necessary medical, nursing, or other care more economically in an inpatient facility of another type or home care program, and such organization finds that—

"(A) payment is authorized to be made under or pursuant to such title of this Act (as described in subsection (a)) with respect to services furnished to such individual in such other type of facility or home care program; and

"(B) there is no such other type of facility or home care program available to such individual,

then payment, from funds described in subsection (a), to such hospital may continue to be made (but at a rate determined under paragraph (2)) for days (in a continuous period of days which begins with the day following the last day for which payment may be made, with application of subsection (d), for such inpatient hospitals services fur-

nished to such individual) with respect to which such individual meets the conditions specified in subparagraphs (A) and (B).

"(2)(A) The rate at which payment may be continued under paragraph (1) shall be a rate equal to the estimated average rate per patient-day paid for services provided in such other type of facility under the State plan approved under title XIX of the State in which such hospital is located, or, if less, the reasonable reimbursement allowed to such hospital for services of the type provided in such other type of facility (if such hospital has a unit which provides such other type of services).

"(B) In the case of a State that does not have a State plan approved under title XIX, the rate at which payment may be continued under paragraph (1) shall be an amount equal to the estimated average allowable costs per patient-day for services provided in such other type of facility under title XVIII in the State in which such hospital is located, or, if less, the allowable costs in effect for such hospital for services of the type provided in such other type of facility (if such hospital has a unit which provides such other type of services).

"(3) Any day on which an individual receives inpatient hospital services for which payment is made at a lower amount on account of the provisions of this subsection shall, for purposes of this Act, be deemed to be a day on which he received the type of services provided by such other type of facility or home care program.".

(2) Section 1158(a) of such Act is amended by striking out "subsection (d)" and inserting in lieu thereof "subsections (d) and (e)".

(3) Section 1158(d) of such Act is amended—

(A) by striking out "In any case" and inserting in lieu thereof: "(1) Except as provided in subsection (e) and paragraph (2) of this subsection, in any case"; and

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

"(2) A Professional Standards Review Organization shall not disapprove (under subsection (a)) of inpatient hospital services provided under a title of this Act to an individual on the grounds that such individual could receive appropriate and necessary medical, nursing, or other care more economically in an inpatient facility or home care program of another type for which payment can be made under such title (but shall maintain and make public a quarterly report to the Secretary by hospital and area as to the number of cases and hospital days which, except for this paragraph, would have otherwise been disapproved) if—

"(A) there is no excess of inpatient hospital beds (adjusting for patients occupying hospital beds who do not need that level of care) in the geographic area in which the hospital is located (as certified by the State or local health planning agency or health systems agency); and

"(B) there is no such other type of facility or home care program reasonably available to such individual to provide appropriate care for which payment can be made under such

(b)(1) Section 1812(a) of such Act is amended—

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

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(C) by adding after paragraph (3) the following new paragraph:

"(4) detoxification facility services.".

(2) Section 1814(a)(2) of such Act is amended—

(A) by striking out "or" at the end of subparagraph (D);

(B) by inserting "or" at the end of subparagraph (E); and

(C) by adding after subparagraph (E) the following new subparagraph:

"(F) in the case of detoxification facility services, such services are required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of detoxification);".

(3) Section 1861(u) of such Act is amended by inserting "detoxification facility," after "home health agency,".

(4) Section 1861 of such Act is amended by adding after subsection (bb) (as added by section 651 of this Act) the following new subsection:

"Detoxification Facility Services

"(cc)(1) The term 'detoxification facility services' means services provided by a detoxification facility in order to reduce or eliminate the amount of a toxic agent in the body, but only to the extent that such services would be covered under subsection (b) if furnished as an inpatient service by a hospital, or are physician services covered under subsection (s).

"(2) The term 'detoxification facility' means a public or voluntary community-based nonprofit facility, other than a hospital, which—

"(A) is engaged in furnishing to inpatients the services described in paragraph (1);

"(B) is accredited by the Joint Commission on the Accreditation of Hospitals as meeting the Accreditation Program for Psychiatric Facilities standards (1979 edition), or is found by the Secretary to meet such standards;

"(C) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring services not available at the facility; and

"(D) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by the facility.".

(c) The amendments made by the preceding provisions of this section shall become effective on October 1, 1980.

(d) The Secretary of Health and Human Services shall conduct a study and make recommendations, within 18 months after the date of the enactment of this Act, concerning the appropriateness of extending coverage to postdetoxification rehabilitation and to outpatient detoxification.

(e) Section 1128(c) of the Social Security Act (as added by section 651 of this Act) is amended by adding at the end thereof the following new paragraph:

"(4) The Commission shall review and make recommendations with respect to a method of classifying and comparing detoxification facili-

ties so as to provide that such method may be used for reimbursement purposes for such facilities within two years after the date of the enactment of this section.".

(f) Section 1155 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Any Professional Standards Review Organization which has assumed responsibility under this section for review of inpatient hospital services in an area shall also assume responsibility in such area for review of detoxification facility services.".

PSRO REVIEW OF HOSPITAL ADMISSIONS, ROUTINE TESTING, AND PREOPERATIVE STAYS

SEC. 556. Section 1155(a)(1) of the Social Security Act is amended by adding at the end thereof (after and below subparagraph (C)) the following new sentence: "In carrying out the provisions of this paragraph such organization shall give priority to making such determinations with respect to routine hospital admission testing, preoperative hospital stays in excess of one day, and elective admissions on weekends or other times when services are not available.".

CERTAIN SURGICAL PROCEDURES PERFORMED ON AN AMBULATORY BASIS

SEC. 557. Part B of title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"SPECIAL PROVISIONS RELATING TO CERTAIN SURGICAL AND PREOPERATIVE PROCEDURES PERFORMED ON AN AMBULATORY BASIS

"SEC. 1845. (a) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify those surgical procedures which can be safely and appropriately performed either in a hospital on an inpatient basis or on an ambulatory basis—

"(1) in a physician's office; or

"(2) in an ambulatory surgical center or hospital.

"(b)(1) If a physician performs in his office a surgical procedure specified by the Secretary pursuant to subsection (a)(1) on an individual insured for benefits under this part, he shall, notwithstanding any other provision of this part, be entitled to have payment made under this part equal to—

"(A) 100 percent of the reasonable charge for the services involved with the performance of such procedure (including all pre- and post-operative physicians' services performed in connection therewith), plus

"(B) the amount established by the Secretary pursuant to paragraph (2),

but only if the physician agrees with such individual to be paid on the basis of an assignment under the terms of which the reasonable charge for such services is the full charge therefor.

"(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(1), an amount established with a view to according recognition to the special costs, in excess of

usual overhead, which physicians incur which are attributable to securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and to assuring that the performance of such procedure in the physician's office will involve substantially less total cost than would be involved if the procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical procedure periodically shall be reviewed and revised and may be adjusted, when appropriate, by the Secretary to take account of varying conditions in different areas.

"(c)(1) Payment under this part may be made to an ambulatory surgical center for ambulatory facility services furnished in connection with any surgical procedure, specified by the Secretary pursuant to subsection (a)(2), which is performed on an individual insured for benefits under this part in an ambulatory surgical center, which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, if such surgical center agrees to accept in full payment of all services furnished by it in connection with such procedure, the amount established for such procedure pursuant to paragraph (2).

"(2) The Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2), a reimbursement amount which is payable to an ambulatory surgical center for its services furnished in connection with such procedure. The amount established for any such surgical procedure shall be established with a view to according recognition to the costs incurred by such centers generally in providing the services involved in connection with such procedure, and to assuring that the performance of such procedure in such a center involves less cost than would be involved if such procedure were performed on an inpatient basis in a hospital. The amount so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

"(3) If the physician, performing a surgical procedure (specified by the Secretary under subsection (a)(2)), in a hospital on an outpatient basis or in an ambulatory surgical center with respect to which payment is authorized under the preceding provisions of this subsection, or a physician performing physicians' services in such center or hospital directly related to such surgical procedure, agrees to accept as full payment for all services by him in connection with such procedure (including pre- and post-operative services) an amount equal to 100 percent of the reasonable charge for such services, he shall be paid under this part for such services an amount equal to 100 percent of the reasonable charge for such services.

"(d)(1) The Secretary is authorized by regulations to provide that in case a surgical procedure specified by the Secretary pursuant to subsection (a)(2) is performed on an individual insured for benefits under this part in an ambulatory surgical center which meets such health, safety, and other standards as the Secretary shall by regulations prescribe, there shall be paid with respect to the services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic serv-

ices) a single all-inclusive fee established pursuant to paragraph (2), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

"(2) In implementing this subsection, the Secretary shall establish with respect to each surgical procedure specified pursuant to subsection (a)(2) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall periodically be reviewed and revised and may be adjusted, when appropriate, to take account of varying conditions in different areas.

"(e)(1) The Secretary shall, in consultation with the National Professional Standards Review Council and appropriate medical organizations, specify those preoperative medical and other health services which can be safely and appropriately performed in a hospital on both an inpatient and outpatient basis.

"(2) If a physician, performing a preoperative service (specified by the Secretary under paragraph (1)) in a hospital on an outpatient basis, within seven days prior to admission on an inpatient basis for the surgery to which such service relates, agrees to accept as full payment for such service an amount equal to 100 percent of the reasonable charge for such service, he shall be paid under this part for such service an amount equal to 100 percent of the reasonable charge for such service.

"(f) The provisions of sections 1833 (a) and (b) shall not be applicable to expenses attributable to services to which subsection (b) is applicable, to ambulatory facility services (furnished by an ambulatory surgical center) to which the provisions of subsections (c) (1) and (2) are applicable, or to services to which the provisions of subsection (c)(3), (d), or (e) are applicable.".

CRITERIA FOR DETERMINING REASONABLE CHARGE FOR PHYSICIANS' SERVICES

SEC. 558. (a) Section 1842(b) of the Social Security Act is amended—

(1) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6);

(2) by striking out so much of paragraph (3) as follows the first sentence; and

(3) by inserting after paragraph (3) the following new paragraph;

"(4)(A) In determining the reasonable charge for services for purposes of paragraph (3) (including the services of any hospital-associated physicians), there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services.

"(B)(i) Except as otherwise provided in clause (iii), no charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31,

1970, if it exceeds the higher of (I) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (II) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the fiscal year in which the bill is submitted or the request for payment is made.

"(ii) In the case of physician services, the prevailing charge level determined for purposes of clause (i)(II) for any fiscal year beginning after June 30, 1973, may not (except as otherwise provided in clause (iii)) exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. Moreover, for any twelve-month period beginning on July 1 of any year (beginning with 1980), no prevailing charge level for physicians' services shall be increased to the extent that it would exceed by more than one-third the statewide prevailing charge level (as determined under subparagraph (E)) for that service.

"(iii) Notwithstanding the provisions of clauses (i) and (ii) of this subparagraph, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such clauses for the fiscal year beginning July 1, 1975, shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.

"(C) In the case of medical services, supplies, and equipment (including servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under circumstances specified by the Secretary. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

"(D) The requirement in paragraph (3)(B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this title and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected.

"(E) The Secretary shall determine separate statewide prevailing charge levels for such State that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 50 percent of the customary charges made for similar services in the State during the last preceding calendar year elapsing prior to the start of the fiscal year in which the bill is submitted or the request for payment is made. In States with more than one carrier, the statewide prevailing charge level shall be the weighted average of the fiftieth percentiles of the customary charges of each carrier.

"(F) Notwithstanding any other provision of this paragraph, any charge for any particular service or procedure performed by a doctor of medicine or osteopathy shall be regarded as a reasonable charge if—

"(i) the service or procedure is performed in an area which the Secretary has designated as a physician shortage area.

"(ii) the physician has a regular practice in the physician shortage area.

"(iii) the charge does not exceed the prevailing charge level as determined under subparagraph (B), and

"(iv) the charge does not exceed the amount generally charged by such physician for similar services.".

(b) Sections 506(f)(1) and 1903(i)(1) of the Social Security Act are each amended by striking out "the fourth and fifth sentences of section 1842(b)(3)" and inserting in lieu thereof in each instance "subparagraphs (B)(ii), (B)(iii), (C), and (F) of section 1842(b)(4)".

(c) The amendments made by this section shall become effective on July 1, 1980.

PROCEDURES FOR DETERMINING REASONABLE COST AND REASONABLE CHARGE

SEC. 559. (a) Part A of title XI of the Social Security Act is amended by adding after section 1133 the following new section:

"EXCLUSION OF CERTAIN ITEMS IN DETERMINING REASONABLE COST AND REASONABLE CHARGE

"SEC. 1134. (a) Except as otherwise provided in subsection (b), in determining the amount of any payment under title XVIII, under a program established under title V, or under a State plan approved under title XIX of this Act, when the payment is based upon the reasonable cost or reasonable charge, no element comprising any part of the cost or charge shall be considered to be reasonable if, and to the extent that, such element is—

"(1) a commission, finder's fee, or for a similar arrangement, or

"(2) an amount payable for any facility (or part or activity thereof) under any rental or lease arrangement, which is, directly or indirectly, determined, wholly or in part as a percentage, fraction, or portion of the charge or cost attributed to any health service (other than the element) or any health service including, but not limited to, the element.

"(b)(1) The Secretary shall by regulations establish exceptions to the provisions of subsection (a) with respect to any element of cost or charge which consists of payments based on a percentage arrangement, if such element is otherwise reasonable and the percentage arrangement—

"(A) is a customary commercial business practice, or

"(B) provides incentives for the efficient and economical operation of the health service.

"(2) The provisions of subsection (a) shall not be applicable to compensation payable to a physician under a percentage arrangement (including an arrangement that relates to compensation for supervisor, executive, educational, or research activity) between a physician and a hospital if the physician shows (to the satisfaction of the Secretary) that compensation under such arrangement does not exceed, on an annual basis, an amount which would reasonably have been paid to the physician under a relative value schedule which takes into consideration such physician's time and effort, consistent with the inherent complexity of the procedures and services".

(b) Section 506 of such Act is amended by adding at the end thereof the following new subsection:

"(h) For additional exclusions from reasonable cost and reasonable charge see section 1134.".

(c) Section 1842(b)(4) of such Act (as amended by section 158 of this Act) is further amended by adding at the end thereof the following new subparagraph:

"(G) For additional exclusions from reasonable cost and reasonable charge see section 1134.".

(d) Section 1861(v) of such Act is amended by adding after paragraph (8) (as added by section 151 of this Act) the following new paragraph:

"(9) For additional exclusions from reasonable cost and reasonable charge see section 1134.".

(e) Section 1903 of such Act is amended by adding at the end thereof the following new subsection:

"(r) For additional exclusions from reasonable cost and reasonable charge see section 1134.".

(f) The Secretary of Health and Human Services shall conduct a study of the hospital-based physician compensation and the impact of alternative reimbursement methods on providers, patients, physicians, and third party payors, and shall submit to the Congress a full and complete report thereon, together with recommendations for such legislation as he deems appropriate, within two years after the date of the enactment of this Act.

(g) The amendments made by this section shall become effective on October 1, 1980, except that a percentage arrangement entered into prior to January 1, 1980, shall be recognized for reimbursement purposes under the Social Security Act, subject to the same tests of reasonableness as were prescribed by such Act or regulations thereunder on January 1, 1980, until such time as the facility is able to uninlaterally terminate such arrangement, or until December 31, 1981, whichever is earlier.

LIMITATION ON REASONABLE COST AND REASONABLE CHARGE FOR OUTPATIENT SERVICES

SEC. 560. (a) Section 1134 of the Social Security Act (as added by section 659 of this Act) is amended by adding at the end thereof the following new subsection:

"(c) The Secretary shall issue regulations that provide for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals, community health centers, or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be based upon the reasonableness of such costs or charges in relation to the reasonable charges of physicians in the same area for similar services provided in their offices.".

(b) Section 1128(c) of the Social Security Act (as added by sections 661 and 655 of this Act) is amended by adding at the end thereof the following new paragraph:

"(5) The Commission shall give immediate priority to making a study and submitting recommendations to the Secretary with respect to the setting of limitations on reasonable costs and reasonable charges for outpatient services as provided in section 1134(c).".

MEDICARE LIABILITY WHERE PAYMENT CAN BE MADE UNDER LIABILITY INSURANCE

SEC. 561. (a) Section 1862(b) of the Social Security Act is amended—

(1) by inserting before the period at the end of the first sentence the following: ", or under liability insurance of the person at fault, or under no-fault liability insurance";

(2) by inserting before the period at the end of the last sentence ", or under such liability insurance"; and

(3) by adding at the end thereof the following new sentence: "The Secretary may waive the provisions of this subsection with respect to liability insurance if he determines that the probability of recovery or amount involved does not warrant the pursuing of the claim.".

ACCESS TO AND PURCHASE OF MEDICAID SERVICES

SEC. 562. (a) Section 1902(a)(23) of the Social Security Act is amended to read as follows:

"(23) provide that limitations or restrictions elected by a State with respect to choice by recipients of medical assistance provided for by the State—

"(A) may apply only to institutional providers (including clinics), laboratory services, and medical devices;

"(B) must be cost-effective arrangements which provide for reasonable payment based upon comparisons of costs at which services of proper quality may be obtained and are actually available (and for this purpose the plan may provide that such arrangements need not be in effect in all political subdivisions of the

State notwithstanding the provisions of paragraph (1)), and must provide that in the case of inpatient hospital services, payment to a hospital shall not be deemed to be reasonable for purposes of paragraph (13) (D) if it is less than the cost that is found reasonable and necessary in the efficient and economical delivery of such needed services in the geographic area in which such hospital is located;

"(C) have reasonable access to services (taking into account geographic location and reasonable travel time) for which they are eligible (including emergency services and provisions for timely referral and transfer to other providers when medically appropriate) through providers which meet all applicable standards under the State plan and whose services are available to such recipients; and

"(D) must provide that, subject to the provisions of subparagraph (B) there will not be a resulting substantially adverse effect on the access of recipients to qualified hospitals having graduate medical education programs that undertake to provide such care;".

(b) Section 1902(a) of such Act (as amended by section 653 of this Act) is amended—

(1) by striking out "and" at the end of paragraph (41);

(2) by striking out the period at the end of paragraph (42) and inserting "; and"; and

(3) by adding after paragraph (42) the following new paragraph:

"(43) provide that any laboratory services (other than such services provided in a physician's office) paid for under such plan must be provided by a laboratory which meets the requirements of section 1861(e)(9) and paragraphs (10) and (11) of section 1861(s), or, in the case of a rural health clinic, section 1861(aa)(2)(G).".

(c)(1) The amendments made by subsection (b) shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act, on or after the first day of the first calendar quarter that begins more than 30 days after the date of enactment of this Act.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), 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 enactment of this Act.

(3) The amendment made by subsection (a) shall become effective on the date of the enactment of this Act.

SUSPENSION OF PERIODIC INTERIM PAYMENT METHOD OF REIMBURSEMENT

SEC. 563. Effective September 1, 1981, the Secretary of Health and Human Services shall withhold payments to hospitals under title XVIII of the Social Security Act under the periodic interim payment

method of reimbursement to the extent necessary to provide that the lag time between the date services are rendered and the date of payment under such method of reimbursement is equal to the lag time in such payments under this title to hospitals not being reimbursed under such method.

WITHHOLDING OF DISPUTED PAYMENTS

SEC. 564. Section 1903(d) of the Social Security Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) In any case in which the Secretary estimates that there has been an overpayment to a State on the basis of a claim by such State that has been disallowed by the Secretary, and such State disputes such disallowance, the amount of the Federal payment in controversy shall not be paid to such State until such time as a final determination has been made with respect to such amount. If such determination is to the effect than an amount is owed to such State, such amount shall be increased by an amount equal to the amount which would have been paid on the amount otherwise owed, at the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund, during the period beginning on the date that the State disputed such disallowance and ending on the date that payment is made to the State.".

REIMBURSEMENT RATES UNDER MEDICAID FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

SEC. 565. (a) Section 1902(a)(13)(E) of the Social Security Act is amended to read as follows:

"(E) for payment of the skilled nursing facility and intermediate care facility services provided under the plan through the use of rates, determined in accordance with methods and standards developed by the State, which the State finds, and make assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports; and".

(b) The amendment made by subsection (a) shall become effective on October 1, 1980.

HOME HEALTH AGENCY REIMBURSEMENT LIMITS

SEC. 566. (a) Section 1861(v)(1) of the Social Security Act is amended by adding after subparagraph (G) (as added by section 654 of this Act) the following new subparagraph:

"(H)(i) Such regulations shall provide that the cost per visit for each of the different types of visits a home health agency provides shall not be considered to be reasonable to the extent that it exceeds an amount that would cover 75 percent of the average per visit costs for such visits (weighted on the basis of the number of visits rendered) incurred by home health agencies which are determined to be comparable by the Secretary.

"(ii) Such regulations shall require in the case of visits by a skilled nurse or home health aide, the costs incurred by a health agency for such visits shall not be considered reasonable to the extent that the cost of any such visit exceeds the per diem rate paid, in the State where such agency is located, under the State's plan approved under title XIX of this Act for skilled nursing facility services in the area. In making such determination, in the case of a hospital-based home health agency, the comparison shall be made to the per diem rate for hospital-based skilled nursing facilities, and in the case of other home health agencies the comparison shall be made to the per diem rate for nonhospital-based skilled nursing facilities. In the case of a State which does not have a plan approved under title XIX, the per diem rate for skilled nursing facilities under this title shall be used in lieu of the per diem rate under such a State plan.

"(iii) Any supervisory visit which is specifically required by regulations shall be reimbursable as a home health aide visit (but shall not count as a visit for purposes of determining a particular beneficiary's eligibility for visits). Any initial patient assessment visit shall be a reimbursable visit notwithstanding a determination of ineligibility following such visit, if there was a reasonable basis for assuming potential eligibility, such as a referral from a discharge planner, physician, or other source qualified as being knowledgeable with respect to the beneficiary and the program under this title.

"(iv) Such regulations may provide for appropriate exceptions and adjustments on an agency-by-agency basis where warranted by unusual circumstances.".

(b) The amendment made by this section shall become effective on October 1, 1980.

DETERMINATION OF REASONABLE CHARGE

SEC. 567. (a) Section 1842(b)(4)(B)(i) of the Social Security Act (as added by section 658 of this Act) is amended by striking out "fiscal year in which the bill is submitted or the request for payment is made" and inserting in lieu thereof "fiscal year in which the service is rendered".

(b) Section 1842(b)(4)(E) of such Act (as added by section 658 of this Act) is amended by striking out "fiscal year in which the bill is submitted or the request for payment is made" and inserting in lieu thereof "fiscal year in which the service is rendered".

(c) Section 1842(b)(3) of such Act is amended by striking out "and" at the end of subparagraph (D), by adding "and" at the end of subparagraph (E), and by inserting after subparagraph (E) the following new subparagraph:

"(F) will take such action as may be necessary to assure that where payment under this part for a service rendered in a particular month is on a charge basis, such payment shall be determined on the basis of the charge that is determined to be reasonable for such month in accordance with this part (except that in the case of a service which was rendered prior to the beginning of the calendar year preceding the year in which the bill is submitted, or request for payment is made, with

respect to such service, payment shall be determined on the basis of the charge that is determined to be reasonable in accordance with this part for the first month of such preceding year;".

(d) The amendments made by this section shall become effective on October 1, 1980.

(e) In any case in which the Secretary of Health and Human Services is required to issue regulations on or before a specified date by reason of any amendment made by this part, the Secretary shall (and is authorized to) waive or modify any requirement of section 553 of title 5, United States Code, to the extent necessary (as determined by the Secretary) in order to issue such regulations in a timely manner.

Part G—Transfer of Funds

Sec. 571. The Secretary of the Treasury shall delay transfer, until on or after October 1, 1981, of $600,000,000 which would otherwise be transferred during September 1981 from the general fund in the Treasury into the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund. In delaying such transfer the Secretary shall insure that the funds are withheld from any or all of such trust funds in such amounts so as not to adversely affect the ability of the Secretary of Health and Human Services to make payments out of such trust funds as required under the Social Security Act. The Secretary shall, at the time of such transfer, also transfer to the appropriate trust funds an amount equal to the amount of interest which he estimates would have accrued to such trust funds if the transfer had not been delayed as provided by this section.

Appendix B: Congressional Budget Office Estimates of Budgetary Impact of Finance Committee Amendments

(Note.—The totals is the CBO estimates do not reflect the savings from already-enacted legislation (H.R. 3434 and H.R. 3236). These amounts are included in the committee estimates as shown in the table in Chapter IV of this report. The committee estimates are otherwise consistent with those of the CBO.)

Congressional Budget Office,
Washington, D.C., June 24, 1980.

Hon. Russell B. Long,
Chairman, Committee on Finance,
Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 202 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for Title VI, Senate Resolution on Budget Reconciliation.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, *Director.*

CONGRESSIONAL BUDGET OFFICE: COST ESTIMATE

JUNE 24, 1980.

1. Bill title: Title V, Senate Resolution on Budget Reconciliation.

2. Bill status: As transmitted by the Senate Committee on Finance to the Senate Committee on the Budget, June 25, 1980.

3. Bill purpose: To bring the expenditures authorized by the Senate Committee on Finance within the target for that Committee established by the First Concurrent Resolution on the Budget for fiscal year 1981.

4. Cost estimate:

[By fiscal years, in millions of dollars]

	1980	1981	1982	1983	1984	1985
Budget authority	−39	839	279	−387	−387	−372
Outlays	−39	−2,172	−1,398	−1,851	−2,329	−2,791

The savings resulting from this bill fall within budget functions 550 and 600.

5. Basis of estimate: Since much of the final language of the bill was not available at the time this estimate was prepared, the attached section-by-section cost analysis is based on CBO's understanding of the provisions of the bill from press releases and conversations with Committee staff.

6. Estimate comparison: None.

7. Previous CBO estimate: Where applicable, previous CBO estimates are discussed by section under "Basis of Estimate."

8. Estimate prepared by: Human Resources Cost Estimates Unit, Charles Seagrave, Chief (225–7766)

9. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Sec. 501: Elimination of National Trigger:

Cost estimate:

[By fiscal years, in millions of dollars]	*Estimated outlays*
1981	0
1982	−300
1983	0
1984	0
1985	0

Basis of estimate: Under current CBO economic assumptions, the unemployment rate is expected to trigger a national extended benefit program during one quarter of fiscal year 1982. Elimination of this national trigger is estimated to save $300 million in fiscal year 1982. CBO is in the process of revising its economic assumptions. It is likely that a revised set of economic assumptions will show savings from this provision in 1981.

Previous CBO estimate: An estimate of the savings from this provision was included in CBO's December 10, 1979 estimate of H.R 4612, as ordered reported by the Senate Finance Committee. The previous estimate has been updated for economic assumptions.

Sec. 502: Waiting Period for Benefits:

Cost estimate:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	—25
1982	—27
1983	—30
1984	—32
1985	—33

Basis of estimate: Currently, 12 States do not require unemployed individuals to wait one week before receiving unemployment insurance benefits. Another 9 states require a one week waiting period, but pay for that week retroactively after a certain period of unemployment. This provision would eliminate federal matching for the first week of extended benefits in states with no waiting period. The estimate assumes that 10 percent of the states that either have no waiting period or pay retroactively, would institute a one week waiting period or eliminate retroactive payments as a result of this provision.

Previous CBO estimate: An estimate of the savings from this provision was included in CBO's December 10, 1979 estimate of H.R. 4612, as ordered reported by the Senate Finance Committee. The previous estimate has been updated for economic assumptions.

Sec. 503: Optional State Trigger:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	—30
1982	—30
1983	—30
1984	—30
1985	—30

Basis of estimate: Under current law, states are required to participate in the extended benefit program (1) when the national trigger is "on" because the national insured unemployment rate is 4.5 percent or higher or (2) when the state insured unemployment rate is both at least 4 percent and 20 percent above the comparable state insured unemployment rate for the last two years. States which are not required to participate under the above criterion may participate, if the insured unemployment rate is at least 5 percent. This bill would permit states to select a higher unemployment rate to initiate the extended benefit program. It is not known how many states would change the 5 percent trigger rate or what new trigger rate they would select. The estimate assumes that 25 percent of the states that currently use the 5 percent rule will adopt a 6 percent trigger point.

Previous CBO estimate: An estimate of the savings from this provision was included in CBO's Deccember 10, 1979 estimate of H.R. 4612, as ordered reported by the Senate Finance Committee. The previous estimate has been updated for economic assumptions.

Sec. 504: Unemployment Benefits for Ex-Servicemen:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	—43	—47	—51	—55	—57
Estimated outlays	—43	—47	—51	—55	—57

Basis of estimate: Under current law, unemployment insurance benefits are payable to ex-servicemen who have served at least 90 days. This bill would extend the minimum period of service to one year. The cost estimate is based on Department of Defense data on the length of service of enlistees from 1975 to 1977.

Previous CBO estimate: An estimate of the savings from this provision was included in CBO's December 10, 1979 estimate of H.R. 4612, as ordered reported by the Senate Finance Committee. The previous estimate has been updated to reflect new data on average benefits and lengths of receipt for this population.

Sec. 505: Unemployment Benefits for Federal Employees:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	−11	−12	−13	−14	−15
Estimated outlays	−11	−12	−13	−14	−15

Basis of estimate: Under current law, unemployed former federal employees receive unemployment insurance payments financed from a general appropriation. This provision would require each agency to reimburse claims for former employees out of the agency appropriation. The provision is expected to save 5 percent of total benefit payments to former federal employees in the outyears.

Previous CBO estimate: An estimate of the savings from this provision was included in CBO's December 10, 1979 estimate of H.R. 4612, as ordered reported by the Senate Finance Committee. The previous estimate has been updated for economic assumptions.

Sec. 506: Limitation on Extended Benefits for Nonresidents:

Cost estimate:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	−46
1982	−30
1983	−28
1984	−19
1985	−15

Basis of estimate: For extended unemployment benefit recipients moving to a state where no extended benefit program currently exists, only two weeks of extended benefit payments could be made. Based on Depatment of Labor data on the number of extended benefit claimants applying for benefits outside of their original state, CBO estimates a fiscal year 1981 savings of 2 percent of extended benefit payments.

Sec. 507(A): Extended Benefits Not Payable on the Basis of Less Than 20 weeks of Unemployment:

Cost estimate:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	−120
1982	−130
1983	−90
1984	−85
1985	−20

Basis of estimate: Eighteen states and the District of Columbia do not make extended benefit payments to persons with less than 20 weeks of employment. In the remaining states, Department of Labor data shows a saving of between 5 and 10 percent. This estimate assumes a savings of 7½ percent of extended benefit payments in the remaining states. The savings are reduced in 1983 through 1985 due to an improved economic forcast.

Sec. 507(B): Extended Benefit Not Payable to Persons Who Leave Jobs Voluntarily or for Misconduct:

Cost estimate:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	−32
1982	−49
1983	−24
1984	−10
1985	−6

Basis of estimate: The 1981 estimate was provided by the Department of Labor. The outyear estimates assume the savings are a constant ratio of total estimated extended benefit payments.

Sec. 507(C): Extended Benefits Not Payable to Persons Refusing Any Reasonable Job Offer:

Cost estimate:

[By fiscal years, in millions of dollars]	Estimated outlays
1981	−94
1982	−145
1983	−72
1984	−29
1985	−16

Basis of estimate: An SRI study of the job requirement in the now expired federal supplemental benefits program found a savings of approximately 4 percent from requiring acceptance of any job which meets minimum standards of acceptability. This estimate assumes a 4 percent savings from total extended benefit payments.

Sec. 511: Limit Supplemental Security Income (SSI) Eligibility for Individuals who Dispose of Resources:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	−15	−31	−40	−49	−55
Estimated outlays	−15	−31	−40	−49	−55

Basis of estimate: Under current law, the disposal or transfer of a resource prior to the filing of an SSI application does not preclude program eligibility, even through the individual would be ineligible if he retained the resource. This provision would delay SSI eligibility in the case of applicants who dispose of resources for less than current market value, if retaining such resources would make them ineligible for benefits. The cost estimate is based on Social Security Administration data on the proportion of all new program applicants who dispose of assets. The estimate includes medicaid savings.

Previous CBO estimate: An estimate of the savings from this provision was contained in CBO's September 20, 1979 cost estimate of H.R.

4904. The savings estimate has been modified to reflect a different implementation date.

Sec. 521: Federal Day Care Regulations:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	−20	0	0	0	0
Estimated outlays	−20	0	0	0	0

Basis of estimate: The Department of Health and Human Services has issued final regulations for day care provided under state social services plans (Title XX), to be effective September 19, 1980. Some states have expressed concern about the cost of implementing the new standards, indicating that they believe that their enforcement would result in reducing the available supply of care, particularly for low income families, the primary recipients of HHS-funded care. To the extent that AFDC families are denied day care services at these facilities as a result of the new regulations, they would be eligible for additional AFDC monies to purchase day care elsewhere. This provision would postpone the implementation of the new standards one year until October 1, 1981, thereby postponing the increased AFDC costs, as well.

CBO estimates that in fiscal year 1981, without the new regulations, $100 million in federal expenditures will go to pay for day care costs incurred by AFDC parents who work. This might be expected to rise about $20 million when AFDC parents purchase child care services outside of Title XX funded institutions. Postponing the implementation date of the regulations would, thus, save the $20 million.

Sec. 531: Public Assistance Payments to Territorial Jurisdictions:

Cost estimate:

[By fiscal years, in millions of dollars]

	1980	1981	1982	1983	1984	1985
Budget authority	−39	−26	0	0	0	0
Outlays	−39	−26	0	0	0	0

Basis of estimate: H.R. 3434, as recently enacted, raised the federal payments to the trust territories (Puerto Rico, Guam and the Virgin Islands) from $26 million to $78 million. This provision would cut payment level to $39 million in fiscal year 1980 (saving $39 million) and $52 million in fiscal year 1981 (saving $26 million).

Sec. 541: Reallocation of OASDI Taxes Between OASI and DI Trust Funds:

Cost estimate: No cost.

Sec. 542: Three Month Limit on Retroactive Benefits:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	5	20	40	62	86
Outlays	−150	−250	−260	−270	−280

Basis of estimate: Cutting the retroactive period during which OASI and DI beneficiaries can receive benefits from 12 to 3 months will save approximately $150 million in fiscal year 1981. We accept the actuaries estimates at this time, although it is possible that people's behavior patterns will result in their more prompt application for benefits, and thus the savings might be slightly lower. Available evidence, however, does not indicate that this faster application for benefits has occurred in the past when similar provisions went into effect.

Sec. 543: Cut Social Security Benefits for Prisoners:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	1	2	3	5	7
Outlays	−16	−17	−19	−21	−24

Basis of estimate: This provision will withhold benefit payments for all disabled and student prisoners, and their dependents.

A GAO study of federal benefits received by prison inmates shows that there are approximately 3,750 prisoners in receipt of Social Security benefits. Assuming an average 1981 benefit of $4,400 (including dependents), there will be $16 million in savings for fiscal year 1981.

Sec. 551: Hospital Routine Cost Limits:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Hospital routine cost limits:					
Estimated outlays	−70	130	40	−290	−530
Budget authority	−10	10	−20	−60	−60
Payments for State programs:					
Estimated outlays	(1)	4	6	7	9
Budget authority	(1)	1	1	1	1

[1] Less than $500,000.

Basis of estimate: The estimate is derived from two CBO microsimulation models using medicare cost reports of 5,800 hospitals. The cost reports, the most recent available as of July 18, 1978, were updated using actual and projected aggregate increases in patient days and routine costs. Because section 651 would replace the regulations promulgated under section 223 of the 1972 Social Security Amendments, it was necessary to simulate both programs in order to determine the net effect of section 551.

Over the next five years the limits on routine hospital costs would reduce federal medicare and medicaid outlays by approximately $720 million, assuming the limits are effective July 1, 1980, as stated in the bill. The penalties, net of section 223 savings,[1] would save about $1,420 million over five years; whereas, bonus payments would cost about $700 million (see Table 1).

[1] Estimates of section 223 savings include estimates of the impact of revised regulations included in President's Fiscal Year 1981 Budget.

TABLE 1.—COMPONENTS OF IMPACT OF ROUTINE COST LIMITS ON FEDERAL MEDICARE AND MEDICAID OUTLAYS, FISCAL YEARS 1981–85.

[In millions of dollars]

	1981[1]	1982	1983	1984	1985	1981–85
Gross impact of limits	−340	[2] −350	[2] −520	−1,030	−1,340	−3,580
Effect of eliminating sec. 223[3]	270	370	440	510	570	2,160
Net impact of limits	−70	20	−80	−520	−770	−1,420
Bonus payments		110	120	230	240	700
Total costs	−70	130	40	−290	−530	−720

[1] The new reimbursement system would be phased in during fiscal year 1981, beginning with hospital accounting years starting July 1, 1980.
[2] Figures include excess penalties returned to hospitals at final settlement.
[3] Figures include estimates of impact of revised regulations included in President's fiscal year 1981 budget.

Although the limits under section 551 appear to be similar to those in effect under section 223, the section 551 limits are more restrictive for several reasons. First, the section 551 limits for any one year are based on data that are two to three years old. The data would be updated by an index of the prices hospitals pay for the goods and services used in providing the care covered by the bill, called a hospital "market basket", rather than by projected costs. Because actual cost increases usually exceed the increases in the market basket due to growth in the intensity of services, the use of the market basket index in updating the data would result in lower limits than if an index of routine costs were used. The section 223 regulations, on the other hand, are based on more recent data that is updated to some extent by an index of total routine costs, not only market basket increases. As a result, the section 551 limits would be more restrictive than the section 223 limits. Furthermore, the section 551 limits become much more restrictive over time.

The unusual pattern of savings and costs over the 1981 to 1985 period results from assumptions about the administration of the bill by HHS. Based on discussions with staff of the Health Care Financing Administration, CBO made the following assumptions:

(1) Although the bill would reduce penalties by one-half during the first two years, full penalties would be deducted from interim payments for all years. The extra one-half of penalties assessed during the first two years would be returned to hospitals at final settlement. This procedure would be necessary since one would not know the amount of one-half of the penalties until the year was completed.

(2) Bonsues would be paid at the time of final settlement, or about six months after the end of the hospitals' accounting years.

These assumptions maximize the cash savings in fiscal year 1981. All the savings would show up during the hospital's first fiscal year under the new controls, while the costs (bonuses plus one-half of penalties for first two years) would not show up until the hospital's next fiscal year.

Section 551 would also establish a Health Facilities Cost Commission that could recommend to the Secretary of HHS expansion of the controls to cover all (routine, special care, and ancillary) costs. No savings are attributed to this particular provision.

Finally, this section would provide funds totaling approximately $26 million for the administrative costs of state hospital cost commis-

sions. The commissions would be reimbursed by the federal government for a portion of their administrative costs equal to the proportion that medicare and medicaid hospital expenditures represent of all hospital expenditures covered by the state commissions.

Further details on the estimate of this section are available on request.

Previous CBO estimate: In October, 1979, CBO estimated that the same provisions contained in H.R. 934, Section 202, would increase federal outlays by $450 million. The primary reason for the substantial change in the estimate was the development of the simulation model that greatly improved CBO's ability to analyze the impact of the provisions. In particular, the model indicated that the provision of the bill that allows hospitals with below average lengths-of-stay per patient to have different limits does not reduce the savings by as much as previously estimated. In addition, CBO now assumes that the penalties would be deducted from interim payments, rather than assessed at final settlement as was assumed in the last estimate. This assumption shifts estimated savings forward by one year.

Sec. 552: Closure/Conversion of Underutilized Facilities:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	0	−2	−2	−4	−6
Outlays:					
Medicare	−2	−7	−19	−36	−58
Medicaid	0	−2	−4	−8	−14
Total outlays	−2	−9	−23	−44	−72

Basis of estimate: The estimate assumes the conversion of acute care facilities to lesser levels of care will be the predominant activity resulting from the provision, in fiscal years 1981 and 1982, 49 hospitals are assumed to receive payments, and 50 hospitals in each fiscal year thereafter. Only hospitals with less than 400 beds are assumed to undertake conversion projects. Fifteen beds out of an average of 120 beds per hospital are assumed to be converted since this would raise the acute care occupancy rate from an average of 65 percent to 74 percent. The conversion cost is assumed to be $30,000 per bed in fiscal year 1981 dollars, amortized over 20 years. Savings are generated by recouping one-half the cost of an occupied acute care bed, offset by the costs for the long-term care patients that would fill the converted beds.

Previous CBO estimate: This estimate is identical to that provided to the Committee on October 25, 1979 for section 205 of H.R. 934, except that it has been extended to fiscal year 1985. Since the assumed enactment date for this estimate is later than for the earlier estimate, it is implicitly assumed that the conversion program will become operational more quickly than was previously assumed.

Sec. 553: Coordinated Audits

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Required budget authority	−4	−5	−6	−6	−7
Estimated outlays	−4	−5	−6	−6	−7

Basis of estimate: This provision would require that audits of providers performed for the purposes of medicaid or of Title V programs be coordinated with medicare audits whenever a provider participates in medicare and in one or both of the other programs. Federal reimbursements for state expenditures for medicaid or for maternal and child health programs would be reduced for any state not conducting common audits. The amount paid to the state would be reduced to the amount that would have been paid for auditing expenses had the state conducted common audits.

Eliminating duplicative audits should reduce administrative costs for providers, states, and the federal government. A rough estimate of potential federal savings is derived in the following manner.

HCFA estimates that medicare audits will cost about $63 million in fiscal year 1980. This figure includes the costs of coordinated medicaid audits in the more than 30 states that already perform such audits. A comparable HCFA estimate of the cost of medicaid audits is unavailable because states do not routinely report such costs. Assuming that audit costs per participating provider are identical for medicare and medicaid, however, CBO estimates that, in the absence of any coordinated audits, medicaid audits would cost about $47 million in fiscal year 1980. The 16 states and territories that were not performing common audits on June 30, 1977 accounted for about 25 percent of total medicaid administrative expenditures that year. Thus, medicaid audit costs for those states that would be affected by Section 21 are estimated to be about $12 million in fiscal year 1980 and $13 million in fiscal year 1981. The federal share of these expenditures is $7 million. Assuming arbitrarily that 80 percent of this amount would be saved through coordinated audits, over $5 million would be saved by the federal government during fiscal year 1981. Because the provision is assumed to be affective for just three-quarters of the year, however, the estimated savings shown have been reduced to $4 million. Savings in future years are assumed to increase according to CBO's projections of the Consumer Price Index.

Previous CBO estimate: This estimate is consistent with earlier CBO estimates of similar provisions included in H.R. 4000 as reported by the House Committee on Interstate and Foreign Commerce (estimate dated March 28, 1980). This estimate is considerably lower than CBO's estimate of the provision included in H.R. 934 as reported by the Senate Committee on Finance (estimate dated October 25, 1979). The reestimate is based on more complete information regarding current audit costs than was previously available.

Sec. 554: Apportionment of Provider Costs:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	3	(1)	(1)	(1)	(1)
Outlays: Medicare	−75	(1)	(1)	(1)	(1)

[1] Estimate not available.

Basis of estimate: This proposal is a modification of Section 210 of H.R. 934 as ordered reported on June 28, 1979. In effect, the 8.5

percent nursing differential would be retained during the first half of fiscal year 1981 and suspended during the second half, pending the results of a GAO study. The Office of Financial and Acturial Analysis of the Health Care Financing Administration has estimated that complete elimination of the nursing differential would save $191 million in fiscal year 1981. CBO has verified this estimate and has adjusted it to account for the proposal being effective only during the latter half of fiscal year 1981. An estimate for subsequent fiscal years is not possible until the results of the GAO study are known.

Previous CBO estimate: See "Basis of Estimate" section above.

Sec. 555: Inappropriate Hospital Services;

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Medicare: Estimated outlays	−118	−179	−204	−231	−263
Medicaid: Required budget authority	−33	−51	−58	−66	−76
Estimated outlays	−33	−51	−58	−66	−76

Basis of estimate: The provision would restrict medicare and medicaid reimbursements for inpatient hospital services furnished to beneficiaries who do not require hospital care but who are hospitalized because necessary long-term care services are unavailable. Reimbursement would be limited to the average skilled nursing facility, intermediate care facility, or detoxification facility payment rate, as appropriate.

Currently, under medicare, inpatient hospital care provided only because necessary long-term care services are unavailable is reimbursed at normal medicare rates for inpatient hospital services. Consequently, the provision would reduce medicare payments for such care. Under medicaid, most states follow current medicare practices regarding such care, but some already limit reimbursement to skilled nursing or intermediate care facility rates, and still others do not pay for such care at all. Thus, for medicaid, the effect of the provision would be reduced somewhat.

One study of medicare and medicaid hospital patients indicates that approximately 3 percent of medicare and medicaid hospital days (about four million days) are provided only because required long-term care services are unavailable. Based on the results of the study, CBO estimates that 20 percent of these medically unnecessary hospital days would escape PSRO review altogether (because of the periodic nature of that review). CBO assumes that 90 percent of reviewed days would be reimbursed at the special rate. On the basis of current payment data, fiscal year 1980 savings of $80 are estimated for each day reimbursed at the lower rate. Thus, gross first-year savings (federal and state) would be about $230 million. Exemption of hospitals in areas not having excess hospital beds is estimated to reduce gross savings by about 10 percent to $207 million.

The assumed six-month delay in implementation would cut estimated net savings in fiscal year 1981 to $177 million. Two-thirds of this amount ($118 million) is estimated to accrue to medicare. Of the medicaid portion, about $33 million would be federal savings. Savings

in subsequent years grow according to CBO's projections of increases in total annual hospital days and in savings per day.

Previous CBO estimate: This estimate is consistent with earlier CBO estimates of similar provisions included in H.R. 4000, as reported by the House Committee on Ways and Means (estimate dated November 20, 1979), and as reported by the House Committee on Interstate and Foreign Commerce (estimate dated March 28, 1980). This estimate is considerably higher than CBO's estimate of the provision included in H.R. 934, as reported by the Senate Committee on Finance (estimate dated October 25, 1979). The reestimate is based on additional information about unnecessary hospital days and the PSRO review process.

Sec. 556: ESRO Review of Hospital Admissions, Routine Tests, and Preoperative Stays.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−1	−6	−5	−1	4
Outlays:					
Medicare	−23	−55	−72	−85	−99
Medicaid	−2	−10	−14	−17	−20

Savings from eliminating unnecessary routine tests are estimated on the assumption that a battery of six tests costing about $70 would be involved per admission. It is estimated on the basis of HI discharge data that 65 percent of HI admissions are for nonsurgical procedures. Based on a study by Blue Cross, it is assumed that, in 75 percent of these admissions, the affected tests are done routinely. It is further assumed that 10 percent of these tests would be eliminated by the increased priority placed by the provision on the review by PSROs of their necessity. The foregoing assumptions yield, through a multiplicative relationship, first-year savings in HI of outlays of $38 million in fiscal year 1981. These are assumed to be reduced in half in fiscal year 1981 due to delays in implementation. Outyear savings are projected to increase by both the rate of growth in medicare hospital admissions (5 percent per year) and by CBO's latest projections in the rate of growth in the medical care services component of the Consumer Price Index.

On the basis of findings by a CBO study of PSROs, it is assumed that 2 percent of medicare preop days for elective procedures could be eliminated by PSRO efforts in this area. At an assumed $148 in routine costs per day, first year savings would be $22 million. The savings are partially offset by $5 million for administrative costs. Due to delays in implementation, first-year savings are assumed to be reduced by two-thirds. Out-year savings are projected to increase by both the rate of growth in HI surgical admissions (7 percent per year) and by CBO's latest projections of the rate of increase in hospital expense per day.

Medicaid savings are assumed to be 20 percent of total medicare savings, based on the relative shares of total hospital expenditures financed by these two programs. Out-year savings are projected to grow at the same rate as total medicaid outlays.

Previous CBO estimate: The estimate is similar to the one of section 213 of H.R. 934 with some minor changes in assumptions.

Sec. 557: Ambulatory Surgery:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority		1	2	4	6
Outlays: Medicare	−5	−15	−20	−25	−26

Basis of estimate: The parts of this proposal which provide for reimbursement for surgery done on an ambulatory basis will result in both savings and costs to the medicare program. Savings are generated by the lower cost of minor surgery done in an ambulatory rather than an inpatient setting. Costs are generated by the likely increase in the number of minor operations done because of the greater convenience to patients of an ambulatory setting. The estimate of costs is based on a three-year study of the costs and quality of surgery performed in different settings which was done by the Orkand Corporation for DHHS. This study showed that the total costs of minor surgery done in an ambulatory setting is about 25 percent less than that performed in an inpatient setting. CBO assumes that minor operations cost 60 percent of the average cost for all surgical procedures financed by medicare. It is further assumed that 0.5 percent of all medicare-financed operations will be done in an ambulatory setting in fiscal year 1981 and that this figure will increase to 4 percent in fiscal year 1985. These assumptions, combined with a 25 percent savings rate per operation and CBO's projections of the growth in HI outlays, produce an estimated savings to the medicare program of $8 million in fiscal year 1981. The savings rise to $122 million in fiscal year 1984. CBO expects these savings to be reduced slightly by HI's share in the costs produced by an assumed 40 percent refilling of the empty hospital beds created by the shift of minor operations out of hospitals. The savings are further offset by the costs of the additional demand for minor operations. These are estimated under the assumption that the number of medicare-financed operations that can be performed on an ambulatory basis will increase by one percent in fiscal year 1981, increasing to 10 percent in fiscal year 1984. The proposal also provides incentives for presurgical diagnostic tests to be done on an outpatient basis seven days prior to admission for a surgical procedure. The bulk of the savings resulting from this provision would be achieved by the similar provision in Section 556.

Previous CBO estimate: This estimate is essentially the same as that for section 234 of H.R. 934. There are some slight differences in the assumptions underlying the estimate of savings from ambulatory surgery. In addition, necessary modifications have been made for a shift in the assumed enactment date.

Sec. 558: Criteria for determining Reasonable Charge for Physicians' Services:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	1	2	4	6	8
Outlay-Medicare	−15	−20	−25	−25	−25

Basis of estimate: The cost estimates included here were developed by the Office of Financial and Actuarial Analysis of DHHS. The provision affects physicians' fees in two ways. First, it limits the difference between local prevailing fees and the statewide median fee for a procedure to one-third of the latter. The savings estimate is generated by a computer simulation of the effect of the limitation using data on 1976 medicare prevailing charges for the 50 most commonly performed physician services. The second effect of the provision is to raise the allowable prevailing charge from the 50th to the 75th percentile for new and established physicians practicing in designated physician-shortage areas. The estimate is derived from data on prevailing charges and the number of physicians practicing in physician-shortage areas.

Previous CBO estimate: This is identical to the estimate shown for section 235 of H.R. 934, except for a change in the enactment date.

Sec. 559: Procedures for Determining Reasonable Cost and Charge:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−3	−7	−5	−1	3
Outlays:					
Medicare	−21	−59	−76	−96	−117
Medicaid	−4	−11	−15	−18	−23

Basis of estimate: This section provides that payments to contractors, subcontractors, employees, or consultants that are based upon percentage arrangements not be recognized for purposes of reimbursement by medicare. Savings are estimated separately for limitations on percentage reimbursement arrangements for hospital-based physicians (HBPs) and for limitations on percentage-based contracts for business services. Savings in medicare reimbursements to HBPs were estimated by assuming that payments would be reduced by the difference between what HBPs are paid on a percentage basis and what they would be paid as salaried employees. It is estimated on the basis of data from the American Medical Association, Health Care Financing Administration (HCFA), and a recent study of HBPs done by the Arthur Andersen Company for HCFA, which indicate that approximately 1,000 radiologists and 1,600 pathologists would be affected by this provision. The Andersen study also provided data for 1975 on the difference in income between percentage-basis and salaried physicians in hospitals. This difference was adjusted for the overhead expenses assumed to be generated by the salaried physicians and inflated to account for the growth in total hospital expenditures and physicians' incomes from 1975 to 1981. It was further assumed that only half of the apparent savings would be realized because of various adjustments likely to occur in the arrangements between the affected physicians and their hospitals. Half-year savings are assumed for fiscal year 1981 and full-year savings thereafter. Savings in medicare reimbursement for business services are assumed not to occur until fiscal year 1982 due to the complexity of the regulations that would have to be written. About 2 percent of hospitals' total expenses are for business services. CBO assumes that the average amount of overcharge resulting from percentage arrangements is 2 percent. One-half of this

amount is assumed to be saved in medicare reimbursements to hospitals during fiscal year 1982, 75 percent in fiscal year 1983, and 100 percent in succeeding fiscal years. Medicaid savings in all years are estimated to bear about the same relationship to medicare savings as medicaid hospital expenditures do to medicare hospital expenditures.

Previous CBO estimate: This estimate is the same as that done for section 252 of H.R. 934, in the area of HBP reimbursement. The estimate for business services was done previously and, thus, represents additional savings.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−2	0	1	2	5
Outlays:					
Medicare	−20	−23	−27	−31	−36
Medicaid	−3	−3	−4	−5	−5

Basis of estimate: The estimate is based on the assumption that all charges for outpatient visits that exceed by 80 percent charges for similar procedures performed in a physician's office would be reduced to the average charge per physician visit. About five percent of SMI outpatient charges are estimated to be reduced by 25 percent as a result of this provision. The first-year savings to SMI are about 1.3 percent of total SMI outpatient expenditures. Federal medicaid savings are estimated to bear the same relationship to SMI savings as total federal medicaid outpatient expenditures do to SMI outpatient expenditures. Outyear savings are expected to increase at the same rate as total SMI and medicaid expenditures.

Previous CBO estimate: This estimate is similar in most respects to the estimate of section 249 of H.R. 934. In that estimate, the reduction in excessive charges was assumed to be 50 percent, whereas in this estimate that has been changed to 25 percent. Adjustments have also been made for changes in the assumed enactment date.

SEC. 561: Medicare Liability in Accident Cases:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	1	2	7	16	28
Outlays: Medicare	−14	32	−75	−135	−156

Basis of estimate: Medicare hospital discharge data show that 10 percent of all HI discharges are for diagnoses involving accidents of all types. Similar data from the National Ambulatory Medical Care Survey show that about 5 percent of all physician office visits by persons aged 65 or older are for accident-related conditions. It is assumed, therefore, that 10 percent of HI outlays and 5 percent of SMI outlays are for injuries resulting from accidents. Data from the Health Interview Survey show that about 50 percent of accidents occurring in the 65 and older population at home, about 10 percent are related to automobile accidents, and 30 percent are due to all other causes. Accidents occurring at home are unlikely to involve situations where liability

insurance claims can be made. Similarly, accidents occurring in the workplace are likely to be covered by workers' compensation. It is assumed, therefore, that recoveries from liability insurance policies would be possible for all accidents except those occurring in the home or at work. The proportion of total medicare outlays spent for medical services related to each type of accident is assumed to be the same as the proportion each represents of all accidents. For automobile accidents, it is assumed for both HI and SMI that 95 percent of the accidents involving medicare beneficiaries occur where insurance coverage is present and that 50 percent of these have the potential for recovery of medical insurance payments. For all other accidents, it is similarly assumed that 25 percent occur in circumstances in which liability insurance is present and that 50 percent of these have the potential for recoveries. For both types of accidents, it is further assumed that the actual volume of recoveries will be 5 percent of the potential level in fiscal year 1981, 10 percent in fiscal year 1982, and 20 percent in fiscal year 1983, and thereafter.

Previous CBO estimate: This estimate is similar to the earlier one of section 255 of H.R. 934, although some assumptions have changed. It is now assumed that 50, rather than 80 percent of automobile accidents involving medicare beneficiaries have the potential for recovery of medical insurance payments. Similarly, it is assumed for all other accidents that 25, rather than 60, percent occur where liability insurance is present, and that 50, rather than 80, percent have the potential for recoveries. For both types of accidents the volume of recoveries in the affected fiscal years is assumed to be 5, 10, 20, 20, and 20 percent respectively rather than 15, 20, 25, 25, and 25 percent.

Sec. 562: Access to and Purchase of Medicaid Services:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−91	−227	−273	−314	−363
Outlays	−91	−227	−273	−314	−363

Basis of estimate: CBO has tried to assess the possible impact of this provision through discussions with officials of state medicaid agencies. We have assumed that states responsible for one-half of medicaid spending will restrict choice of provider in 1981, with the proportion growing to two-thirds by 1985. First-year savings are assumed to be reduced by one-half because of implementation delays. We have further assumed that choice of provider will be restricted only in metropolitan areas and that restriction will not be effective in nursing homes because of capacity constraints. Within metropolitan area hospitals in states restricting choice, we assume a savings of 8 percent of expenditures.

The estimate of savings under competitive bidding arrangements for clinical laboratory services and medical devices is based on studies done in New York, New Jersey, and California. We assume a savings rate of 20 percent. First-year savings are assumed to be halved due to delays in implementation.

Previous CBO estimate: The part of the section on payment for clinical labortories was previously estimated by CBO for section 258 of H.R. 934 Fiscal year 1981 savings have been reduced to reflect delays in passage of the legislation.

Sec. 563: Medicare Hospital Reimbursement: Periodic Interim Payments (PIP):

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	2				
Outlays: Medicare	−675	682			

Basis of estimate: This section mandates that the Secretary of HHS modify the Hospital Insurance (HI) periodic interim payment (PIP) system during September 1981 in such a manner that hospitals on PIP experience a three-week interruption in reimbursements. The effect would be similar to eliminating the PIP system entirely, which would presumably result in a three-week interruption in the flow of nearly one-half of all HI reimbursements. Conceivably, the providers of PIP could build up their cash positions with respect to HI by shortening the period under regular billing procedures between hospital discharge and receipt of payment. On the basis of discussions with knowledgable individuals within HCFA and the hospital industry, it appears that this could occur only to a very limited extent. CBO therefore assumes that only a two-day gain could occur in the billing cycle. The affected providers' cash shortfall could be met by increased payments under the PIP system prior to its discontinuance. This, of course, would substantially reduce the savings. CBO, therefore, assumes that neither increased payments under the PIP system nor any other special accelerated payments will be made prior to the end of the fiscal year 1981. The interruption of payments to the affected hospitals is assumed to occur during September 1981. It is further assumed that the PIP system would be reestablished on October 1, 1981, and that accelerated payments equal to the cash shortfall experience by the affected providers would be made during the first week of October. The accelerated payments would appear as an additional cost to the HI program in fiscal year 1982. There would be a small additional interest cost to the program resulting from the short-term borrowing that hospitals would have to undertake to meet the anticipated cash shortfall in September 1981.

Previous CBO estimate: This estimate updates an informal estimate provided to the Committee on October 3, 1979, for a proposal to eliminate PIP in September 1980. The estimate has been adjusted for the change in effective date and for the fact that the change would occur at the end of the fiscal year. A further adjustment has been made to take into account the higher level of HI reimbursements at the end of the fiscal year as compared to the average level during the fiscal year.

Sec. 564: Disallowance of State, Claims for Federal Medicaid Funds:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Medicaid:					
Required budget authority	0	0	0	0	0
Estimated outlays	−147	−83	−16	−18	−20

Basis of estimate: This provision is designed to expedite recovery of federal payments for certain disallowed medicaid claims. Under current policy, if a state appeals a disallowance, the amount disallowed by HHS is not recovered until the appeal has been resolved. The proposal would allow HHS to recover amounts disallowed immediately upon notice of disallowance, without regard to any pending appeal. The proposal would affect disallowances after September 30, 1980.

On the basis of information provided by HCFA, it is estimated that about $140 million in medicaid claims will be disallowed by HHS and appealed by the affected states in fiscal year 1981. That figure includes $25 million of such disallowances for which recovery is assumed to be delayed until fiscal year 1981 from the last quarter of fiscal year 1980 as a consequence of active consideration of this proposal by the Congress. Current experience and the large backlog of unresolved appeals suggests that, during the next several years, the typical appeal will take 18 months. Under current law, then that $140 million would not begin to be recovered by HHS until the third quarter of fiscal year 1982. Under the proposal, however, that amount would be offset against federal medicaid outlaws in fiscal year 1981. In terms of the federal budget, therefore, the proposal would directly reduce federal medicaid outlays in fiscal year 1981 and in the first half of fiscal year 1982 and would yield interest savings thereafter. The proposal would have no effect on required budget authority.

Estimate assumes effective date of October 1, 1980 medicaid only.

Sec. 565: Reimbursement Under Medicaid for Skilled Nursing and Intermediate Care Facilities:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−2	−2	−2	−2	−2
Outlays: Medicaid	−2	−2	−2	−2	−2

Basis of estimate: This proposal is identical to section 227 of H.R. 934, which would substitute new language for section 1902(a)(13)(E) of the Social Security Act relating to reimbursement of nursing homes under medicaid on a reasonable cost-related basis. The new wording would modify the Secretary's approval authority over state medicaid plans in order to give states more flexibility in setting nursing home reimbursement rates. Based on conversations with medicaid officials in several states, knowledgeable individuals within the nursing home industry, and HCFA officials, CBO has concluded that the new word-

ing will result in some modest cost savings. Most states probably would not significantly alter their rate-setting methodologies in response to passage of this section. One state, Oklahoma, has informed CBO that it would change its rate-setting methods in order to realize $3 million in savings. Of this $3 million savings, the federal share would be $2 million. At this time, CBO cannot estimate more reliably the magnitude of the savings because of the uncertainty concerning state actions and concerning the outcome of court actions initiated by state nursing home associations in response to changes in rate-setting methodologies made by state medicaid agencies.

Previous CBO estimate: In its original cost estimate of the budgetary impact of H.R. 934, CBO estimated that this proposal would have a negligible cost impact. That estimate was based on a draft of the bill dated August 23, 1979, that differed substantially from the language contained in the final printed version of H.R. 934 dated December 10, 1979. The new estimate corrects this discrepancy.

Sec. 566: Home Health Agency Reimbursement Limits:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	3	10	17	27	37
Outlays: Medicare	−73	−86	−99	−114	−131

Basis of estimate: The average medicaid skilled nursing per diem rate in calendar year 1978 was estimated by CBO using data from the National Center for Health Statistics. This figure was supplied to analysts within the Bureau of Program Policy of the Health Care Financing Administration for use in a computer simulation of the impact of limiting home health aide and skilled nursing visit reimbursement to no more than medicaid per diem. SNF rate in a state. The simulation also calculated the impact of changing application of the percentiles to a descending array of visits rather than providers and the impact of lowering the percentile to be applied from the 80th to the 75th. The resulting fiscal year 1981 savings estimate was extrapolated to the outyears by applying CBO's latest estimates of the growth rate of medicare home health care expenditures.

Sec. 567: Calculating Medicare Reasonable Charges:

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	6	21	41	62	84
Outlays	−147	−226	−231	−250	−279

Basis of estimate: The estimates for all years were provided by the Office of Financial and Actuarial Analysis of DHHS. The estimate for fiscal year 1981 is composed of $173 million in savings offset by $26 million in implementation costs. The implementation costs are assumed to occur only in fiscal year 1981.

Sec. 571: Delay Transfer of Funds From the Treasury to Trust Funds:

Cost estimate

[By fiscal years, in millions of dollars]	Budget Authority
1981	−600
1982	+600
1983	-----
1984	-----
1985	-----

Basis of estimate: The effect of specifying a $600 million delay in transfers to the trust fund from the Treasury's general fund is to reduce budget authority by that amount in fiscal year 1981, and increase it by $600 million in 1982. (There could also be $.5 million in interest loss in 1981 and regained in 1982, depending on the amount of time this transfer is delayed.) It is assumed that the entire delay in the transfer from the Treasury occurs from only one trust fund, and that the fund will be either the OASI or DI fund.

COMMITTEE ON GOVERNMENTAL AFFAIRS

COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C., June 25, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on the Budget,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 3(a)(17) of H. Con. Res. 307, we are submitting the legislative recommendations of the Committee on Governmental Affairs together with a report on the Committee action for inclusion in the report of the Senate Committee on the Budget on any reconciliation bill.

By a vote of 9 to 6, the Committee on Governmental Affairs recommends a one-time-only change in the civil service retirement laws eliminating the September 1980 cost-of-living adjustment. The Congressional Budget Office estimates that $523 million in savings are associated with the elimination of the September increase.

We trust that this action fulfills the obligations and responsibilities of the Committee on Governmental Affairs pursuant to H. Con. Res. 307.

Sincerely,

ABE RIBICOFF,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Enclosures.

COMMITTEE ACTION

The Committee on Governmental Affairs met in a business meeting on June 25, 1980 to consider legislative recommendations to comply with section 3(a)(17) of H. Con. Res. 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981. Various proposals relating to cost-of-living adjustments for civil service annuitants were considered.

After discussion and several votes, the Committee approved, by a vote of 9 to 6 a legislative recommendation to provide a one-time change in the civil service retirement laws eliminating the cost-of-living increase for September 1980 only. This legislative recommendation is submitted forthwith to the Senate for its consideration pursuant to section 3(a)(17) of H. Con. Res. 307.

The Congressional Budget Office estimates provided to the Committee indicate $523 million in fiscal year 1981 savings associated with elimination of the September 1980 cost-of-living increase.

HISTORY OF LEGISLATION

Congress authorized automatic cost-of-living adjustments (COLA) in civil service annuities in 1962. Prior to 1962, Congress had inter-

mittently enacted increases in retirement benefits to reflect increases in inflation. The legislation enacted October 11, 1962, P.L. 87–793, provided that civil service annuities would be increased automatically whenever the Consumer Price Index for a year exceeded the CPI in the base by 3 percent or more. The base year for the first increase was 1962, and a new base year was substituted whenever a new COLA was applied. The percentage increase would be equal to the rise in the CPI between measuring periods, and would be effective on April 1 of the following year. In order to be eligible to receive the adjustment an annuitant had to have been on the retirement rolls for one year or more.

In 1965, with the adoption of P.L. 89–205, the cost-of-living formula was revised to make it more sensitive to rising prices by gearing it to a monthly price index indicator. This was accomplished by basing the "triggering" mechanism for cost-of-living increases on monthly rather than yearly increases in the CPI. In so doing, the law was amended so that whenever the Consumer Price Index rose by at least 3 percent greater than the CPI for the month of the previous increase, and remained at or exceeded the 3 percent figure for 3 consecutive months, civil service annuities would be increased by the highest monthly percentage increase in the CPI during those 3 months. The increase would take effect on the first day of the third month following the 3-consecutive month period.

The COLA formula under the Civil Service Retirement Act was again amended in 1969 to compensate retirees for the 5-month gap that exist between the initial month that the CPI rose by 3 percent and the month in which the COLA was made effective, which was the third month following the 3-month period in which the CPI rose by 3 percent. This was accomplished by adding 1 percent to each cost-of-living adjustment that resulted from an increase in the CPI. This so called "1 percent add-on" was authorized by P.L. 91–93, enacted October 20, 1969.

According to the statement of the House Committee on Post Office and Civil Service in their report on this measure (H. Rept. No. 91–158):

Federal staff retirement systems represent a mixture of insurance and humanitarian principles. In the matter of adjusting annuities after retirement, insurance practice would guarantee that whatever annuity an employee had earned at the tire of retirement should be preserved without change. On the other hand, humanitarian considerations would urge that the welfare of the retired person is the major concern, and that annuities should be adjusted to changing needs. The latter theory has prevailed through congressional action; but putting theory into practice has proved difficult.

P.L. 89–205, adopted in 1965 also removed the requirement that beneficiaries of the COLA be on the rolls for 1 year, providing that COLA would be applicable to all annuities payable on the effective date of the increase. As a consequence, until 1973 there was a perceived advantage to retiring the day before a COLA became effective as opposed to the day after. Large numbers of employees, particularly those whose pay rates were frozen, clustered their retirements immediately prior to scheduled annuity increases. A decision to remain

on the job resulted in lower annuity payments and as a result the compounding effect of these adjustments provided a substantial incentive to retire and begin receiving annuities.

To correct this problem, in 1973 the procedure was changed by P.L. 93–136 so that employees would not be penalized for working past effective dates of new cost-of-living adjustments. Upon retirement, employees continued to have their annuities based upon salary and years of service, but now had the option of receiving annuities increased by the previous adjustment, based upon their salary and years of service at that time. Retiring employees were now guaranteed an annuity at least equal to what they would have received had they retired prior to the previous COLA. This provision is known as the comparative computation or the "look-back" provision.

The last change in the cost-of-living adjustment formula under the Civil Service Retirement Act occurred in 1976 with the passage of P.L. 94–440. That legislation repealed the "1 percent add-on" because it was found to overcompensate retirees for the effects of inflation. In its place, Congress enacted semi-annual adjustments based on the percentage increase in the cost-of-living, as measured by CPI. The changes made in 1976 were intended to compensate civil service retirees for the smaller increases that would occur in their annuities in the future because of the elimination of the 1 percent "kicker," by providing for cost-of-living increases on a regular semi-annual basis.

Under this current law, employees who retire from the civil service and are receiving annuities from the Civil Service Retirement System have their annuities adjusted twice annually to reflect percentage changes in the cost-of-living as measured by the Consumer Price Index. The CPI measurement periods are July-December for the March 1 increase and January–June for the September 1 increase. New retirees are also eligible to receive the entire amount of all future COLA adjustments including the initial adjustment, even if the employee retires one day before the date of the next increase, as well as to receive the benefit of the "look-back" provision. The following list represents COLA increases granted between 1965 and the present:

Effective date	Percent increase	CPI increase
December 1965	6.1	4.6
January 1967	3.9	3.9
May 1968	3.9	3.9
March 1969	3.9	3.9
November 1969	5.0	4.0
August 1970	5.6	4.6
June 1971	4.5	3.5
July 1972	4.8	3.8
July 1973	6.1	5.1
January 1974	5.5	4.5
July 1974	6.3	5.3
January 1975	7.3	6.3
August 1975	5.1	4.1
March 1976	5.4	4.4
March 1977	4.8	4.8
September 1977	4.3	4.3
March 1978	2.4	2.4
September 1978	4.9	4.9
March 1979	3.9	3.9
September 1979	6.9	6.9
March 1980	6.0	6.0

Source: 57th Annual Report of the Board of Actuaries of the Civil Service Retirement System.

RECENT ACTION

On June 12, 1980, the Senate adopted the conference agreement to the First Concurrent Resolution on the Budget for fiscal year 1981. Under the resolution the Committee on Governmental Affairs is instructed to report legislative recommendations to reduce spending for fiscal year 1981 by $500 million in budget authority and outlays. Committee action is instructed to be completed before June 25, 1980.

According to the reports of the House and Senate Budget Committees the recommended savings can be achieved through annualization of the semi-annual cost-of-living adjustment for retired federal workers.

The Committee recommendation assumes that outlay savings will be achieved starting in FY 1981 from action by the Congress to institute an annual, rather than semi-annual cost-of-living adjustment for Federal civil service retirees. (Senate Report No. 96-654)

The Budget Committee recommendation was opposed by Senator Stevens and others who offered an amendment on May 8, 1980 on the floor of the Senate to restore to the Budget the projected $500 million savings. The Stevens' amendment was tabled by a vote of 50 yeas to 43 nays.

Section-by-Section Analysis

Section 1 of the bill provides that notwithstanding the provisions of section 8340(b) of title 5, United States Code, any annuity increase which would otherwise take effect on September 1, 1980, shall not take effect. This is a temporary change in the statute to annualize the cost-of-living adjustment for civil service retirees for this year only. Paragraph (2) establishes that the annuity increase which is to take effect on March 1, 1981 shall be based on the 12 month period from December 1979 to December 1980. This change is necessary in order to assure that annuitants will receive the full amount of a cost-of-living increase over a 12-month—rather than six month period.

Section 2 of the legislation provides that the provisions of this Act shall become effective on the date of enactment.

Rollcall Votes in Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, as amended, the rollcall votes taken during committee consideration of this legislation are as follows:

Vote on Stevens' motion eliminating September 1980 cost-of-living adjustments:

YEAS (5)

Chiles, Percy, Stevens, Durenberger, Javits (by proxy).

NAYS (8)

Ribicoff, Eagleton, Nunn, Sasser, Pryor, Mathias, Danforth, Cohen.

Vote on Eagleton motion to permanently annualize cost-of-living adjustments:

YEAS (6)

Ribicoff, Eagleton, Nunn, Percy, Danforth, Cohen.

NAYS (7)

Chiles, Sasser, Pryor, Javits, Stevens, Mathias, Durenberger.

Vote on motion to reconsider Stevens' proposal.

YEAS (11)

Chiles, Nunn, Sasser, Pryor, Percy, Javits, Stevens, Mathias, Danforth, Cohen, Durenberger.

NAYS (2)

Ribicoff, Eagleton.

Vote on Stevens' proposal:

YEAS (7)

Chiles, Percy, Javits, Stevens, Mathias, Danforth, Durenberger.

NAYS (7)

Ribicoff, Eagleton, Nunn, Glenn, Sasser, Pryor, Cohen.

Vote on Javits' proposal to annualize cost-of-living adjustments in 1980 and 1981:

YEAS (7)

Chiles, Percy, Javits, Stevens, Mathias, Danforth, Cohen.

NAYS (7)

Ribicoff, Eagleton, Nunn, Glenn, Sasser, Pryor, Durenberger.

Vote on Pryor motion to eliminate September 1980 cost-of-living increase:

YEAS (9)

Chiles, Pryor, Levin, Percy, Javits, Stevens, Mathias, Danforth, Durenberger.

NAYS (6)

Ribicoff, Eagleton, Nunn, Glenn, Sasser, Cohen.

A BILL To provide for one cost-of-living adjustment for civil service annuities during fiscal year 1981

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of section 8340(b) of title 5, United States Code—

(1) any increase in any annuity which would otherwise take effect under such section on September 1, 1980, shall not take effect, and

(2) any increase under such section which is to take effect on March 1, 1981, shall be based on the percent change in the price index published for December 1980 over the price index published for December 1979.

SEC. 2. The provisions of this Act shall take effect on the date of enactment.

SEPARATE VIEWS OF SENATOR EAGLETON

The reconciliation process required the Governmental Affairs Committee to reduce its Fiscal Year 1981 federal spending by $500 million. The Budget Committee assumed this reduction would be accomplished by "annualizing" the cost-of-living adjustment (C.O.L.A.) for federal retirees, changing the twice yearly inflation adjustment to once a year. The Budget Committee envisioned that this change would be made on a permanent basis.

The Governmental Affairs Committee decided to make the change for Fiscal 1981 only. I am opposed to this "one-shot" approach which prevailed in the Committee by a narrow margin.

Congress is presentlly going through the painful process of making hard decisions to reduce spending and balance the budget. Of the benefit programs indexed according to the cost of living, only a handful have adjusted benefits to cover inflationary increases every six months. We have embarked on the process of annualizing those programs. The full Congress has changed the cost-of-living adjustment for the Food Stamp Program. The Agriculture Committee has done the same for the Child Nutrition Program. The Committee on Armed Services has voted to move the military retirement system to an annual cost-of-living adjustment as well, if the federal Civil Service retirees are treated the same way.

Simple fairness demands that we make this change with respect to federal retirees. If we fail to do so, we undermine the common approach taken to several programs which promised to save $6 billion over the next five years. We also are put in the unfortunate position of taking actions which adversely affect the least affluent segments of our society, such as those who benefit from food stamps or the child nutrition programs, while leaving the federal retirees in a special category.

COMMITTEE ON LABOR AND HUMAN RESOURCES

U.S. SENATE, COMMITTEE ON
LABOR AND HUMAN RESOURCES,
Washington, D.C., June 26, 1980.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, D.C.

DEAR FRITZ: H. Con. Res. 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981, instructs the Senate Committee on Labor and Human Resources to recommend changes in laws within its jurisdiction that will reduce spending for the Fiscal Year 1981 by $350 million in budget authority and $450 million in outlays.

On May 15 of this year, the Labor and Human Resources Committee reported S. 1839, the Education Amendments of 1980 (Report No. 96–733). This bill includes provisions to revise and reform the Federal student loan programs. CBO cost estimates of S. 1839 indicate that the savings contained in these student loan provisions meet the reconciliation instructions contained in H. Con. Res. 307.

On June 24, the Senate adopted the Education Amendments of 1980 as amended by a vote of 92–4, and Conference with the House is slated to begin immediately after the recess.

Title IV, Parts B, D, and E of this bill contain the cost savings provisions outlined above. As passed by the Senate, this legislation appears on pages S8003 to S8012 of the Congressional Record, June 24, 1980.

Sincerely,

HARRISON A. WILLIAMS, Jr.,
Chairman.

TITLE VII. SENATE LABOR AND HUMAN RESOURCES COMMITTEE

On June 24, 1980, the Senate passed H.R. 5192, the Education Amendments of 1980. This bill meets the reconciliation instruction to the Labor and Human Resources Committee by modifying the existing guaranteed student loan program and by replacing the existing National Direct Student Loan Program with a new direct student loan program.

The attached excerpts from the Labor and Human Resources Committee's report on this bill provide legislative history on the student loan provisions in the reported bill. Also attached are excerpts from the Congressional Record describing the two amendments to the student loan provisions which the Senate adopted (the first by Senator Metzenbaum and the second by Senators Bellmon and Hollings).

The following table compares the student loan savings in the Senate-passed bill to the Labor and Human Resources Committee's reconciliation instructions:

[In millions of dollars]

	Fiscal year 1981	
	Budget authority	Outlays
Reconciliation requirement to the Senate Labor and Human Resources Committee	−350	−450
Legislative savings from H.R. 5192	−603	−611
1. Guaranteed student loan program	(−225)	(−233)
2. Repayments from the expired national direct student loan program	(−378)	(−378)

[Excerpts from Labor and Human Resources Committee Report on S. 1839 (Report No. 96–733)]

Part B—Guaranteed and Insured Student Loans

The Guaranteed Student Loan Program has provided private capital in the form of loans to students since 1965. A student applies for the loan from a bank, credit union, savings and loan institution, or other eligible lender. His institution of post-secondary education certifies to his enrollment status and standing within the schools, along with the amount needed by the student to meet the costs of his education.

During the period a student is in school, the Federal Government subsidizes the 7 percent interest charged to him. Repayment of principal and interest begins within 9 to 12 months after the student ceases to be enrolled at least half-time. A student has ten years to pay off his loan, with a minimum payment of $30 per month, although the average loan is paid off early, within seven years.

Due to spiraling inflation, lenders have in recent years been unable to make student loans at 7 percent interest without an additional special allowance from the Federal Government to cover their costs of money. The special allowance is calculated quarterly, based on the average 90-day Treasury bill rate for the preceding quarter. The most recent special allowance was 9 percent, reflectinng the high rate of Treasury bills due to inflation.

In 45 States, the program is administered by State guaranty agencies or other non-profit organizations or institutions. In the remainder of the States, the Federal Government insures loans directly. Defaulted loans, and those cancelled by reason of the borrowers death or disability, are paid off by the guarantor. In the case of a State with a low default rate, the Federal Government provides 100 percent reinsurance of the loan principle and outstanding interest.

Much publicity has surrounded the default rate in the Guaranteed Student Loan Program. Former HEW Secretary Califano instituted Operation Match, to check rosters of defaulting borrowers against the personnel rolls of the Department. A similar undertaking is being contemplated in the Senate. While past performance of the Office of Education in collecting defaulted loans from student borrowers has too often been deplorable, the Committee would like to note that the efforts of the Office in the past year and a half to correct this situation have been extremely successful. Default rates in the student loan program now closely approximate those in other commercial loan programs. The Committee urges the new Department of Education to continue to make loan collection a high priority, so that Federal

funds are not wasted in paying off loans for which student borrowers are legally responsible.

The Committee bill extends the provisions of the Guaranteed Loan Program for five years, through fiscal year 1985. In response to the severe budgetary pressures currently facing our Nation, the bill makes significant changes in the program to reduce both its short-term and long-range costs to the Federal government. In addition, the bill strengthens the program's administrative structure to assist in further reduction of the default rate.

LOAN LIMITATIONS

The Committee bill recognizes that more and more students in post-secondary education are independent students, either making their way through college on their own, without assistance from their parents or older individuals returning to school or going to college for the first time. For these students, the current limit of $2,500 per year in guaranteed loans is often insufficient. S. 1839, therefore, establishes a new limit of $3,000 per year for independent students. The bill also establishes an aggregate maximum of $15,000 in loans for independent students who have not completed their undergraduate study, and increases from $15,000 to $25,000 the aggregate maximum for graduate and professional study.

The Committee bill does not change the maximum annual loan limits and aggregate limits for dependent undergraduate students, however. While this may appear harsh, given the rising costs of undergraduate education in the country today, the Committee wished to discourage students from taking out large amounts of heavily subsidized Guaranteed Loans for undergraduate school. The parents of these students will have access to the unsubsidized parental loan program created in the Committee bill to make up additional costs. The parental loan program, because of its unsubsidized nature, has been estimated by the Congressional Budget Office to be approximately one-quarter as expensive to the Federal government as a similar dollar-for-dollar increase in undergraduate borrowing. The Committee wishes to encourage utilization of the parental loan program to the greatest extent possible, to keep the Federal costs to a minimum.

Some graduate and professional programs, such as medicine and other health professions, are extremely expensive. For these programs, a $25,000 aggregate ceiling on borrowing may be unrealistically low. For this reason, the Committee bill authorizes the Secretary of Education to exempt from the loan limit programs which he determines, by regulation, to be exceptionally expensive. The Committee anticipates that the Secretary will make every attempt to do this on a program-by-program basis, rather than dealing with every individual case or curriculum which applies for the waiver of loan limits. Of course there may be exceptionally expensive programs at individual schools which, as the exception rather than the rule for the discipline, might warrant individual determinations of eligibility for waiver. In urging program-by-program review, the Committee does not intend to preclude the Secretary from making such individual determinations.

DEFERRAL OF REPAYMENT

The Committee bill provides that the repayment requirement shall be deferred for periods of up to three years for service as an officer in the Commissioned Corps of the Public Health Service or for services as a full time volunteer for certain types of tax-exempt organizations. In addition, repayment may be deferred for two years during an internship, if successful completion of the internship is required for professional practice. Finally, the bill defers for up to three years repayment obligations of a temporarily totally disabled borrower, or one whose spouse is sufficiently disabled that the borrower is unable to seek employment because of the spouse's need for care.

These deferrals are added to provisions in existing law deferring repayment obligations for military service, Peace Corps or VISTA service, and under other circumstances, such as the unemployment of the borrower. In all cases, the responsibility to repay the loan is merely deferred for the stated period of time. The borrower's obligation to repay is not cancelled.

STATE AGENCIES AS LENDERS OF LAST RESORT

The Committee was concerned that, in these times of high interest rates and stringent credit limitations, many students might not be able to obtain needed loans through private lenders. In addition, increasing numbers of students are attending postsecondary educational institutions on a less-than-half-time basis. For them, under existing law, no sources of financial aid are available.

Under the Committee bill, State guaranty agencies and other nonprofit organizations operating State loan programs would be eligible to receive from the Student Loan Marketing Association up to 25 percent of the average of the unpaid principal balance of loans guaranteed by that agency for the preceding three years, in order to make loans to eligible students who were otherwise unable to borrow money under the program. It is not the intention of the Committee to make this account available to State agencies regardless of their actual need for additional loan capital. Each such agency is expected to make applications to the Student Loan Mortgage Association for advances against their eligible borrowing amount, as students seek loans of last resort directly from such agencies.

In States which have recently established loan guaranty agencies or which are planning to establish such agencies in the future, a three-year borrowing history will not be available to establish the amount available for loans of last resort. In this instance, the amount available to the new agency will be the equipment average for a State of comparable size to the State seeking funds from SLMA. This "comparable size" criterion is similar to that used to establish per pupil expenditure rates in the Impact Aid program. It has proved, over history, to be more accurate than estimates of potential volume (or cost) for purposes of payment.

In addition to eligible students who cannot, for whatever reason, obtain loans through the private market, students attending eligible institutions less than half-time will also be able to receive loans from State agencies under this provision of the Committee bill. Testimony

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before the Subcommittee on Education, Arts, and Humanities indicated that banks and other private lenders would be extremely reluctant to make loans to less-than-half-time students, since the amount of the principal loaned would be *de minimus*, in the light of the size of regular commercial loans, and the cost of collection would outweigh the value of the capital loaned. Since it seemed unlikely to the Committee that commercial lenders would be willing to aid the expanding population of nontraditional students who are unable to attend college on a full-time basis, it decided to vest the State guaranty agencies with this responsibility.

To be eligible for a loan, a less-than-half-time student must not only be enrolled or accepted for enrollment at an eligible institution but be registered for not less than two nor more than six semester or quarter credits (or their equivalent) at the institution. In addition, such courses must be for credit to satsify the qualifications for a degree, diploma or certificate. They may not be noncredit courses, as defined by the institution.

The maximum amount that a less-than-half-time student may borrow under the Committee bill is $1,250 for any academic year, or a total of $5,000. The amount of the loan shall not exceed the cost to the borrower of tuition, books, supplies, travel, and wherever necessary, child care. In no instance does the Committee intend to have the loan cover the cost of regular room, board, or living expenses for a student who attends postsecondary education on a less than half-time basis.

INTEREST RATE AND PAYMENT

The current interest rate to students under the Guaranteed Student Loan Program is seven percent. In the light of current commercial rates, which range up to 18 or 20 percent, this appeared to the Committee to be an unreasonably low amount for students to be expected to repay. Therefore, the Committee bill increases the interest rate to student borrowers from 7 percent to 9 percent. While this will not show an immediate saving in Federal costs, in the long run, over the life of the loans authorized by the Committee bill, it is estimated by the Congressional Budget Office that the Federal government would realize a $260 million savings, if compared to current law.

The Committee bill also reduces the grace period before a student is required to repay his loan, with interest, from nine-to-twelve months to four months. This change will result in no immediate savings in fiscal year 1981, but the Congressional Budget Office estimates that elimination of interest subsidies for that five-to-eight month period will reduce long-term costs to the Federal government by approximately $115 million.

In addition, the Committee believes that shortening the grace period before a loan must be repaid will result in a significant lowering of the default rates. Students are an extremely mobile population, especially in the period immediately following their graduation, when they are seeking employment. A lender often has great difficulty in locating a student borrower nine months to a year after graduation, as he may have settled in a far off community. However, with only a four month interval, this allows the student the summer months to

make a career decision or to enroll in graduate school (where he would be eligible for deferment of his repayment responsibility), yet gives greater assurance that the lender or State agency will be able to keep track of his residence.

COLLECTION PRACTICES

The Committee bill authorizes the use of credit bureau organizations in the exchange of information concerning past performance of student borrowers. Several States have made information concerning student repayment or defaults available to credit bureaus, with substantial success. If a student is aware that his failure to repay his debt to the Federal Government will be part of his credit record, he is more likely to make timely payments on his loan, so that future credit will not be impaired.

To date, however, the Federal government has not availed itself of the credit bureau mechanism, in part because of concerns about the effects of the Privacy Act. It makes little sense to the Committee that a future creditor should not be given the information that a student had not repaid his student loan, usually his first experience with credit. Surely an automobile dealer or a credit card company would think twice before giving credit to a defaulting student. Under current law, they would not have this information; the Committee bill would make it available to them.

Provisions of the Fair Credit Reporting Act would be complied with, under the Committee bill, and students would be required to be notified by the Secretary that information will be disclosed to credit bureau organizations unless the student begins to repay his loan.

ADMINISTRATIVE IMPROVEMENTS

The Committee bill makes a number of technical amendments to the Guaranteed Loan Program designed to make the administration of the program more efficient and less costly. First, it establishes that States may charge an insurance premium of not to exceed one percent, to defray the costs of their insurance and administrative, operating, and overhead costs. This does not increase the rate currently charged by States for insurance; however, it clarifies an ambiguity in current law which might allow the charge to rise above one percent or, on the other hand, to be reduced by unilateral administrative action by the Department of Education.

Second, the Committee bill vests responsibility in the State guaranty agency to ascertain whether the student borrower is enrolled on at least a half-time basis, to notify the lender when a student ceases to be so enrolled (thereby triggering the timing of the repayment period), to audit the note to determine that its provisions with regard to the amount of principal guaranteed match with agency records, and to examine the note to assure that its repayment provisions are consistent with the requirements of the law. No additional Federal payment is authorized to support these additional State activities. However, States may be able to derive some additional income from the provisions of the Committee bill which authorize them to establish escrow accounts for multiple disbursements of student loans.

One of the major problems in the student loan program has been that students often receive the full amount of their loan in a lump sum, then drop out of school. Since these students have received no educational services, they are too often reluctant to repay the total amount of their obligation. Instead they default on their loan.

The Education Amendments of 1976 authorized lenders to make multiple disbursements of loan principal, rather than paying the entire amount in a single check. However, the Office of Education failed for two years to issue regulations necessary to implement this section of the law. The Congress had to pass a second law, Public Law 96–49, in order to implement the multiple disbursement provision.

Still, it is costly to lenders to make multiple disbursements on small student loans. The paperwork costs often exceed the return to the lender on the loan. Single loan payments are still being made to most students, leading to higher potential Federal costs in covering defaults.

Therefore, the Committee bill authorizes State guaranty agencies to act as escrow agents for the lenders, disbursing the loan principal to the students under the specific terms of the agreement between the lender and each individual student. The Committee expects that lenders, freed from the costly obligation of making several small installment payments to students, will enter into agreements with the State agency for such multiple disbursements.

The State agency will be allowed, under the bill, to commingle the proceeds of all the student loans in escrow, prior to their being paid to the borrower. The agency may invest the loan proceeds in Federal government obligations and may retain the interest or other earnings to support the additional responsibilities given the agency under the Committee bill. If a student ceases to be enrolled at least half-time during the period of the loan, the State agency will return the undisbursed portion to the lender.

LOANS TO PARENTS

The Committee bill establishes a new loan program for parents of dependent students. As college costs increase, many parents are unable to come up with the amount of cash that a needs test indicates that they are able to contribute to their son's or daughter's education. While they are able to budget in order to make the total contribution available over the course of a year, many parents do not have the savings or other liquid assets available to make a single lump-sum payment of the entire expected family contribution in the fall, when most colleges expect full payment.

Recognizing this real problem for middle-income parents, the Committee bill creates a parental loan program. It is totally unsubsidized, thereby substantially reducing its cost to the Federal government. If a parent elects to wait until his son or daughter completes his education or drops out of school, the interest rate is 14 percent, which is deferred during the in-school period and added to the principal of the loan when repayment begins. However, if the parent merely wishes a loan to assist him in his cash-flow problems, he may begin repayments within 60 days to taking out the loan. In that case, the parental interest rate is only 9 percent.

The Congressional Budget Office estimates that loans made under this program, if parents elect to begin immediate repayment, will cost the Federal government about one-fourth as much as regular student loans, due to their lack of interest subsidy. The Committee encourages parents to take out these loans to ease the acute financial burden that postsecondary education places on many families.

Under the Committee bill, a parent would be eligible to borrow up to $3,000 per year on behalf of each student in college during each academic year. The aggregate amount parents could borrow for each student cannot exceed $15,000.

SPECIAL ALLOWANCES

Special allowances are paid by the Federal government to lenders to make up the difference between the interest rate charged in the Guaranteed Loan program and the cost to the lenders of the money they must obtain to make the principal amount of the loans available to the students. Under current law, the amount of the special allowance is pegged to the rate of 90-day Treasury bills for the quarter preceding the date of payment of the allowance. The Committee bill continues this special allowance rate, making technical changes to reflect the proposed interest rate increases from seven to nine percent, and the 14 percent rate on parental loans which do not go into repayment status 60 days after being taken out. In all events, the return to commercial lenders would be the same, the total of the interest charged and the concomitant special allowance.

One major change made by the Committee bill concerns the rate of return paid to holders of loans which were made or purchased with funds obtained from the issuance of tax-exempt obligations. The past few years have seen a substantial increase in the issuance of tax-exempt bonds for student loan purposes. These bonds are often issued at interest rates significantly lower than commercial rates, since they are State obligations or otherwise qualified for tax-exempt status. However, the special allowance paid on such bonds has been identical with that paid commercial lenders, an allowance which reflects the commerical cost of money. As a result, unforeseen amounts of special allowances have been paid to holders of loans which resulted from tax-exempt issuances, providing a return far in excess of the cost of administration or the cost of obtaining the capital. The Committee bill seeks to prevent this windfall by limiting the special allowance on loans made or purchased by tax-exempt funds to one-half the regular special allowance paid to commercial lenders. This figure has been estimated by the Congressional Budget Office to provide an adequate rate of return on such loans, commensurate with the cost of administration of such loans. In order to provide a measure of stability in return to bond holders, the Committee bill provides that the rate of special allowance set for such holders shall not be less than one-half of one percent.

The current method of determining special allowances on Guaranteed Loans was set by a committee, pursuant to the provisions of the Education Amendments of 1976. When this rate was set, money conditions and interest rates were significantly different from those experi-

enced in our present economy. Therefore, the Committee believed that the entire question of adequate return, as represented by the special allowance, should be reconsidered, in the light of current rates of inflation and costs of borrowing money.

The Committee bill establishes a Committee on Determining Student Loan Special Allowances, comprised of the Secretary of Education, the Secretary of the Treasury, the Secretary of Health and Human Services, a representative of State guaranty agencies participating in the program, a student financial aid administrator, and a representative of participating eligible lenders under the program. This committee is charged with a reanalysis of the current procedures for determining special allowances under the program, taking into consideration the experiences of students and lenders under the existing system, the administrative costs of various types of lenders, relevant financial indicators which accurately reflect the costs of capital invested in the program, an administrative mechanism which will result in prompt determination of the quarterly rate set for the special allowance, and other factors necessary to carry out the purposes of the Guaranteed Loan Program. The Department of Education is directed to give full cooperation to the functioning of the committee, including the hiring of consultants and the entering into of any necessary contracts.

The committee shall submit a report of its findings to the Congress no later than one year after the date of enactment of the Education Amendments of 1980. Every effort shall be made by the members to arrive at a unanimous recommendation concerning any new method of arriving at a special allowance payment rate. Existing payment rates shall remain in effect until the Congress, by joint resolution, adopts the method recommended by the committee, in whole or in part. The Committee hopes that the deliberations undertaken by this committee will result in suggestions to the Congress of additional ways of calculating the special allowance which will result in additional savings to the Federal government, while providing a fair rate of return to lenders under the program.

Since the Committee is cognizant of the proliferation of government committees, which seem to have perpetual life once established; the bill provides that the committee on special allowances shall cease to exist ten days after the Congress approves the joint resolution concerning a new method of calculating special allowances.

STUDENT LOAN MARKETING ASSOCIATION

Sallie Mae's primary purpose is to provide a national secondary market for student loans. This bill continues this role by modifying Sallie Mae's charter to allow the corporation to more effectively carry out this function and to assure the ability of the corporation to meet the future needs of GSLP borrowers and lenders. Sallie Mae also is authorized to act as a direct lender for the limited purposes of loan consolidation and assuring loan availability where shortages of student loan capital exist. Further, where student loan capital shortages exist in a given state, Sallie Mae is authorized to advance funds to a eligible state guarantee agency or direct lender to enable the agency or lender to make student loans.

In the interest of allowing Sallie Mae to effectively perform its secondary market functions, this bill modifies its program authorities, capital structure, and fiancing authorities.

Current law authorizes Sallie Mae "to make advances on the security of, purchase, service, sell, or otherwise deal" in insured loans. This bill restates these authorities, including the authority of the corporation to offer participations or pooled interests secured by insured student loans. Participations or pooled interests if offered by Sallie Mae would be used to raise capital in support of its activities. Such offerings are a common practice by secondary markets.

Student loan participation involve the purchase of a share of the future principal and interest payments to be made by student borrowers and/or the government in a pool of student loans, evidenced by a security such as a certificate of beneficial interest. Additional investment opportunities in student loans will attract capital from private investors in these securities and will provide additional support for Sallie Mae's secondary market programs.

Sallie Mae's warehousing advance program has been modified in order to make it a more competitive source of student loan financing thereby encouraging lenders to use the program to borrow funds from Sallie Mae and reinvest those funds in additional student loans. Under current law, Sallie Mae cannot advance funds in excess of 80 percent of the face amount of the insured student loan collateral pledged by the borrower. This provision, in effect, requires borrowers to pledge collateral equal to 125 percent of the warehousing advance made by Sallie Mae. This rigid collateral requirement limits a lender's ability to borrow funds from Sallie Mae without regard to other judgmental factors. Sallie Mae, with several years of experience in dealing with lenders under its warehousing advance program, is in the best position to establish appropriate collateral requirements for this program.

In order to broaden the number of lenders eligible to participate in Sallie Mae's warehousing advance program, the bill allows lending institutions to secure an advance from Sallie Mae with collateral other than insured student loans. Eligible collateral would be government guaranteed or backed obligations which currently are acceptable as collateral to secure borrowings from other agencies of government such as the Federal Reserve. Under current law, only insured student loans may be pledged as collateral, thus limiting Sallie Mae's ability to assist lenders which have only recently begun participating in the Guaranteed Student Loan Program.

This ability to pledge collateral other than insured student loans for a warehousing advance will allow participating and potential lenders to obtain capital in support of their student lending on relatively attractive terms thereby encouraging continued program participation and expanding student loan availability.

S. 1839 modifies Sallie Mae's capital structure and financing authorities. These changes will allow Sallie Mae to continue to raise funds through the issuance of its debt securities in support of its secondary market activities. At the same time, this will allow for an orderly transition after July 1, 1984, from financing through the Federal Financing Bank (FFB) with the full faith and credit of the United States to issuing nonguaranteed debt obligations directly

to the public. This transition and the changes made in anticipation of it are consistent with the experience of other government-sponsored enterprises who have similarly undergone such a transition and correspond with the intent of Sallie Mae's enabling legislation.

In order to facilitate this transition, the bill makes several changes which will enable Sallie Mae to raise private equity more easily. The bill provides Sallie Mae additional flexibility in the issuance of its common and preferred stock and creates a non-voting class of common shareholders. In the interest of assuring the availability and certainty of funds to Sallie Mae, the bill also makes several changes relative to the issuance and guarantee of Sallie Mae's debt obligations, including a limited extension of the corporation's full faith and credit.

Under current law, common stock issued by Sallie Mae must have a par value of $100 per share. Under this bill, the authority to fix the par value of its common stock is vested in Sallie Mae's Board of Directors. A similar provision applies to Sallie Mae's preferred stock. It is contemplated that the par values of such common and preferred stock will reflect the normal par values of similar stocks which generally range considerably below the current fixed $100 par value. A lower par value would place Sallie Mae's stock within the price range of most corporate equity offerings, thus increasing its marketability and liquidity. Any reduction in par value would reflect current business practices and would not in any way prejudice the position of current common shareholders.

The bill also removes the authority of the Secretary of Education to approve the issuance of stock by Sallie Mae. The need for continued regulation of Sallie Mae's issuance of stock, originally justified by the risks associated with the establishment of Sallie Mae, no longer exists. Other government-sponsored enterprises which have undergone similar transitions have like authorities to issue stock.

The bill also provides for a new class of non-voting common stock. This will give Sallie Mae the flexibility to obtain additional equity from a broader group than its current common shareholders, which is limited by statute to eligible lenders. Authority to issue this stock will allow Sallie Mae to raise additional equity from the public without altering its governance as established by its enabling legislation.

Under current law, Sallie Mae's debt obligations may be guaranteed by the Secretary of Education through July 1, 1982. Sallie Mae issues its debt obligations with the approvals of the Secretary of Education and the Secretary of the Treasury. Currently, the corporation issues its guaranteed debt obligations to the Federal Financing Bank (FFB) in accordance with the policy of the Treasury Department. In recognition of the expectation of significant expansion of the corporation's secondary market activities and related program support functions, the bill extends through July 1, 1984, the full faith and credit guarantee of Sallie Mae's debt obligations while modifying certain oversight authorities of the Secretary of Education and the Secretary of the Treasury. The authority of the Secretary of Education regarding the approval of the issuance of Sallie Mae's debt obligations is limited to those obligations the Secretary is authorized to guarantee through July 1, 1984. The Committee is concerned that

Sallie Mae continue its support of the Guaranteed Student Loan Program and intends that the authorities of the Secretary of Education and the Secretary of the Treasury with regard to the guarantee and issuance of the corporation's debt obligations not be construed to allow them to limit, control and constrain the corporation's programs.

As a further means of facilitating the decision-making process with regard to granting approvals of Sallie Mae's financing arrangements, the bill requires that where a required approval or denial of the corporation's financing requests is not forthcoming within 60 days, the Congress will be informed of the reasons by the Secretaries of Education and Treasury. The bill, anticipating the eventuality of Sallie Mae's reliance on the public markets for its funding needs clarifies Sallie Mae's ability to market its debt directly to the public and provides that the Secretary of the Treasury may not require that Sallie Mae use the FFB as a condition of his approval of the terms of the corporation's financing.

In order to provide for an orderly transition from the full faith and credit, Sallie Mae's enabling legislation is modified to give the Secretary of the Treasury discretionary authority to purchase obligations issued by Sallie Mae. This should allow Sallie Mae additional stability in financing its program obligations while creating no additional liabilities or commitments on the part of the Federal Government.

This authority is similar to the Secretary's authority with regard to Fannie Mae and is intended to provide assurance of funds to Sallie Mae only if necessary. Such an authority would reassure potential investors in Sallie Mae's obligations as to the long term stability and security of the corporation.

In addition to the modification of its secondary market program and financing authorities, Sallie Mae is authorized to provide for a program of loan consolidation and to assist in financing student loans where there is a shortage of capital either as a direct lender or as a source of funds to eligible state guarantee agencies or direct lenders.

Sallie Mae is authorized at the request of a borrower to make student loans under the terms and conditions of the Guaranteed Student Loan Programs which allow for loan consolidation and extended flexible repayment terms. Where a borrower has received loans from more than one lender, or under both the Guaranteed Student Loan Program and National Direct Student Loan Program, and the amount of those loans exceeds $5,000, or where the total indebtedness of a borrower from one source exceeds $7,500, Sallie Mae will be able to make a new loan to the borrower with graduated or income-sensitive repayment terms of up to twenty years. Similar authorities are granted to State guarantee agencies.

Sallie Mae is authorized to make funds available where there appear to be shortages of student loan capital in individual states. Under certain conditions, a guarantee agency or, in any State, a single agency of the State or a single non-profit private agency designated by the State to act as a direct lender, may request Sallie Mae to advance funds to it in support of a program of direct loans to students otherwise unable to obtain guaranteed student loans from commercial lenders.

The Committee does not intend that Sallie Mae allocate a specific amount of funds for this purpose, but it be construed as a guarantee of access to funds by such agency, institution, organization, or lender. These funds should be made available under pressing circumstances by Sallie Mae with due regard to the financial accountability and creditworthiness of such agency or lender. However, Sallie Mae is encouraged to anticipate such credit needs in its planning process and to designate procedures which allow it to assess and respond to requests in a timely manner. The Committee recognizes that the availability after June 30, 1984, greatly impacts the ability of the corporation to choose among competing priorities and that Sallie Mae must maintain flexibility in this regard. Further, because Sallie Mae is a private corporation and is fully accountable to its shareholders for the assets of the corporation, there is a need to insure that applications for requests for funds provide Sallie Mae with full and accurate information relating to the creditworthiness of a State agency or lender and regarding the proposed disposition and investment of funds in guaranteed student loans. Sallie Mae should develop such criteria as are consistent with the objectives of this program.

Such assistance is intended to be in the form of loans or advances by Sallie Mae with the contractual commitment of the agency or borrower. As appropriate, such assistance may be in conjunction with or contemplate the use of Sallie Mae's other programs provided the corporation's criteria for use of such programs is complied with. Eligibility conditions and approval by Sallie Mae should reffect the statutory provisions of this program and consideration of the likelihood of eventual repayment of such funds to Sallie Mae. While this part is not intended to give Sallie Mae control over guarantee agency or lender operations and policy, such assistance should not be provided where the individual agency or lender cannot display satisfactory levels of efficiency, management capacity, an ability to repay the loan upon maturity, or other factors which are customarily considered by private sources of financing before making an investment decision. As is reasonable, the borrower may be required to keep books, records, and financial accounts regarding such an advance, and the student loans made with the proceeds in such form as requested by Sallie Mae. Likewise, the corporation may require such additional reporting or audits as are necessary to safeguard its interests and assure compliance with the terms of this program. Interest rates, terms of repayment, the amount and nature of any required collateral and other conditions of financial assistance by Sallie Mae should reflect the prevailing rates, terms, and conditions available to borrowers of similar scale and nature.

This program is intended as an alternative source of funds for student loans where there is an actual and substantial shortage of loan capital. As such, it should be considered as a last resort alternative to the statutory policy of encouraging loan availability by stimulating new sources of non-Federal financial investment in student loans through guarantees. special allowance payments, and the secondary market provided by Sallie Mae.

Notwithstanding the other provisions of this bill, Sallie Mae is authorized to act as a direct lender in areas where there is a severe

shortage of student loan capital. Sallie Mae would act as a lender only upon a determination by the Secretary of Education and, as appropriate, the affected state that a severe capital shortage exists. It is intended that Sallie Mae's role be limited and temporary pending the implementation of a state agency and the expansion of private sector GSLP lending activity. Likewise, Sallie Mae's lending activity is subject to several statutory stipulations which should insure that direct lending by Sallie Mae does not displace lending by other eligible lenders or discourage the creation or continuation of state guarantee agencies.

LOAN CONSOLIDATION BY STATE AGENCIES

One of the major problems faced by student borrowers at the present time is that, upon graduation, they are faced with a number of notes, of differing terms, to repay upon graduation. Students who borrow under both the Guaranteed Loan Program and the National Direct Student Loan Program must make payments to different collectors, at differing interest rates, and upon different terms and conditions. All too often, a student is confused by his conflicting repayment requirements and unable to make timely repayments to meet his legal responsibilities. The result may be default, however unintentional.

The Committee bill authorizes State guaranty agencies, upon the request of the borrower who has received loans from two or more programs or lenders, to consolidate those loan obligations into a single new loan, under certain circumstances.

To be eligible to have his loan consolidated, a borrower must have outstanding indebtedness in excess of $5,000 from various programs or lenders, or have indebtedness of more than $7,500 from a single lender. The new loan made by the State agency shall be upon terms and conditions mutually agreeable to the borrower and the lender. In such an instance, a graduated, income-sensitive repayment schedule may be established for repayment.

PROMPT DEFAULT DETERMINATION

The Committee is informed that, in some cases, payments to insured beneficiaries under section 430(a) of the Act have been withheld for indefinite periods without any determination of wrongdoing or lack of due diligence on the part of insured beneficiaries. The Committee believes that such actions discourage vital participation by lending institutions and are contrary to the express directives of the Act. Section 422 of the bill clarifies section 430(a) of the Act to ensure that payments will be paid promptly to insured beneficiaries.

MISCELLANEOUS AMENDMENTS

The Committee bill makes several miscellaneous amendments to the Guaranteed Loan Program, to conform to the new general provisions governing student aid concerning eligibility of students and assessment of need. In addition, the bill authorizes the Secretary to pay $10 per academic year for each student receiving a Guaranteed Loan to the institution in which he is enrolled. Funds received shall first be used to underwrite the costs of providing mandated student

information, and the remainder shall be available to the college's student aid office to offset the costs to the institution of making the necessary determinations of student eligibility and need required by this part.

Part D—National Direct Student Loan Association

Part D of title IV of the Committee bill establishes a new nonprofit agency in the executive branch of the Federal government, the National Direct Student Loan Association. This Association will be responsible for administration of an expanded program of need-based loans available to students on-campus through their institution's financial aid office.

The Association's principal office shall be located in the District of Columbia. Its Board of Directors shall consist of the Secretary of Education and eight other members appointed by the President, subject to the advice and consent of the Senate. The President shall designate the appointee who shall serve as Chairman of the Board.

The Secretary, who shall be a full voting member of the Board, serves *ex officio*. Other members shall serve four-year terms; no member may serve for more than eight years. Four of the members appointed by the President shall be representative of educational institutions; the other four shall represent the general public, one of them a student.

The Association shall have the powers generally granted to corporations. The Chairman, with the approval of the Board, may employ necessary staff to carry out the activities of the Association.

In administering the National Direct Student Loan Program, the Association shall provide, either directly or by way of contract or other arrangement with State guaranty agencies or other appropriate agencies, organizations, and institutions for collection of Direct student loans, programs of pre-claims assistance for default prevention, and other programs which the Board of Directors deems necessary to assure the success of the program. State guaranty agencies shall be offered the first right of refusal to carry out these activities in their respective States.

The Association will be authorized to enter into agreements with students for prepayment of loans made under the existing National Direct Student Loan Program. Since it will have the responsibility for collection of outstanding loans made under current law, it may receive information regarding student borrowers from the Secretary and, pursuant to agreements with institutions regarding collection, make such information available to them.

The Association is authorized to issue notes, debentures, bonds, or other obligations necessary to make loan capital available to institutions for their needy students. However, all such obligations are specifically limited by annual limitations in appropriations Acts, which will control the amount of money available to the Association for payment of interest on its obligations. In addition, the Association may not issue any obligation without the prior concurrence of the Secretary of the Treasury as to the obligation's terms and conditions. The Secretary of the Treasury may direct that any issuance by the Association

be sold to the Department of the Treasury or to the Federal Financing Bank. The Secretary of the Treasury is authorized to purchase any obligations of the Association, upon such terms and conditions as to yield a rate determined by him, taking into account the current average yield on outstanding obligations of the United States of comparable maturity. Interest owed by the Association may be deferred, in the discretion of the Secretary, but such deferred interest shall bear interest. The Secretary may sell any of the obligations he acquires, upon such terms and conditions as he decides, and at such prices as he determines. All actions of the Secretary shall be treated as public debt transactions of the United States.

All obligations of the Association shall be guaranteed as to principal and interest, and shall constitute general obligations of the United States, backed by the government's full faith and credit. Association funds not otherwise employed may be deposited with the Treasury, with the approval of the Secretary of the Treasury, deposited in a Federal Reserve bank, or with the approval of the Secretary of the Treasury and the Board of Directors, used in the purchase (for redemption and retirement) of the Association's obligations.

The Association shall prepare annually and submit a budget as provided by the Government Corporations Control Act. In addition, it shall maintain an integral set of accounts with respect to loans made, which the General Accounting Office shall audit annually. The Association shall report annually to the Congress and the President on the general operations of the National Direct Loan Program, including a specific description of the progress made on collection of student loans for which the Association is responsible.

There are authorized to be appropriated such sums as may be necessary to the Association for administrative costs of carrying out the National Direct Student Loan Program, to pay the differential between the rate of return on the Association's obligations and the interest rates collected under the program, and for the costs of repayment of student loans in the event of default, death, or disability.

Part E—Direct Loans to Students in Institutions of Higher Education

Part E of the Committee bill replaces the existing National Direct Student Loan Program with a new program administered by the National Direct Student Loan Administration. Under current law, which has been in effect since 1958, the Federal government makes new capital contributions, through annual appropriations, to institutional loan funds. The institution of higher education participating in the program contributes $10 for each $90 received from the Federal government. Loans are made to students in the discretion of the college financial aid administrator, bearing an interest rate of 3 percent, which begins to be charged to the student nine months after he leaves school. During his collegiate career, no interest attaches to the loan. Students entering specified careers, such as teaching the handicapped or in schools with high percentages of disadvantaged children, are eligible to have their loan obligations cancelled over a period of years. The college is responsible for collection of the loan.

While the National Direct Student Loan Program has been successful in directing loan funds to needy students for the past 22 years, it has not been without its problems. Defaults of student loans have ranged as high as 40 to 50 percent on some campuses, primarily because institutions of higher education are in the business of educating students, not acting as collection agents. Although loan cancellation has benefited a number of students who entered the teaching profession, there is no evidence that the possibility of cancellation of a loan influenced a student's choice of career. And a three percent interest rate, in the light of today's cost of money in the commercial market, is unrealistically low, in the eyes of the Committee.

Faced with the need to reduce Federal spending, in the light of the current budget situation, the Committee considered a number of alternatives in its reauthorization of the loan programs. Senators Kennedy and Bellmon had proposed a complete rewriting of both the Guaranteed and Direct Loan Program in S. 1600, to focus the programs more directly on those students in need of financial assistance. The Administration had proposed a similar reform in its bill, S. 1840.

The Committee bill seeks to adopt the best elements of both of these proposals, in order to create a vastly expanded need-based loan program available to students on-campus, while simultaneously reducing the costs of the program to the Federal government. It believes that its new provisions for the National Direct Student Loan Program meet these requirements.

Under the Committee bill, the National Direct Student Loan Association is responsible for providing funds to institutions of higher education to enable them to make loans to students with demonstrable financial need. Each institution with an agreement with the Association will analyze the overall financial need of students on its campus, taking into account other financial aid (other than Guaranteed Loans) available to them.

Subject to appropriations available to allow the Association to borrow money from the Federal Financing Bank, the Association will make necessary loan funds available to colleges based on their aggregate need for student loans. It will do so in installments, to avoid unnecessary accumulation of capital at the institutional level, taking into account the institution's actual disbursement of student loans. The first such payment by the Association will be made as soon as possible after October 1, 1980, so that the savings anticipated by the Committee bill will be realized during the 1981–82 school year, if not earlier.

The Association's agreement with an institution of higher education shall provide for the establishment and maintenance of a student loan fund at the institution. Payments made to the institution under this part, shall be deposited into the loan fund. The fund shall be used only for loans to students, based on their need as demonstrated by the uniform needs analysis, costs of administration, distributions of capital, if any, and costs of litigation or collection, if required by the Association.

If the institution wishes to act as a collection agent, it may apply to the Association for that purpose. It will be required to demonstrate that it has a good collection record in the existing Direct Loan Program, in order for the Association to enter into an agreement with the

institution. Not to exceed 10 percent of an institution's loan funds may be used for loans to less than half-time students who need assistance, in the discretion of the student financial aid administrator.

The Committee bill provides that the aggregate amount of Direct Loans which may be made available to a graduate or professional student may not exceed $12,000. A student who has completed two years of undergraduate study may borrow up to $6,000; any other student has an aggregate limit of $3,000.

Direct Student Loans, under the Committee bill, bear an interest rate of seven percent, beginning nine months after the borrower ceases to carry at least a half-time workload, and ending ten years after that date. Repayments may, at the option of the borrower, be made in graduated installments, with larger payments due later in the repayment period, and with provision for acceleration of repayment of the loan, in whole or in part. The normal minimum repayment shall be $30 per month, unless the Association provides, by regulation, for a lower payment for one year to avoid hardship to the borrower, or unless the borrower is employed in a low-income occupation during the repayment period, in which case the repayment schedule may be adjusted to reflect his income. The loan shall bear interest at the rate of seven percent per year. Repayment obligations are deferred for additional education on more than a half-time basis, for service in the Armed Forces or the Commissioner Corps of the Public Health Service, Peace Corps or VISTA service and related activities.

Upon the winding down of the current Direct Student Loan Program, institutions shall return to the Association the 90 percent Federal contribution to their student loan funds, retaining the 10 percent institutional contribution on campus. As additional repayments of Direct Loans are made to the Association, that capital shall be available to the Association for the purpose of making new Direct Loans to students. New student notes entered into under the Direct Loan Program shall be assigned to the Association for collections purposes. As noted earlier, institutions with good collections records may apply to the Association to continue as collection agents.

EXCERPT FROM STATEMENT BY SENATOR METZENBAUM IN THE CONGRESSIONAL RECORD OF JUNE 23, 1980 (P.S. 7893)

Mr. METZENBAUM. Mr. President, the amendment I expect to call up tomorrow, on behalf of myself and other Democratic Senators, has the support of the distinguished chairman of the committee and has the support of a number of Members on the minority side.

It might appropriately be described as being a matter of equity, a matter of fairness to the blue-collar family and the general taxpayers. The essence of this amendment is very simple and elementary.

At the present time, student loans provide for a Government subsidy with respect to the interest, and this amendment would eliminate that subsidy of interest except in certain special instances, which I will discuss.

Frankly, I believe that we must find a way to cut back on the cost of the GSL program. Loan volumes have grown at an absolutely alarming rate. In 1977, $1.5 billion in loans were issued. By 1978, that

figure had gone up to almost $2 billion. By 1979, the figure had gone up to almost $3 billion. By 1980, there will be more than $5.3 billion in loan volume, based on data in the first half.

As these numbers show, the volume has almost doubled in the past year alone, and Federal outlays have tripled in the past 3 years.

In 1978, the outlay was $546 million, in 1979, the outlay was $899 million. In 1980, $1.5 billion is estimated to be the total outlay.

Mr. President, I am not opposed to the GSL program. As a matter of fact, I think it is a great program and I do not want to have any negative impact upon that program. But I firmly believe that once students, male or female, graduate from college they have two obligations. One obligation is to repay the loan that the Government was good enough to have made available to them, and the second is to repay and see to it that the Government does not suffer any more than a modest amount of interest subsidy.

Even with our amendment it still will cost the Government a certain number of dollars as far as the interest subsidy is concerned, but it will cut down immeasurably because it will provide that the students will have the obligation to repay the loan plus interest at the rate of 9 percent.

We believe that any student who needs a loan should be eligible to receive one, and there is nothing in this amendment that would provide for a limitation with respect to family income, an issue that has been a matter of great dispute. That is not in this measure. Some have one view on that subject and some have the other. But this amendment does not address itself to that issue.

We are not cuting back on the MISAA program—the Middle Income Student Assistance Act of 1978—and I commend those who provided the leadership with respect to the enactment of that legislation.

We are not placing a cap on eligibility. But our amendment is more equitable to the taxpayer and would place a cap on unnecessary lending.

Let us talk about what the impact would be upon the student. No one wants to make the student who graduates have an impossible task. No one wants to place an unfair burden on that student. But no one wants to place an unfair burden on the blue collar worker who is paying those taxes either, and this amendment might have some impact upon the student and have some impact upon the amount that the student repays.

According to CBO the average borrower of $4,000 would pay $51 a month under the committee bill, $58 a month under our amendment, and $46 a month under current law. The very worst would be a total of $144 a year if there were a loan of $4,000.

If a student borrowed $7,500 maximum for undergraduate students, the schedule would be $95 a month payable under the committee bill, $112 a month payback under our amendment, and $87 a month payback under current law, a maximum of $25 changed from the current law or $300 a year.

To summarize, we believe—I see in the Chamber three Members who I know will address themselves to this issue and who support it—the amendment will receive substantial cost savings to the GSL program

without restricting loan eligibility. We believe this approach is fair to the student. Equally important, it is fair to that average Joe working in the shop who is bearing an unfair burden of taxation and wants to know why.

Any student who needs a loan should have access to one. But he or she should be willing to pay back the interest subsidy once he or she is out of school and earning a living.

Our amendment does not affect a minuscule amount of dollars. Our amendment will save $627 million in long-term savings for loans issued during each school year. Since this is a 5-year authorization bill, we would save an estimated $3.1 billion over the life of the loans authorized in this legislation.

The question might very well be asked how do we save so much money?

First, we would save because students would be paying back the interest subsidy to the Federal Government, but he or she would not pay it back until he or she is out of school.

Second, this amendment would eliminate the incentive to take out so-called "convenience" loans. The CBO estimates that our amendment would actually reduce future borrowing by as much as 25 percent. That is not because the students will not have the money available. The CBO has reported that such "convenience" borrowing has actually helped boost loan volumes issued in recent years.

According to the CBO:

The subsidy may induce many students to borrow for students from higher-income families, who have no financial need, the opportunity to borrow at zero interest is an attractive one. The rapid post-MISAA increases in borrowing suggest that many middle and upper income students have taken advantage of it.

Interest subsidy on more than the first $7,500 on borrowing is eliminated because we are concerned that a student can get himself or herself so much in debt that it would be over their head.

The fact is that there are other modifications to the amendment, all of which are more fully explained in a written memorandum that has been circularized which I ask unanimous consent to have printed in the Record.

There being no objection, the memorandum was ordered to be printed in the Record as follows:

(1) What does the amendment do? Requires interest to be repaid.

Under the current guaranteed student loan program, loans are interest-free while a student remains in school due to a government subsidy. Our amendment would simply require a student to repay that interest subsidy once he/she is out of school and earning an income. This approach is fair to the student. Equally important, it is fair to the general taxpayer that subsidizes the loan program.

(2) How much money would this amendment save? $627 million on each year's loans.

According to CBO, this approach would save $627 million in long-term costs on loans issued each year. Since this is a five-year authorization bill. the amendment would save $3.1 billion.

(3) What impact would this have on the student? On the average loan it would cost student $7 more per month.

Again according to CBO, a student who borrows an average loan amount of $4,000 would pay $51 per month under the committee bill and only $58 per month under our amendment. If an undergraduate student borrows the maximum allowed of $7,500, the payback would be $95 per month under the committee bill and $112 per month under our amendment.

(4) Does the amendment apply to all students? No. Needy students are protected.

We have modified our original approach to protect students who are needy and to protect long-term graduate and professional students as well as those who enter VISTA or the military. No student would be required to repay the interest subsidy on more than the first $7,500 in loans borrowed. Interest to be repaid would accumulate no longer than three years.

(5) How is the cost savings achieved under our amendment?

According to CBO, the cost savings comes about for two reasons:

First, money would be returned to the Treasury due to student repayments.

Second, future loan volumes would be reduced by a full 25 percent, because the interest repayment plan insures money is only used for essential school purposes. In other words, it would eliminate much of the discretionary borrowing that has taken place in recent years because of the interest-free years of the loan. As CBO has stated:

"For students from higher-income families, who have no financial need, the opportunity to borrow at zero interest is an attractive one. The rapid increases in borrowing suggest that many middle and upper income students have taken advantage of it."

Our amendment would deter such "convenience" borrowing.

EXCERPT FROM STATEMENT BY SENATOR BELLMON IN THE CONGRESSIONAL RECORD OF JUNE 23, 1980 (P.S. 7870–1)

Mr. BELLMON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. Bellmon), for himself and Mr. Hollings, proposes an unprinted amendment numbered 1272:

On page 141, line 22, delete section 414(B), including all through page 144, line 16.

Mr. BELLMON. Mr. President, the bill before us would extend eligibility for Federal student assistance programs to students enrolled in school for as few as one or two courses. Under current law, a student must be enrolled at least half-time, as defined by the institution the student is attending. This amendment would continue that requirement.

No one knows, Mr. President, what would be the effect on program participation and cost of extending eligibility for these programs to the vast numbers of people who take just one or two courses at a time. Indeed, since there are many people who make it a practice to take at least one course every semester—virtually all their lives—it is possible we could be expanding eligibility for these programs to a population

that could become permanent recipients of these benefits. That was never the intent of Federal student assistance legislation.

Moreover, Mr. President, the line between student assistance and income maintenance becomes almost indistinguishable, when the recipients of student assistance are not really students. We have a whole array of Federal income maintenance programs for people who are needy; and those programs are structured to assist the needy to attend school, if such schooling could help them to become economically self-sufficient. Indeed, in programs such as CETA, the Federal Government will pay stipends to economically disadvantaged participants—in addition to paying the full cost of their training—in order to help them become economically self-sufficient.

For people whose primary occupation is not school, this kind of assistance, income maintenance programs, food stamps, et cetera, are a far more reasonable approach to meeting their needs than trying to write them into Federal student assistance legislation.

Mr. President, I can understand how some could argue that we may meet some real needs, by including this new broader eligibility criteria in this legislation. I have some sympathy with the arguments put forth by the women's colleges, for instance, that this broader eligibility criteria would make it easier for women who have been out of the work force for some time to return to school, without committing themselves at first to a full time course of study.

On the other hand, I must reiterate that no one has really studied the potential impact on these programs of this broader eligibility. I would remind my colleagues, when we expand eligibility for BEOG's and for guaranteed student loans in 1978, the cost of those programs skyrocketed. (In fiscal year 1978 the cost was $2.243 billion, in fiscal year 1979 the cost was $2.656 billion; this year the costs are estimated at $3.498 billion. That is an increase of 56 percent in 2 years. The cost of the loan programs has increased 134 percent over that same 2-year period.)

When we passed the 1978 amendments, we thought we knew the probable impact of the changes in eligibility enacted then. As a matter of fact the increased costs have been about double the costs projected at that time. We can not even make a reasonable guess as to the likely cost of the changes proposed by the committee. I submit that, in the times of necessary budgetary restraint, we simply cannot pass legislation which could significantly impact cost and program participation, without more information than we now have on these effects.

There is a provision in the House-passed bill, Mr. President, which the sponsors say will address the needs of less than half-time students; and that provision should not add to the cost of Federal student assistance programs. I would suggest, Mr. President, that the managers of the bill could either direct a study of the needs of less than half-time students—and the potential impact of our trying to meet those needs in student assistance legislation—or they could agree to the House provisions in conference, if indeed the House provision would meet those needs without additional cost.

Mr. President, most of us now agree that the existing student assistance programs are too costly. I think that one of our objectives in considering this legislation should be to bring those costs under contral.

In order to accomplish that objective—and still meet the needs of people whose primary pursuit is education, that is, who are students at least half-time—we must carefully allocate our scarce resources among competing needs. I simply do not feel that we can extend these programs to meet new, lower priority needs.

Mr. President, I urge adoption of the amendment.

Mr. PELL. Mr. President, am I correct in my understanding that what this amendment does is it knocks out from the viewpoint of the guaranteed student loan increased eligibility for the less than half-time students?

Mr. BELLMON. That is right.

Mr. PELL. I understand the amendment, and I understand that this acceptance of this amendment is acceptable to the Senator from New Jersey, our chairman, and for that reason we recommend on our side we accept this amendment.

PART B—GUARANTEED AND INSURED STUDENT LOANS

EXTENSION OF PROGRAMS

SEC. 411. (a) Section 424(a) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

(b) Section 428(a)(5) of the Act is amended—

(1) by striking out "1981" and inserting in lieu thereof "1986"; and

(2) by striking out "1985" and inserting in lieu thereof "1990".

LOAN LIMITATIONS

SEC. 412. (a) Section 425(a)(1) of the Act is amended—

(1) by redesignating clauses (A), (B), and (C), as clauses (B), (C), and (D), respectively;

(2) by inserting immediately before clause (B) (as so redesignated) the following new clause:

"(A) that in the case of an independent student (as defined in section 482h(c)(2)) who has not successfully completed a program of undergraduate education, the total of such loans may not exceed $3,000,"; and

(3) by striking out "clause (B)" in the last sentence of such section and inserting in lieu thereof "clause (C)".

(b) Section 425(a)(2) of the Act is amended by striking out "and $15,000 in the case of any graduate or professional student" and inserting in lieu thereof "$15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(c) The matter preceding division (1) of section 428(b)(1)(A) of the Act is amended—

(1) by inserting after "student" the following: "(other than an independent student)"; and

(2) by inserting after "undergraduate education," the following: "or not more than $3,000 in the case of an independent stu-

dent (as defined in section 482(c)(2)) who has not successfully completed a program of undergraduate education,".

(d) Section 428(b)(1)(B) of the Act is amended by striking out "and $15,000 in the case of any graduate or professional student" and inserting in lieu thereof "$15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(e) Section 428A of the Act is amended—

(1) by striking out "$2,500 (in the case of a student who has not successfully completed a program of undergraduate education) or $5,000 (in the case of a graduate or professional student)" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$2,500 (in the case of a student, other than an independent student, who has not successfully completed a program of undergraduate education), $3,000 (in the case of an independent student (as defined in section 482(c)(2)) who has not successfully completed a program of undergraduate education), or $5,000 (in the case of a graduate or professional student)"; and

(2) by striking out "$15,000 in the case of any graduate or professional student" in subsection (a)(1)(A) and in subsection (a)(2)(A) and inserting in lieu thereof in each such place the following: "$15,000 in the case of any independent student who has not successfully completed a program of undergraduate education, and $25,000 in the case of any graduate or professional student".

(f) Part B of title IV of the Act is further amended by inserting immediately before the period at the end of section 425(a)(2) and immediately before the semicolon at the end of sections 428(b)(1)(B), 428A(a)(1)(A), and 428A(a)(2)(A) the following: ", except that the Secretary may increase the limit applicable to graduate or professional students who are pursuing programs which the Secretary determines are exceptionally expensive".

DEFERRAL OF REPAYMENT

SEC. 413. (a) Section 427(a)(2)(C) is amended—

(1) by inserting "or is an officer in the Commissioner Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: (v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer (for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrower is temporarily totally disabled, as established by sworn affidavit of qualified physician, or during which the borrower is unable to secure em-

ployment by reason of the care required by a spouse who is so disabled, or (viii)".

(b) Section 428(b)(1)(M) of the Act is amended—

(1) by inserting "or is an officer in the Commissioned Corps of the Public Health Service" immediately after "Armed Forces of the United States" in clause (ii); and

(2) by striking out "or (v)" and inserting in lieu thereof the following: "(v) not in excess of three years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954; (vi) not in excess of two years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service; (vii) not in excess of three years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a spouse who is disabled, or (viii)".

(c) Section 435 of the Act is amended by adding at the end thereof the following new subsection:

"(j) The term 'temporarily totally disabled' when used with respect to a borrower means a borrower who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years. Such term when used means a spouse who, by reason of injury or illness, cannot be expected to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed three years and who during such period requires continuous nursing or other similar services.".

STATE AGENCIES AS LENDERS OF LAST RESORT

SEC. 414. Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(h)(1) From sums paid by the Association pursuant to section 439(p), each State agency and nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of this section or an eligible lender in such State described in section 435(g)(1)(D) of the Act is authorized to make loans directly to students otherwise unable to obtain loans under this part.

"(2) Each State agency or nonprofit private institution or organization which has an agreement under subsection (b) of this section or an eligible lender in a State described in section 435(g)(1)(D) and which has an application approved under section 439(p)(2) may receive payments under section 439(p) for each fiscal year in an amount necessary to meet the demand for loans under this section. The amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the average of the loans guaranteed by that agency, institution, organization, or lender for the three years preceding the fiscal year for which the determination is made. When-

ever the determination required by the preceding sentence cannot be made because the agency, institution, organization, or lender does not have three years previous experience, the amount such agency, institution, organization, or lender is eligible to receive may not exceed 25 per centum of the loans guaranteed under a program of a State of comparable size.

"(3) Loans made pursuant to this subsection shall have the same terms, conditions, and benefits as all other loans made under this part.".

INTEREST RATE AND PAYMENT

SEC. 415. (a) Section 427(b) of the Act is amended by striking out "7 per centum" and inserting in lieu thereof "9 per centum".

(b) (1) (A) Section 427(a) (2) (B) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and by inserting in lieu thereof "four months".

(B) Such section 427(a) (2) (B) is further amended by striking out "nine months nor later than one year" and by inserting in lieu thereof "four months".

(2) (A) Section 428(b) (1) (E) of the Act is amended by striking out "nine-to-twelve-month period" the first time it appears and by inserting in lieu thereof "four months".

(B) Such section 428(b) (1) (E) is further amended by striking out "nine months nor later than one year" in both places that it appears and by inserting in lieu thereof "four months".

(c) Section 428(a) (3) (B) of the Act is amended by striking out "7 per centum" and inserting in lieu thereof "9 per centum".

(d) Section 428(b) (1) (F) of the Act is amended by striking out "7 per centum" and inserting in lieu thereof "9 per centum".

(e) Section 428(d) of the Act is amended by striking out "7 per centum per annum" and inserting in lieu thereof "the rate specified in this part".

COLLECTION PRACTICES

SEC. 416. (a) (1) Section 430(b) of the Higher Education Act of 1965 is amended by inserting "(1)" after "(b)" and by adding at the end thereof the following new paragraph:

"(2) (A) For the purpose of promoting responsible repayment of loans covered by Federal loan insurance or guarantees pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations providing for the exchange of information concerning student borrowers in accordance with the requirements of this paragraph. For the purpose of assisting such organizations to comply with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subparagraph (C), such agreements shall provide for the disclosure by the Secretary to such organizations with respect to any loan for which the Secretary has received a notice of default under subsection (a) of this section of—

"(i) the date of disbursement and the amount of any such loan;

"(ii) information concerning collection of any such loan, including information concerning the status of any defaulted loan

on which the Secretary has made a payment pursuant to subsection (a) of this section; and

"(iii) the date of cancellation of the note upon completion of repayment by the borrower of any such loan or payment by the Secretary pursuant to section 437.

"(B) Such agreements may also provide for the disclosure by such organizations to the Secretary, upon receipt from the Secretary of a notice under subparagraph (A) (ii) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Secretary in proceeding to collection of the defaulted amount.

"(C) Agreements entered into pursuant to this paragraph shall contain such provisions as may be necessary to ensure that—

"(i) no information is disclosed by the Secretary unless its accuracy and completeness have been verified, and no information stating that a loan is in default is disclosed until the Secretary has made a reasonable effort to collect the debt;

"(ii) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Secretary with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 16811);

"(iii) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(iv) except for disclosures made to obtain the borrower's location, the Secretary (I) shall not disclose any such information until he has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his loan, but (II) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(D) (i) The Secretary shall, within ninety days after the date of enactment of this paragraph, take such steps as may be necessary to establish the disclosure of information described in subparagraph (A) (i), (ii), and (iii) as a routine use in accordance with section 552a(b) (3) of title 5, United States Code, and to establish a system for the prompt notification of any borrower of any disclosure made pursuant to this paragraph.

"(ii) Information disclosed by the Secretary to credit bureau organizations under the requirements of this paragraph shall not constitute a system of records within the meaning of section 552a of title 5, United States oCde (the Privacy Act of 1974): and credit bureau organizations which enter into agreements with the Secretary under this paragraph shall not be considered Government contractors within the meaning of that Act.".

(2) Section 427(a)(2) of the Act is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respec-

tively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) (i) contains a notice of the system of disclosure of information concerning such loan to credit bureau organizations under section 430(b)(2), and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations.".

(b) Section 430(c) of the Act is amended by adding at the end thereof the following new sentence: "Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.".

(c) Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any State or any nonprofit private institution or organization having a guaranty agreement under section 428(c)(1), any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.".

ADMINISTRATIVE IMPROVEMENTS

SEC. 417. (a) Section 428(b)(1)(H) of the Act is amended to read as follows:

"(H) does not provide for collection of an insurance premium in excess of 1 per centum per year on the unpaid principal amount of the loan (excluding interest added to principal), payable in advance, which may be used by the insurer to insure loans and to cover administrative, operating and overhead costs of the insurer;"

(b)(1) Section 428(c)(6)(A)(ii) of the Act is amended—

(A) by striking out "and" the first time it appears and inserting in lieu thereof a comma; and

(B) by inserting after "prevention" a comma and the following: "and the administrative costs of monitoring the enrollment and repayment status of students".

(2) Section 428(c)(6)(B) is amended—

(A) by striking out "and" at the end of clause (i) and inserting in lieu thereof a comma;

(B) by inserting "and" at the end of clause (ii); and

(C) by adding after clause (ii) the following:

"(iii) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an audit of the note agreement to determine if the provisions of that agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part,".

(3) Section 428(f)(1)(A) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

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

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(4) Section 428(f)(1)(B) of the Act is amended by striking out "clause (iv)" and inserting in lieu thereof "clauses (iv) and (v)".

(5) Section 428(f)(2) of the Act is amended—

(A) by striking out "or" at the end of clause (iii);

(B) by redesignating clause (iv) as clause (v); and

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

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or".

(6) Section 428(f)(3) of the Act is amended—

(A) by striking out "and" at the end of clause (B):

(B) by striking out the period at the end of clause (C) and inserting in lieu thereof a comma and the word "and"; and

(C) by adding after clause (C) the following new clause:

"(D) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an aduit of the note agreement to determine if the provisions of that agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note to assure that the repayment provisions are consistent with the provisions of this part.".

(c) Section 428(f)(3)(A) of the Act is amended by redesignating clauses (iv) and (v) as clauses (vi) and (vii) respectively, and by inserting after clause (iii) the following new clauses: "(iv) the costs of providing interest and special allowance computation and billing services to lenders, (v) the amount of non-Federal funds expended by an insurer as incentive payments to lenders to induce them to improve or expand their program participation.".

(d) Section 428 of the Act is amended by adding at the end thereof the following new subsection:

"(i)(1) Any State agency or any nonprofit private institution or organization which has an agreement under subsection (b) of this section may enter into an agreement with any eligible lender (other than an eligible institution or an agency or instrumentality of the State) for the purpose of authorizing multiple disbursements of the proceeds of a loan under which the lender will pay the proceeds of such loans into an escrow account to be administered by the State agency or any nonprofit private institution or organization in accordance with the provisions of paragraph (2) of this subsection.

"(2) Each State agency or each nonprofit private institution or organization entering into an agreement under paragraph (1) of this subsection is authorized to—

"(A) make the disbursements in accordance with the note evidencing the loan;

"(B) commingle the proceeds of all loans paid to it pursuant to the escrow agreement entered into under such paragraph (1);

"(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

"(D) retain interest or other earnings on such investment; and

"(E) return to the eligible lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.".

LOANS TO PARENTS

SEC. 419. Part B of title IV of the Act is amended by inserting immediately after section 428A the following new section:

LOAN COUNSELING PROGRAM AUTHORIZED

SEC. 418. Title IV of the Act is amended by adding after section 433 the following new section:

"STUDENT LOAN COUNSELING BY ELIGIBLE LENDERS

"SEC. 433A. Each eligible lender shall enter into an agreement with the Secretary under which the eligible lender will, at the time such lender makes a loan to a student borrower which is insured or guaranteed under this part, provide thorough and accurate loan counseling on loans insured or guaranteed under this part to the student borrower. The loan counseling required by this section shall include—

"(1) the yearly and cumulative maximum amounts that may be borrowed by a student;

"(2) the date on which repayment will begin;

"(3) the maximum number of years in which the loan must be repaid;

"(4) the interest rate that will be repaid, and the minimum amount of required monthly payment;

"(5) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

"(6) a definition of default and the consequences to the borrower if the borrower should default; and

"(7) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance".

"LOANS TO PARENTS OF DEPENDENT UNDERGRADUATE STUDENTS

"SEC. 428B. (a) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section the terms 'student' and 'student borrowers' used in this part shall include a parent borrower under this section.

"(b)(1) Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or the equivalent (as defined by regulation by the Secretary) is $3,000.

"(2) The aggregate insured principal amount for insured loans made to parents on account of an undergraduate dependent student shall not exceed $15,000.

"(3) No loan may be made to any parent or student under this part which would cause their combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c)(1) Repayment of principal on loans made under this section may be deferred until the earliest of—

"(A) four years from the disbursement date of the first loan made for the educational expenses of the dependent student named in the parent's loan application;

"(B) the student's anticipated date of graduation or completion of studies estimated at the time of the application for a loan;

"(C) the date on which the student ceases to be at least a half time student at an eligible institution; or

"(D) such other date as the parent may request. Such repayment obligation shall not be further delayed because of any current status of the student, but nothing in this section shall be construed to prohibit a lender from exercising forbearance for the benefit of the borrower.

"(2) No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(3) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date later than sixty days after the date such loan is disbursed by a lender, then the interest shall be 14 per centum per year on the unpaid principal balance of the loan except that, if provided in the note or other written agreement, any interest payable by the borrower may be deferred until not later than the date upon which repayment of the first installment of principal falls due, in which case interest that has so accrued during that period may be added on that date to the principal.

"(4) If a borrower under this section elects to begin making regular monthly payments of principal and interest at a date not later than sixty days after the date such loan is disbursed by a lender, then the interest shall be 9 per centum per annum on the unpaid principal balance of the loan.

"(d) Loans made under this section shall be insured by the Secretary in a State only if—

"(1) the State is not served by a State agency or nonprofit private institution or organization having an agreement with the Secretary pursuant to section 428(b), or

"(2) an agency, institution, or organization in a State having such an agreement does not authorize loans under this section (A)

within one hundred and twenty days after the effective date of this amendment, or (B) if a State is prohibited from authorizing loans under this section because of existing State law, one hundred and twenty days after the adjournment of the next regular session of the State legislature which convenes after the effective date of this amendment.".

SPECIAL ALLOWANCES

SEC. 420. (a) Section 438 of the Act is amended to read as follows:

"SPECIAL ALLOWANCES

"SEC. 438. (a) In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

"(b)(1) A special allowance shall be paid for each of the three-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any three-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

"(2)(A)(i) Subject to subparagraphs (B) and (C) and paragraph (4), the special allowance paid pursuant to this subsection shall be computed (I) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (II) by subtracting 5.5 per centum from such average, (III) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (IV) by dividing the resultant per centum by four.

"(ii) Subject to paragraph (4), the special allowance paid pursuant to this subsection on loans which were made or insured prior to October 1, 1980, shall be computed (I) by determining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (II) by subtracting 3.5 per centum from such average, (III) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (IV) by dividing the resultant per centum by four.

"(B) The quarterly rate of the special allowance for the holders of parental loans authorized under section 428B under this Act which are paid under section 426B(c)(3) shall be computed (i) by deter-

mining the average of the bond equivalent rates of the ninety-one-day Treasury bills auctioned for such three-month period, (ii) by subtracting 10.5 per centum from such average, (iii) by rounding the resultant per centum upward to the nearest one-eighth of 1 per centum, and (iv) by dividing the resultant per centum by four.

"(C)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A). Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.

"(ii) The rate set under division (i) shall not be less than one-half of 1 per centum per year.

"(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with section 420(b) of the Education Amendments of 1980.

"(3) Subject to paragraph (4) of the special allowance determined for any such three-month period shall be payable at such time, after the close of such period, as may be specified by or pursuant to regulations promulgated under this section. The holder of a loan with respect to which any such allowance is to be paid shall be deemed to have a contractual right, as against the United States, to receive such allowance from the Secretary.

"(4)(A) If payments of the special allowances payable under this section or of interest payments under section 428(a) with respect to a loan have not been made within thirty days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

"(B) Such daily interest shall be computed at the daily equivalent rate of the special allowance rate computed pursuant to paragraph (2) plus 9 per centum and shall be paid for the later of (i) the thirty-first day after the receipt of such request for payment from the holder, or (ii) the thirty-first day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

"(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

"(5) As used in this section, the term 'eligible loan' means a loan which is insured under this part, or made under a program covered by an agreement under section 428(b) of this Act.

"(6) The Secretary shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that

such holder shall submit to the Secretary at such time or times and in such a manner as he may deem proper, such information, as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

"(c) The Secretary shall adopt or amend appropriate regulations pertaining to programs carried on under this part to prevent, where practicable, any practices which he finds have denied loans to a substantial number of eligible students.

"(d) There is established a Committee on Determining Student Loan Special Allowances (hereinafter in this section referred to as the 'committee'). The committee shall be composed of—

"(1) the Secretary of Education;

"(2) the Secretary of the Treasury;

"(3) the Secretary of Health and Human Services;

"(4) a representative of State and nonprofit private institutions and organizations participating under an agreement under section 428(b);

"(5) a student financial aid administrator of an eligible institution (as defined in section 435(g)(2)); and

"(6) a representative of participating eligible lenders other than one defined in section 435(g)(1)(E).

"(e) The Secretary shall appoint the members of the committee described in paragraphs (4), (5), and (6) of subsection (d) of this section, after consultation, in the case of those members appointed under each such paragraph, with nationally recognized organizations of such persons or agencies.

"(f)(1) The committee shall prepare and submit to the Congress a report not later than one year of the date of enactment of the Education Amendments of 1980, of their findings and recommendations for an improved method or methods for the determination of the quarterly rate of the special allowances paid under this Act which the committee determines will carry out the objectives set forth in subsection (a) of this section.

"(2) The quarterly rate of the special allowances provided for in paragraph (2) of subsection (b) shall remain in effect until the Congress by joint resolution approves of the method, in whole or in part, proposed by the committee in the report submitted under paragraph (1) of this subsection.

"(3) The committee shall make every effort to reach a unanimous decision with respect to the method for the determination of the quarterly rate of the special allowances established under this section.

"(4) In developing the method for the determination of the quarterly rate of the special allowances under this section, the committee shall consider—

"(A) the experience of students and eligible lenders under the method in operation during the period of the study,

"(B) the administrative costs of various types of eligible lenders under this part.

"(C) relevant and widely available financial indicators which accurately reflect the costs of capital invested in programs under this part, or substitute financial indicators which equitably represent the cost of such capital.

"(D) an administrative mechanism necessary to produce a prompt and rapidly disseminated determination of the quarterly rate of the special allowances, in order to avoid delays in the determination and dissemination of that rate and in the actual payment of the special allowances to eligible lenders, and

"(E) such other factors as the committee considers necessary to carry out the purposes of this section.

"(5) In carrying out its responsibilities under this section, the committee shall be given the full cooperation and assistance of the official in the Department of Education directly responsible for the administration of part B of title IV of the Higher Education Act of 1965 and such other appropriate officials of the Department of Education as the committee deems appropriate.

"(6) In order to assist the committee in carrying out its functions under this section, the Secretary is authorized to hire consultants, and to enter into contracts, and to pay the costs of such contracts from funds regularly appropriated for the purpose of administering programs authorized by this part.

"(7) The Secretary shall convene the first session of the committee as soon as possible after the date of enactment of the Education Amendments of 1980. The chairman of the committee shall be elected by its members.

"(8) The committee shall cease to exist ten days after the approval of the joint resolution required by paragraph (2) of this subsection.

"(g) There are authorized to be appropriated such sums as may be necessary for special allowances authorized by this section."

(b) In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, to be eligible to receive a special allowance under section 438(b)(2)(C) of the Higher Education Act of 1965, the Authority shall submit to the Secretary, for the approval of the Secretary, a plan for doing business. Each such plan shall contain provisions designed to assure that—

(1) no eligible lender in the area served by the authority will be excluded from participating in the program and that all eligible lenders may participate in the program on the same terms and conditions if eligible lenders are going to participate in the program;

(2) no director or staff member of the Authority may own stock in, or receive compensation from any agency that would contract to service and collect the loans of the Authority;

(3) student loans will not be purchased from participating lenders at a rate less than nor more than one percent of the unpaid principal amount borrowed plans accrued interest to the date of acquisition;

(4) the Authority will, within the limit of funds available and subject to applicable State and Federal law, make loans to, or purchase loans incurred by, all eligible students who are residents or who attend an eligible institution within the area served by the Authority;

(5) the Authority has a plan under which the Authority will pursue the development of new lender participation in a continuing program of benefits to students together with assurances of existing lender commitments to the program; and

(6) there will be an annual audit of the Authority by a certified public accounting firm which will include review of compliance by the Authority with the provisions of the plan.

THE STUDENT LOAN MARKETING ASSOCIATION

SEC. 421. (a)(1) Section 439(a)(1) of the Act is amended by striking out "Government-sponsored".

(2) Section 439(f) of the Act is amended to read as follows:

"(f)(1) The Association shall have common stock having such par value as may be fixed by its Board of Directors from time to time which may be issued only to lenders under this part, pertaining to guaranteed student loans, who are qualified as insured lenders under this part or who are eligible institutions as defined in section 435(a) other than an institution outside of the United States.

"(2) Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of Directors. Voting shall be by classes as described in subsection (c)(3).

"(3) The maximum number of shares of common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any common share issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Asociation.

"(4) To the extent that net income is earned and realized, subject to subsection (g)(2), dividends may be declared on common stock and nonvoting common stock by the Board of Directors. Such dividends as may be declared by the Board shall be paid to the holders of outstanding shares of common stock and nonvoting common stock, except that no such dividends shall be payable wtih respect to any share which has been called for redemption past the effective date of such call.

"(5) The Association is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. Any nonvoting common stock shall be freely transferable, except that, as to the Association, it shall be transferable only on the books of the Association.".

(3) The first sentence of section 439(g)(j) of the Act is amended to read as follows: "The Association is authorized to issue nonvoting preferred stock having such par value as may be fixed by its Board of Directors from time to time.".

(b)(1) Section 439(d) of the Act is amended—

(A) in paragraph (1), by inserting "or repurchase," after "purchase" and by inserting "or resell, offer participations, or pooled interests," after "sell".

(B) by amending paragraph (2) to read as follows:

"(2) Any warehousing advance made under paragraph (1) of this subsection shall be made on the security of (A) insured loans,

(B) marketable obligations and securities issued, guaranteed, or insured by the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality, or corporation of the United States for which the credit of such agency, instrumentality, or corporation is pledged for the repayment of principal or interest thereof, in an amount equal to the amount of such advance. The proceeds from any such advance secured by collateral shall be invested in additional insured student loans"; and

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

"(4) Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities".

(2) Section 439(1) of the Act is amended by inserting "including those made under subsection (d)(4)" after "All obligations issued by the Association".

(c)(1) Section 439(h)(1) of the Act is amended to read as follows:

"(h)(1) The Association is authorized with the approval of the Secretary of Education and the Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to those obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank.".

(2) Section 439(h)(2) of the Act is amended—

(A) By striking out "July 1, 1982" and inserting in lieu thereof "July 1, 1984"; and

(B) by adding at the end thereof the following new sentence: "Nothing in this section shall be construed so as to authorize the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain programs of the Association or support of the Guaranteed Student Loan Program by the Association.".

(3) Section 439(h) of the Act is amended by adding at the end thereof the following new paragraphs:

"(4) Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than sixty days

unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation for doing so.

"(5) The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holding of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

"(6) Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 428 or 429 of this part.".

(d)(1) Section 439 of the Act is amended by adding at the end thereof the following new subsections:

"(o)(1) The Association or its designated agent may, upon request of a borrower who has received loans under this title from two or more programs or lenders, or has received any other federally insured or guaranteed student loan, and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make, notwithstanding any other provision of this part limiting the maximum insured principal amount for all insured loans made to a borrower, a new loan to the borrower in an amount equal to the unpaid principal and accrued unpaid interest on the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.

"(2) Loans made pursuant to this subsection shall be insurable either by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b), except that such State or nonprofit private institution or organization shall provide

the Association with a certificate of comprehensive insurance coverage. The terms of loans made under this subsection shall be such as may be agreed upon by the borrower and the Association and meet the requirements of section 427, except that (A) the ten-year maximum period referred to in section 427(a)(2)(B) may be extended to no more than twenty years, and (B) clause (ii) of section 427(a)(2)(B) shall not be applicable.

"(3) Notwithstanding any other provision of this part, the Association, with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules.

"(4) The Association shall develop a program to ensure the dissemination of information to students, lenders, and institutions of higher education regarding the loans authorized by this subsection.

"(p)(1) The Association shall make payments in each fiscal year from amounts available to it to each State agency, non-profit institution or organization, and eligible lender described in subsection 428(h)(1) having an application submitted to the Association which sets forth that payments are necessary to enable such agency, institution, organization or lender to make student loans in accordance with section 428(h) of this title.

"(2) No payment may be made under this subsection unless the State agency or non-profit private institution, organization, or lender makes an application to the Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

"(q)(1)(A) Whenever the Secretary determines that eligible borrowers in a State not served by a State agency or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1)(D) are seeking and are unable to obtain loans under this part, the Association or its designated agency may begin making loans in accordance with this subsection at the request of the Secretary. The Association shall give preference to such States in making loans under this subsection.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1).

"(2)(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the agency in a State or nonprofit private institution or organization having an agreement pursuant to section 428(b), or an eligible lender in a State described in section 435(g)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agency may begin making loans in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pur-

suant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

"(3) The Association or its designated agent shall cease making loans under this part in any State at such time as it is determined by the Secretary, with regard to loans made under paragraph (1), or by any party to the agreement required by paragraph (2), that—

"(A) the conditions which caused the implementation of this subsection have ceased to exist; or

"(B) the implementation of this subsection has either (i) further reduced the availability of loans from other sources in the applicable geographical area, or (ii) inhibited the formation in a State of an agency which would have an agreement pursuant to section 428(b) of this part which would have the responsibility of developing local sources of funds for student loans.".

(2) Section 435(g)(1) of the Act is amended by striking out "and" at the end of subparagraph (E), by striking out the period at the end of subparagraph (F) and by adding at the end thereof the following:

"(G) for purposes of making loans under section 439 (o) and (q) the Student Loan Marketing Association;

"(H) for purposes of making loans under section 428(j) a State agency or a nonprofit private institution or organization having an agreement under section 428(b).".

LOAN CONSOLIDITION BY STATE AGENCIES

SEC. 422. (a) Section 428 of the Act (as amended by section 417) is amended by adding at the end thereof the following new subsection:

"(j)(1) Each State agency and nonprofit private institution or organization with which the Secretary has an agreement under section 428(b) and each eligible lender in such State described in section 435(g)(1)(D), or its designated agent may, upon request of a borrower who has received loans under this title from two or more programs or lenders and where the borrower's aggregate outstanding indebtedness is in excess of $5,000, or where the borrower's aggregate outstanding indebtedness is in excess of $7,500 from a single lender under this part, make a new loan to the borrower in an amount equal to the unpaid principal balance and accrued unpaid interest on the old loans. The proceeds of the new loan shall be used to discharge the liability on such old loans.

"(2) Loans made pursuant to this subsection shall be insurable either by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a State agency or nonprofit private institution or organization with which the Secretary has an agreement under subsection (b) of

this section, except that such State agency or nonprofit private institution or organization shall provide the eligible lender with a certificate of comprehensive insurance coverage. The terms of loans made under this subsection shall be such as may be agreed upon by the borrower and the eligible lender and meet the requirements of sections 427, 428(b) and 428A, except that (A) the ten year maximum period referred to in sections 427(a)(2)(B) and 428(b)(1)(E) may be extended to no more than twenty years, and (B) clause (ii) of sections 427(a)(2)(B) and 428(b)(1)(D) shall not be applicable.

"(3) Notwithstanding any other provision of this part, the eligible lender, with the agreement of the borrower, may establish such repayment terms as it determines will promote the objectives of this subsection including, but not limited to, the establishment of graduated, income sensitive repayment schedules.".

(b)(1) Section 425(a)(2) of the Act is amended by striking out "The" and by inserting in lieu thereof "Except in the case of loans made under section 428(j) or section 439(a), the".

(2) Section 428(b)(1)(B) of the Act is amended by striking out "provides" and by inserting in lieu thereof "except in the case of loans made under section 428(j) or section 439(o), provides".

(3) Section 428(a)(2)(A) of the Act is amended by inserting after "in excess of such annual limit; and" the following: "except in the case of loans made under section 438(j) or section 439(o),".

PROMPT DUE DILIGENCE DETERMINATIONS

SEC. 423. Section 430(a) of the Act is amended by adding at the end thereof the following new sentence: "The Secretary shall make the determination required to carry out the provisions of this section not later than ninety days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary's loss pending completion of his due diligence investigation.".

DEFERRAL OF PRINCIPAL DURING CERTAIN PERIODS OF STUDY, SERVICE, AND UNEMPLOYMENT

SEC. 424. (a) Section 427(a)(2)(C) of the Act is amended—

(1) by striking out "and any such period" and inserting in lieu thereof "that any such period", and

(2) by inserting before the comma at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until four months after the completion of such period or combination thereof".

(b) Section 428(b)(1)(M) is amended by inserting before the semicolon at the end thereof a comma and the following: "and that no repayment of principal of any loan for any period of study, training, service, or unemployment described in this clause or any combination thereof shall begin until four months after the completion of such period or combination thereof".

RECAPTURE OF CERTAIN INTEREST SUBSIDIES

SEC. 425. (a) Section 427(a)(2) of the Act (as amended by section 416(a)(2) of this Act) is amended by striking out "and" at the end of clause (I), by redesignating clause (J) as clause (K), and by inserting after clause (I) the following new clause:

"(J) provides (subject to section 432(e) (1) and (2)), for the repayment to the United States, after the beginning of the repayment period in installments during such period, of the full amount of the interest paid under section 428(a) on behalf of any student,".

(b) Section 428(b)(1) of the Act is amended by striking out "and" at the end of clause (O), by striking out the period at the end of clause (P) and inserting in lieu thereof a semicolon and the word "and" and by adding at the end thereof the following new clause:

"(Q) provides (subject to section 432(e) (1) and (2)) for the repayment to the United States, after the beginning of the repayment period in installments during such period, of the full amount of the interest paid under section 428(a) on behalf of any student.".

(c) Section 432 of the Act is amended by adding at the end thereof the following new subsection:

"(e)(1) No repayment of interest paid under section 428(a) on behalf of any student shall be required under section 427(a)(2)(J) and 427(b)(1)(Q) if—

"(A) the borrower has exhausted the ability to obtain loans under part E or this title and is required by reason of need to obtain a loan under this part for undergraduate study,

"(B) the borrower borrows more than $7,500, or

"(C) the borrower borrows under section 428(h) of this title."

"(2)(A) No repayment shall be required under sections 427(a)(2)(J) and 428(b)(1)(Q) for the interest paid under section 428(a) for more than three years.

"(B) No interest shall accrue on the repayments required under sections 427(a)(2)(J) and 428(b)(1)(Q).

"(3) The Secretary shall prescribe procedures to carry out the provisions of sections 427(a)(2)(J) and 428(b)(1)(Q) as soon as possible after the date of enactment of the Education Amendments of 1980.".

MISCELLANEOUS AMENDMENTS

SEC. 426. (a)(1) Section 427(a)(1) of the Act is amended to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and".

(2) Section 428(a)(2)(B)(i) of the Act is amended to read as follows:

"(i) a student's estimated cost of attendance means the cost of attendance for such student determined in accordance with section 482(d);".

(b) The first sentence of section 428(c)(1)(A) of the Act is amended by striking out everything after "of any insured loan" and inserting in lieu thereof a period.

(c) Section 428(e) of the Act is amended to read as follows:

"(e) From funds appropriated to carry out this part in any fiscal year, the Secretary shall pay to each eligible institution the amount of $10 per academic year for each student enrolled in that institution who is in receipt of a loan described in paragraph (1) of subsection (a) of this section or made under section 428B, for that year. Payments received by an institution under this subsection shall be used first by the institution to carry out the provisions of section 485 and then for the purpose of offsetting the costs of the institution for the program under this part.".

(d) Section 439A of the Act is repealed.

PART D—NATIONAL DIRECT STUDENT LOAN ASSOCIATION

ASSOCIATION ESTABLISHED

SEC. 441. (a) The Act is amended by inserting after part C the following new part:

"PART D—NATIONAL DIRECT STUDENT LOAN ASSOCIATION

"STATEMENT OF PURPOSE

"SEC. 451. It is the purpose of this part to establish a Government corporation which will administer the student loan program authorized by part E of this title.

"ESTABLISHMENT

"SEC. 452. (a) There is established in the executive branch of the Federal Government a body corporate without capital stock to be known as the National Direct Student Loan Association. The Association shall have succession until dissolved.

"(b) The principal office of the Association shall be located in the District of Columbia. The Association shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen of the District of Columbia. Offices, agencies, and branches may be established by the Association in such other places as the Association deems necessary or appropriate for the conduct of its business.

"BOARD OF DIRECTORS

"SEC. 453. (a) The Association shall have a Board of Directors which shall consist of the Secretary of Education and eight other members, one of whom shall be designated Chairman by the President.

"(b) The President shall appoint, by and with the advice and consent of the Senate, the members of the Board other than the Secretary of Education who shall serve ex officio. Four of the members shall be representative of educational institutions. Four of the members shall be representative of the general public. One of the members appointed from the general public shall be a student.

"(c)(1) The term of office of each member of the Board, other than the Secretary, shall be four years; except that (A) the members first

taking office shall serve as designated by the President two for terms of two years, three for terms of three years, and three for terms of four years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. No member may serve for a period in excess of eight years.

"(2) The Directors appointed by the President shall serve until their successors have been appointed and have qualified.

"(d) (1) The Board of Directors shall meet at the call of its Chairman, but at least semiannually. The Board shall determine the general policies which shall govern the operations of the Association.

"(2) The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified individuals to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such individuals shall be the executive officers of the Association and shall discharge all such executive functions, powers, and duties.

"(e) Members of the Board of the Association who are not regular full time employees of the United States shall, while serving on the business of the Association, be entitled to receive compensation at rates fixed by the President, but not in exceeding the rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code, including traveltime; and while serving away from their homes and regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in government service employed intermittently.

"GENERAL POWERS

"SEC. 454. In carrying out the provisions of part E of this title and this part, the Association is authorized—

"(1) to adopt, alter, and vote a corporate seal, which shall be judicially noticed;

"(2) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(3) to sue and be sued, complain and defend, in its corporate name, and through its own counsel;

"(4) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(5) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Association;

"(6) to consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note evidencing a loan which has been made by it under part E of this part;

"(7) to enforce, pay, compromise, waive, or release any right, title, claim, lien or demand however acquired, including any equity or any right of redemption;

"(8) without regard to section 3648 of the Revised Statutes (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary for it to carry out its responsibilities under this title;

"(9) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(10) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their compensation, and to require bonds for them and fix the penalty thereof;

"(11) to make provision for and designate such committees, and functions thereof, as the Board of Directors deems necessary or desirable;

"(12) to determine and prescribe the manner in which obligations of the Association shall be incurred and its expenses allowed and paid;

"(13) to use funds received by the Association, notwithstanding any other provision of law, to carry out the provisions of Part E;

"(14) to use the services and facilities of any agency of the Federal Government and of any other public or nonprofit private entity in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon; and

"(15) to exercise all other lawful powers necessarily or reasonably related to the establishment and conduct of a corporate entity; to the achievement of its purposes and the exercise of its powers, functions, and authorized activities.

"FUNCTIONS OF THE ASSOCIATION

"SEC. 455. (a) The Association shall carry out the provisions of part E of this title.

"(b)(1) The Association shall provide, either directly or by way of contract or other arrangement with State guaranty agencies and for other appropriate agencies, organizations and institutions, for—

"(A) the collection of principal and interest of student loans made under part E;

"(B) programs of preclaims assistance for default prevention; and

"(C) such other programs as the Board of Directors deems necessary to assure the success of the student loan program authorized by part E.

"(2) In carrying out the functions set forth in paragraph (1), the Association shall first offer the State guaranty agency the right to carry out such functions.

"(3) The Association may not enter into a contract or other arrangement with any collection agency pursuant to paragraph (1) of this subsection unless the contract or other arrangement is made on a competitive basis.

"(4)(A) For the purpose of promoting responsible repayment of loans made under part E and for the collection of loans for which the

Association is responsible, the Association is authorized to enter into cooperative agreements with credit bureau organizations providing for the exchange of information concerning student borrowers in accordance with the requirements of this paragraph. For the purpose of assisting such organizations to comply with the Fair Credit Reporting Act, such agreements may provide for timely response by the Association to requests from such organizations for responses to objections raised by such borrowers. Subject to the requirements of subparagraph (C), such agreements shall provide for the disclosure by the Association to such organizations, with respect to any loan for which the Association is responsible, of—

"(i) the date of disbursement and the amount of any such loan;

"(ii) information concerning collection of any such loan, including information concerning the status of any defaulted loan; and

"(iii) the date of cancellation of the note upon completion of repayment by the borrower of any such loan.

"(B) Such agreements may also provide for the disclosure by such organizations to the Association, upon receipt from the Association of a notice under subparagraph (A)(ii) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Association in proceeding to collection of the defaulted amount.

"(C) Agreements entered into pursuant to this paragraph shall contain such provisions as may be necessary to ensure that—

"(i) no information is disclosed by the Association unless its accuracy and completeness have been verified, and no information stating that a loan is in default is disclosed until the Association has made a reasonable effort to collect the debt;

"(ii) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Association with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 16811);

"(iii) no use will be made of any such information which would result in the use of collection practices with respect to such borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(iv) except for disclosures made to obtain the borrower's location, the Association (I) will not disclose any such information until the Association has notified the borrower that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his loan, but (II) will, if the borrower has not entered into repayment within a reasonable period of time, but not less than thirty days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(D)(i) The Association shall, within one hundred eighty days after the effective date of this paragraph, take such steps as may be necessary to establish the disclosure of information described in subparagraph (A) (i), (ii), and (iii) as a routine use in accordance with section 552a(b)(3) of title 5, United States Code, and to establish a system for the prompt notification of any borrower of any disclosure made pursuant to this paragraph.

"(ii) Information disclosed by the Association to credit bureau organizations under the requirements of this paragraph shall not constitute a system of records within the meaning of section 552a of title 5, United States Code (the Privacy Act of 1974); and credit bureau organizations which enter into agreements with the Secretary under this paragraph shall not be considered Government contractors within the meaning of that Act.

"(c) The Association is authorized to—

"(1) enter into contracts with student borrowers for the prepayment of loans made under part E prior to the effective date of the Education Amendments of 1980 and under title II of the National Defense Education Act of 1958; and

"(2)(A) obtain information with respect to the names and addresses of borrowers and other relevant information which is available to the Secretary, from whatever source such information may be derived, and (B) whenever, pursuant to an agreement entered into between the Association and an institution of higher education under which the institution acts as a collection agent, make the information obtained under this clause available to such institution, notwithstanding any other provision of law.

"OBLIGATIONS OF THE ASSOCIATION

"SEC. 456. (a) The Association is authorized to issue and to have outsanding at any one time notes, debentures, bonds, or other obligations in such amounts as shall be necessary to carry out its functions under part E of this title and this part, subject to such annual limitations as may be provided in an appropriation Act, except that the Association shall not issue any such obligation without the prior concurrence of the Secretary of the Treasury as to the terms and conditions of such obligations. The Secretary of the Treasury may direct that any such issuance by the Association be sold to the Department of the Treasury for its own account or to the Federal Financing Bank.

"(b)(1) The Secretary of the Treasury is authorized and directed to purchase any obligations issued under this section, and for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under the Second Liberty Bond Act are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this section shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United

States of comparable maturity. Interest due on obligations of the Association held by the Treasury may be deferred, at the discretion of the Secretary, but any such deferred interest shall bear interest at the rate specified in this section. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"(2) For the purpose of the Federal Financing Bank Act, the Association shall be deemed to be an agency of the Federal Government.

"(c) All obligations of the Association issued under this section shall be fully and unconditionally guaranteed as to principal and interest and shall constitute general obligations of the United States, backed by the full faith and credit of the Government of the United States of America. Such guarantee shall be expressed on the face of all such obligations.

"(d) Obligations of the Association issued pursuant to this part shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Association shall, for the purposes of section 14(b)(2) of the Federal Reserve Act, be deemed to be an agency of the United States.

"(e) In order that the Association may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this part, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Association, to be held in the Treasury subject to delivery, upon order of the Association. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other obligations.

"(f) All moneys of the Association not otherwise employed may be—

"(1) deposited with the Treasury of the United States subject to withdrawal by the Association, by check drawn on the Treasury of the United States by a Treasury disbursing officer, or

"(2) with the approval of the Secretary of the Treasury, deposited in any Federal Reserve bank, or

"(3) with the approval of the Secretary of the Treasury, and by authorization of the Board of Directors of the Association, used in the purchase for redemption and retirement of any notes, debentures, bonds, or other obligations issued by the Association.

"MANAGEMENT; AUDITS; REPORTS

"SEC. 457. (a) The provisions of chapter 11 of title 18, United States Code, shall apply to the directors and all officers and employees of the Association, and the Board of Directors is authorized to promulgate regulations consistent with the provisions of that chapter.

"(b) The Board of Directors may, by resolution, delegate to the Chairman of the Board such of its functions, powers, and duties assigned to the Board under this part as it deems appropriate. The Chairman of the Board may, by written instrument, delegate such functions, powers, and duties as are assigned to the Chairman by or pursuant to the provisions of this part to such other full-time directors, officers, or employees of the Association as the Chairman deems appropriate.

"(c) The Association shall—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by the Government Corporation Control Act; and

"(2) maintain with respect to loans made under this part an integral set of accounts, which the General Accounting Office shall audit every three years in accordance with principles and procedures applicable to commercial corporate transactions, as provided by section 105 of the Government Corporation Control Act, except that the transactions of the Association are final and conclusive upon all accounting and other officers of the Government.

"(d) The Association shall submit to the Congress and the President an annual report containing a general description of the operations of the Association during the year, and a specific description of the progress on collection of loans made under part E of this title and all other loans for which the Association is responsible.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 458. There are authorized to be appropriated in each fiscal year to the Association—

"(1) for administrative costs of carrying out part E of this title and this part;

"(2) to pay the differential between the rate of return on obligations of the Association made under section 456 and the interest rates collected under part E of this title, and under this part; and

"(3) for the cost of repayment of student loans in the event of a default, death, or disability.

such sums as may be necessary.".

(b) Section 1201 of such Act is amended by adding at the end thereof the following:

"(n) The term 'Association' (except when used in section 439) means the National Direct Student Loan Association established under part D of title IV of this Act.".

(c) The right to alter, amend, or repeal this Act and part D of the Higher Education Act of 1965 is expressly declared and reserved, but

no such amendment or repeal shall operate to impair the obligation of any contract made by the Association under any power conferred by this Act or any amendment made by this Act.

PART E—DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

DIRECT LOAN PROGRAM REESTABLISHED

SEC. 451. Part E of title IV of this Act is amended to read as follows:

"PART E—DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

"PROGRAM AUTHORIZED

"SEC. 461. The Association shall carry out a program of establishing and maintaining funds at institutions of higher education for making low-interest loans to students who demonstrate financial need to pursue their course of study in such institutions.

"PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

"SEC. 462. (a) The Association shall make payments under this part for any fiscal year to each institution of higher education having an agreement under section 463 on the basis of the estimated needs of that institution for making student loans taking into consideration—

"(1) the cost of attendance at that institution,

"(2) the financial need of students at that institution to meet the cost of attendance as determined under section 482, and

"(3) the financial assistance received by students at that institution under parts A and C of this title (other than part B), or any other provision of Federal law, and other scholarship, grant and loan assistance received by students,

subject to the limitation specified in section 464(a)(2).

"(b)(1) The Association shall make payments required by subsection (a) of this section in such installments as the Association determines—

"(A) will not result in unnecessary accumulations of capital in the student loan fund of the institution of higher education concerned,

"(B) reflect accurately the disbursement of funds for student loans by the institution of higher education concerned, and

"(C) will best carry out the objectives of this part.

"(2) The first initial payment under this part shall be made as soon after October 1, 1980 as possible, and subsequent initial payments for any academic year required by subsection (a) shall be made not later than March 1 for the academic year following the year for which the payment is made. Subsequent installment payments in each such academic year shall be made promptly.

"(c) Any institution of higher education desiring to receive payments from the Association under this part shall enter into an agreement under section 463 and shall submit an application for such payments to the Association in accordance with the provisions of this part. The Association shall set dates before which such institutions must file applications under this section. Each such application shall contain such information as is necessary to assure the validity of estimated need for loan funds.

"(d) The approval of the Association of the application under this section with an institution of higher education having an agreement under section 463 shall be deemed a contractual obligation of the United States for making the payments specified in that application.

"AGREEMENT WITH INSTITUTIONS OF HIGHER EDUCATION

"SEC. 463. (a) An agreement with any institution of higher education for the payment of advances under this part shall—

"(1) provide for the establishment and maintenance of a student loan fund for the purposes of this part;

"(2) provide for the deposit in such fund of—

"(A) payments made under this part, and

"(B) any other earnings of the funds;

"(3) provide that such student loan fund shall be used only for—

"(A) loans to students, in accordance with the provisions of this part,

"(B) administrative expenses, as provided in subsection (b),

"(C) distributions, if any, and

"(D) costs of litigation, and other collection costs, if any, required by the Association in connection with the collection of a loan from the fund;

"(4) provide that upon the beginning of the repayment period the note or evidence of obligation shall be assigned to the Association for collection, unless the Association finds that (A) the institution of higher education requests to act as collecting agent for loans made under this part by that institution, and (B) that institution has a good collection record, in which case the Association and the institution may agree that the institution act as collection agent for loans made under this part;

"(5) provide that not to exceed 10 per centum of the funds available to the institution in any fiscal year may be used for loans to less than half-time students who are determined by the institution to be in need of loans under this part; and

"(6) include such other provisions as may be necessary to protect the financial interest of the United States and promote the purposes of this part as are agreed to by the Association and the institution.

"(b) An institution which has entered into an agreement under subsection (a) shall be entitled, for each fiscal year during which it makes student loans from a student loan fund established under such

agreement, to a payment in lieu of reimbursement for its expenses in administering its student loan program under this part during such year. Each such payment shall be made in accordance with section 489. Payments received by an institution under this subsection shall be used first by the institution to carry out the provisions of section 485 of this Act and then for the purpose of offsetting the costs to the institution for the program under this part.

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COMMITTEE ON VETERANS' AFFAIRS

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C., June 25, 1980.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on the Budget,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 3(a)(20) of House Concurrent Resolution 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981, and action of the Committee at a June 25, 1980, meeting, the Committee on Veterans' Affairs is submitting to the Budget Committee the enclosed resolution and report recommending spending reductions. The Committee reconciliation resolution comprises recommendations for changes in existing laws providing for entitlements and equivalent savings legislation, designed, in conformance with the joint explanatory statement accompanying the budget resolution conference report, to enable our Committee "to remain within . . . [our] spending limits contemplated in the Resolution."

Our Committee's recommendations are as follows:

First, reduce to 10 percent the 15-percent GI Bill cost-of-living increase approved by the Senate, 78–14, on January 24 as an amendment to H.R. 5288, and postpone from September 1, 1980, to January 1, 1981, the effective date for such increase. These changes would result in reductions in fiscal year 1981 requirements of $272 million in budget authority and $265 million in outlays.

Second, modify flight and correspondence training provisions, as approved in the Senate amendment to H.R. 5288. This would achieve reductions in fiscal year 1981 requirements of $35.4 million in budget authority and outlays.

Third, repeal the authority for pre-discharge education program (PREP) training, as approved in the Senate amendment to H.R. 5288. This would achieve reductions in fiscal year 1981 requirements of $1 million in budget authority and outlays.

Fourth, modify vocational-objective course approval criteria, as approved in the Senate amendment to H.R. 5288. This would achieve reductions in fiscal year 1981 requirements of $4.1 million in budget authority and outlays.

Fifth, improve substantially the VA's ability to collect delinquent debts owned by individuals to the Federal Government by virtue of participation in Veterans' Administration benefits programs. This would achieve reductions in fiscal year 1981 requirements of $138 million in budget authority and outlays.

Also enclosed is a copy of a Committee resolution, adopted today pursuant to this Committee's construction-approval responsibility under section 5004(a) of title 38, which would save $109,550,000 in budget authority (by making it out of order for the Senate to appro-

priate certain construction funds) requested in the President's budget for four construction projects.

Mr. Chairman, our Committee makes these recommendations to postpone the GI Bill cost-of-living increase and takes this construction action with the utmost reluctance. In our view, there is now—as there was on January 24—overwhelming evidence of the present necessity for a 15-percent cost-of-living increase in GI Bill benefits. In fact, we believe that, in view of inflation, exceeding 20 percent already and projected to approximate 30 percent by 1981, since the most recent increase in the fall of 1977, there is ample justification for a greater increase. Yet, in order to carry out our commitment to our Nation's service-connected disabled veterans and the survivors of those who have died in the service of our country, we have not only cut the GI Bill increase but also postponed its effective date by four months.

During the consideration of the Resolution on the floor of the Senate, we urged and moved for higher levels for veterans' benefits and services. As agreed to by the Senate, those levels still would have been less than what is adequate and fair for the funding of veterans' programs in fiscal year 1981, yet they were higher than the House-passed level to which the Senate budget conferees agreed and which Congress approved.

In my view, the budget levels for veterans' programs are too low this year to be fair and to deal with the critical, high-priority needs that should be addressed. We emphasize that the needs of veterans should be regarded by Congress as among the highest national priorities, and we take this opportunity to reiterate our Committee's deeply held belief that a Nation which has been so well served by the millions of men and women who have served in its Armed Forces should never break its commitments to them.

Cordially,

ALAN K. SIMPSON,
Ranking Minority Member.
ALAN CRANSTON,
Chairman.

Enclosures.

RESOLUTION OF THE COMMITTEE ON VETERANS' AFFAIRS

Whereas, in section 3(a)(20) of House Concurrent Resolution No. 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981, the Senate Committee on Veterans' Affairs has been instructed by the Congress to "recommend changes in laws within its jurisdiction which provide spending authority described in section 401(c)(2)(C) of the Budget Act or equivalent savings legislation to reduce spending for fiscal year 1981 by $200,000,000 in budget authority and $400,000,000 in outlays" in order to remain within the Committee's spending limits contemplated by such resolution; and

Whereas, under section 3(b) of such resolution, the Senate Committee on Veterans' Affairs is required to submit to the Senate Budget Committee recommendations for changes in such laws or equivalent savings legislation not later than June 25, 1980;

Therefore, in compliance with such instructions, *be it resolved that the Senate Committee on Veterans' Affairs makes the following legislative recommendations:*

SEC. 1. In order to reduce fiscal year 1981 spending for legislation increasing the rates of training and educational benefits in chapters 34, 35, and 36 of title 38, United States Code, to amounts $272 million in budget authority and $265 million in outlays less than the cost of the rate increases in the provisions of title I of H.R. 5288 as passed by the Senate on January 24, 1980, the Committee recommends adoption of the following provision:

[SEC. .] The Clerk of the House of Representatives is directed to make the following changes in the Senate amendment to H.R. 5288:

On page 39, beginning with line 21, strike out all that follows through page 42, line 15, and insert in lieu thereof the following:

SEC. 101. Chapter 34 is amended by—

(1) striking out in the last sentence of section 1677(b) "$288" and inserting in lieu thereof "$317";

(2) amending the table contained in paragraph (1) of section 1682(a) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	$342	$407	$464	$29
Three-quarter-time	256	305	349	21
Half-time	172	204	232	14
Cooperative	276	323	367	21";

(3) striking out in section 1682(b) "$311" and inserting in lieu thereof "$342";

(4) amending the table contained in paragraph (2) of section 1682(c) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$276	$323	$367	$21
Three-quarter-time	207	243	276	17
Half-time	139	162	184	11";

and

(5) striking out in section 1692(b) "$69" and "$828" and inserting in lieu thereof "$76" and "$911", respectively.

SEC. 102. Chapter 35 is amended by—

(1) striking out in section 1732(b) "$251" and inserting in lieu thereof "$276"; and

(2) striking out in section 1742(a) "$311", "$98", "$98", and "$10.40" and inserting in lieu thereof "$342", "$108", and "$108", and "$11.40", respectively.

SEC. 103. Chapter 36 is amended by—

(1) striking out in section 1786(a)(2) "$311" and inserting in lieu thereof "$342";

(2) amending the table contained in paragraph (1) of section 1787(b) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$249	$279	$305	$13
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth and any succeeding 6 month periods	62	92	119	13";

and

(3) striking out in paragraph (3) of section 1798(b) "$311" and inserting in lieu thereof "$342".

On page 95, lines 14 and 15, strike out "September 1, 1980" and insert in lieu thereof "January 1, 1981".

SEC. 2. In order to reduce fiscal year 1981 spending for flight and correspondence training programs under title 38, United States Code, by $35,400,000 in budget authority and outlays, the Committee recommends enactment of the following provisions:

[SEC. .] (a) Subsection (b) of section 1677 of title 38, United States Code, is amended by striking out "90 per centum" and inserting in lieu thereof "60 per centum".

(b) Section 1798 of title 38, United States Code, is amended by—

(1) striking out in the second sentence of subsection (c) "flight, apprentice or other on-job, or PREP training" and inserting in lieu thereof " or apprenticeship or other on-job training"; and

(2) adding at the end thereof the following new subsection:

"(h) In the case of a loan made to a veteran under this section to pursue a program of education consisting exclusively of flight training, the Administrator shall, as hereinafter provided in this subsection, cancel the repayment obligation (which for the purposes of this subsection shall include the obligation to pay interest), or reimburse for repayments already made, or both, as appropriate, if (1) such veteran has successfully completed such program and secured employment as a pilot or in a closely related occupation, and (2) such employment constitutes such veteran's primary vocational pursuit and major source of occupational income. Upon completion by such veteran of a full year of such employment during the first five years after the completion of such training, $1,000 of the repayment obligation under any such loss shall be canceled; and, upon the completion by such veteran of any additional three-month period of such employment during such five-year period, such repayment obligation shall be canceled at the rate of $250 for each such three-month period. In the event that a veteran meets the requirement of this section for repayment obligation cancellation in an amount exceeding any remaining unpaid bal-

ance of such obligation, the Administrator shall, to the extent that the amount of the cancellation to which the veteran is entitled exceeds such balance, reimburse such veteran for any amounts of such obligation that such veteran has repaid".

(c) Subsection (a) of section 1786 of title 38, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3) No veteran, spouse, or surviving spouse may be paid an educational assistance allowance under this subsection unless the Administrator has determined that no type of education other than correspondence is reasonably and feasibly available to such veteran, spouse, or surviving spouse in order to pursue successfully the educational or vocational objective being sought."

(d)(1) Except as provided in paragraph (2) of this subsection, the provisions of this section shall become effective October 1, 1980.

(2) The provisions of subsections (a) through (c) of this section shall not apply to any person receiving educational assistance under chapter 34 or 35, of title 38, United States Code, on August 1, 1980, for the pursuit of a program of education, as defined in section 1652(b) of such title, in which such person is enrolled on that date, for as long as such person continuously thereafter is enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under the provisions of such chapter and chapter 36 of such title as in effect on that date.

SEC. 3. In order to reduce fiscal year 1981 spending for the predischarge education program under title 38 United States Code by $1,000,000 in budget authority and outlays, the committee recommends enactment of the following provisions:

[SEC. —.](a) Chapter 32 of title 38, United States Cade, is amended by—

(1) amending section 1641 by striking out "1696, and 1698 and inserting in lieu thereof "and 1691(a)(1)"; and

(2) amending subsection (b) of section 1631 to read as follows:

"(b) Any enlisted member of the Armed Forces participating in the program shall be eligible to enroll in a course, courses, or program of education to pursue a secondary school diploma (or an equivalency certificate), as authorized by section 1691(a)(1) of this title, during the last 6 months of such members' first enlistment and at any time thereafter.".

(b) Chapter 34 of title 38, United States Code, is amended by—

(1) amending section 1661(c) by striking out "subchapters V and VI" and inserting in lieu thereof "subchapter V";

(2) amending section 1691(a) by—

(A) striking out "not on active duty"; and

(B) inserting "is not on active duty and who," after "(2)";

(3) striking out subchapter VI in its entirety; and

(4) striking out in the table of sections at the beginning of such chapter the item relating to subchapter VI in its entirety.

(c) Chapter 36 of title 38, United States Code, is amended by—

(1) amending section 1780(d) by—

(A) striking out in the third sentence of paragraph (2) "(other than under subchapter VI of chapter 34)";

(B) striking out paragraph (3);

(C) striking out in paragraph (5) "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)";

(D) striking out in paragraph (6) "(5)" and inserting in lieu thereof "(4)"; and

(E) redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) striking out in section 1780(e) "and (3)";

(3) striking out in section 1780(f) "(except as provided by subsection (d)(3) of this section)";

(4) striking out in section 1784(b) "1780(d)(5)" and inserting in lieu thereof "1780(d)(4)";

(5) striking out in section 1788(a)(6) "or 1696(a)(2)";

(6) striking out in section 1789(b)(5) "or VI"; and

(7) striking out in section 1798(f)(2) "1780(d)(5)" and inserting in lieu thereof "1780(d)(4)".

(d) The provisions of this section become effective on October 1, 1980.

SEC. 4. In order to reduce fiscal year 1981 spending related to the provision of educational assistance for the pursuit of vocational objective courses under title 38, United States Code, by $4,100,000 in budget authority and outlays, the Committee recommends enactment of the following provisions:

[SEC. .] (a) Section 1673 of title 38, United States Code, is amended by—

(1) amending subsection (a) by—

(A) inserting "(1)" before "The" at the beginning thereof;

(B) redesignating clauses (1), (2), (3), and (4) as clauses (A), (B), (C), and (D), respectively;

(C) amending clause (B) of paragraph (1), as redesignated by subclause (B) of this clause, to read as follows:

"(B) any course with a vocational objective, unless the eligible veteran or the institution offering such course presents evidence satisfactory to the Administrator showing that (i) at least one-half of the persons who enrolled in such course over the preceding two-year period completed it, and (ii) at least one-half of the persons who completed such course over such period, and who are not unavailable for employment, attained employment in an occupational category for which the course was designed to provide training and such employment constitutes the primary vocational pursuit and major source of occupational income of each such person;"; and

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

"(2)(A) For the purposes of clause (B) of paragraph (1) of this subsection, in computing the number of persons who discontinued or completed a course over any two-year period, there shall not be included in such number those persons who received assistance under this title for pursuing such course while serving on active duty.

"(B) The provisions of clause (B) of paragraph (1) of this subsection shall not apply in the case of a particular course offered

by an educational institution in a particular year if the total number of eligible veterans and eligible persons (as defined in section 1701(a)(1) of this title) enrolled in the institution during the two-year period preceding such year did not exceed 35 per centum of the total enrollment in such institution during such period and the course has met the requirements of subclauses (i) and (ii) of such clause for any two-year period ending on or after the date of the enactment of this paragraph.

"(C) The Administrator may waive the requirements under clause (B) of paragraph (1) of this subsection in the case of any course with a vocational objective offered by any educational institution if the Administrator determines, under regulations which the Administrator shall prescribe, that such requirements would work an undue administrative hardship on the institution because of the small proportion of eligible veterans and eligible persons (as defined in section 1707(a)(1) of this title) enrolled in such institution.".

(b) The provisions of this section shall become effective on October 1, 1980.

SEC. 5. In order to achieve cost savings in fiscal year 1981 of $138 million in budget authority and outlays, the Committee recommends the enactment of the following provisions:

[SEC. —.] (a)(1) Chapter 53 of title 38, United States Code, is amended by adding at the end thereof the following new sections:

"§ 3113. Indebtedness offsets

"(a) Notwithstanding any other provision of this title or of any other law, where an individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, the amount of the indebtedness concerned shall, under regulations which the Administrator shall prescribe, be deducted from future payments made under laws administered by the Veterans' Adminisration to such individual if—

"(1) such individual has been provided with reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title and with a reasonable opportunity to exercise such rights;

"(2) the Administrator has made a determination with respect to any such challenge or request, unless the Administrator determines that the passage of the time required to make such determinations prior to making deductions would have the effect of jeopardizing the Administrator's ability to recover the full amount of such indebtedness through deductions from such payments; and

"(3) the Administrator has made reasonable efforts to notify such individual about the proposed deduction from such payments and the provisions of subsection (c) of this section and the regulations prescribed thereunder.

"(b) Notwithstanding any other provision of this title or of any other law, the authority of the Administrator to make deductions under this section or to take other administrative action authorized by

law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for determining the credit worthiness of the individual who owes such indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

"(c) Upon application by the individual concerned and under such regulations, the Administrator may, in order to avoid undue hardship to such individual to the extent consistent with recovering the full amount of an indebtedness described in subsection (a) of this section, set the rate at which the amount of such indebtedness shall be deducted from future payments at a rate less than that which would otherwise be required.

"§ 3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States

"(a) Notwithstanding any other provision of this title or of any other law, and subject to section 3102 of this title, interest and administrative costs (as described in subsection (b) of this section) shall, under regulations which the Administrator shall prescribe, be charged on an amount owed to the United States—

"(1) for an indebtedness to the United States resulting from a person's participation in a benefits program administered under this title by the Veterans' Administration, other than a loan, loan-guaranty or loan-insurance program;

"(2) for the provision of care or services under chapter 17 of this title; or

"(3) to the extent permissible under the loan instruments concerned, for an indebtedness resulting from an individual's participation in a program of loans, loan-guarantee, or loan-insurance administered by the Veterans' Administration under this title,

if a reasonable period of time, as determined under such regulations, has expired following the initial notification of the amount due to the person owes such amount of the amount due and the fact that such amount has not been paid. Interest shall accrue on such amount after the expiration of such reasonable period of time, but not for any period to the date (A) of the enactment of this section, or (B) on which the Administrator has mailed to the individual concerned, at such individual's most currently available address, notice of the Administrator's intention to charge interest on the indebtedness.

"(b)(1) The administrative costs to be charged under this section shall be so much of the costs incurred by the United States in collecting an indebtedness as the Administrator determines, under such regulations, to be reasonable and appropriate.

"(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Administrator, in consultation with the Secretary of the Treasury, under such regulations.

"§ 3115. Authority to sue to collect certain debts

"(a) Not later than 90 days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right

of the United States to bring suit, subject to the direction and supervision of the Attorney General and upon such terms and conditions as the Attorney General may prescribe, in any court of competent jurisdiction to recover any indebtedness that is owed to the United States by an individual by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, if the Administrator has determined, under regulations which the Administrator shall prescribe, that such individual has failed to respond appropriately to reasonable administrative efforts to collect such indebtedess.

"(b) Not later than 120 days after the date of the enactment of this section, the Administrator and the Attorney General shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section.

"(c) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.".

(1) inserting "or in preparation for" after "In" in clause (5) of subsection (b);

(2) redesignating subsection (g) as subsection (h) and inserting after subsection (f) the following new subsection:

"(g)(1) Subject to the provisions of this paragraph, the Administrator may, pursuant to regulations which the Administrator shall prescribe, release the name and address of an individual to a consumer reporting agency when necessary for the purpose of—

"(A) locating such individual when (i) such individual is administratively determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, or (ii) the Administrator determines under such regulations that (I) it is necessary to locate such individual in order to conduct a study pursuant to section 219 of this title or a study required by any other provision of law, (II) such individual's inclusion, in such study and the cost of such inclusion, in light of any other alternatives reasonably available to develop information necessary for such study and the costs of such alternatives and any possible consequences for such individual resulting from such release, clearly warrant such release, and (III) the release of such information and the fact that the Administrator has inquired as to such individual's present address (in order that any such study may be conducted) will not create a substantial risk of being construed as indicating that such individual is indebted to the United States or of otherwise having an adverse effect on such individual's credit worthiness, credit standing, or credit capacity; or

"(B) obtaining a consumer report in order to assess the ability of an individual so indebted to the United States to repay the indebtedness when the Administrator determines under such regulations that such individual has failed to respond appropriately to administrative efforts to collect such an indebtedness;

and may so release to such agency for either such purpose such other information as the Administrator determines under such regulations

is reasonably necessary to identify such individual, but not including any information indicating expressly or implicity any indebtedness to the United States or any other information reflecting adversely on such individual. Prior to making any such release, the Administrator shall, to the maximum extent practicable and under such regulations, determine that such agency (including any consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which such information is to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) maintains and reports information of the character involved in such release in such a manner as not to indicate in its file on such individual or in any consumer report issued or other disclosure made by it that an inquiry by the Veterans' Administration pursuant to this paragraph indicates the existence of an indebtedness to the United States or otherwise reflects adversely on such individual. A consumer reporting agency to which the Administrator releases information under this paragraph may not, on the basis of such information, indicate by any such recording or notation in such file or in any consumer report issued or disclosure made by such agency the existence of such indebtedness or any other information reflecting adversely on such individual's credit worthiness, credit standing, or credit capacity. Any willful failure of such consumer reporting agency or of any employee of such agency to comply with the requirements set forth in the preceding sentence shall be punishable in the same manner prescribed for the violation described in the last sentence of subsection (f) of this section.

"(2)(A) When the Administrator determines under such regulations that an individual has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness described in paragraph (1)(A)(i) of this subsection, the Administrator may release information relating to such indebtedness and the identity and address of such individual to one or more consumer reporting agencies for the purposes of making such information available for inclusion in consumer reports regarding such individual and, if necessary, of locating such individual if—

"(i) the individual has been provided reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title, has been provided with a reasonable opportunity to exercise such rights, and the Administrator has made a determination with respect to any such challenge or request; and

"(ii) sixty calendar days have elapsed following the mailing to such individual at such individual's most currently available address of notice of the Administrator's intent to release such information for such purposes, notice of the name and address of each consumer reporting agency to which such release will be made by the Administrator, and the specific information intended to be released.

"(B) Following the release of information under subparagraph (A) of this paragraph—

"(i) the Administrator shall notify each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administra-

tor has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which such information has been released by the Administrator of any substantial change in the status or amount of such indebtedness by the end of the calendar month following the calendar month during such change occurs and shall, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly provide verification or correction, as appropriate, of such information; and

"(ii) If the Administrator determines that the individual concerned had not, prior to such release of information, received a communication from the Veterans' Administration providing such individual with actual notice of the indebtedness and the rights and the opportunity described in subparagraph (A)(i) of this paragraph, any information in the possession a consumer reporting agency indicating that such indebtedness is delinquent or past due shall, notwithstanding any other provision of law, be deemed to be inaccurate for purposes of section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), and the Administrator shall immediately advise such individual and each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which the Administrator has released information relating to such indebtedness that any such indication is inaccurate for purposes of such section and advise such individual of the provisions of such section.

"(3) No contract entered into for any of the purposes of this subsection and no action taken pursuant to any such contract or this subsection shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

"(4) For the purposes of this section—

"(A) The terms 'consumer report' and 'file' shall have the meaning provided in subsections (d) and (g) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g)), respectively.

"(B) The term 'consumer reporting agency' (i) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and (ii) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit information or other information on consumers from consumer reporting agencies (or defined in subsection (f) of section 603 of such Act) for the purpose of furnishing such information to third parties, or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies."; and

(3) amending subsection (h), as redesignated by clause (2) of this section, by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (g)(3) of this section, any".

Resolution of the Committee on Veterans' Affairs, United States Senate

Resolved by the Committee on Veterans' Affairs of the United States Senate that, pursuant to section 5004(a) of title 38, United States Code:

(1) The following medical construction projects are approved at the following total estimated costs shown:

Veterans' Administration Medical Center, project, and estimated cost:

Altoona, Pennsylvania, ambulatory care addition, $10,400,000.

Amarillo, Texas, central air conditioning, patient, privacy, and elimination of fire and safety deficiencies, $6,139,000.

Bath, New York, ambulatory care addition, $4,400,000.

Biloxi, Mississippi, clinical addition, $20,750,000.

Boston, Massachusetts, secondary generator and updating of interior wiring, $2,550,000.

Bronx, New York, 120-bed nursing home care unit, $11,700,000.

Castle Point, New York, relocation and replacement of boiler plant, $2,800,000.

Chillicothe, Ohio, modernization, $13,700,000.

Coatesville, Pennsylvania, 120-bed nursing home care unit, $8,500,000.

Dallas, Texas, 120-bed nursing home care unit, $7,850,000.

Danville, Illinois, relocation and expansion of processing and distribution, $5,600,000.

Fayetteville, Arkansas, clinical addition, $4,500,000.

Hampton, Virginia, relocation and expansion of spinal cord injury unit, $5,150,000.

Iowa City, Iowa, elimination of fire and safety deficiencies, $2,700,000.

Kerrville, Texas, 120-bed nursing home care unit, $7,750,000.

Long Beach, California, addition and renovation for expansion of supply processing and distribution, $2,550,000.

Martinez, California, education building, $2,300,000.

Memphis, Tennessee, ambulatory care addition, $9,250,000.

Miami, Florida, outpatient addition, renovation and spinal cord injury relocation, $26,650,000.

Palo Alto, California, elimination of fire and safety deficiencies, $4,000,000.

Pittsburgh, Pennsylvania, elimination of fire and safety deficiencies, $8,400,000.

Reno, Nevada, 60-bed nursing home care unit, $5,100,000.

Reno, Nevada, laundry, $2,420,000.

Togus, Maine, renovation of bed building, $5,100,000.

Wichita, Kansas, 60-bed nursing home care unit and underground drainage culvert, $6,800,000.

(2) The development of the design and the site preparation for the following medical construction projects are approved, effective with respect to appropriations in an amount not to exceed the estimated costs shown:

Veterans' Administration Medical Center, project, and estimated cost:

New Orleans, Louisiana, expansion of clinical, outpatient, research, and education space, $4,485,000.

Palo Alto, California, correction of seismic deficiencies, $2,000,000.

Temple, Texas, clinical expansion, $1,830,000.

Tucson, Arizona, clinical expansion, $1,250,000.

ALAN CRANSTON,
Chairman.
ALAN K. SIMPSON,
Ranking Minority Member.

Adopted: June 25, 1980.

MANDATORY RECOMMENDATIONS TO ACCOMPLISH REDUCTIONS IN FISCAL YEAR 1981 SPENDING FOR VETERANS' PROGRAMS

Mr. Cranston, from the Committee on Veterans' Affairs, submitted the following [to accompany a resolution making recommendations pursuant to section 3(a)(20) of H. Con. Res. 307].

The Committee on Veterans' Affairs, having been instructed by the Congress in section 3(a)(20) and (b) of House Concurrent Resolution 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981, to submit, not later than June 25, 1980, to the Committeee on the Budget recommendations for changes in laws within the jurisdiction of the Committee on Veterans' Affairs which provide spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 or equivalent savings legislation in order to reduce spending for fiscal year 1981 by $200,000,000 in budget authority and $400,000,000 in outlays, after due consideration reports a Committee resolution containing such recommendations and recommends that the provisions of such resolution do pass.

RESOLUTION OF THE COMMITTEE ON VETERANS' AFFAIRS

Whereas, in section 3(a)(20) of House Concurrent Resolution No. 307, the First Concurrent Resolution on the Budget for Fiscal Year 1981, the Senate Committee on Veterans' Affairs has been instructed by the Congress to "recommend changes in laws within its jurisdiction which provide spending authority described in section 401(c)(2)(C) of the Budget Act or equivalent savings legislation to reduce spending for fiscal year 1981 by $200,000,000 in budget authority and $400,000,000 in outlays" in order to remain within the Committee's spending limits contemplated by such resolution; and

Whereas, under section 3(b) of such resolution, the Senate Committee on Veterans' Affairs is required to submit to the Senate Budget Committee recommendations for changes in such laws or equivalent savings legislation not later than June 25, 1980;

Therefore, in compliance with such instruction, *be it resolved that the Senate Committee on Veterans' Affairs makes the following legislative recommendations:*

SEC. 1. In order to reduce fiscal year 1981 spending for legislation increasing the rates of training and educational benefits in chapters 34, 35, and 36 of title 38, United States Code, to amounts $262 million

in budget authority and $268 million in outlays less than the cost of the rate increases in the provisions of title I of H.R. 5288 as passed by the Senate on January 24, 1980, the Committee recommends adoption of the following provision:

[SEC.] The Clerk of the House of Representatives is directed to make the following changes in the Senate amendment to H.R. 5288:

On page 39, beginning with line 21, strike out all that follows through page 42, line 15, and insert in lieu thereof the following:

SEC. 101. Chapter 34 is amended by—

(1) striking out in the last sentence of section 1677(b) "$288" and inserting in lieu thereof "$317";

(2) amending the table contained in paragraph (1) of section 1682(a) to read as follows:

"Column I	Column II	Column III	Column IV	ColumnV
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	$342	$407	$464	$29
Three-quartertime	256	305	349	21
Half-time	172	204	232	14
Cooperative	276	323	367	21";

(3) striking out in section 1682(b) "$311" and inserting in lieu thereof "$432";

(4) amending the table contained in paragraph (2) of section 1682(c) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$276	$323	$367	$21
Three-quarter-time	207	243	276	17
Half-time	139	162	184	11";

and

(5) striking out in section 1692(b) "$69" and "$828" and inserting in lieu thereof "$76" and "$911", respectively.

SEC. 102. Chapter 35 is amended by—

(1) striking out in section 1732(b) "$251" and inserting in lieu thereof "$276"; and

(2) striking out in section 1742(a) "$311", "$98", "$98", and "$10.40" and inserting in lieu thereof "$342", "$108", "$108", and "$11.40", respectively.

SEC. 103. Chapter 36 is amended by—

(1) striking out in section 1786(a)(2) "$311" and inserting in lieu of "$342";

(2) amending the table contained in paragraph (1) of section 1787(b) to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$249	$279	$305	$13
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth and any succeeding 6 month periods	62	92	119	13";

and

(3) striking out in paragraph (3) of section 1798(b) "$311" and inserting in lieu thereof "$342".

On page 95, lines 14 and 15, strike out "September 1, 1980" and insert in lieu thereof "January 1, 1981".

SEC. 2. In order to reduce fiscal year 1981 spending for flight and correspondence training programs under title 38, United States Code, by $35,400,000 in budget authority and outlays, the Committee recommends enactment of the following provisions:

[SEC. .] (a) Subsection (b) of section 1677 of title 38, United States Code, is amended by striking out "90 per centum" and inserting in lieu thereof "60 per centum".

(b) Section 1798 of title 38, United States Code, is amended by—

(1) striking out in the second sentence of subsection (c) "flight, apprentice or other on-job, or PREP training" and inserting in lieu thereof "or apprenticeship or other on-job training"; and

(2) adding at the end thereof the following new subsection:

"(h) In the case of a loan made to a veteran under this section to pursue a program of education consisting exclusively of flight training, the Administrator shall, as hereinafter provided in this subsection, cancel the repayment obligation (which for the purposes of this subsection shall include the obligation to pay interest), or reimburse for repayments already made, or both, as appropriate, if (1) such veteran has successfully completed such program and secured employment as a pilot or in a closely related occupation, and (2) such employment constitutes such veteran's primary vocational pursuit and major source of occupational income. Upon completion by such veteran of a full year of such employment during the first five years after the completion of such training, $1,000 of the repayment obligation under any such loan shall be canceled; and, upon the completion by such veteran of any additional three-month period of such employment during such five-year period, such repayment obligation shall be canceled at the rate of $250 for each such three-month period. In the event that a veteran meets the requirement of this section for a repayment obligation cancellation in an amount exceeding any remaining unpaid balance of such obligation, the Administrator shall, to the extent that the amount of the cancellation to which the veteran is entitled exceeds such balance, reimburse such veteran for any amounts of such obligation that such veteran has repaid.".

(c) Subsection (a) of section 1786 of title 38, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3) No veteran, spouse, or surviving spouse may be paid an educational assistance allowance under this subsection unless the Administrator has determined that no type of education other than correspondence is reasonably and feasibly available to such veteran, spouse, or surviving spouse in order to pursue successfully the educational objective being sought.".

(d)(1) Except as provided in paragraph (2) of this subsection, the provisions of this section shall become effective October 1, 1980.

(2) The provisions of subsections (a) through (c) of this section shall not apply to any person receiving educational assistance under chapter 34 or 35 of title 38, United States Code, on August 1, 1980, for the pursuit of a program of education, as defined in section 1652(b) of such title, in which such person is enrolled on that date, for as long as such person continuously thereafter is so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under the provisions of such chapter and chapter 36 of such title as in effect on that date.

SEC. 3. In order to reduce fiscal year 1981 spending for the predischarge education program under title 38, United States Code, by $1,000,000 in budget authority and outlays, the Committee recommends enactment of the following provisions:

[SEC. .] (a) Chapter 32 of title 38, United States Code, is amended by—

(1) amending section 1641 by striking out "1696, and 1968" and inserting in lieu thereof "and 1691(a)(1)"; and

(2) amending subsection (b) of section 1631 to read as follows:

"(b) Any enlisted member of the Armed Forces participating in the program shall be eligible to enroll in a course, courses, or program of education to pursue a secondary school diploma (or an equivalency certificate), as authorized by section 1691(a)(1) of this title, during the last 6 months of such member's first enlistment and at any time thereafter.".

(b) Chapter 34 of title 38, United States Code, is amended by—

(1) amending section 1661(c) by striking out "subchapters V and VI" and inserting in lieu thereof "subchapter V";

(2) amending section 1691(a) by—

(A) striking out "not on active duty"; and

(B) inserting "is not on active duty and who," after "(2)";

(3) striking out subchapter VI in its entirety; and

(4) striking out in the table of sections at the beginning of such chapter the item relating to subchapter VI in its entirety.

(c) Chapter 36 of title 38, United States Code, is amended by—

(1) amending section 1780(d) by—

(A) striking out in the third sentence of paragraph (2) "(other than under subchapter VI of chapter 34)";

(B) striking out paragraph (3);

(C) striking out in paragraph (5) "paragraphs (2) and (3)" and inserting in lieu thereof "paragraph (2)";

(D) striking out in paragraph (6) "(5)" and inserting in lieu thereof "(4)"; and

(E) redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively;

(2) striking out in section 1780(e) "and (3)";

(3) striking out in section 1780(f) "(except as provided by subsection (d)(3) of this section)";

(4) striking out in section 1784(b) "1780(d)(5)" and inserting in lieu thereof "1780(d)(4)";

(5) striking out in section 1788(a)(6) "or 1696(a)(2)";

(6) striking out in section 1789(b)(5) "or VI"; and

(7) striking out in section 1798(f)(2) "1780(d)(5)" and inserting in lieu thereof "1780(d)(4)".

(d) The provisions of this section shall become effective on October 1, 1980.

SEC. 4. In order to reduce fiscal year 1981 spending related to the provision of educational assistance for the pursuit of vocational objective courses under title 38, United States Code, by $4,100,000 in budget authority and outlays, the Committee recommends enactment of the following provisions:

[SEC. .] (a) Section 1673 of title 39, United States Code, is amended by—

(1) amending subsection (a) by—

(A) inserting "(1)" before "The" at the beginning thereof;

(B) redesignating clauses (1), (2), (3), and (4) as clauses (A), (B), (C), and (D), respectively;

(C) amending clause (B) of paragraph (1), as redesignated by subclause (B) of this clause, to read as follows:

"(B) any course with a vocational objective, unless the eligible veteran or the institution offering such course presents evidence satisfactory to the Administrator showing that (i) at least one-half of the persons who enrolled in such course over the preceding two-year period completed it, and (ii) at least one-half of the persons who completed such course over such period, and who are not unavailable for employment, attained employment in an occupational category for which the course was designed to provide training and such employment constitutes the primary vocational pursuit and major source of occupational income of each such person;"; and

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

"(2)(A) For the purposes of clause (B) of paragraph (1) of this subsection, in computing the number of persons who discontinued or completed a course over any two-year period, there shall not be included in such number those persons who received assistance under this title for pursuing such course while serving on active duty.

"(B) The provisions of clause (B) of paragraph (1) of this subsection shall not apply in the case of a particular course offered by an educational institution in a particular year if the total number of eligible veterans and eligible persons (as defined in section 1701(a)(1) of this title) enrolled in the institution during the two-year period preceding such year did not exceed 35 per centum of the total enrollment in such institution during such period and

the course has met the requirements of subclauses (i) and (ii) of such clause for any two-year period ending on or after the date of the enactment of this paragraph.

"(C) The Administrator may waive the requirements under clause (B) of paragraph (1) of this subsection in the case of any course with a vocational objective offered by any educational institution if the Administrator determines, under regulations which the Administrator shall prescribe, that such requirements would work an undue administrative hardship on the institution because of the small proportion of eligible veterans and eligible persons (as defined in section 1701(a)(1) of this title) enrolled in such institution.".

(b) The provisions of this section shall become effective on October 1, 1980.

SEC. 5. In order to achieve cost savings in fiscal year 1981 of $139 million in budget authority and outlays, the Committee recommends the enactment of the following provisions:

[SEC. .] (a)(1) Chapter 53 of title 38, United States Code is amended by adding at the end thereof the following new sections:

"§ 3113. Indebtedness offsets

"(a) Notwithstanding any other provision of this title or of any other law, where an individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, the amount of the indebtedness concerned shall, under regulations which the Administrator shall prescribe, be deducted from future payments made under laws administered by the Veterans' Administration to such individual if—

"(1) such individual has been provided with reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title and with a reasonable opportunity to exercise such rights;

"(2) the Administrator has made a determination with respect to any such challenge or request, unless the Administrator determines that the passage of the time required to make such determinations prior to making deductions would have the effect of jeopardizing the Administrator's ability to recover the full amount of such indebtedness through deductions from such payments; and

"(3) the Administrator has made reasonable efforts to notify such individual about the proposed deduction from such payments and the provisions of subsection (c) of this section and the regulations prescribed thereunder.

"(b) Notwithstanding any other provision of this title or of any other law, the authority of the Administrator to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for determining the credit worthiness of the individual who owes such indebtedness, shall not be subject

to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

"(c) Upon application by the individual concerned and under such regulations, the Administrator may, in order to avoid undue hardship to such individual to the extent consistent with recovering the full amount of an indebtedness described in subsection (a) of this section, set the rate at which the amount of such indebtedness shall be less than that which would otherwise be deducted from future payments at a rate required.

"§ 3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States

"(a) Notwithstanding any other provision of this title or of any other law, and subject to section 3102 of this title, interest and administrative costs (as described in subsection (b) of this section) shall, under regulations which the Administrator shall prescribe, be charged on an amount owed to the United State—

"(1) for an indebtedness to the United States resulting from a person's participation in a benefits program administered under this title by the Veterans' Administration, other than a loan, loan-guaranty, or loan-insurance program;

"(2) for the provision of care or services under chapter 17 of this title; or

"(3) to the extent permissible under the loan instruments concerned, for an indebtedness resulting from an individual's participation in a program of loans, loan-guaranties, or loan-insurance administered by the Veterans' Administration under this title,

if a reasonable period of time, as determined under such regulations, has expired following the initial notification of the amount due to the person owes such amount of the amount due and the fact that such amount has not been paid. Interest shall accrue on such amount after the expiration of such reasonable period of time, but not for any period prior to the date (A) of the enactment of this section, or (B) on which the Administrator has mailed to the individual concerned, at such individual's most currently available address, notice of the Administrator's intention to charge interest on the indebtedness.

"(b)(1) The administrative costs to be charged under this section shall be so much of the costs incurred by the United States in collecting an indebtedness as the Administrator determines, under such regulations, to be reasonable and appropriate.

"(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Administrator, in consultation with the Secretary of the Treasury, under such regulations.

"§ 3115. Authority to sue to collect certain debts

"(a) Not later than 90 days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit, subject to the direction and supervision of the Attorney General and upon such terms and conditions as the Attorney General may prescribe, in any court of competent jurisdiction to recover any indebtedness that is owed to the United

States by an individual by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, if the Administrator has determined, under regulations which the Administrator shall prescribe, that such individual has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

"(b) Not later than 120 days after the date of the enactment of this section, the Administrator and the Attorney General shall submit to the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section.

"(c) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.".

(2) Not later than October 1, 1980, the Administrator shall prescribe the regulations required to be prescribed under sections 3113 and 3114 of title 38, United States Code, as added by paragraph (1) of this subsection.

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

"3113. Indebtedness offsets.
"3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States.
"3115. Authority to sue to collect certain debts.".

(b) Section 3301 of title 38, United States Code, is amended by—

(1) inserting "or in preparation for" after "In" in clause (5) of subsection (b);

(2) redesignating subsection (g) as subsection (h) and inserting after subsection (f) the following new subsection:

"(g)(1) Subject to the provisions of this paragraph, the Administrator may, pursuant to regulations which the Administrator shall prescribe, release the name and address of an individual to a consumer reporting agency when necessary for the purpose of—

"(A) locating such individual when (i) such individual is administratively determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, or (ii) the Administrator determines under such regulations that (I) it is necessary to locate such individual in order to conduct a study pursuant to section 219 of this title or a study required by any other provision of law, (II) such individual's inclusion in such study and the cost of such inclusion, in light of any other alternatives reasonably available to develop information necessary for such study and the costs of such alternatives and any possible consequences for such individual resulting from such release, clearly warrant such release, and (III) the release of such information and the fact that the Administrator has inquired as to such individual's present address (in order that any such study may be conducted) will not create a substantial risk of being construed as indicating that such individual is indebted to the United States or of otherwise having an adverse effect on such individual's credit worthiness, credit standing, or credit capacity; or

"(B) obtaining a consumer report in order to assess the ability of an individual so indebted to the United States to repay the indebtedness when the Administrator determines under such regulations that such individual has failed to respond appropriately to administrative efforts to collect such an indebtedness;

and may so release to such agency for either such purpose such other information as the Administrator determines under such regulations is reasonably necessary to identify such individual, but not including any information indicating expressly or implicitly any indebtedness to the United States or any other information reflecting adversely on such individual. Prior to making any such release, the Administrator shall, to the maximum extent practicable and under such regulations, determine that such agency (including any consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which such information is to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) maintains and reports information of the character involved in such release in such a manner as not to indicate in its file on such individual or in any consumer report issued or other disclosure made by it that an inquiry by the Veterans' Administration pursuant to this paragraph indicates the existence of an indebtedness to the United States or otherwise reflects adversely on such individual. A consumer reporting agency to which the Administrator releases information under this paragraph may not, on the basis of such information, indicate by any such recording or notation in such file or in any consumer report issued or disclosure made by such agency the existence of such indebtedness or any other information reflecting adversely on such individual's credit worthiness, credit standing, or credit capacity. Any willful failure of such consumer reporting agency or of any employee of such agency to comply with the requirements set forth in the preceding sentence shall be punishable in the same manner prescribed for the violation described in the last sentence of subsection (f) of this section.

"(2)(A) When the Administrator determines under such regulations that an individual has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness described in paragraph (1)(A)(i) of this subsection, the Administrator may release information relating to such indebtedness and the identity and address of such individual to one or more consumer reporting agencies for the purposes of making such information available for inclusion in consumer reports regarding such individual and, if necessary, of locating such individual if—

"(i) the individual has been provided reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title, has been provided with a reasonable opportunity to exercise such rights, and the Administrator has made a determination with respect to any such challenge or request; and

"(ii) sixty calendar days have elapsed following the mailing to such individual at such individual's most currently available address of notice of the Administrator's intent to release such information for such purposes, notice of the name and address of each consumer reporting agency to which such release will be made

by the Administrator, and the specific information intended to be released.

"(B) Following the release of information under subparagraph (A) of this paragraph—

"(i) the Administrator shall notify each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporing agency described in paragraph (4)(B)(ii)(I) of this subsection) to which such information has been released by the Administrator of any substantial change in the status or amount of such indebtedness by the end of the calendar month following the calendar month during which such change occurs and shall, upon the request of any such consumer reporting agency for verification of any or all information so released, promptly provide verification or correction, as appropriate, of such information; and

"(ii) if the Administrator determines that the individual concerned had not, prior to such release of information, received a communication from the Veterans' Administration providing such individual with actual notice of the indebtedness and the rights and the opportunity described in subparagraph (A)(i) of this paragraph, any information in the possession of a consumer reporting agency indicating that such indebtedness is delinquent or past due shall, notwithstanding any other provision of law, be deemed to be inaccurate for purposes of section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), and the Administrator shall immediately advise such individuals and each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which the Administrator has released information relating to such indebtedness that any such indication is inaccurate for purposes of such section and advise such individual of the provisions of such section.

"(3) No contract entered into for any of the purposes of this subsection and no action taken pursuant to any such contract or this subsection shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

"(4) For the purposes of this subsection—

"(A) The terms 'consumer report' and 'file shall have the meaning provided in subsections (d) and (g) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g)), respectively.

"(B) The term 'consumer reporting agency' (i) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a(f), and (ii) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit information or other information on consumers from consumer reporting agencies (as defined in subsection (f) of section 603 of such Act) for the purpose of furnish-

ing such information to third parties, or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies."; and

(3) amending subsection (h), as redesignated by clause (2) of this section, by striking out "Any" and inserting in lieu thereof "Except as provided in subsection (g)(3) of this section, any".

Introduction

The Committee resolution makes legislative recommendations for reductions in spending for veterans' benefits and services in fiscal year 1981, as required by section 3(a)(20) of H. Con. Res. 307, the First Concurrent Resolution on the Budget for Fscal Year 1981, which was agreed to by the Congress on June 12, 1980 (hereinafter referred to as "the Resolution"). Under section 3(b) of H. Con. Res. 307, the Committee's recommendations are required to be submitted to the Budget Committee not later than June 25, 1980.

The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget for a fiscal year is required, under section 302(a) of the Congressional Budget Act of 1974, to provide for allocations of "the appropriate levels of total budget oulays and total new budget authority among each committee of the House of Representatives and the Senate which has jurisdiction over bills and resolutions providing such new budget authority". Thus, under the Resolution pursuant to section 306 (a) of the Budget Act, allocations of $13.9 billion in budget authority and $14.1 billion in outlays were made to the Committee for "entitlements requiring annual appropriations action". As stated in the joint explanatory statement accompanying the conference report on H. Con. Res. 307 (S. Rept. No. 96–792), the purpose of the reconciliation instructions to the Committee on Veterans' Affairs and to other Committees is to direct such Committees to report legislation to achieve the fiscal year 1981 "savings necessary for the committees to remain within their spending limits contemplated in the Resolution."

Having considered the matters involved, the Committee concluded that, in order to remain within its spending limits as contemplated in the Resolution, certain revisions to its legislative agenda—as set forth in its March 1980 budget views and estimates report to the Budget Committee (Committee Print No. 24)—would be required. Thus, the Committee determined to revise its legislative agenda, in part, and to report recommendations based on such revisions, together with certain recommendations identical to recommendations it previously had made to the Senate, in a Committee resolution setting forth the Committee's recommendations to achieve savings in fiscal year 1981 spending for veterans' programs.

Thus, after carefully reviewing the requirements imposed by the Resolution and section 302 of the Congressional Budget Act of 1974, the need to achieve a balanced budget, the importance of and priorities with respect to adequate funding for veterans' benefits and services, and the Committee's legislative agenda, the Committee met in open session on June 25, 1980, and voted, 10–0, to report favorably a resolution containing certain recommendations.

In addition, the Committee voted to report to the Senate, as required under section 302(b) of the Congressional Budget Act of 1974, subdivisions of the Committee's allocations under the Resolution pursuant to section 306(a) of the Congressional Budget Act of 1974.

SUMMARY OF RECONCILIATION RESOLUTION AS REPORTED

The Committee reconciliation resolution as reported (hereinafter referred to as "the Committee resolution") contains 5 sections, each of which sets forth the Committee's recommendations with respect to programs within the Committee's jurisdiction.

Section 1: Recommendations concerning cost-of-living adjustment in GI Bill benefit programs. This recommendation would achieve reductions in fiscal year 1981 requirements of $262,000,000 in budget authority and $268,000,000 in outlays by provisions that would provide for a 10-percent cost-of-living increase in educational assistance benefits under chapters 34, 35, and 36 of title 38, United States Code, effective January 1, 1981, in lieu of the 15-percent increase in education, training, and rehabilitation assistance benefits under chapters 31, 34, 35, and 36 of title 38, effective September 1, 1980, agreed to by the Senate on January 23, 1980, during its consideration of S. 870, the proposed "GI Bill Amendments of 1980", and approved by the Senate on January 24, 1980, in the Senate amendment to H.R. 5288.

Section 2: Recommendation concerning modifications of flight and correspondence training provisions. This recommendation, identical to modifications provided for under title V of H.R. 5288 as passed by the Senate, would achieve reductions in fiscal year 1981 requirements of $35,400,000 in budget authority and outlays by providing for modifications in flight and correspondence training programs. Included in section 2 of the Committee resolution are provisions that would:

(1) Reduce from 90 to 60 percent the portion of the cost of a flight training course that the VA will pay.

(2) Make veterans pursuing flight training courses eligible for VA educational loans of up to $2,500 per year and provide that a veteran who, after completing training, obtains employment in a flight-related occupation for a period of at least 1 year may obtain cancellation of such loan at the rate of $1,000 for each year the veteran is so employed.

(3) Provide that benefits for correspondence course training may be paid only when no other means of education are reasonably and feasibly available for the successful pursuit of the educational or vocational objective being sought.

Section 3: Recommendations concerning repeal of PREP authority. This recommendation, identical to sections 601(2)(B) and (3), 602, and 603 of H.R. 5288 as passed by the Senate, would achieve reductions in fiscal year 1981 requirements of $1,000,000 in budget authority and outlays by providing for repeal of the authority for predischarge education program (PREP) training and certain other changes in VA educational assistance provisions in light of or to conform with such repeal. Included in section 3 are provisions that would:

(1) Repeal the authority for PREP.

(2) Make a member of the Armed Forces who is participating in the post-Vietnam-era veterans' educational assistance program

eligible, at no charge to entitlement, for educational assistance benefits for pursuit of secondary education courses during the last 6 months of his or her first enlistment and at any time therafter.

(3) Provide that GI Bill benefits may be paid, at no charge to entitlement, for secondary education courses taken while a chapter-34-eligible individual is on active duty.

Section 4: Recommendations concerning modifications of vocational-objective course approval.—This recommendation, identical to modifications provided for under section 204 of H.R. 5288 as passed by the Senate, would achieve reductions in fiscal year 1981 requirements of $4,100,000 in budget authority and outlays through modifications of vocational-objective course approval criteria. Included in section 4 are provisions that would:

(1) Add to the criteria for the approval of vocational objective courses a requirement that at least 50 percent of those enrolled complete the course.

(2) Modify the existing requirement that at least 50 percent of those who have completed the course and are available for employment in the occupational field concerned be so employed by requiring that such employment be the individual's primary vocational pursuit and major source of occupational income.

(3) Exempt from further application of such criteria those institutions having a 2-year history of compliance at which less than 35 percent of the enrollees are receiving VA educational assistance.

(4) Provide the Administrator with authority to waive the 50-percent completion and 50-percent employment rules when their application would work an administrative hardship on an educational institution in light of the small number, in relation to the institution's total enrollment, of GI Bill trainees enrolled at that institution.

Section 5: Recommendation concerning enhancement of VA's ability to collect delinquent debts owed by individuals.—This recommendation, by providing increased authority to the VA to enhance its collection efforts, would increase receipts and thus achieve reductions in fiscal year 1981 requirements of $139,000,000 in budget authority and outlays. Included in section 5 are provisions that would:

(1) Require the VA, in cases where an individual has been determined to be indebted to the VA as a result of such individual's participation in a VA program, to deduct the amount of the indebtedness from future VA benefit payments to that individual and provide certain safeguards to protect individuals from erroneous deductions and undue hardship resulting from such deductions.

(2) Clarify that the 6-year statute of limitations under 28 U.S.C. 2415, regarding collection actions by the Federal Government, does not apply to certain VA administrative actions to collect a debt or determine credit worthiness for purposes of approval of VA home-loan guaranty eligibility.

(3) Require the VA to charge interest and reasonable collection costs on certain delinquent debts.

(4) Require the Administrator to take steps to authorize VA attorneys to bring debt-collection suits under the supervision and

direction of the Department of Justice, and subject to such terms and conditions as may be prescribed by the Attorney General.

(5) Authorize the Administrator of Veterans' Affairs to release to consumer reporting agencies (CRA's), pursuant to regulations which the Administrator must prescribe, the names and addresses of and other necessary identifying information pertaining to individuals who have been administratively determined to be indebted to the United States, as a result of participation in a VA benefits program, in order to obtain current address information or consumer reports, which the VA would use for purposes of determining the debtor's ability to pay the debt. In disclosing identifying information other than the individual's name and address, the Administrator would not be authorized to disclose any information that would indicate expressly or implicitly that the individual is indebted to the United States or would otherwise reflect adversely on the individual. Also, prior to making any disclosure for these purposes, the Administrator would be required to determine that the information disclosed would not be recorded or reported by the CRA (to which it was being disclosed directly by the VA) in such a way as to suggest that the VA inquiry indicates the existence of an indebtedness or otherwise reflects adversely on the individual. In addition, the CRA (to which the VA made direct disclosure) would be prohibited from indicating in its files and reports that the VA inquiry indicates an indebtedness or is otherwise adverse to the individual's credit rating and a willful violation by a CRA or one of its employees of that prohibition would be punishable by a fine of up to $5,000 for the first offense and up to $20,000 for a subsequent offense.

Discussion—Section 1: Recommendations Concerning Cost-of-Living Adjustment in GI Bill Benefit Programs

BACKGROUND

Senate-passed 15-percent Cost-of-Living Increase, Effective September 1, 1980.

On January 23, 1980, the Chairman offered a Committee amendment to S. 870, the proposed "GI Bill, Amendments of 1980". That amendment provides for a 15-percent increase, effective September 1, 1980, in GI Bill benefits and vocational rehabilitation allowances. It was agreed to by voice vote on January 24, following the defeat on January 23, by a vote of 14 to 78, of a motion to table the amendment. The provisions of S. 870, as amended, were substituted for the text of H.R. 5288 as passed by the House, and H.R. 5288 as so amended was then passed by the Senate.

On March 6, 1980, the Congressional Budget Office advised the Committee that it estimated the fiscal year 1981 costs of this amendment as $429 million in budget authority and $407 million outlays.

10-percent Cost-of-Living Increase, Effective October 1, 1980.

In S. 1188, the proposed "Disabled Veterans Rehabilitation Act of 1980", as reported, on May 15, 1980, the Committee recommended, in lieu of the Senate-passed 15-percent GI Bill rate increase, a 10-percent increase, effective October 1, 1980.

The following materials in support of that 10-percent increase are taken from the report (S. Rept. No. 95–746) accompanying S. 1188:

Part B of title II of the Committee bill, "GI Bill Rate Increases", would provide for a 10-percent increase in the amounts of GI Bill educational assistance allowances paid pursuant to chapters 34, 35, and 36. The following table compares the benefit levels for the various allowances provided for by current law with the benefit levels which would be effective on October 1, 1980, under the Committee bill.

TABLE 2.—COMPARISON OF BENEFIT LEVELS IN CURRENT LAW AND AS PROPOSED BY COMMITTEE BILL

	Existing law				S. 1188			
	No dependents	1 dependent	2 dependents	Each additional dependent	No dependents	1 dependent	2 dependents	Each additional dependent
INSTITUTIONAL AND COOPERATIVE TRAINING (COLLEGE TRAINING) (CH. 34, SEC. 1682(A))								
Full-time	$311	$370	$422	$26	$342	$407	$464	$29
Three-quarter	233	277	317	19	256	305	349	21
Half-time	156	185	211	13	172	204	232	14
Cooperative	251	294	334	19	276	323	367	21
FARM COOPERATIVE TRAINING (CH. 34, SEC. 1682(A))								
Farm cooperative:								
Full-time	$251	$294	$334	$19	$276	$323	$367	$21
Three-quarter	188	221	251	15	207	243	276	17
Half-time	126	147	167	10	139	162	184	11
APPRENTICESHIP OF OTHER ON-JOB TRAINING (CH. 36, SEC. 1787)								
Periods of training:								
1st 6 mo	$226	$254	$277	$12	$249	$279	$305	$13
2nd 6 mo	169	197	221	12	186	217	243	13
3rd 6 mo	113	141	164	12	124	155	180	13
4th and any succeeding 6-mo periods	56	84	108	12	62	92	119	13

OTHER PROVISIONS	Existing law	S. 1188
Flight training	$288	[1] $317
Active duty and less than half-time	311	[2] 342
Correspondence courses	311	[3] 342
Special supplementary assistance	69	[4] 76
Loan	311	[5] 342
OTHER PROVISIONS—WAR ORPHANS, WIDOWS, AND WIVES EDUCATIONAL ASSISTANCE (CH. 35)		
Full time	$311	$342
Three-quarter time	233	265
Half-time	156	172
Institutional-business courses	251	276
Special restorative training	311	342

[1] 90-percent of established charges, with 1-mo charged to entitlement for each $317 cost.
[2] Established charges for tuition and fees, but not to exceed full-time rate of $342 per month.
[3] Established charges, with 1-mo charged to entitlement for each $342 cost.
[4] Per month, with maximum of $911.
[5] Amount of available loan determined by multiplying months of entitlement to educational assistance times the value of 1 mo's entitlement ($342) up to maximum of $2,500.

A chronology of educational assistance allowances since the beginning of the current GI Bill program (in 1966)—including the rate increase proposed by the Committee bill—are shown in the following table:

TABLE 3.—CHRONOLOGY OF ACTUAL AND PROPOSED EDUCATIONAL ASSISTANCE RATES UNDER POST-KOREAN CONFLICT AND VIETNAM-ERA VETERANS' GI BILL PROGRAM

Law, effective date, and type of course	Percentage increases for single veteran	Single veteran	Veteran and 1 dependent	Veteran and 2 dependents	Additional dependents
Public Law 89-358, June 1, 1966: Full-time institutional		$100	$125	$150	
Public Law 90-77, October 1967:					
Full-time institutional	30	130	155	175	$10
Full-time cooperative farm		105	125	145	7
Full-time training on the job		80	90	100	
Public Law 91-219, Feb. 1, 1970:					
Full-time institutional	34.6	175	205	230	13
Full-time cooperative farm		141	165	190	10
Full-time training on job		108	120	133	
Public Law 92-540, Oct. 1, 1972:					
Full-time institutional	25.7	220	261	298	18
Full-time cooperative farm		177	208	236	14
Full-time training on job		160	179	196	8
Public Law 93-508, Dec. 3, 1974, retroactive to Sept. 1, 1974:					
Full-time institutional	22.7	270	321	366	22
Ful-time cooperative farm		217	255	289	17
Full-time training on job		189	212	232	9
Public Law 94-502, Oct. 1, 1976:					
Full-time institutional	8	292	347	396	24
Full-time cooperative farm		235	276	313	18
Full-time training on the job		212	238	260	11
Public Law 95-202, Oct. 1, 1977:					
Full-time institutional	7	311	370	422	26
Full-time cooperative farm		251	294	334	19
Full-time training on the job		226	254	277	12
S. 1188, Oct. 1, 1980:					
Full-time institutional	10	342	407	464	29
Full-time cooperative farm		276	323	367	21
Full-time training on the job		249	297	305	13

The current GI Bill program was established in 1966 in order that (1) service in the Armed Forces be made more attractive, (2) eligible veterans and dependents might benefit from attaining a higher educational level than they might otherwise have been able to afford, (3) individuals whose lives and careers have been disrupted by their active duty in service might receive vocational and educational readjustment assistance, and (4) individuals who served their country honorably might attain the vocational or educational objectives they would have otherwise realized had they not served in the military. Since the inception of the current GI Bill in 1966, Congress has intended that the educational assistance allowance cover, in part, the costs incurred by the veteran-student for tuition, fees, books, supplies, subsistence, and other associated costs.

Since 1966, Congress has increased the rates of educational assistance by more than 200 percent. Yet, even the benefit increases provided by past amendments have not assured that benefit levels kept pace with the rate of inflation from year to year. For example, in 1976, Congress increased GI Bill educational assistance allowances by 8 percent. However, the increase in the cost of living (as measured by the Consumer Price Index (CPI))—between September 1, 1974, and effective date of the increases provided by Public Law 93–508, and October 1, 1976, the effective date of the increases provided by Public Law 94–502—was 14.08 percent.

The Committee believes that a cost-of-living increase in GI Bill benefits is long overdue. The GI Bill purchasing power has declined since 1970 as a result of the continued rise in the cost of living as measured by the CPI. The Congress has increased benefits almost 78 percent since 1970 (from $175 to $311). However, the increase in the CPI from

1970 through April 1980 has been close to 111 percent. Since the last increase in benefits, made by Public Law 95–202, effective on October 1, 1977, the cost of living has increased by more than 30.3 percent. This rate of inflation has badly eroded the value of the GI Bill educational assistance dollar and has created hardships on many veterans attempting to pursue their educations under the GI Bill.

On January 24, in connection with the consideration of the proposed "GI Bill Amendments Act of 1980," the Senate approved a 15-percent cost-of-living increase in the rates of educational assistance allowances paid under chapters 31, 34, 35, and 36 of title 38. At that time, the cost of this rate increase, effective September 1, 1980, was estimated by CBO to be $22 million for fiscal year 1980 and $376 million [1] for fiscal year 1981 and to total $1.4 billion over the period fiscal year 1980 through 1984.

The Committee is deeply committed to providing relief to veterans training under the GI Bill. Likewise, the Committee is concerned about the need to balance the Federal budget and understands the necessity of curbing Federal expenditures as a necessary step toward efforts to reduce inflation.

Consequently, after serious examination and consideration, the Committee, in conjunction with its March recommendations to the Senate Budget Committee, recommended that a 10-percent increase in GI Bill benefits be enacted in lieu of the 15-percent increase that had already passed the Senate. This percentage increase is consistent with the President's recommendations made in his January and revised budgets for fiscal year 1981.

Thus, part B of title II of the Committee bill would provide for a 10-percent increase in GI Bill educational assistance allowances prescribed by chapters 34, 35, and 36 of title 38. A comparable increase in benefit levels for chapter 31 is proposed to be made by section 101(a) of the Committee bill. CBO estimates the fiscal year 1981 cost of this increase, together with the cost of the increase in chapter 31 rates, would be $258 million. Thus, this proposal would result in $118 million [2] in savings over the Senate action taken earlier this year.

COMMITTEE RESOLUTION PROVISION

In the view of this Committee, the Congress unjustly and unreasonably failed, during its consideration of the First Concurrent Resolution in the Budget for Fiscal Year 1981, to provide adequate funding for veterans' programs. The allocations to the Committee on entitlement spending levels are insufficient to achieve the Committee's very modest and prudent legislative agenda for fiscal year 1981. Specifically, the levels fail to provide sufficient funding for a 15-percent GI Bill rate increase with an effective date of September 1, 1980, together with an adequate cost-of-living increase in service-connected disability compensation benefits and a modernization of the VA's rehabilitation programs for service-connected disabled veterans.

Thus, the Committee recommends, only with the greatest reluctance, what it considers an unfair postponement from September 1, 1980, to

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[1] The Congressional Budget Office, on March 6, advised the Committee of its revision of this estimate to $420 million.

[2] The Congressional Budget Office, on June 24, 1980, advised the Committee that this amount, as adjusted by the Mar. 6, 1980, reestimate, would be $149 million.

January 1, 1981, of the effective date of the 10-percent increase in GI Bill benefits. To accomplish this, the Committee resolution provision would direct the Clerk of the House of Representatives to make appropriate changes in the text of H.R. 5288, as amended by the Senate, to provide for a reduction of the increase to 10 percent under chapters 34, 35, and 36 of title 38, United States Code, with an effective date of January 1, 1981.

SAVINGS ESTIMATE

CBO estimates that these changes would achieve reductions in fiscal year 1981 requirements of $262 million in budget authority and $268 million in outlays. Of those amounts, reductions of $111 million in budget authority and $147 million in outlays are attributable to the reduction from 15 percent to 10 percent in the cost-of-living increase as passed by the Senate in H.R. 5288, and reductions of $151 million in budget authority and $147 million in outlays are attributable to the postponement of the effective date to January 1, 1981.

SECTION 2: RECOMMENDATIONS CONCERNING MODIFICATION OF FLIGHT AND CORRESPONDENCE TRAINING PROVISIONS

BACKGROUND

The Committee is recommending the enactment of provisions to modify flight and correspondence training programs under the GI Bill to limit the use of GI Bill benefits for such training for genuine vocational purposes and to eliminate abuse. The recommended provisions are identical to those reported by the Committee on September 7, 1979, in S. 870, the proposed "GI Bill Amendments Act of 1980", and passed by the Senate in H.R. 5288 on January 24, 1980. The following materials in justification for those provisions are taken from the report (S. Rept. No. 96-314) accompanying S. 870:

The Administration has recommended on four occasions—for fiscal years 1977, 1978, 1979, and 1980—termination of eligibility for GI Bill benefits for enrollments in flight and correspondence training programs. This recommendation is made on the basis, as stated in the VA's March 26, 1979, letter transmitting the proposed "GI Bill Amendments Act of 1979 (S. 870), that "there is ample evidence that the training does not lead to jobs for the majority of trainees and that the courses tend to serve a vocational/recreational and/or personal enrichment rather than basic employment objectives". Under the Administration's proposed termination, no eligible veteran would receive GI Bill benefits—after the effective date of the legislation—for participation in flight or correspondence training programs.

In the past, the Committee has declined to consider favorably such proposals. However, section 204 of the Veterans' Education and Employment Assistance Act of 1976 (Public Law 94-502) mandated that the VA conduct and submit to the President and Congress, within 180 days after the date of enactment of that law, a thorough and comprehensive study of vocational objective programs. The study was to place particular emphasis on the implementation of section 1673(a)(2) of title 38—the so called "50-percent employment rule"—which provides that the Administrator shall not approve the enrollment of a veteran in

any vocational objective course which fails to submit justification annually showing that at least one-half the available course graduates have, within 2 years of completion, secured employment in the occupational category for which they were trained. As discussed earlier in this report with respect to the changes proposed by the Committee bill regarding this rule, the Committee has, in the past, expressed concern about the contradiction in the Administration's rationale which suggests less than vigorous implementation and enforcement of this rule.

The report of the study on vocational objective programs, entitled "Study of Vocational Objective Programs Approved for the Enrollment of Veterans", which was received in the Senate on July 12, 1978, indicates that the completion rate for flight training courses is the third highest of all vocational training programs—76 percent compared to 67.3 percent for all courses. In addition, the flight training course rate of employment, as computed for purposes of determining compliance with the 50-percent rule, is 90.3 percent. This is the fourth highest rate of all vocational courses.

The VA report notes that, although the 50-percent employment rule "is a step in the right direction. . . . it may not adequately reflect the real 'success' and utility of the school and course." In this regard, the report notes that completion rates for flight training courses tend to be high because "students are enthusiastic and are eager to stay with the course to the end because they are interested in flying, professionally or avocationally". The report further notes that graduates of flight training courses "often . . . accept very limited, part-time employment which will enable them to fly free of charge or at modest pay after they complete the course", and, that this part-time employment, such as making occasional messenger runs and piloting for weekend sightseeing trips, boosts the employment ratio of flight school graduates.

With regard to correspondence training courses, the report indicates that many individual correspondence courses continue to meet the requirements of the law with regard to the 50-percent employment rule, although the average completion rate for correspondence courses is low—50.3 percent.

Upon examining these VA conclusions that GI Bill benefits for flight and correspondence training should be terminated, the Committee's view, as expressed in its report, "Budget Views and Estimates for Fiscal Year 1980", submitted to the Senate Budget Committee on March 15, 1979, was that, at that time, the VA did not have available hard data sufficient to justify as recommendations. At the June 6, 1979, hearing, the VA was unable to provide this data.

In order to obtain more definitive data in connection with its consideration of the Administration's latest termination proposal, the Committee requested that the General Accounting Office (GAO) undertake a study to assess the accuracy of the VA's assertions with respect to flight and correspondence training programs. (The results of that GAO survey and its report, entitled "GI Bill Benefits for Flight and Correspondence Training Should Be Discontinued", are included as the Appendix to this Report.) In conducting the survey, the GAO compiled data from IRS returns filed by a scientifically-selected sample group of veterans who completed flight or correspondence training within a 5-year period. In addition, in the case of flight

training, medical files maintained by the Federal Aviation Administration (FAA) were examined, and the results of that examination were also analyzed. It is the Committee's belief that the data compiled by GAO substantiate the VA's assertions.

Based on criteria that the GAO developed for determining whether an individual is employed as a full-time pilot, it determined from the FAA data that about 83 percent of the sampled veterans completing flight training with GI Bill assistance were subsequently not employed as full-time pilots. The accuracy of that determination is supported by the survey findings that only 16 percent of the tax returns of the sampled veterans indicated flight-related occupations. The FAA data also showed that only 15.6 percent of the former GI Bill trainees reported themselves to be engaged in an aeronautical occupation and that only another 4 percent reported were flying substantially for businesses. Further, the FAA data showed that almost 57 percent of the sampled veterans trained indicated that they fly primarily for pleasure. The Committee believes that the GAO's findings are particularly significant in light of the remarkable consistency between the data obtained from IRS and the data obtained from the FAA.

With respect to correspondence training, the GAO determined that although the percentages vary between different vocational objectives programs, the average percentage of those GI Bill trainees who completed training in the six sampled programs and who were employed in the field for which they had been trained was 33.5 percent—the lowest percentage was in auto mechanics (19.3 percent) and the highest in real estate and insurance (56 percent). When coupled with an average completion rate for these six courses of 31.7 percent, this means that only an average of 10.6 percent of those *entering* training are subsequently employed in the field for which trained.

The GAO report also incorporated data based on a recent telephone sample survey of former correspondence course trainees conducted by the VA's Inspector General. That survey revealed a significant difference between the 50-percent employment rule reports submitted by the school's and the telephone responses of veterans who had completed training. For example, in the case of a locksmith course offered by correspondence, only 11 percent of the survey sample indicated that they were employed in that field and only an additional 30 percent were making some use of the skill for which they had received training. However, the employment report submitted had shown an employment rate of graduates of 80 percent.

Despite these findings, the Committee does not believe that it would be justifiable or fair to terminate totally the benefits for flight and correspondence training. The Committee believes that for some veterans, flight training is a legitimate vocational objective. In certain States, such as Alaska and Hawaii, flight training is sometimes necessary to acquire the ability to get to and from a job any may be essential to the performance of the job. With regard to correspondence training, the Committee is concerned that the termination of this training could deny the chance to utilize GI Bill educational assistance benefits to many who, for a variety of reasons, are not able to attend classes at an educational institution on a regular basis.

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Thus, in the cases of both types of training the Committee believes that the abuses and failures cited by the VA can be eliminated or curbed by tightening certain aspects of the administration of the programs. The Committee notes in this regard that the modifications proposed to be by section 104 made (1) of the Committee bill in the criteria for approving vocational objective courses—the addition of a 50-percent completion rule and the revision of the 50-percent employment rule—are specifically designed to close loopholes in the flight and correspondence training programs and curb the alleged abuses that occur in those programs, such as employing course-completers in weekend, parttime positions and counting them as employed in the field, and disenrolling students prior to completion in order to avoid having to include them in the required computations to determine compliance with the present 50-percent rule. However, the Committee believes that further legislative action is necessary to limit the program to those really needing the training for employment purposes.

COMMITTEE BILL PROVISIONS

With regard to flight training courses, section 401 of the Committee bill would reduce the portion of the course charge paid by the VA, under present section 1677(b) of title 38, from the current 90 percent to 60 percent, would make veterans pursuing such training eligible for for VA education loans (available in amounts up to $2,500 per year), and would provide that $1,000 of the loan amount would be canceled in the event a veteran is employed full time for at least 1 year in a flight-related occupation within 5 years after completing training. Any additional 3-month period of employment subsequent to the 1-year period and within the 5-year period would qualify the veteran for cancellation of an additional $250 of the loan amount.

The Committee believes that enactment of this provision will result in curbing the abuse of GI Bill benefits by veterans pursuing flight training for recreational purposes, by providing assurance that the veteran has a substantial financial and vocational stake in the pursuit of flight training. If the veteran has already repaid all or part of the repayment obligation and the remaining unpaid balance is less than the amount of the cancellation to which the veteran is entitled, the VA would—to the extent by which the cancellation to which the veteran is entitled exceeds the unpaid balance—reimburse the veteran for the amount that the veteran has repaid.

At the same time, under the Committee bill, a veteran with a serious employment objective for pursuing flight training could be able to obtain a greater degree of initial GI Bill assistance. For example, under current law, a veteran enrolled in a program of flight training costing $5,000 would have $4,500 paid by the VA; the remaining $500 would have to be paid by the veteran. Under the proposal made by the Committee bill, of the same $5,000 cost, the VA would pay outright $3,000. However, the veteran could, if eligible, receive a $2,000 education loan to cover the balance of the cost. If, within the 5 years following completion of training, the veteran subsequently is employed full time in a flight-related occupation for 2 years (plus any additional 3-month periods necessary to cancel accrued interest), the

entire amount of the loan (plus interest) would be canceled. Thus, the cost to the veteran would be less than it currently is.

In the case of correspondence training, section 402 of the Committee bill would authorize such training for those for whom the Administrator determines that no other type of training is "reasonably and feasibly available for successful pursuit of the vocational objective sought". The Committee intends to eliminate the abuse of GI bills benefits by those taking correspondence courses even though other programs of education are available and accessible to them, but also to assure that those individuals who cannot attend classes on a regular basis—such as disabled persons, those with parental responsibilities, those with jobs not permitting them to attend classes at the times classes are offered, and certain in-service personnel—and who thus could not use their GI Bill benefits except for correspondence training would continue to be able to use their benefits for such training. In making the determinations called for by the Committee bill, the Committee expects the Administrator to resolve questions of doubts in favor of the veteran. The Committee believes, for example, that training could be approved in the case of an individual who has access to types of training other than correspondence, but who could not attend regularly or within a reasonable time period as required for successful pursuit of his or her vocational objectives.

The Committee bill would provide that, in the case of both flight and correspondence training, those modifications in the authorities would not be effective with respect to those individuals enrolled in such training as of August 1, 1979, for as long as such individuals remain continuously enrolled.

COMMITTEE RESOLUTION PROVISION

Section 2 of the Committee resolution would amend title 38, United States Code, in a manner identical to the provisions of sections 501 and 502 of H.R. 5288 as passed by the Senate and would be effective on October 1, 1980.

SAVINGS ESTIMATE

CBO estimates that the enactment of the provisions of section 2 would achieve reductions in fiscal year 1981 requirements of $35.4 million in budget authority and outlays.

SECTION 3: RECOMMENDATIONS CONCERNING REPEAL PREP AUTHORITY

BACKGROUND

The Committee is recommending the enactment of provisions to repeal the authority for pre-discharge education program (PREP) training and to make technical conforming changes in appropriate provisions of title 38, United States Code. The recommended provisions are identical to those reported by the Committee on September 7, 1979, in S. 870, the proposed "GI Bill Amendments Act of 1980", and passed by the Senate in H.R. 5288 on January 24, 1980. The following materials in justification of those provisions are taken from the report (S. Rept. No. 96–314) accompanying S. 870:

BACKGROUND

In 1976, Public Law 94–502 created a new title 38, partially contributory program of educational assistance design to meet the needs of the All-Volunteer Armed Forces. This program, established under chapter 32 Post-Vietnam Era Veterans' Educational Assistance, is a voluntary program in which persons generally entering active duty after December 31, 1976, may make contributions—in the form of payroll deductions—of up to $75 a month to their educational funds. Their contributions are then matched on a $2-for-$1 basis by the VA when the veteran enrolls in an approved program of education. Additional contributions to the fund may be made by the Department of Defense or any service branch. As of December 31, 1978, there were 111,731 service persons enrolled in and making contributions to the chapter 32 program. During fiscal year 1978, 37 veterans enrolled in programs of education and received educational assistance benefits under this program.

COMMITTEE BILL PROVISIONS

Eligibility for the chapter 32 program

Under current law, present section 1601(1)(A), in order to be eligible for participation in the chapter 32 program, a serviceperson must initially have entered active duty on or after January 1, 1977. Eligibility for the current GI Bill program is established, as provided in section 1652(a), by active-duty service of more than 180 days any part of which occurred after January 31, 1955, and generally before January 1, 1977.

It was brought to the Committee's attention that there is a small group of individuals now serving in the Armed Forces who fail to meet the eligibility criteria for either program. These individuals—estimated to total not more than 5,000—served on active duty prior to January 1, 1977, but were discharged or released for various reasons prior to completion of 181 days of active duty service. Subsequently, these persons have re-entered the Armbed Forces and are ineligible for either the chapter 34 program—because of the minimum length of service requirement—or the chapter 32 program—because of the requirement of initial entry into active duty after December 31, 1976.

The ineligibility of these individuals for VA educational assistance under either program seems clearly the result of an inadvertent drafting oversight, which the Committee believes should be remedied by making them eligible for participation in the chapter 32 program. Thus, session 501(1) of the Committee bill incorporates an amendment offered by the Committee's Ranking Minority Member, Senator Alan K. Simpson, to amend the definition of chapter 32 eligible veteran to include this group of servicepersons.

VA educational and vocational counseling for chapter 32 participants

Current law does not provide for the furnishing of VA educational and vocational counseling services at the request of persons enrolled in the chapter 32 programs. It is hoped that counseling relating to future education and vocational pursuits for chapter 32 participants, as well as other service personnel, would be generally available through

the resources of the Department of Defense. However, the Committee does recognize a need to make the VA's counseling services available to chapter 32 participants seeking to utilize their educational benefits when they request these services.

Thus, section 501(2) of the Committee bill would amend present section 1641 to make this counseling available, upon request, to these individuals.

Repeal of the authority for the predischarge education program (PREP)

Under current law, service personnel participating in the chapter 32 program are permitted to pursue PREP training during the last 6 months of their first enlistment. These programs, authorized by Public Law 91–219 in 1970, and terminated for chapter 34 Vietnam-era veterans in 1976, are designed to provide individuals the opportunity—without charge to their GI Bill entitlement—to enroll in high school and remedial course designed to aid them in enrolling in and pursuing a program of education after discharge from the service.

The Committee believes that a substantial continued need for the PREP authority does not exist for persons serving in the current All-Voluntary Army. In order to attract qualified men and women into the nonconscripted military forces, the military services offer many inducements, of which educational opportunities are among the most attractive. Thus, the Department of Defense now operates a wide variety of inservice education programs. These benefits, which range from vocational training through graduate work, are available to active duty personnel in the military service.

In addition, the Committee is aware of the burden on military operations that PREP may have caused as the result of the provision (in present section 1698(b)(3)) regarding release from duty in order to train during on-duty hours. The possibility of replication under chapter 32 of the type of abuses, primarily related to remedial and refresher training that led to the termination of chapter 34 PREP training in 1976 is also of great concern to the Committee. However, this is speculative since the first chapter 32 participants did not become eligible for PREP training until July 1, 1979.

The Committee believes it is vital that those chapter 32 participants who may lack high school diplomas or equivalency certificates (so-called "GED's"—General Education Diplomas) have ample opportunity to undertake and complete programs of secondary education so that their contributions to the chapter 32 program may be fully and effectively utilized. It is not clear to the Committee, however, that all the needs of these individuals would be met by the inservice education programs offered by the Department of Defense.

Thus, sections 501(3) and 502(3) of the Committee bill would terminate the authority for the PREP training and, in lieu thereof, would make chapter 32 participants eligible for educational assistance to pursue programs of secondary education (high school or GED courses but not special refresher, deficiency, or preparatory courses)—at no charge to their entitlement during the last 6 months of their first enlistments or at any time thereafter. The educational assistance allowance for this pursuit would be paid, as proposed by section 108 of the Committee bill, at the rate of tuition and fees, or $156, a month, whichever is the lesser.

Secondary education training under chapter 34

Persons who are eligible for the current GI Bill (chapter 34) and who are still on active duty are not permitted to use the free-entitlement program for secondary education under section 1691(a)(1). This exclusion was enacted in 1970 by Public Law 91–219 at the same time the PREP authority was enacted because the PREP authority was designed to prescribe the terms and conditions to be applied to such inservice education. However, when the PREP authority for chapter 34 trainees was repealed in 1976 by Public Law 94–502, the prohibition on the use of the free-entitlement program for secondary education was—apparently invertently—not repealed. Since chapter 34-eligible servicepersons may no longer participate in PREP, eligibility for inservice use of entitlement-free secondary education benefits should be restored.

Thus, section 502(2) of the Committee bill would provide chapter 34-eligible active-duty service personnel with eligibility for this type of training assistance (but not special refresher, deficiency, or preparatory courses). The Committee notes that, by virtue of the change proposed by section 108 of the Committee bill, the rate of assistance paid for such secondary education courses would be the cost of tuition and fees, or $156 a month, whichever is the lesser.

COMMITTEE RESOLUTION PROVISION

Section 3 of the Committee resolution would amend title 38 in a manner identical to sections 601 (2) and (3), 602, and 603 of H.R. 5288 as passed by the Senate and would be effective on October 1, 1980.

SAVINGS ESTIMATE

CBO estimates that the enactment of the provisions of section 3 would achieve reductions in fiscal year 1981 requirements of $1 million in budget authority and outlays.

SECTION 4: RECOMMENDATION CONCERNING MODIFICATIONS OF VOCATIONAL-OBJECTIVE COURSE APPROVAL CRITERIA

BACKGROUND

The Committee is recommending the enactment of provisions to modify vocational-objective course criteria applicable to GI Bill benefit programs. The recommended provisions are identical to those reported by the Committee on September 7, 1979, in S. 870, the proposed "GI Bill Amendments Act of 1980", and passed by the Senate in H.R. 5288 on January 24, 1980. The following materials in justification of those provisions are taken from the report (S. Rept. 96–314) accompanying S. 870:

Section 104(1) of the Committee bill would amend section 1673(a)(2) to strengthen the criteria for approval of vocational objective courses. That section, as amended by section 203(1) of Public Law 93–508, currently provides that the Administrator shall not approve the enrollment of a veteran in any vocational objective course which fails to submit justification showing that at least one-half of the avail-

able course graduates during the preceding 2-year period have secured employment in the occupational category for which trained—the so-called 50-percent employment rule.

Background Regarding 50-Percent Employment Rule.—Enactment of this provision resulted from Congressional concern that vocational courses may not always be of adequate quality and intensity to prepare the trainee for employment in the chosen vocation and that some vocational courses tend to serve avocational, recreational, and other personal enrichment objectives rather than basic employment goals.

In 1976, the Committee noted, in its report accompanying legislation that was enacted as Public Law 94–502 (S. Rept. No. 94–1243), its belief that compliance with the 50-percent employment rule was "an important tool in assuring that the purposes of the GI Bill are and continue to be met". In response to the Administration's proposal, for fiscal year 1977, to terminate eligibility for GI Bill benefits for flight and correspondence training on the grounds that such training "does not lead to jobs for the majority of trainees and that the courses tend to serve avocational/recreational and/or personal enrichment rather than basic employment objectives", the Committee expressed its view that such an assertion appeared to contradict directly the flight and correspondence schools' claims that 50 percent of their course graduates had secured employment in the occupation for which they were trained.

The Committee concluded that either the Veterans' Administration's position in favor of terminating authority for these programs was based upon insufficient facts or the obvious Congressional intent underlying the 50-percent rule had not been effectuated. The Committee noted that there was a "growing suspicion" that the latter was the case. The Committee expressed its belief that rigorous application and enforcement of the 50-percent employment rule would terminate enrollment for vocational/recreational purposes and training that was inferior while allowing those schools meeting basic vocational objectives to continue enrolling veterans under the GI Bill.

Thus, believing that more study was both appropriate and necessary, Public Law 94–502 mandated the Administrator to undertake a thorough study of, and to submit to Congress within 180 days after the enactment of that law a report, on vocational objectives courses, compliance with the 50-percent employment rule, and the need for any legislative or administrative remedies.

The report, entitled "Study of Vocational Objective Programs Approved for the Enrollment of Veterans", was submitted to Congress on July 11, 1978. That report indicates that the average rate of employment was 81.3 percent for vocational objective course graduates in an occupation related to that for which the training was designed to prepare the trainee. Only 669 of the 28,461 courses submitting reports failed to meet the 50-percent employment rule; however, reports for approximately 7,200 additional previously-approved courses were not received with the result that the schools in question were not permitted to enroll additional veterans in those courses until those schools submitted justification of meeting the 50-percent employment rule.

Although the results of the VA's study indicate that the vast majority of courses surveyed met the 50-percent employment rule, the VA's

report also suggests that much of the data may be misleading. For example, only individuals who complete a course are included when computing the 50-percent employment rule. Thus, courses with high attrition rates—such as correspondence courses—may exceed the required 50-percent employment rate by counting only a small number of graduates, and a high attrition rate may indicate that a course is promising too much or delivering too little in the way of useful vocational services. (It is also possible, it should be noted, that high attrition may indicate that a course is rigorous.) At the Committee's hearing on June 6, Guy H. McMichael III, General Counsel of the VA, testified that an on-going VA Inspector General's audit had found that of 1,100 students enrolled in one correspondence course, only 11 completed it. Of those 11, only five graduates were counted in the computation and the other six were excluded. Of those five graduates, one reported employment in the field for which trained, and the other four reported "related employment". Thus, the course demonstrated, on the basis of five graduates, a 100-percent employment ratio for graduates.

Furthermore, current law does not specify whether job placement needs to be full time. The VA's report indicates that some schools—particularly in the case of flight training—have used this lack of definition to achieve relatively high placement ratios, in technical compliance with the law, through the use of graduates as part-time instructors. In addition, individuals who work only part time or occasionally in the field for which trained may also be counted as employed for the purposes of meeting the 50-percent employment rule.

Finally, the VA report notes that the 50-percent employment rule data may be misleading because it is the school that gathers and complies it. The VA's report contends that it is reasonable to assume that some of the data submitted is biased because the school is eager to continue to be approved for VA benefit payment purposes, and thus is interested in compiling data that produce the highest possible placement rates.

Provisions of Committee Bill.—In submitting the proposed GI Bill Amendments Act of 1979, the Administration proposed a series of modifications to tighten the 50-percent rule, including a proposal that the rule be modified to base the required computation on the number of persons initially enrolling in a course. This would have the effect of requiring that at least half of those who initiate training in a course become employed in the field for which they were trained. The Committee rejected this modification on the grounds that it would have been too harsh a criterion since many institutions would have little control over, or ability to compile data on, students who drop out of courses.

Rather, in order to take account of the attrition factor, the Committee bill would add a new requirement that more than one-half of the persons enrolled in a vocational objective course during the preceding 2-year period have completed it. The Committee believes that enactment of this provision would eliminate some schools' practice of disenrolling a student prior to graduation in an effort to avoid having to include the student in the 50-percent employment computation.

With respect to the current requirement that at least one-half of those who complete a course and are not unavailable for employment

obtain employment in the occupational category for which trained, the Committee bill would add the requirement, proposed in the Administration bill, that, for an individual to be counted as being employed in that occupational category, such employment be his or her primary vocational pursuit and major source of occupational income. The Committee believes that enactment of this requirement would make the employment test a more valid indication of the effectiveness of the school's training in line with Congressional intent that vocational training lead to substantial jobs. Thus, it would no longer be sufficient for a school to establish minimum compliance by including in its computation a graduate who, for example, is employed in the occupation for which trained on a limited spare-time or part-time basis. The Committee also believes that enactment of this provision would result in the disapproval of GI Bill enrollment of courses with objectives tending to be primarily avocational or recreational in nature.

Section 104(1) of the Committee bill would provide that reporting of compliance with these two 50-percent rules would not be required in the case of a particular course if the course is determined to have a history of compliance with the rules and if the number of persons in receipt of VA educational assistance enrolled in the educational institution offering the course does not exceed 35 percent in a particular year of the institution's total enrollment. The Committee believes that the potential for abuse is subsantially reduced when an institution enrolls less than 35-percent GI Bill trainees—the same test that exempts institutions from the 85–15 ratio—and can show that its performance has been in compliance with both rules. The Committee further believes that compliance reporting in these cases would not be cost effective for either the institution or the VA.

Finally, the Committee bill would also provide that the Administrator, purusant to regulations, may waive the requirements for the 2-year computation when the Administrator determines that reporting would place an onerous and unnecessary paperwork burden on the school in light of the small proportion of GI Bill trainees enrolled there. This provision reflects the Committee's concern that many reputable institutions offering good vocational objective programs might be discouraged from seeking VA approval because of the cost of computing the 50-percent rules if they enroll only a small proportion of GI Bill trainees. Thus, this provision would allow the Administrator to waive these requirements when he determines that the small proportion of GI Bill trainees enrolled would justify such a waiver. The Administrator would, of course, be able to place reasonable and appropriate conditions and limits on such waivers, for example, to limit such waivers to a certain period of time. In addition, if the conditions justifying the waiver were no longer present, the Administrator would be authorized to withdraw it.

COMMITTEE RESOLUTION PROVISION

Section 4 of the Committee resolution would amend title 38 in a manner identical to section 204 of H.R. 5288 as passed by the Senate and would be effective on October 1, 1980.

SAVINGS ESTIMATE

CBO estimates that the enactment of the provision of section 4 would achieve reductions in fiscal year 1981 requirements of $4.1 million in budget authority and outlays.

SECTION 5: RECOMMENDATIONS CONCERNING ENHANCEMENT OF VA EFFORTS TO COLLECT DEBTS

BACKGROUND

During the past several years there has been heightened concern about the effectiveness of Federal debt-collection efforts. These efforts have been the subject of a number of reports prepared by the General Accounting Office. In addition, the need specifically to enhance the VA's ability to collect the sizable amount of overdue debts owed to it by persons indebted to the VA as a result of participation in a VA-benefits program is evident. These debts arise primarily from overpayments of educational assistance benefits and, to a lesser extent in terms of dollar value, from defaults on education loans.

On May 11, 1978, the GAO issued a report (HRD–78–112), entitled "Improvement Needed in VA's Education Loan Program". The report included recommendations to the Administrator of Veterans' Affairs for improving the collection of VA education loan defaults such as instructing regional offices to offset defaulted loans against current benefits wherever possible and developing strongly worded collection letters specifically tailored to the education loan program.

The VA, having previously studied many of those issues, concurred in most of the GAO recommendations and in May 1978 issued new guidelines which address many areas of concern cited in the GAO report, including the use of offsets against current or future benefit payments and revisions of collection letters.

On October 23, 1978, the GAO issued a report (FGMSD–78–61), entitled "The Government Needs To Do A Better Job of Collecting Amounts Owed by The Public". This report indicated that government agencies needed to be more aggressive in collecting delinquent accounts and recommended that the Secretary of the Treasury and the Director of the Office of Management and Budget issue guidelines for charging interest on delinquent debts owed to the Federal Government.

On February 23, 1979, the GAO issued a report (FGMSD–78–59), entitled "The Government Can Be More Productive in Collecting Its Debts by Following Commercial Practices". This report indicated that, by adopting certain private sector practices such as referring information about debts to credit bureaus and using credit bureau locator services to locate debtors and collection agencies to obtain repayments, the Federal Government could more effectively collect debts owed to it. The VA concurred in the use of vigorous collection efforts for debts owed for VA benefits programs. The agency also indicated that it was seeking legislation to permit the use of consumer reporting agencies in this regard, but that it favored the use of the Federal Government's own collection resources prior to referring information to consumer reporting agencies.

Another GAO report, issued on March 9, 1979 (FGMSD–79–19), entitled "The Government Can Collect Many Delinquent Debts by Keeping Federal Tax Refunds as Offsets", examined the feasibility of offsetting debts owed to the Federal Government by reducing or withholding the income tax refunds which were due to debtors.

On January 15, 1980, the GAO issued a report (CD–96–1), entitled "Unresolved Issues Impede Federal Debt Collection Efforts—a Status Report." This report reviewed the Federal Government's debt collection efforts. The report recommended a number of methods for improving Federal agency debt collection procedures, including: reporting debtors to commercial credit bureaus; charging interest on delinquent debts; collecting debts by offset against other Federal benefits; using private collection agencies; and referring debts to the Department of Justice for collection action. The report also recommended the increased use of Federal agencies to litigate their own debts in order to reduce the growing backlog of cases referred to the U.S. Attorneys and improve the timeliness of recovery action. The Committee's recommendations in its resolution are responsive to the recommendations regarding the reporting of delinquent debtors to credit bureaus, the collecting of debts by offset, and the increased use of VA attorneys to litigate VA debt claims.

In addition, on April 30, 1979, the GAO and the Department of Justice modified their jointly issued guidelines on Federal claims collection practices to require Federal agencies to implement procedures for reporting delinquent debts to commercial credit bureaus and to charge interest on delinquent debts and debts being paid in installments. (Federal Register, vol. 44, pp. 22701–02 (April 17, 1979), amending 4 CFR parts 101, 102, and 104). The Committee resolution is responsive to the goals of these guidelines.

CURRENT VA EFFORTS TO COLLECT DEBTS

The dollar amount of accounts receivable due the VA—active accounts with respect to which collection efforts have not been terminated—is enormous and is increasing. The total accounts receivable increased from $577 million as of March 31, 1979, to $620.4 million as of March 31, 1980. Educational assistance overpayments represent the largest portion of the accounts receivable due the VA—$405.8 million. Accounts receivable in the compensation, pension and loan guaranty program represents $178.6 million of the total accounts receivable due the VA. Also, as of March 31, 1980, the VA was owed $23 million as a result of education loan defaults.

Currently, the VA's administrative debt-collection process involves sending out computer-generated collection letters to debtors. These letters notify the debtor of the opportunity to dispute the amount or existence of the debt, to have the debt waived or compromised, or to pay the debt on a repayment plan. However, many debtors do not respond to these demand letters, and in those instances further collection efforts depend on the amount of the debt.

Where the debt owed the VA is $600 or more, the VA may refer the debt to the Department of Justice for consideration for collection litigation. However, individuals who owe the VA less than $600 have gen-

erally been immune to the normal collection actions by the Department of Justice.

Generally, the only recourse left to the VA to collect a debt of less than $600 has been to see if the debtor is entitled to a VA benefit which could be applied to the debt or could be withheld pending resolution of the debt. In this regard, the VA recently instituted a procedure, utilizing the VA's new automated claims processing system, "TARGET", whereby a veteran who applies for a VA home-loan guaranty must repay or enter into an arrangement to repay any delinquent indebtedness to the VA before the application will be approved. As of the end of April, 1980, the VA had collected $6.5 million as a result of this promising procedure and had established repayment plans for an additional $2.0 million. However, this approach works only where the debtor is using or wishes to use a VA benefit. A large number of veterans who are indebted to the VA do not, after the debt arises, receive or apply for VA benefits, and thus would not fall under this procedural arrangement.

AUTHORIZATION TO OFFSET DEBTS AGAINST FUTURE BENEFITS

One means of collecting overpayments is to reduce or withhold future payments of benefits to which the debtor is entitled under other VA programs. The Federal Claims Collection Standards (4 CFR 102.11) require Federal agencies to collect by offsetting debts against future payments, when feasible.

The VA currently uses offset to recover overpayments. In fact, in recent years the VA has substantially improved its effectiveness in collecting educational assistance overpayments by offset against future education, compensation and pension benefits. A recent GAO review of a random sample of 1200 terminated accounts disclosed that the VA had taken advantage of potential offsets against these benefits in over 99 percent of the cases.

The Committee is pleased with the effectiveness of VA offset procedures and, to assure that offset is utilized in all appropriate cases, the Committee resolution would add a new section 3113 to title 38, United States Code, to require the VA, when an individual is determined to be indebted to the Federal Government by virtue of the individual's participation in a VA benefits program, to deduct the amount of the indebtedness from any future payments of VA benefits to the individual.

In order to attempt to assure fair treatment, the new section would provide for several safeguards in connection with the offset of future payments.

First, the new provision would require that, before any overpayment may be deducted from future benefits payments, the individual must be provided with notice of his or her right to dispute the existence or amount of the debt or seek to have it waived, and be given a reasonable opportunity to exercise those rights. In addition, the new provision would require the VA to make determinations with respect to any such challenge or request before any deduction may be made from future benefits payment, unless the Administrator determines that the time that would be required to make such a determination before making a deduction would jeopardize the VA's ability to recover

the full amount of the indebtedness from future payments. The Committee notes that, under existing VA procedures, when an individual contacts the VA to dispute the existence or amount of a debt, the VA routinely checks its records to determine whether its information regarding the indebtedness is accurate, and informs the beneficiary of its findings in this regard. The *Yamasaki* case would seem to indicate that such a procedure would satisfy minimal due process requirements. In any event, this provision would require the VA to prescribe regulations setting forth the administrative procedures to be followed, including notice to the individual of his or her rights to dispute or seek a waiver of the debt. In that regard, the Committee does not intend that a final decision of the Board of Veterans' Appeals be required with respect to a challenge to the existence of an indebtedness before an indebtedness could be offset from future payments.

In addition, the new section would provide that, where the individual believes that the deduction would cause an undue hardship, he or she would be able to seek—and the Administrator would be authorized and expected, to establish—a rate of deductions that would avoid such hardship while still assuring the VA's ability ultimately to obtain full recovery. This section would further require the VA to inform the individual of this provision prior to making any deduction from benefit payments. The Committee notes that this provision would not require the VA to apply the debt against the entire amount of any future monthly payments. Thus, for example, if a veteran receiving monthly pension payments of $400 were determined to owe $1,000 to the VA, the VA would not be expected to recoup the entire $1,000 from the next 2 and a half months' payment. Rather, the Committee intends that the Administrator's regulations establish guidelines for the deductions of reasonable amounts. The Committee also intends that the VA, in setting the rate at which the amount of the debt will be deducted from future payments, will take into consideration such factors as the individual's financial needs and resources and obligations for the support of other family members, the extent to which he or she is dependent on the benefit to be reduced, the amount of the debt, and the likelihood that the rate set will result in a recovery of the full amount of the debt. The Committee does not intend that this provision will supersede the Administrator's authority, under section 3102 of title 38, to waive recovery of payments or overpayments in appropriate cases.

The Committee notes that a question has arisen as to whether the decision of the United States Supreme Court in the case of *Califano* v. *Yamasaki*, 99 S. Ct. 2545 (1979), relating to a Social Security benefits program administered by the then Department of Health, Education, and Welfare, necessitates a change in the procedure by which the VA considers beneficiary requests for waiver of overpayments under section 3102 of title 38 in offset cases. In Yamasaki, the Court held that a statute, which the Court went out of its way to point out, was substantially similar to section 3102 of title 38 (*id.* at p. 2554, n. 9), compels a Government agency to grant an oral hearing prior to recouping alleged overpayments when a beneficiary requests that recovery be waived, but that the Government need not provide such a hearing when the beneficiary is merely challenging the accuracy of the overpayment determination.

In a June 25 letter (printed below) from the VA General Counsel to the Chairman of the Committee, the VA indicates that it believes that the Supreme Court's decision in Yamasaki will require the VA to revise its procedures with regard to the collection of overpayments to insure that waiver requests are treated in a manner consistent with the Court's decision. The Committee wishes to make clear that, in proposing new and additional authorities to strengthen the VA's debt-collection efforts, it does not intend, in any way, to counter or override the Yamasaki decision to the extent it is applicable to the VA.

VETERANS ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., June 25, 1980.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to inquiries made by members of the Committee staff concerning potential changes in the procedures by which the Veterans Administration (VA) recovers benefit overpayments by administrative offset. Specifically, the question has arisen as to whether the decision of the United States Supreme Court in the case of *Califano* v. *Yamasaki*,——— U.S. ———, 61 L. Ed. 2d 176, 99 S. Ct. 2545 (1979), necessitates a change in the procedure by which the VA considers beneficiary requests for waiver of overpayments under 38 U.S.C. § 3102 in offset cases. We have been considering the opinion in this case since it was issued and we will be issuing a legal opinion concerning its applicability to the VA in the near future. I would be pleased to provide you with a copy of this opinion when it has been issued.

As members of the staff have also indicated, the prerecoupment hearing issue has also arisen in a civil action brought in United States District Court for the Northern District of Ohio (*Poslick* v. *Veterans Administration*, Civ. No. 80–644, filed May 19, 1980). The plaintiff in that case has alleged that under 38 U.S.C. § 3102 and the Due Process Clause of the Fifth Amendment to the United States Constitution, pension recipients are entitled to an administrative prerecoupment oral hearing on the issues of whether an overpayment of benefits actually occurred and whether the overpayment should be waived under 38 U.S.C. § 3102.

In Yamasaki, the Court held that a statute substantially similar to 38 U.S.C. § 3102, among other requirements, compels a Government agency to grant an oral hearing prior to recouping alleged overpayments when a beneficiary requests that recovery of the overpayment be waived, but that the Government need not provide such a hearing when the beneficiary is merely challenging the accuracy of the overpayment determination. The Court found that the statute required the following to be provided prior to recoupment:

a. the fact that an overpayment has occurred;
b. the reason for the overpayment;
c. the right to request a waiver of collection of the overpayment;
d. the right to a hearing on the issue of whether the waiver should be granted; and

e. the fact that, if a hearing is promptly requested, recoupment will be delayed until the waiver decision is made.

Accordingly, in light of the aforementioned litigation, we believe there is a necessity to revise our procedures dealing with collection of overpayments to insure that waiver requests are treated in a manner consistent with the Court's opinion.

The legal opinion which was referred to above will address the applicability of the Yamasaki opinion, and other relevant precedent, to all VA benefit programs, including the pension program at issue in the Poslick case. Of the several monetary benefit programs which the VA administers, the changes necessitated by this case will have the greatest impact on the educational assistance program. A detailed cost estimate is being requested from the Office of the Comptroller and the Department of Veterans Benefits, but we have informally estimated that the cost of these changes could be as high as $30 to $40 million a year.

As indicated above, we will supply the Committee with a copy of our legal opinion in this matter when it is issued by this office.

Please contact this office if you desire further information concerning this issue.

Sincerely yours,

GUY H. MCMICHAEL III,
General Counsel.

The Committee expects that, in prescibing the procedures to be followed to afford the individual the "reasonable opportunity" required by the new section to exercise his or her waiver rights, the VA will incorporate the Yamasaki procedural requirements described in this letter.

The Committee is concerned that VA efforts to collect debts by means of offsets against future benefit payments could be precluded by time limitations on initiating civil actions or administrative proceedings. In a September 1978 memorandum opinion to the Chairman of the Civil Service Commission (now Office of Personnel Management), the Department of Justice concluded that the 6-year statute of limitations (28 U.S.C. 2415) on tort and contract actions brought by the Federal Government precludes the Federal Government from collecting debts more than 6 years old by means of administrative offset—except by way of an offset asserted by the United States where an individual initiates, and prevails on, a claim against the United States or has brought a claim under sections 71a and 237, of title 31, United States Code, which allow a claimant ten years in which to present to the General Accounting Office a claim against the United States.

This opinion was confirmed in a November 1, 1979, letter from the Department of Justice to the Comptroller General. However, the GAO, in its recent GAO report entitled "Unresolved Issues Impede Federal Debt Collection Efforts—A Status Report", January 15, 1980, disagrees with the Department of Justice on this point, but indicates that, in view of the Department of Justice's opinion, legislation may be needed to remove legal implements to pursuit of time-barred debts by administrative offset. Thus, in order to clarify the VA's authority to collect debts, more than 6 years old by means of administrative offset, the new section would provide that the VA's authority to deduct the

amount of a debt from future payments shall not be subject to any limitations (such as 28 U.S.C. 2415) with respect to the time for bringing civil actions or for commencing administrative proceedings. This provision would assure that this collection method will remain available as long as the debt exists.

The same new section would also provide that the VA's authority to take other administrative actions in connection with collecting an indebtedness shall not be subject to any limitations with respect to the time for bringing civil actions or for commencing administrative proceedings. Such administrative actions would include, for example, the disclosure of information pertaining to a delinquent indebtedness in order to affect the debtor's credit rating (as would be authorized by new subsection (g) which would be added to section 3301 of title 38 by subsection (b)(2) of this section of the Committee resolution) or the VA's ability to deny an individual, who has been determined to be indebted to the VA, a VA-guaranteed home loan (pursuant to section 1810(b) of title 38) on the basis that the individual is not a satisfactory credit risk.

AUTHORITY TO CHARGE INTEREST AND ADMINISTRATIVE COSTS ON DELINQUENT PAYMENTS

On October 20, 1978, the GAO issued a report (FGMSD-78-61). entitled "The Government Needs To Do A Better Job of Collecting Amounts Owned By The Public." This report indicated that many debtors have little incentive to pay promptly amounts due the Federal Government when agencies charge little or no interest on delinquent accounts. The report further indicated that Federal agencies that levied substantial interest charges generally collected most accounts in a timely manner, while other agencies which had not established interest charges for later payments were encountering significant collection problems. The report concluded that the Government should generally charge interest on delinquent accounts to encourage individuals to pay debts that they owe to the Government. The report also concluded that, although it seems reasonable that interest should not be applied to collection of overpayments made by the Federal Government when the recipients are not at fault, interest charges may be warranted if the money due is not repaid within a reasonable time.

The Federal Claims Collection Standards as revised (4 C.F.R. 102. 11), effective April 30, 1979, state: "In the absence of a different rule prescribed by staute, contract or regulation, interest should be charged on delinquent debts and debts being paid in installments in conformity with the Treasury Fiscal Requirements Manual."

However, a January 29, 1980, letter to the Comptroller General from the General Counsel indicated that, in the VA's view, this regulation fails to contain sufficient legal authority to impose administratively created interest charges on most debts resulting from overpayments of VA benefits.

This, in order to address the concerns raised by the GAO and the VA, the Committee resolution would add a new section 3114 to title 38 to authorize the VA to charge interest and the administrative costs of collection on delinquent payments under certain circumstances.

Specifically, the new section would authorize the VA to levy charges for interest and the administrative costs of collection on debts owed to the VA which were incurred as a result of an individual's participation in a VA benefits program, other than a loan, loan-guaranty or loan-insurance program, or as a result of the receipt of care or services under chapter 17 of title 38. In the case of an indebtedness resulting from participation in a VA loan, loan-guaranty, or loan-insurance program, the new section would authorize the VA to charge interest and administrative costs on such indebtedness to the extent that such charges are consistent with the provisions contained in the loan instruments.

However, this provision would require that, before interest or administrative costs may be charged, the individual must be notified of the amount owed, a reasonable period of time must have expired since such notification, and the individual must have failed to pay the indebtedness. The new section would further provide that interest on the debt would accrue only after the expiration of a reasonable period of time after the individual has been notified of the debt and after the individual has been notified of the intention to charge interest.

The VA often incurs substantial administrative costs in collecting an indebtedness. Thus, the new provision would authorize the VA to charge the debtor for the administrative costs—so much of the costs to the VA of collecting a delinquent indebtedness—as the Administrator determines to be reasonable and appropriate. The Committee intends that, where the cost to the VA of assessing and collecting administrative costs in connection with the collection of a debt exceeds the cost of collecting the debt, the charging of administrative costs to the debtor would be considered to be inappropriate. The Committee further intends that administrative costs not be charged on a debt where an individual has received an overpayment through no fault of his own and has repaid the overpayment or, in good faith, made reasonable payments within a reasonable time after being notified of the overpayment.

At the April 1, 1980, hearing of the Subcommittee on Special Investigations of the House Committee on Veterans' Affairs, the GAO recommended that the rate of interest which should be charged on delinquent accounts should be based on the Treasury's costs of borrowing to replace these funds. In this regard, the GAO noted that, if interest rates charged by Federal agencies are substantially lower than interest rates being charged by private-sector creditors, debtors who have debts in both areas would have a strong incentive to pay off high-interest private sector debts and to ignore or postpone payment of their low- or no-interest debts owned to the Federal Government.

The Committee agrees with the concerns raised by GAO in this regard. Thus, the new section would provide that the rate of interest to be charged on delinquent accounts be determined (and specified regulations) by the Administrator, in consultation with the Secretary of the Treasury, based on the rate of interest paid by the United States for its borrowing.

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AUTHORITY TO SUE

Under the Federal Claims Collection Standards (4 CFR parts 101–04) issued jointly by GAO and the Department of Justice, the VA may refer debts of $600 or more to the Department of Justice for consideration for collection litigation. However, the large number of cases referred to the Department of Justice by the VA (approximately 77,138 accounts since March 1, 1978) and by the Office of Education (approximately 24,000 cases) has resulted in a rapidly increasing backlog of debt litigation cases pending in the Department.

The total dollar value of these accounts referred to the Department of Justice by the VA since March 1, 1978, is $88.7 million. As of March 13, 1980, there were 58,952 remaining accounts pending in the Justice Department for collection action, representing a dollar value of $64.9 million; thus, of the 77,138 accounts referred, there had been disposals of only 18,186, with collections totalling only $8.6 million, or 10.3 percent of the total amount referred. Of the 77,138 cases referred, only 4,341 accounts have been paid in full. An additional 1,189 cases have been compromised, 89 waived, and collection action has been terminated on 652 accounts.

All parties concerned seem to agree that action is necessary to pursue more vigorous and prompt collection actions, and it is understandable that the Justice Department may not be able to assign sufficient priority (in view of other priority demands on its resources) to resolving these cases in order to bring about the much-needed substantial improvement in the collection of VA debts through litigation, or the threat of litigation. In addition, the GAO has recommended in a January 15, 1980, report, that Federal agencies be given the authority to collect debts through litigation.

To provide a further means of pursuing the collection of debts under $600, the VA, pursuant to a November 20, 1979, memorandum of understanding with the Department of Justice, is conducting at 10 locations a pilot project under which the VA is using its own attorneys to pursue collection actions in court against those whose debts are less than $600. To support this new effort, the Senate Committee on Appropriations Subcommittee on HUD-Independent Agencies recommended fiscal year 1980 appropriations of $472,000 for 30 additional VA employees. The Committee on Appropriations approved that recommendation and, in its report accompanying H.R. 4394, the HUD-Independent Agencies Appropriation Act for fiscal year 1980, directed the VA to proceed with the pilot projects (S. Rept. No. 96–258, pages 84–85). The appropriation act, as signed into law as Public Law 96–103 on November 5, 1979, included the recommended funding for the 30 employees needed for the pilot project.

Phase I of the test involved approximately 900 cases which had been retrieved from terminated status by GAO—generally, very difficult collection cases—and distributed to 6 stations. The results of Phase I of the pilot program seem very promising. Accordingly to the Veterans' Administration, of the approximately 900 cases investigated, 9 percent were closed or terminated for the following reasons: (1) the overpayment was recouped from other benefits; (2) the overpayment

was in error and appropriate records were corrected; (3) the veteran was deceased or outside the jurisdiction of the test station; or (4) the debt had grown to over $600. In cases where the debt is now over $600, action has been taken to refer the debt to the Department of Justice for collection.

Of the remaining cases, 335 (41 percent) were found to have inadequate inaccurate addresses. The General Accounting Office has been provided with a list of these cases and is attempting to provide current information. Other cases in which the VA was unable to continue to pursue collection included 47 accounts (6 percent) which were either disputed by the veteran or required further verification.

Of the 371 cases that the VA was able to pursue, 270 (73 percent) have been either permanently or temporarily disposed of either by obtaining payment in full, a promissory note, a firm repayment plan; or by initiation of litigation action. In addition, the VA has indicated that its experience with these cases suggests that the VA will obtain a high rate of voluntary resolution of debts merely by sending demand letters which indicate the VA's willingness and ability to sue to recover the debt and by taking immediate followup action.

Phase II of the pilot program involves actions on active cases in which the amount of the debt is less than $600. However, due to numerous changes in automated procedures, involving the VA's Centralized Accounts Receivables System (CARS), this program did not become fully operational until May 1980.

The potential for recovery of debts in Phase II seems substantial. In the first 3 weeks of the program, the VA has initiated collection action on 1,057 cases. In addition, the documentation necessary to initiate collection action has been requested in an additional 1,200 cases. The VA estimates that once the program has become fully operational, collection action could be initiated on as many as 3,000 cases each month.

The Committee is pleased that the results of Phase I of the pilot program, which involves accounts which had previously been terminated by the VA, have resulted in such a high percentage—73 percent—of dispositions of accounts which VA attorneys were able to pursue. Although the Commmittee was disappointed that the implementation of Phase II of the program was delayed until May 1980, the Committee is encouraged now that Phase II is fully operational, and it expects that it will contribute significantly to the overall debt-collection effort.

In light of the backlog of cases currently pending in the Department of Justice for collection action, the need to enhance the VA's ability to collect debts of less than $600, and the initial success of the pilot program under which the VA is using its own attorneys to pursue court action to collect such debts, the Committee believes that the VA should be given expanded authority to use its own attorneys to pursue collection actions in court. The Committee believes that such authority would result in more timely recovery action and intensified prelitigation collection efforts. In addition, the Committee believes that this authority would provide the VA with an effective means—on a nationwide basis—of collecting debts of less than $600, which, under current regulations, cannot be referred to the Department of Justice for collection action.

Thus, the Committee resolution would add a new section 3115 to title 38, United States Code, to require the Administrator to take appropriate steps to authorize VA attorneys to bring suit to recover debts owed to the VA by virtue of an individual's participation in a VA benefits program in cases where an individual has failed to respond appropriately to reasonable administrative efforts to collect the debt.

The Committee resolution further provides that the exercise of such authority shall be subject to the direction and supervision of the Attorney General and subject to such terms and conditions as the Attorney General may prescribe. In the Committee's view, the Attorney General's authority to prescribe the terms and conditions under which VA attorneys may bring suit would allow the Attorney General, for good cause relating to the need for consistent overall Federal litigation policy, to limit the categories of cases in which VA attorneys could initiate litigation.

The Committee fully expects that this provision would be carried out in good faith with a view toward greatly expanded VA efforts to collect debts through court actions brought by its own attorneys. Thus, in the Committee's view, the direction and supervision and terms and conditions of the Department of Justice reflected in the VA/Department memorandum of understanding governing the pilot program would generally be appropriate to the expanded VA litigation effort (copy printed in the Appendix to this report). In addition, the Committee urges the Administrator and the Attorney General to take all steps necessary to assure that the new program under this provision is implemented efficiently at both the Washington and local levels.

The Committee resolution also requires the Administrator and the Attorney General, within 120 days of the enactment of this provision, to submit to the appropriate Congressional Committees a joint report that describes and explains their actions with regard to the implementation of this new authority.

Finally, the Committee resolution provides that the authority of the VA to pursue collection litigation will not derogate from the Attorney General's authority to direct and supervise all litigation to which the United States, an agency, or an officer thereof is a party.

AUTHORITY TO DISCLOSE CERTAIN INFORMATION TO CONSUMER REPORTING AGENCIES

In addition, the Committee is recommending enactment of provisions to permit the VA to disclose names, addresses, and certain other information to consumer reporting agencies—credit bureaus—for purposes of facilitating VA debt-collection efforts. The recommended provisions are identical to those reported by the Committee, on January 23, 1980, and passed by the Senate in H.R. 5288 on January 24, 1980. The following materials in justification for those provisions are taken from the report (S. Rept. No. 96-555) accompanying S. 1518.

DISCLOSURES TO LOCATE DEBTORS OR OBTAIN CONSUMER REPORTS

At the Committee's August 2, 1979, hearing, the VA testified that one of the greatest obstacles to the effectiveness of VA debt-collection

efforts is its inability to locate the debtor. The VA indicated that it does not have current addresses on at least 180,000 of those it is attempting to collect debts from and that a high percentage of an additional 653,000 inactive accounts are lacking current addresses.

Although the VA is presently authorized to obtain current address information from Internal Revenue Service files very cheaply (approximately $0.10 per individual) under section 6103(m)(2) of the Internal Revenue Code, the VA's use of IRS-provided addresses is, under the IRS interpretation of that provision, very limited. The addresses may be disclosed only to VA employees engaged in debt-collection efforts and disclosures to non-Federal agencies are not permitted—even for debt-collection purposes. For example, the VA is unable to provide an IRS-provided address to a consumer reporting agency (CRA)—credit bureau—for the purposes of obtaining a consumer report to help evaluate the individual's ability to repay the debt or of giving notice of the debt to CRA's in order to affect the individual's credit rating.

In addition, under existing regulations, 4 CFR 105.3, the VA must, in referring a debt to the Department of Justice for collection action, provide evidence of the debtor's ability to repay. At present, the VA uses a contractor to obtain asset and income information by interviewing the debtor or the debtor's family or neighbors. In accordance with the VA's interpretation of current law, the contractor may not redisclose the VA-provided address information in order to obtain information for such reports. These reports cost an average of about $5.75, which is payable even where no useful information is obtained; according to the GAO, in fiscal year 1978 the debtor was not located and no useful information was developed in 42 percent of the cases.

According to the VA, legislation authorizing it to disclose names and addresses to CRA's would enable the VA to obtain the needed information more readily and economically—at a cost of less than $2.50 per case.

AUTHORIZATION TO DISCLOSE NAMES AND ADDRESSES

In order to allow the VA to disclose names and addresses for these purposes without the limitations attached to the use of IRS-provided addresses, the Committee bill would authorize the VA to disclose to CRA's the names and addresses of persons administratively determined to be indebted to the United States by virtue of participation in a VA benefits program for the purpose of obtaining from CRA's current address information or a consumer report which the VA would then use to pursue debt-collection efforts.

For the purposes of the provisions of the Committee bill, the definition of CRA's would include certain entities—known as "service bureaus" or "marketing agents"—which serve as intermediaries between large numbers of smaller CRA's and those who wish to purchase services, such as locator services or consumer reports, from such CRA's or to report delinquent-debt information to them. The use of such intermediaries by the VA would be much more efficient and cost-effective than the establishment of unassisted, direct contacts with the many hundreds of small credit bureaus that it otherwise would be necessary for the VA to deal with in order to obtain complete ac-

cess to data on all the individuals concerned. Thus, this authorization—and all other authorizations in the Committee bill—to disclose information to CRA's would include authority to make disclosures to such intermediaries.

AUTHORIZATION TO DISCLOSE IDENTIFYING INFORMATION OTHER THAN NAME AND ADDRESS

In many cases, the individual's name and former address will not be sufficient information to enable a CRA to identify the individual or distinguish him or her from others with the same name or similar names. Thus, other identifying information, such as date of birth and social security number, would generally be necessary, and the Committee bill would authorize the release of other identifying information that the Administrator determines is reasonably necessary, but not including any information that would indicate directly or implicitly that the individual is indebted to the VA or would otherwise reflect adversely on the individual.

SAFEGUARDS

In addition, since the legislation does not authorize that a disclosure to obtain current address information or a consumer report may be used for the purposes of giving notice of an indebtedness or otherwise affecting the individual's credit rating, the Committee bill would also require the Administrator to determine, to the maximum extent practicable that the CRA's to which the VA releases the information will not record or report such information in such a way as to suggest that the GA inquiry indicates the existence of an indebtedness or otherwise reflects adversely on the individual's credit rating. The Committee bill would also prohibit the CRA's to which the VA releases such information from indicating in their files and reports that the VA inquiry indicates an indebtedness or is otherwise adverse. A willful violation by a CRA or CRA employee of this prohibition would be punishable in the same manner as willful violation of the prohibition in existing subsection (f) of section 3301 of title 38 against the unauthorized disclosure by non-VA intities of names and addresses released to them by the VA under that subsection—a fine of up to $5,000 for the first offense and up to $20,000 for a subsequent offense.

In this respect, it is the Committee's intention that the VA will make such disclosures to CRA's that have the capability and practice of recording and reporting such inquiries as nonadverse or nonevaluated information. In the Committee's view, the VA could easily determine a CRA's capability and practice in this regard by an examination of sample consumer reports and the CRA's employees' manual or similar document, or by a demonstration conducted on the CRA's data processing equipment.

The Committee stresses that it understands that this safeguard provision—designed to assure that the VA selects CRA's with appropriate standards for the protection of the individuals concerned—does not make the provisions of the Committee bill impractical.

The Committee bill also provides that if, after disclosure, the individual demonstrates to the VA that he or she never received notice from the VA regarding the indebtedness or the right and opportunity to dispute the debt or seek a waiver, information in the possession of a CRA provided by the VA indicating that the indebtedness is delinquent would be deemed inaccurate for purposes of section 611 of the Fair Credit Reporting Act, which provides for the individual to dispute inaccurate information and requires the CRA to reinvestigate disputed information. In addition, the VA would be required immediately to advise the individual and the CRA's involved of the fact that the information is to be deemed inaccurate and to advise the individual of his or her remedies.

DISCLOSURES TO AFFECT CREDIT RATINGS

Both the VA and the GAO testified strongly in favor of legislation to strengthen the VA's debt-collection efforts by authorizing it to disclose to CRA's, for the purpose of affecting credit ratings, the names and addresses of those who fail to respond appropriately to reasonable administrative efforts to collect debts owed to the VA. In the view of both agencies, VA debt-collection efforts are often hamstrung by the debtor's knowledge that his or her refusal to pay a VA debt will not result in the delinquency becoming part of his or her credit history as would a failure or refusal to pay a commercial debt. In addition, both agencies testified in August that in cases of debts amounting to less than $600, there is evidence that the debtors concerned have been aware that, under VA and Department of Justice policies and practices, litigation to collect debts has been undertaken only if the debt exceeds $600. (The VA's pilot program to pursue litigation with respect to debts under $600 should ameliorate this situation.) Moreover, there is a substantial backlog of debt-collection litigation to be pursued, and court action is taken only against individuals whose whereabouts are known and who are known to have sufficient financial resources available. Thus, it appears that there currently exists little incentive for a substantial number of persons to pay their overdue debts to the VA.

AUTHORIZATION TO DISCLOSE DEBT INFORMATION

Therefore, in order to provide the VA with generally the same recourse that private creditors have available to encourage timely repayment of debts by affecting debtors' credit ratings, the Committee bill would authorize the VA, when the individual has failed to respond appropriately to reasonable administrative collection efforts, to disclose to CRA's information identifying the individual and pertaining to the indebtedness. Under the Committee bill, the information so disclosed by the VA to CRA's could be redisclosed to other CRA's and to prospective creditors of the individual.

It is the Committee's belief that persons with delinquent indebtedness to the VA will be encouraged by the prospect of disclosure to CRA's and the consequent impact upon their credit ratings to cooperate with the VA in making or arranging to make repayment. In this connection, it is the Committee's understanding from the VA's

testimony and the Committee's intent that debt information will not be disclosed to CRA's when the individual has indicated a good faith willingness to repay or entered into a repayment agreement or while the individual is attempting to make repayment including efforts to comply with a repayment agreement.

In addition, in cases in which disclosure of debt information is authorized, the Committee bill would authorize the VA both to disclose such information and to request address information in order to enable the VA to use a service—known as a "skip-locator" or "skip-trace" service—which CRA's provide for the purpose of assisting a creditor in locating a debtor whose current address cannot be ascertained. This service consists of the CRA including in its file and reports on a particular individual a notation indicating that a creditor of that individual is unable to locate him or her and wishes to obtain current address information. Subsequently, when a new address of the individual comes to the attention of the CRA—in connection with a request for a consumer report or otherwise—it is automatically matched (usually electronically) with the "skip-locator" notation, and the new information is provided to the creditor. Thus, if the VA were unable to obtain a current address of an individual as to whom disclosure of delinquent-debt information is authorized, it could on a continuing basis, attempt to obtain new address information through such a service.

SAFEGUARDS

In order to protect innocent persons from the disclosure of information erroneously indicating the existence of delinquent indebtedness and to assure that all persons are dealt with fairly, the Committee bill provides several safeguards in connection with the disclosure of debt information.

First, the Committee bill would require that, before information pertaining to a debt delinquency may be disclosed, the individual must be provided notice of the VA's intention to make the disclosure and of his or her right to dispute the existence or amount of the debt or seek to have it waived, and be given an opportunity to exercise those rights, and the VA must make a determination with respect to any such challenge or request.

Also, at least 60 days before disclosure, the individual must be given notice of the specific information to be disclosed and the consumer reporting agency or agencies to which it will be disclosed.

This advance notice would provide the individual with the opportunity to seek correction of any misinformation. It would also provide the individual with the opportunity to challenge the disclosure of extraneous or unnecessary information that would constitute an undue invasion of the individual's privacy or adversely affect such person's reputation in ways unrelated to his or her failure to repay the indebtedness.

In addition, notice to the inividual of the identities of the CRA's to which disclosure would be made by the VA would provide information that may prove useful if the individual wished to exercise his or her right, under section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), to have included in his or her file with the CRA infor-

mation disputing the VA's position or explaining his or her position in the matter. In this connection, the Committee intends that the VA include in such notices information advising the individual of his or her rights under that section.

The Committee bill would also require the VA to notify promptly each CRA to which it has disclosed debt information of any change in the status or amount of the debt to the agency and would require the VA to provide promptly, upon the request of a CRA for verification, verification or correction of any information released by the VA. At the August 2 hearing, the Associated Credit Bureau, Inc., testified that prompt VA notification of information regarding any change in the status of a debt and prompt VA verification of any debt information would be essential in terms of fairness to the debtor and the cooperation of CRA's in accepting debt information from the VA.

DISCLOSURES TO LOCATE VETERANS FOR STUDY PURPOSES

The VA, in its testimony at the August 2 hearing, commented on its present lack of authority to disclose names and addresses from its files in order to obtain current address information from CRA's to locate veterans in order to carry out program evaluation studies authorized by section 219 of title 38 or studies required by other Federal law. The section 219 studies generally involve contacting veterans to determine what VA benefits they have utilized, why they have not utilized some or any benefits, and whether VA programs are accomplishing their intended goals. These studies are generally carried out by agency contactors.

Prior to the Tax Reform Act of 1976 (Public Law 94–455), the VA had been using IRS taxpayer address information to locate veterans in connection with these studies. However, section 6103(m)(2) of the Internal Revenue Code (26 U.S.C. 6103(m)(2)) currently limits IRS disclosures of addresses to the VA to those VA employees engaged in debt-collection efforts and prohibits redisclosures to others or use of the information for non-debt-collection purposes. As a consequence the VA now has a backlog of studies which it testified it cannot complete without being able to locate large numbers of veterans for whom it does not have current addresses.

Thus, the Committee bill would authorize the VA to disclose information to a CRA when necessary to locate an individual in order to conduct one of these studies and the disclosures would be authorized subject to the same safeguards, described above, proposed for disclosures for the purposes of obtaining current address information or a consumer report on those indebted to the VA. In addition, to help assure that CRA's are not contacted about veterans for this purpose without sufficient justification and to protect against the possibility of a VA inquiry resulting in any harm to the credit ratings of veterans who are not indebted to the VA, the Committee bill would require that, before information is dosclosed, the Administrator must determine, first that the individual's inclusion in the study—in light of other alternatives reasonably available to develop information necessary for the study and the comparative costs of the alternatives and the possible consequences for the individual resulting from disclosure—warrants

the disclosure, and second, that neither the release of the information nor the fact of the inquiry would create any substantial possibility that the individual's credit rating would be adversely affected. With respect to the requirement that alternatives be weighed, it is the Committee's intention to assure that individual privacy concerns and feasible alternatives not involving disclosure are given appropriate consideration; it is not the Committee's intention generally to impose an onerous requirement of formal detailed cost-benefit analyses.

PRIVACY ACT EXEMPTION

The Administration-requested bill, S. 1518, included a provision stating that information disclosed under that legislation would not be subject to the Privacy Act. At the August 2 hearing, the Department of Justice was asked to provide, after consulting with the VA and GAO, an opinion as to whether information disclosed by the VA to CRA's under this measure would, in the absence of an express legislative exemption, be subject to the Privacy Act when that information is in the hands of the CRA's. The Justice Department opinion, set forth in an October 10, 1979, letter to the Chairman (included as Appendix A to this report), is that, under 5 U.S.C. 552a(m), if the VA were to disclose information to a CRA under a contractual arrangement and the VA information represents an addition to the agency's files or must be maintained by the agency to perform a contract task through other CRA's, the information would, in the hands of the CRA, be considered a "system of records" maintained for the VA (within the meaning of section 552a(m)) and hence be subject to the Privacy Act.

The General Counsel of GAO, however, in a September 27, 1979, letter to the Department of Justice (included as Appendix B to this report), concluded that VA disclosure of information to a CRA, under the type of contractual arrangement anticipated in carrying out the provisions of the Committee bill, would not result in the applicability of the Privacy Act because such a contract would not require the CRA to operate a "system of records on behalf of VA as required for subsection (m) of the Privacy Act to be applicable."

It is the Committee's understanding that CRA's would not do business with the VA without a contract which, in the view of the Justice Department, would trigger Privacy Act applicability. In addition, it is clear from the testimony at the August 2 hearing and subsequent discussions that, if the VA-provided information in the hands of CRA's were considered subject to the Privacy Act, the CRA's would be unwilling to enter into any arrangements with the VA under this legislation because to do so would subject them to Privacy Act requirements and penalties in addition to those under the Fair Credit Reporting Act and thus make doing business with the VA insufficiently financially attractive for the CRA's in this regard.

Thus, in order to assure the VA's ability to be able to make appropriate use of the authorities previously discussed to disclose information to CRA's for debt collection and study purposes, the Committee bill would provide a Privacy Act exemption with respect to the CRA's handling of information disclosed by the VA under the Committee bill provisions. This exemption is included to assure that the overall legis-

lative scheme in the Committee bill is workable and does not indicate the Committee's view that the Privacy Act would necessarily be applicable.

STRUCTURE OF AMENDMENT TO SECTION 3301

As proposed by the Administration, S. 1518 would have amended subsection (f) of present section 3301 of title 38, to add the release to CRA's of the names and addresses of persons indebted to the VA to the categories of cases in which the release of names and addresses from VA files is authorized. The Committee bill, however, provides in a proposed new subsection (g) for the release of names and addresses and certain other information to CRA's for generally the same purposes as the Administration-requested legislation as well as for the purpose of locating veterans for certain evaluative study purposes. To understand why the Committee has chosen this structural approach and the implication of it requires some discussion of section 3301.

Present section 3301 generally provides for the confidentiality of VA claims information and of the names and addresses in the VA's possession of present and former members of the Armed Forces and their dependents, and specifies various circumstances under which release is authorized. Thus, subsection (a) provides that "[a]ll files, records, reports, and other documents pertaining to any claim" and such names and addresses "shall be confidential and privileged and no disclosure thereof shall be made except as provided in this section." Subsequent subsections create certain exceptions to the general rule of confidentialy with regard to specific types of information and in specific circumstances.

Subsection (e) provides that "[e]xcept as otherwise specifically provided in this section with respect to certain information, the Administrator may release information when the release would serve a useful purpose." Subsection (e) does not, however, authorize the release of names and addresses because subsection (f) specifically provides for VA release, pursuant to regulations of the Administrator, of "the names and addresses of present and former members of the Armed Forces, and/or their dependents" in two situations; First, "to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title," or, second, "to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law."

In addition, present subsection (g) provides that any disclosure under section 3301 must be in accordance with the provisions of the Privacy Act.

Subsections (e) and (f) have been interpreted by the VA as allowing the combined release of an individual's name and address and other information about the individual when the criteria for release in both subsections and the Privacy Act are satisfied, that is, when the release of the name and address meets the requirements of clause (1) or (2) of subsection (f), the release of other information is determined under subsection (e) to serve a "useful purpose," and the Pri-

vacy Act does not bar the release. Thus. in the case *Fitch v. Veterans' Administration*, 597 F.2d 1152 (8th Cir. 1979), the VA released to the Health Division of the State of Oregon the name and address of a veteran together with information pertaining to a convulsive disorder and the individual's sex and date of birth for the purpose of that agency's use to determine the individual's qualifications for operating a motor vehicle. The U.S. Court of Appeals for the Eighth Circuit upheld the VA's action as authorized under the combination of subsection (e) and (f).

Based on this interpretation, the Administration proposed in S. 1518 as introduced to amend subsection (f) to provide for the release of names and addresses to CRA's for the purposes of locating debtors, obtaining consumer reports to assess the debtor's ability to repay the debt, and giving notice of the debt. The intention underlying the Administration draft, the Committee is advised, was to release under subsection (e) other information further identifying the individual, such as date of birth and social security number, and indicating the amount and status of the indebtedness.

The Committee, however, has chosen to provide in one new subsection—proposed new subsection (g) of section 3301, with new present subsection (g) proposed to be redesignated as subsection (h)—comprehensive and unified authorization for the release of information to CRA's for the same general purposes proposed by the Administration and for the purpose of locating veterans in connection with the conduct of evaluative studies. The reasons for the Committee's approach are that the provisions regarding such releases are more understandable when consolidated in one subsection, especially the conditions that the Committee proposes to place on the release to CRA's of information other than names and addresses that would otherwise have to be expressed as further, limited exceptions to subsection (e).

The Committee, however, wishes to emphasize that, in not accepting the Administration's proposed format in S. 1518, the Committee does not intend to imply any disagreement with the VA's interpretation of the combination of subsections (e) and (f) with respect to the disclosure of names and addresses together with other information as approved in the *Fitch* case.

PRELITIGATION DISCLOSURES

As introduced, S. 1518 would also have provided for the disclosure of names and addresses "for use in connection with civil proceedings for collection of" the type of indebtedness covered by this provision. However, the VA already has authority under section 3301(b)(5) to disclose any information in its files "[i]n any suit or other judicial proceeding when in the judgment of the Administrator such disclosure is deemed necessary and proper"; and the VA has agreed that, if section 3301(b)(5) were amended—as the Committee bill proposes to amend it—to make clear that disclosures thereunder could be made "in or in preparation for" litigation, the VA would have adequate and appropriate express authority to make disclosures necessary in connection with collections of any claims prior to the filing of a suit.

SAVINGS ESTIMATES

CBO estimates that changes recommended in section 5 of the Committee resolution would achieve reductions in fiscal year 1981 requirements of $139 million in budget authority and outlays. This estimate is based on the amounts of terminated overpayments—$394 million—owed to the VA as of the end of fiscal year 1979 and on the amount of current overpayments—$505 million, as of the end of January 1980.

COST ESTIMATE

On June 25, 1980, the Congressional Budget Office provided the Committee with a cost estimate of the Committee resolution. On the basis of this estimate, the Committee has determined that its recommendations would achieve total reductions in fiscal year 1981 requirements ($448 million in outlays) in excess of the required amount of $400 million in outlays, the effect of which is to reduce budget authority by $445 million. The Committee notes that these amounts exceed those required by the reconciliation instructions under section 3(a)(20) of the Budget Resolution because the budget authority savings reflected in the Committee recommendations are necessary for the Committee to remain within the spending limits imposed upon the Committee under the Resolution. The estimate is as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill title: Resolution of the Committee on Veterans Affairs.
2. Bill status: As transmitted by the Senate Committee on Veterans affairs to the Senate Committee on the Budget, June 25, 1980.
3. Bill purpose: To bring the expenditures authorized by the Senate Committee on Veterans Affairs within the target for that Committee established by the First Concurrent Resolution on the Budget for fiscal year 1981.
4. Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−28.1	94.7	83.7	40.4	33.0
Outlays	−55.1	101.3	89.4	47.1	33.0

The savings resulting from this bill fall within budget function 700.
5. Basis of estimate: CBO's basis of estimate for each provision is found in the attached section-by-section cost analysis.
6. Estimate comparison: None.
7. Previous CBO estimate: Where applicable, previous CBO estimates are discussed by section under "Basis of Estimate."
8. Estimate prepared by: Al Peden (225–7766).
9. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Provision: Ten Percent Rate Increase.

Effective January 1, 1981 (includes Chapters 34 and 35 respectively, the GI Bill and the Survivors and Dependents Educational Assistance Program).

Cost estimate (with respect to current law):

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	151.4	296.9	243.7	168.3	129.3
Outlays	124.4	303.5	249.4	175.0	129.3

Basis of estimate: This provision would raise benefit levels by 10 percent for Chapters 34 and 35 (respectively, the GI Bill and the Survivors and Dependents Educational Assistance Program). It is expected that this will raise expenditures in two ways. First, it will cause the average cost per trainee to go up by about 10 percent. Second, it will cause additional persons to train who would not have trained otherwise. The following table shows the estimated number of veterans training under the GI Bill with and without the 10 percent increase.

ESTIMATED NUMBER OF VETERANS WHO WILL TRAIN UNDER THE GI BILL

[By fiscal years, in thousands]

	1981	1982	1983	1984	1985
Without the 10-percent increase	668	442	291	200	141
With the 10-percent increase	700	516	350	238	167

Similar relative differences occur for the smaller Survivors' and Dependents' Educational Assistance.

Although this provision would represent an addition to expenditures under current law, its cost is less than the cost of the 15 percent rate increase passed as part of S. 870. CBO has estimated the latter (effective September 1, 1980) would add $413.1 million to budget authority and $391.9 million to outlays in fiscal year 1981. Fiscal year 1981 savings relative to this former provision would thus be $261.7 million in budget authority and $267.5 million in outlays.

Previous CBO estimate: Similar to a provision in S. 1188, which had an enactment date of October 1, 1980.

Provision: Modify Flight and Correspondence Training Provisions.

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−35.4	−24	−20	−15	−12
Outlays	−35.4	−24	−20	−15	−12

This provision would reduce the reimbursement rate paid to flight trainees and restrict eligibility for correspondence training.

For flight training the reimbursement rate would drop from 90 percent to 60 percent of the cost of completed training. Veterans pursuing flight training, however, would be eligible for VA education loans up to $2,500 per year to help make up the difference between total tuition and the amount reimbursed. These loans would be forgiven at the rate of $250 for each three month period the veteran spends in a flight-related occupation which is his/her primary vocational pursuit and major source of occupational income. Because flight training is often used for purposes other than a primary vocational pursuit, these loans

are not expected to have a large positive impact. CBO assumes that the lower reimbursement rate would attract fewer trainees. In addition, average payments to flight trainees would decrease. CBO estimates that in fiscal year 1981 there would be 9,000 fewer trainees (out of 14,000) as a result of this provision, and the average payment for flight would drop by one third. Total savings are estimated to be $32.0 million in 1981.

Under this provision correspondence training could be approved only if the VA determines no other type of training is available. This provision is expected to significantly curtail entrances into correspondence training. CBO estimates that in fiscal year 1981 this would result in 10,500 fewer trainees (out of over 20,000) and save $3.4 million in 1981.

EFFECT ON EXPENDITURES

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Flight	−32.0	−20	−17	−13	−10
Correspondence	−3.4	−4	−3	−2	−2
Total	−35.4	−24	−20	−15	−12

Previous CBO estimate: CBO estimated a similar provision from S. 870. This former estimate assumed an earlier enactment date.

Provision: Repeal PREP Authority.

Cost estimated:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−1	−2.7	−2	−1.4	−1.3
Outlays	−1	−2.7	−2	−1.4	−1.3

Basis of estimate: This proposal would eliminate the Predischarge Education Program (PREP) provided under Chapter 32. CBO estimates that this would result in 2,500 fewer trainees and save $1.0 million in fiscal year 1981.

Previous CBO estimate: CBO has most recently estimated this proposal as part of H.R. 7394, as reported by the House Veterans Affairs Committee.

Provision: Modify Vocational Objective Course Criteria.

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−4.1	−3.5	−3	−2.5	−2
Outlays	−4.1	−3.5	−3	−2.5	−2

Basis of estimate: Currently, all courses with vocational objectives are required to have 50 percent of their graduates placed in training-related jobs. This provision would strengthen that requirement in two ways: (1) A training-related job is redefined to include only the primary vocational pursuit and major source of occupational income for the veteran, thus eliminating counting spare-time or part-time employ-

ment; (2) Fifty percent of those who enroll in a course must complete it.[1]

CBO estimates that in fiscal year 1981, 57,000 people in vocational technical schools could be affected by this provision along with 5,000 flight trainees and 9,500 correspondence trainees.[2]

CBO estimates that these changes will reduce the number of eligible vocational courses and students by 9 percent. CBO has assumed, however, that two thirds of the displaced students will sign up for alternative training courses. The provision is estimated to save $4.1 million in 1981.

Previous CBO estimate: Similar provision estimated by CBO as part of S. 870, September 5, 1979.

Provision: Debt Collection Provisions.

Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Budget authority	−139	−172	−135	−109	−81
Outlays	−139	−172	−135	−109	−81

Basis of estimate: There are four basic provisions which apply to VA debt collection procedures:

(1) To allow VA to disclose names and addresses of veterans and other information to consumer reporting agencies for debt collection purposes,

(2) To authorize VA to charge interest on debts owed the federal government plus addditional charges to cover the cost of the debt collection procedures,

(3) To eliminate the current six year statute of limitations on debts owed the United States for programs administered by the Veterans Administration,

(4) To allow the Veterans Administration, under supervision by the Justice Department, the authority to sue to collect debts.

As of the end of fiscal year 1979, the Veterans Administration was owed an estimated $394 million in terminated overpayments. In addition, as of the end of January 1980, it had another $505 million in current overpayments outstanding. CBO expects that greater proportions of both categories will be collected should these provisions become law. In fiscal year 1981, these four provisions are assumed to result in a savings of $120 million to the federal government as a result of increased collections.

[By fiscal years, in millions of dollars]

	Cost
1981	−120.0
1982	−155.0
1983	−119.0
1984	−95.0
1985	−71.0

The Veterans Administration has indicated that they will incur costs for administering the disclosure of names to consumer reporting agencies and for hiring legal staff to prosecute cases. The following are CBO estimates of these costs after conferring with the VA.

[1] These are general requirements to which there are exceptions.

[2] This is after accounting for the effects of the provision to modify flight and correspondence training.

[By fiscal years, in millions of dollars]

	Cost
1981	16.0
1982	13.0
1983	8.0
1984	4.0
1985	3.0

Finally, additional savings should result as veterans either avoid overpayments or pay them back more quickly. According to the Veterans Administration, during fiscal year 1979 there were $503 million in overpayments and through April 1980 there were $261 million in fiscal year 1980 overpayments. While there is no hard evidence available, CBO assumes a $35 million savings as a result of the deterrent factor in fiscal year 1981.

[By fiscal years, in millions of dollars]

	Cost
1981	−35.0
1982	−30.0
1983	−24.0
1984	−18.0
1985	−13.0

Section-by-Section Analysis of Committee Resolution

SECTION 1—RECOMMENDATIONS CONCERNING COST-OF-LIVING ADJUSTMENT IN GI BILL BENEFIT PROGRAMS

Section 1: Would direct the Clerk of the House of Representatives to make changes in the Senate amendment to H.R. 5288 that would substitute, for sections 101 through 104 of such amendment, new sections 101 through 104 and substitute a new effective date for such sections.

The amendments made by this section would provide for a 10-percent increase, effective January 1, 1971, in the rates of educational assistance benefits under chapters 34, 35,, and 36 of title 38, in lieu of the 15-percent increase, effective September 30, 1980, passed by the Senate in title I of H.R. 5288 on January 24 1980, and would achieve fiscal year 1981 savings of $262 million in budget authority and $268 million in outlays.

Changed section 101 of H.R. 5288 would amend chapter 34 of title 38, United States Code, relating to veterans' educational assistance, to increase by 10 percent the rates of educational assistance.

Clause (1) of changed section 101 would amend subsection (b) of present section 1677, relating to the computation of charges to a veteran's educational assistance entitlement for the receipt of an educational assistance allowance for the pursuit of flight training, to increase by 10 percent, rather than 15 percent, the educational assistance allowance amount based on which one-month's entitlement to educational assistance is charged.

Clause (2) of changed section 101 would amend present section 1682, relating to the computation of educational assistance allowances, to increase the rates of such allowances by 10 percent, rather than 15 percent. (Under present section 1732, the rates in section 1682 for institutional, farm cooperative, and independent study training for a veteran without dependents apply to survivors' and dependents' educational assistance under chapter 35. Thus, the rate increase provided

for in this clause would apply to assistance for such training under chapter 35.)

Clause (3) of changed section 101 would amend present section 1692(b), relating to individualized tutorial assistance, to increase by 10 percent, rather than 15 percent, the maximum monthly amount and total maximum amount payable to an eligible veteran for tutorial assistance.

Changed section 102 of H.R. 5288: Would amend chapter 35, relating to survivors' and dependents' educational assistance, to increase by 10 percent, rather than 15 percent, certain rates of educational assistance.

Clause (1) of changed section 102 would amend present section 1732(b), relating to the computation of the educational assistance allowances paid for pursuit of certain full-time programs of education consisting of institutional courses and alternate phases of training in a business or industrial establishment, to increase the rates by 10 percent, rather than 15 percent.

Clause (2) of changed section 102 would amend present section 1742(a), relating to the training allowance for special restorative training, to increase by 10 percent, rather than 15 percent, the rates of allowances payable and entitlement charged for pursuit of a course of such training.

Changed section 103 of H.R. 5288: Would amend chapter 36, relating to administration of educational benefits, to increase by 10 percent, rather than 15 percent, the references to the rates of certain educational assistance allowances.

Clause (1) of changed section 103 would amend present section 1786(a)(2), relating to the computation of charges to educational assistance entitlement for the receipt of an educational assistance allowance for the pursuit of training by correspondence, to increase by 10 percent, rather than 15 percent, the educational assistance allowance amount based on which one-month's entitlement to educational assistance is charged.

Clause (2) of changed section 103 would amend present section 1787(b), relating to the computation of training assistance allowances payable to veterans and other eligible persons for apprenticeship or other on-job training, to increase by 10 percent, rather than 15 percent, the rates of training assistance allowances for pursuit of such training.

Clause (3) of changed section 103 would amend present section 1798(b)(3), relating to the maximum aggregate amount of VA educational loans that may be made to any veteran or other person, to increase by 10 percent, rather than 15 percent, the maximum aggregate amount within the existing overall limit of $2,500.

Section 1 would also direct the Clerk of the House to change section 1103(d) of the Senate amendment to H.R. 5288, relating to the effective date of the proposed cost-of-living increase, to defer the effective date of the chapter 34, 35, and 36 rates by deleting the effective date—September 1, 1980—provided therein and to provide for an effective date of January 1, 1981—and to delete entirely the chapter 31 rate increase provisions which would be made—a 10 percent increase—by S. 1188 as reported.

SECTION 2—RECOMMENDATIONS CONCERNING MODIFICATIONS OF FLIGHT AND CORRESPONDENCE TRAINING PROVISIONS

Section 2: Would amend provisions of chapters 34 and 36, of title 38, that pertain to the authority to pursue a course of flight or correspondence training and would achieve fiscal year 1981 savings of $35.4 million in budget authority and outlays.

Subsection (a) of section 2 would amend subsection (b) of present section 1677, relating to the computation of the amount of educational assistance allowance payable to a veteran pursuing a program of education consisting exclusively of flight training, to reduce from 90 percent to 60 percent the percentage of the cost of such course paid by the VA.

Clause (1) of subsection (b) of section 2 would amend present section 1798(c), relating to educational loans, to delete the exclusion of a veteran pursuing a program of education consisting exclusively of flight training from eligibility for VA education loans, which are available in amounts of up to $2,500 per academic year.

Clause (2) of subsection (b) of section 2 would further amend present section 1798 to add a new subsection (h), as follows:

New subsection (h): Would provide for the cancellation of $1,000 of the amount of a veteran's repayment obligation with respect to any loan (including interest thereon) approved for a program of education consisting exclusively of flight training (as authorized under the amendment proposed to be made by clause (1) of this subsection) if the veteran completes such training and obtains employment of one year's duration within 5 years after completion. Such employment would be required to constitute the veteran's primary vocational pursuit and major source of occupational income. Each additional 3-month period of such employment within the same 5-year period would entitle the veteran to cancellation of an additional $250 of his or her repayment obligation. If the veteran has already repaid all or part of the repayment obligation and the remaining unpaid balance is less than the amount of the cancellation to which the veteran is entitled, the VA would—to the extent by which the cancellation to which the veteran is entitled exceeds the unpaid balance—reimburse the veteran for the amount that the veteran has repaid.

Subsection (c) of section 2 would amend present section 1786(a), relating to correspondence training, to add a new paragraph (3), as follows:

New paragraph (3): Would provide that the enrollment of an eligible veteran or eligible spouse in a correspondence course would not be approved unless the Administrator makes a determination that no other type of education is reasonably and feasibly available to such veteran or spouse for successful pursuit of the educational or vocational objective sought. (Under the current provisions of chapter 35, dependent children are prohibited from enrollment in this type of training.) This provision is designed to eliminate the use of VA educational assistance for correspondence courses where other programs of education are available while assuring that those who, for any of a variety of valid reasons—including, for example, geographical remoteness, active-duty status, parental responsibilities, and handicap—

could not, as a practical matter, otherwise use their GI Bill benefits unless correspondence training continued to be available to them for such training.

Paragraph (1) of subsection (d) of section 2 would provide for an effective date of October 1, 1980, for the provisions of section 2, except as provided in paragraph (2) of this subsection.

Paragraph (2) of subsection (d) of section 2 would provide that the modifications of flight and correspondence training provisions shall not apply to any individual enrolled on August 1, 1980, in such training who continues to meet the eligibility requirements for such training as in effect on such date.

SECTION 3—RECOMMENDATIONS CONCERNING REPEAL OF PREP AUTHORITY

Section 3: Would amend chapter 32 of title 38, relating to Post-Vietnam Era Veterans' Educational Assistance, to repeal the authority for pre-discharge education program (PREP) training, and would achieve fiscal year 1981 savings of $1 million in budget authority and outlays.

Clause (1) of subsection (a) of section 3 would amend present section 1641 to delete the references to the Predischarge Education Program (PREP) authority, which is proposed to be repealed by this section and to add a conforming reference to present section 1691(a)(1) to reflect the amendment proposed to be made by this section.

Clause (2) of subsection (a) of section 3 would amend present section 1631(b), relating to eligibility for members of the Armed Forces participating in the Post-Vietnam Era Veterans' Educational Assistance program to enroll in PREP, to repeal such eligibility and, in lieu thereof, to make such participants eligible for enrollment in courses in pursuit of a secondary school diploma (or equivalency certificate) during the last 6 months of the participants' first enlistments, or at any time thereafter, at no charge to the participants' entitlements, as provided in section 1691(a)(1), as proposed to be modified by this section. This provision is designed to assure that the needs of persons participating in the Post-Vietnam Era Veterans' Educational Assistance program for secondary educational assistance continue to be met after the PREP authority is repealed by this section.

Subsection (b) of section 3 would amend the provisions of chapter 34 that pertain to the PREP authority to repeal that authority and make other amendments in light of or to conform with such repeal.

Clause (1) of subsection (b) of section 3 would amend present section 1661(c), relating to time limitations for completing a program of education, to delete a reference to the PREP authority proposed to be repealed by clause (3) of this section.

Clause (2) of subsection (b) of section 3 would amend present section 1691(a), relating to elementary and secondary education and preparatory educational assistance, to delete the prohibition against members of the Armed Forces who are eligible for chapter 34 GI Bill benefits (by virtue of having entered active duty prior to January 1, 1977) pursuing programs of secondary educational assistance at no charge to their entitlements while on active duty. This prohibition is, evidently, a remnant related to the authority that, prior to the

enactment of the Veterans' Education and Employment Assistance Act of 1976 (Public Law 94–502), made such members eligible for PREP while on active duty.

Clause (3) of subsection (b) of section 3 would repeal (effective October 1, 1980) present subchapter VI of chapter 34, relating to the PREP authority, in its entirety and would thus terminate that program.

Clause (4) of subsection (b) of section 3 would amend the present table of sections at the beginning of chapter 34 to reflect the repeal of subchapter VI proposed to be made by clause (3) of this section.

Subsection (c) of section 3 would make a series of conforming amendments to present chapter 36, relating to administration of educational benefits, to reflect the repeal of the PREP authority as proposed by this section.

Subsection (d) of section 3 would provide for an effective date of October 1, 1980, for the amendments made by this section.

SECTION 4—RECOMMENDATIONS CONCERNING MODIFICATIONS OF VOCATIONAL-OBJECTIVE COURSE CRITERIA

Section 4: Would amend present section 1673 of title 38, relating to the disapproval of enrollment in certain courses, and would achieve fiscal year 1981 savings of $4.1 million in budget authority and outlays.

Clause (1) of subsection (a) of section 4 would amend present section 1673(a), relating to the prohibition on enrollment in certain courses, as follows:

Subclauses (A) and (B) of clause (1) of subsection (a) of section 4 would amend subsection (a) of present section 1673 by redesignating that subsection as paragraph (1) and by redesignating clauses (1), (2), (3), and (4) of paragraph (1) (as so redesignated), as clauses (A), (B), (C), and (D), respectively.

Subclause (C) of clause (1) of subsection (a) of section 4 would amend clause (B) of paragraph (1) of present subsection (a) of present section 1673 (as so redesignated), relating to certain requirements for the approval of a course with a vocational objective, to add a new requirement that at least one-half of the persons enrolled in the course during the preceding 2 years have completed it; and, with respect to the current requirement that at least one-half of those who completed the course, and are not unavailable for employment, obtain employment in the occupational category for which they trained—the so-called "50-percent employment rule"—to add a requirement that, for an individual to be counted as being employed in that occupational category, such employment be the individual's primary vocational pursuit and major source of occupational income.

Subclause (D) of clause (1) would further amend subsection (a) of present section 1673 by adding a new paragraph (2), as follows:

New paragraph (2): Would establish certain new rules regarding the requirements for approval of a course with a vocational objective.

Subparagraph (A) of new paragraph (2): Would provide that, for purposes of determining compliance with the new 50-percent completion and revised 50-percent employment requirements under clause (B) of paragraph (1) of present subsection (a) (as proposed to be re-

designated and amended by subclauses (B) and (C) of clause (1) of this subsection), individuals who enrolled in vocational objective courses with VA educational assistance while serving on active duty shall not be counted. This is consistent with the provisions of current law under which such individuals are excluded from the computation of the number of persons who have completed the course for the purposes of determining compliance with the 50-percent employment ratio. Thus, the effect of this provision is to expand the exclusion so as to exclude from both computations active-duty personnel using GI Bill benefits.

Subparagraph (B) of new paragraph (2): Would exempt a particular vocational objective course from the requirement of continuing compliance with the 50-percent completion and 50-percent employment rules under clause (B) of paragraph (1) of present subsection (a) (as proposed to be redesignated and amended by subclauses (B) and (C) of clause (1) of this subsection), if the course has a history of compliance, for a 2-year period, with such proposed new rules and the number of persons in receipt of VA educational assistance enrolled in the educational institution offering such course in a particular year does not exceed 35 percent of the total enrollment of such institution. It is the Committee's intention that, if an educational institution demonstrates that it met these criteria during the 2-year period to be covered by the first scheduled survey of such institution to determine compliance with the proposed new rules, such institution would thereafter be exempted from the required 50-percent computations until such time as the number of VA educational assistance recipients enrolled in the institution exceeds 35 percent of the total enrollment.

Subparagraph (C) of new paragraph (2): Would authorize the Administrator to waive compliance with the required 50-percent completion and employment ratios under clause (B) of paragraph (1) of present subsection (a) (as proposed to be redesignated and amended by subclauses (B) and (C) of clause (1) of this subsection) when the Administrator determines that such computation would work an undue administrative hardship on an educational institution in light of the small number, in relation to the total enrollment of the institution, of persons in receipt of VA educational assistance who are enrolled in such institution.

Subsection (b) of section 4 would provide that the amendments made by this section would become effective on October 1, 1980.

SECTION 5: RECOMMENDATION CONCERNING ENHANCEMENT OF VA EFFORTS TO COLLECT OVERDUE DEBTS

Section 5: Would add three new sections to chapter 53 of title 38, to authorize the VA to offset overpayments against future benefits payments, to assess charges for interest and certain administrative costs on delinquent payments, and to require the Administrator to take steps to authorize VA attorneys to bring suits in court—under the supervision of the Attorney General and under such terms and conditions as the Attorney General may prescribe—to recover debts due the VA. Section 5 would also amend section 3301 of title 38 to authorize the disclosure of certain information to consumer reporting agencies for

the purposes of facilitating VA debt collection efforts and locating veterans in connection with certain studies.

The provisions added by this part would increase collections and thus reduce net spending in fiscal year 1981 by $139,000,000 in budget authority and outlays.

Clause (1) of paragraph (a) of section 5 would add three sections to chapter 53: new section 3113, relating to deducting certain debts from VA benefit payments; new section 3114, relating to interest and administrative cost charges on delinquent debts; and new section 3115, relating to the authority to sue to collect certain debts:

New section 3113: Would require the VA, in cases where an individual has been properly determined to be indebted to the VA, to deduct the amount of the indebtedness from future VA benefit payments to the individual.

Subsection (a) of new section 3113: Would require the VA, notwithstanding any other provision of title 38 or of any other law, in cases where an individual has been administratively determined to be indebted to the United States by virtue of participation in a VA benefits program (for example, as a student reciving GI Bill benefits or as a VA pension recipient), to deduct the amount of the indebtedness from any future benefits payments to which the individual might be entitled. In order to attempt to assure that all persons are treated fairly, this subsection would require that, before a deduction from future benefits may be made, the individual must be provided notice of his or her rights to dispute the existence or amount of the debt or to seek to have it waived and be given an opportunity to exercise those rights. This subsection would also require the VA to make a determination with respect to any such challenge or request, unless the Administrator determines that the time that would be required to make such a determination would jeopardize the VA's ability to recover the full amount of the indebtedness (such as when the debtor is receiving a monthly GI Bill educational assistance allowance which will continue to be paid for only several months in the future) through deductions from future payments.

This subsection would also require that, before any deductions from future benefits may be made, the VA must make a reasonable effort to notify the individual of the proposed deduction and of his or her options under the provisions of subsection (c) (discussed below) pertaining to the rate at which such deductions may be made to avoid undue hardship.

The Committee does not intend that this subsection diminish the Administrator's authority to withhold and adjust the final payment of benefits for the pursuit of a program of education or training under section 1780(g) of title 38 pending receipt of proof of the individual's enrollment in and satisfactory pursuit of such program.

Subsection (b) of new section 3113: Would provide that, notwithstanding any other provision of title 38 or of any other law, the VA's authority to deduct the amount of an indebtedness from future payments or to take other administrative action to collect an indebtedness or for determining the credit worthiness of an individual indebted to the VA, shall not be subject to any limitations with respect to the

time for bringing civil actions or for commencing administrative proceedings. This paragraph would assure that administrative actions to collect debts would not be precluded by the 6-year statute of limitations (28 U.S.C. 2415) on tort and contract litigation brought by the Federal Government. It is also the Committee's intention, in authorizing such actions with respect to claims for which suit would be barred, that this subsection provide a statutory sanction for the VA's practice—in determining, under present section 1810(b)(3), whether a veteran applying for a VA-guaranteed home loan is a satisfactory credit risk and in attempting to collect delinquent debts—to deny to a veteran who has such a debt a guaranty unless the veteran repays the debt or enters into a satisfactory repayment agreement.

Subsection (c) of new section 3113: Would provide that, where the individual believes that the deduction of the amount of an indebtedness would cause undue hardship, the Administrator may, upon application by the individual, set the rate at which the amount of the indebtedness shall be deducted from future payments at a rate less than that which would otherwise be required. However, this subsection requires that the reduced rate of deduction be sufficient to assure the VA's ability ultimately to obtain full recovery.

New section 3114: Would require the VA to charge interest and administrative costs on delinquent payments of certain amounts due the United States.

Subsection (a) of new section 3114: Would require the VA, notwithstanding any other provision of title 38 or of any other law, to charge interest and the administrative costs of collection on an indebtedness to the United States resulting from an individual's participation in a VA benefits program, other than a loan, loan-guaranty, or loan-insurance program or from the provision of care or services under chapter 17 of title 38, and to charge interest and such administrative costs on an indebtedness resulting from a person's participation in a VA loan, loan-guaranty, or loan-insurance program to the extent that such charges are permissible under the loan instruments concerned. This subsection would further provide that interest and administrative costs shall not be charged until a reasonable period of time, as determined under regulations issued by the Administrator, has expired following the initial notification of the person about the amount of the debt owed and that such debt has not been paid. No interest would accrue on an indebtedness for any period prior to the date on which the VA mailed to the individual, at the individual's most currently available address, notice of the VA's intention to charge such interest or for any period to the enactment of this section.

Paragraph (1) of subsection (b) of new section 3114: Would provide that the administrative costs to be charged under this section are to be that portion of the costs incurred by the United States in collecting the debt as the Administrator determines to be reasonable and appropriate.

Paragraph (2) of subsection (b) of new section 3114: Would provide that the rate of interest to be charged on delinquent payments is to be the rate of interest paid by the United States for its borrowing and would provide that such rate shall be determined by the Administrator in consultation with the Secretary of the Treasury.

New section 3115: Would require the Administrator to take appropriate steps to authorize VA attorneys to pursue collection actions in court to recover certain debts.

Subsection (a) of new section 3115: Would require the Administrator, within 90 days of the enactment of this section, to take appropriate steps to authorize the VA to use its own attorneys to pursue collection actions—subject to the direction and supervision of the Attorney General and to any terms and conditions which the Attorney General may prescribe—in courts to recover debts owed to the United States by an individual by virtue of his or her participation in a VA benefits program. In this regard, the Committee intends that the Administrator and the Attorney General shall make good faith efforts to reach an agreement providing the VA the authority to use its own attorneys to pursue collection action in court and to implement such authority at the earliest possible time. The Committee also intends that any such agreement shall reflect the provisions contained in the November 20, 1979, Memorandum of Understanding entered into between the VA and the Department of Justice which established a one-year pilot project under which the VA was authorized to use its own attorneys to pursue collection actions to recover debts of less than $600.

In the Committee's view, the Attorney General's authority to prescribe the terms and conditions under which VA attorneys may bring suit would allow the Attorney General, for good cause relating to the need for consistent overall Federal litigation policy, to limit the categories of cases in which VA attorneys could initiate litigation.

This subsection would also provide that, before the VA may bring suit against an individual to recover an indebtedness, the VA must have first determined that the individual has failed to respond appropriately to reasonable administrative efforts to collect the indebtedness.

Subsection (b) of new section 3115: Would require the Administrator and the Attorney General, within 120 days after the enactment of this section, to submit to appropriate Congressional committees a report that describes and explains their actions with regard to the provisions of subsection (a) pertaining to the VA's authority to sue to collect certain debts.

Subsection (c) of new section 3115: Would provide that the provisions of this section pertaining to the VA's authority to sue to collect certain debts shall not impair the Attorney General's authority under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or an agency or officer thereof is a party.

Clause (2) of paragraph (a) of section 5: Would require the Administrator, not later than October 1, 1980, to issue regulations required to be prescribed under sections 3113 and 3114 as added by this subsection.

Clause (3) of paragraph (a) of section 5: Would change the table of sections at the beginning of chapter 53 to reflect the addition of new sections 3113, 3114 and 3115.

Paragraph (b) of section 5 would amend section 3301 of title 38, United States Code, to authorize the VA to disclose names, addresses, and certain other information to consumer reporting agencies (CRA's including certain entities which serve as intermediaries between large

numbers of CRA's and those who wish to purchase reports from such CRA's) for the purposes of facilitating VA debt collection efforts and locating veterans in order to carry out studies authorized by section 219 of title 38 or required under any other Federal law.

Clause (1) of paragraph (b) would amend present section 3301(b)(5) to clarify the Veterans' Administration's authority to disclose information in preparation for litigation. Under current law, "necessary and proper" disclosures are permitted "in any suit or other judicial proceeding" and the VA's authority to make such a disclosure prior to the actual filing of a suit is not express. Thus, this amendment would make clear the VA's authority to make disclosures necessary in connection with the collection of any claims prior to the filing of a suit.

Clause (2) of paragraph (b) would redesignate present subsection (g) as subsection (h) and add a new subsection (g) as follows:

New subsection (g): Would authorize the VA to disclose names, addresses, and certain other information to CRA's for the purpose of facilitating VA debt-collection efforts and for the purpose of locating veterans who need to be contacted in certain VA studies.

Paragraph (1) of new subsection (g): Would authorize the VA to release to CRA's, in order to obtain current addresses from CRA's, the names and addresses of individuals who have been administratively determined to be indebted to the United States by virtue of participation in VA benefits programs. This paragraph would also authorize the VA to release an individual's name and address to a CRA when the Administrator determines that disclosure is necessary to locate the individual in order to carry out a program evaluation study pursuant to present section 219 or a study required by any other provision of law. In addition, it would require that, before information is disclosed for study purposes, the Administrator must determine both that the individual's inclusion in the study—in light of other alternatives, reasonably available to develop information necessary for the study, the comparative costs of the alternatives, and any possible consequences of disclosure for the individual—clearly warrant the disclosure and that neither the release of the information nor the fact of the inquiry would create any substantial risk of adversely affecting the individual's credit rating.

In addition, this paragraph would authorize the VA to release to a CRA the name and address of an individual who has failed to respond appropriately to administrative efforts to collect an indebtedness for the purpose of obtaining a consumer report to be used to assess the debtor's ability to pay the debt. This authority would also be available to the VA to meet the requirements of 4 CFR 105.3, under which the VA must, in referring a debt to the Department of Justice for collection purposes, provide evidence of the individual's ability to repay the debt.

This paragraph would also authorize the release of such identifying information, in addition to name and address, as the Administrator determines is reasonably necessary in order to identify the individual, but not including any information that would indicate expressly or implicitly that the individual is indebted to the VA or would otherwise reflect adversely on the individual's credit rating. The disclosure by the VA of other identifying information, such as date of birth and

social security number, would generally be necessary because an individual's name and former address may not be sufficient information for the CRA to identify the individual or distinguish him or her from others with the same name or similar names.

In addition, in order to assure that information disclosed by the VA to a CRA for the purpose of obtaining current address information or a consumer report does not give notice of an indebtedness or otherwise reflect adversely on an individual's credit rating, this paragraph would require the Administrator to limit disclosures to only those CRA's which the Administrator has determined, to the maximum extent practicable, would not record or report the information disclosed in such a way as to suggest that the VA inquiry indicates the existence of an indebtedness or otherwise reflects adversely on the individual.

This determination would be required prior to VA disclosures to a CRA (as defined in paragraph (4)(B) of this new subsection)—including any CRA to which the VA proposes to release information through an intermediary CRA which does not itself function as a CRA within the definition set forth in subsection (f) of section 603 of Fair Credit Reporting Act (15 U.S.C. 1681a(f))—except to the extent that the Administrator determines it is not practicable to make such determinations.

This paragraph would also prohibit CRA's from indicating in their files and reports that the VA inquiry indicates an indebtedness or otherwise reflects adversely on the individual's credit rating. A willful violation by a CRA or one of its employees of this prohibition would be made punishable in the same manner as willful violations of the prohibition in subsection (f) of present section 3301 (against the unauthorized disclosure by non-VA entities of names and addresses released to them by the VA under that subsection)—a fine of up to $5,000 for the first offense and up to $20,000 for a subsequent offense.

Paragraph (2) of new subsection (g): Would authorize the VA, after an individual has failed to respond appropriately to administrative efforts to collect the debt, to disclose, for the purposes of affecting the debtor's credit rating, information relating to the debt and the individual's identity and address. This paragraph would also authorize the VA to disclose the information to a CRA and would permit redisclosure of that information to other CRA's and to the CRA's commercial subscribers, thereby influencing their decision to extend credit to a delinquent VA debtor.

In order to assure that innocent persons' credit ratings are not affected adversely and that all persons concerned are treated fairly, this paragraph would require that, before information pertaining to a delinquent debt may be disclosed, the individual must be provided notice of the VA's intention to make the disclosure and of his or her right to dispute the existence or amount of the debt or seek to have it waived and be given an opportunity to exercise those rights, and the VA must make a determination with respect to any such challenge or request. The paragraph further provides that, at least 60 days before disclosure, the individual would have to be given notice of the specific information to be disclosed and of the CRA's to which the VA would directly make disclosures.

This paragraph would also require the VA to give prompt notice to each CRA to which it has disclosed debt information of any substantial change in the status or amount of the debt and, upon the request of a CRA for verification, promptly to verify or correct any information released by the VA.

In addition, this paragraph would provide that, if after disclosure the individual demonstrates to the VA that he or she never received actual notice from the VA regarding the indebtedness or the right and opportunity to dispute the debt or seek a waiver, information indicating that the indebtedness is delinquent would be deemed inaccurate for purposes of section 611 of the Fair Credit Reporting Act (FCRA, 15 U.S.C. 1681i), which provides that, when the individual disputes the accuracy of information pertaining to him or her, the CRA is required to reinvestigate that information. In addition, the VA would be required immediately to advise the individual and the CRA's involved of the fact that the information is to be deemed inaccurate under the FCRA and to advise the individual of his or her remedies, including the right to have the CRA's provide notice of the correction to certain others who have been provided the inaccurate information.

In those instances in which the VA makes disclosures through a CRA as defined in paragraph (4)(B)(ii)(I) of this new subsection, that is, an intermediary CRA known as a "service bureau", the VA would be required to provide the CRA's to which the intermediary CRA directly made disclosure with information regarding such an inaccuracy and regarding substantial changes in the status or amount of the indebtedness.

Paragraph (3) of new subsection (g): Would provide an exemption from the application of the Privacy Act (5 U.S.C. 552a) with respect to the CRA's handling of information disclosed to them under new subsection (g). CRA's would, however, be subject to the provisions of the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681–81t) with respect to such information.

Subparagraph (A) of paragraph (4) of new subsection (g): Would provide that, for purposes of this new subsection, the terms "consumer report" and "file" shall have the meanings provided in the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g), respectively). These definitions are as follows:

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and ad-

dress of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.

* * * * * * *

(g) The term "file" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

Subparagraph (B) of paragraph (4) of new subsection (g): Would provide that, for purposes of new subsection (g), the term "consumer reporting agency" shall have the meaning provided in subsection (f) of section 603 of the FCRA (15 U.S.C. 1681a(f)) and shall also include certain entities that regularly engage either in obtaining credit information or other information on consumers from CRA's as defined in section 603(f) of the FCRA for the purpose of furnishing such information to third parties—such an entity being known in the credit industry as a "service bureau"—or in serving as a marketing agent under arrangements enabling third parties to obtain such information from CRA's as defined in section 603(f) of the FCRA—such an entity being known in the industry as a "marketing agent."

The definition of "consumer reporting agency" in section 603(f) of the FCRA is as follows:

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Expanding the definition of consumer reporting agency (CRA) beyond the definition in the FCRA would ensure that the authority to release information to a CRA includes the authority to release the information to an intermediary, a so-called "service bureau" or "marketing agent" (which might not necessarily be included in the FCRA definition), where, and to the extent, necessary in order to achieve the stated purposes of the new provision. This expansion of the definition is necessary in light of the fact that, in order to obtain nationwide coverage including areas not covered by the few, very large CRA's, it would generally be practical for the VA to deal with the large numbers of smaller CRA's only through such intermediaries.

Clause (3) of paragraph (b) would amend subsection (j) of present section 3301 of title 38 (as redesignated by clause (2) of this section), requiring that any disclosure pursuant to present section 3301 be made in accordance with the Privacy Act (5 U.S.C. 552a), to reflect the changes made by paragraph (3) of new subsection (g).

Changes in Existing Law Made by Committee Resolution

In accordance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the resolution are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no charge is proposed is shown in roman):

TITLE 38—VETERANS' BENEFITS

* * * * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER III—ENTITLEMENT; DURATION

§ 1631. Entitlement; loan eligibility

(a) (1) A participant shall be entitled to a maximum of 36 monthly benefit payments (or their equivalent in the event of parttime benefit payments).

(2) The amount of the monthly payment to which any eligible veteran is entitled shall be ascertained by (A) adding all contributions made to the fund by the eligible veteran, (B) multiplying the sum by 3, (C) adding all contributions made to the fund for such veteran by the Secretary, and (D) dividing the sum by the lesser of 36 or the number of months in which contributions were made by such veterans.

(3) Payment of benefits under this chapter may be made only for periods of time during which an eligible veteran is actually enrolled in and pursuing an approved program of education and, except as provided in paragraph (4), only after an eligible veteran has been discharged or released from active duty.

(4) Payment of benefits under this chapter may be made after a participant has completed his or her first obligated period of active duty (which began after December 31, 1976) or 6 years of active duty (which began after December 31, 1976), whichever period is less.

(b) Any enlisted member of the Armed Forces participating in the program shall be eligible to [participate in the Predischarge Education Program (PREP), authorized by subchapter VI of chapter *secondary school diploma (or an equivalency certificate), as authorized* 34] *enroll in a course, courses, or program of education to pursue a by section 1691(a)(1)* of this title, during the last 6 months of such member's first enlistment *and at any time thereafter.*

* * * * * * *

SUBCHAPTER IV—ADMINISTRATION

§ 1641. Requirements

The provisions of sections 1670, 1671, 1673, 1674, 1676, 1677, 1681(c), 1683, [1696, and 1698] *and 1691(a)(1)* of this title and the provisions of chapter 36 of this title, with the exception of sections 1777, 1780(c), and 1787 shall be applicable to the program.

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CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

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[SUBCHAPTER VI—PREDISCHARGE EDUCATION PROGRAM

[1695. Purpose; definition.
[1696. Payment of educational assistance allowance.
[1697. Educational and vocational guidance.
[1698. Coordination with the participation by Department of Defense.

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SUBCHAPTER II—ELIGIBILITY AND ENTITLEMENT

§ 1661. Eligibility; entitlement; duration

Entitlement

(a) * * *

* * * * * * *

(c) Except as provided in subsection (b) and in [subchapters] *subchapter* V [and VI] of this chapter, no eligible veteran shall receive educational assistance under this chapter in excess of 45 months.

* * * * * * *

SUBCHAPTER III—ENROLLMENT

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§ 1673. Disapproval of enrollment in certain courses

(a)(*1*) The Administrator shall not approve the enrollment of an eligible veteran in—

[(1)] (A) any bartending course or personality development course;

[(2)](*B*) any [sales or sales management course which does not provide specialized training within a specific vocational field, or in any other] course with a vocational objective, unless the eligible veteran or the institution offering such course [submits justification] *presents evidence satisfactory to the Administrator* showing that [at least one-half of the persons who completed such course over the preceding two-year period, and who are not unavailable for employment, have been employed in the occupational category for which the course was designed to provide training (but in computing the number of persons who completed such course over any such two-year period, there shall not be included the number of persons who completed such course with assistance under this title while serving on active duty)] (*i*) *at least one-half of the persons who enrolled in such course over the preceding two-year period completed it, and* (*ii*) *at least one-half of the persons who completed such course over such period, and who are not unavailable for employment, attained employment in an occupational category for which the course was designed to provide training and such employment constitutes the primary vocational pursuit and major source of occupational income of each such person;*

[(3)](*C*) any type of course which the Administrator finds to be vocational or recreational in character (or the advertising for which the Administrator finds contains significant avocational or recreational themes) unless the veteran submits justification ing that the course will be of bona fide use in the pursuit of the veteran's present or contemplated business or occupation; or

[(4)](*D*) any independent study program except one leading to a standard college degree.

(2)(*A*) *For the purposes of clause (B) of paragraph (1) of this subsection, in computing the number of persons who discontinued or completed a course over any two-year period, there shall not be included in such number those persons who received assistance under this title for pursuing such course while serving on active duty.*

(*B*) *The provisions of clause (B) of paragraph (f) of this subsection shall not apply in the case of a particular course offered by an educational institution in a particular year if the total number of eligible veterans and eligible persons (as defined in section 1701(a)(1) of this title) enrolled in the institution during the two-year period preceding such year did not exceed 35 per centum of the total enrollment in such institution during such period and the course has met the requirements of subclauses (i) and (ii) of such clause for any two-year period ending on or after the date of the enactment of this paragraph.*

(*C*) *The Administrator may waive the requirements under clause (B) of paragraph (1) of this subsection in the case of any course with a vocational objective offered by any educational institution if the Administrator determines, under regulations which the Administrator shall prescribe, that such requirements would work an undue administrative hardship on the institution because of the small proportion of eligible veterans and eligible persons (as defined in section 1701(a)(1) of this title) enrolled in such institution.*

(b) Except as provided in section 1677 of this title, the Administrator shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational institution of higher learning for credit toward a standard college degree the eligible veteran is seeking.

* * * * * * *

§ 1677. Flight training

(a) The Administrator may approve the pursuit by an eligible veteran of flight training where such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation or where generally recognized as ancillary to the pursuit of a vocational endeavor other than aviation, subject to the following conditions:

(1) the eligible veteran must possess a valid private pilot's license and meet and the medical requirements necessary for a commerical pilot's license; and

(2) the flight school courses must meet the Federal Aviation Administration standards and be approved both by that Agency and the appropriate State approving agency.

(b) Each eligible veteran who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of subsection (a) hereof, shall be paid an educational as-

sistance allowance to be computed at the rate of 90 per centum of the established charges for tuition and fees which similarly circumstanced non-veterans enrolled in the safe flight course are required to pay. Such allowance shall be paid monthly upon receipt of a certification as required by section 1681(c) of this title. In each such case the eligible veteran's period of entitlement shall be charged with one month for each [$288] *$317* which is paid to the veteran as an educational assistance allowance for such course.

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

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§ 1682. Computation of educational assistance allowances

(a)(1) Except as provided in subsection (b), or (c) of this section, or section 1677 or 1787 of this title, while pursuing a program of education under this chapter of half-time or more, each eligible veteran shall be paid the monthly educational assistance allowance set forth in columun II, III, IV or V (whichever is applicable as determined by the veteran's dependency status) opposite the applicable type of program as shown in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	$311	$370	$422	$26
Three-quarter-time	233	277	317	19
Half-time	156	185	211	13
Cooperative	251	294	334	19

Column I	*Column II*	*Column III*	*Column IV*	*Column V*
Type of program	*No dependents*	*One dependent*	*Two dependents*	*More than two dependents*
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional:				
Full-time	*$342*	*$407*	*$464*	*$29*
Three-quarter-time	*256*	*305*	*349*	*21*
Half-time	*172*	*204*	*232*	*14*
Cooperative	*276*	*323*	*367*	*21*

(2) A "cooperative" program, other than a "farm cooperative" program, means a full-time program of education which consists of institutional courses and alternate phases of training in a business or

industrial establishment with the business or industrial establishment being strictly supplemental to the institutional portion.

(b) The educational assistance allowance of an individual pursuing a program of education—

(1) while on active duty; or

(2) on less than a half-time basis.

shall be computed at the rate of (A) the established charges for tuition and fees which the institution requires similarly circumstanced nonveterans enrolled in the same program to pay, or (B) [$311] *$342* per month for a full-time course, whichever is the lesser.

(c)(1) An eligible veteran who is enrolled in an educational institution for a "farm cooperative" program consisting of institutional agricultural courses prescheduled to fall within 44 weeks of any period of 12 consecutive months and who pursue such program on—

(A) a full-time basis (a minimum of ten clock hours per week or four hundred and forty clock hours in such year prescheduled to provide not less than eighty clock hours in any 3-month period).

(B) a three-quarter-time basis (a minimum of 7 clock hours per week), or

(C) a half-time basis (a minimum of 5 clock hours per week)

shall be eligible to receive an educational assistance allowance at the appropriate rate provided in the table in paragraph (2) of this subsection, if such eligible veteran is concurrently engaged in agricultural employment which is relevant to such institutional agricultural courses as determined under standards prescribed by the Administrator.

In computing the foregoing clock hour requirements there shall be included the time involved in field trips and individual and group instruction sponsored and conducted by the educational institution through a duly authorized instructor of such institution in which the veteran is enrolled.

(2) The monthly educational assistance allowance of an eligible veteran pursuing a farm cooperative program under this chapter shall be paid as set forth in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the basis shown in column I:

Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$251	$294	$334	$19
Three-quarter-time	188	221	251	15
Half-time	126	147	167	10

Column I	Column II	Column III	Column IV	Column V
Basis	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Full-time	$376	$323	$367	$21
Three-quarter-time	207	245	276	17
Half-time	139	162	184	11

(d)(1) Notwithstanding the prohibition in section 1671 of this title prohibiting enrollment of an eligible veteran in a program of education in which such veteran has "already qualified," a veteran shall be allowed up to six months of educational assistance (or the equivalent thereof in part-time assistance) for the pursuit of refresher training to permit such veteran to update such veteran's knowledge and skills and to be instructed in the technological advances which have occurred in such veteran's field of employment during and since the period of such veteran's active military service.

(2) A veteran pursuing a refresher training under this subsection shall be paid an educational assistance allowance based upon the rate prescribed in the table in subsection (a)(1) or in subsection (c)(2) of this section, whichever is applicable.

(3) The educational assistance allowance paid under the authority of this subsection shall be charged against the period of entitlement the veteran has earned pursuant to section 1661(a) of this title.

(e) The educational assistance alowance of an eligible veteran pursuing an independent study program which leads to a standard college degree shall be computed at the rate provided in subsection (b)(2) of this section. In those cases where independent study is combined with resident training and the resident training constitutes the major portion of such training, the maximum allowance may not exceed the full-time institutional allowance provided under subsection (a)(1) of this section.

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SUBCHAPTER V—SPECIAL ASSISTANCE FOR THE EDUCATIONALLY DISADVANTAGED

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§ 1691. Elementary and secondary education and preparatory educational assistance

(a) In the case of any eligible veteran [not on active duty] who—

(1) has not received a secondary school diploma (or an equivalency certificate) at the time of the veteran's discharge or release from active duty, or

(2) *is not on active duty and who*, in order to pursue a program of education for which the veteran would otherwise be eligible, needs refresher courses, deficiency courses, or other preparatory or special educational assistance to qualify for admission

to an appropriate educational institution, the Administrator may, without regard to as much of the provisions of section 1671 as prohibit the enrollment of an eligible veteran in a program of education in which the veteran is "already qualified", approve the enrollment of such veteran in an appropriate course or courses or other special educational assistance program.

(b) The Administrator shall pay to an eligible veteran pursuing a course or courses or program pursuant to subsection (a)(2) of this section, an educational assistance allowance as provided in sections 1681 and 1682(a) or (b) of this title.

§ 1692. Special supplementary assistance

(a) In the case of any eligible veteran who—

(1) is enrolled in and pursuing a post-secondary course of education on a halftime or more basis at an education institution; and

(2) has a deficiency in a subject required as a part of, or which is a prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education,

the Administrator may approve individualized tutorial assistance for such veteran if such assistance is necessary for the veteran to complete such program successfully.

(b) The Administrator shall pay to an eligible veteran receiving tutorial assistance pursuant to subsection (a) of this section, in addition to the educational assistance allowance provided in section 1682 of this title the cost of such tutorial assistance in an amount not to exceed [$69] *$76* per month, for a maximum of twelve months, or until a maximum of [$828] *$911* is utilized, upon certification by the educational institution that—

(1) the individualized tutorial assistance is essential to correct a deficiency of the eligible veteran in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(2) the tutor chosen to perform such assistance is qualified; and

(3) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

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[SUBCHAPTER VI—PREDISCHARGE EDUCATION PROGRAM

[§ 1695. Purpose; definition

[(a) The purpose of this subchapter is to encourage and assist veterans in preparing for their future education, training, or vocation by providing them with an opportunity to enroll in and pursue a program of education or training prior to their discharge or release from active duty with the Armed Forces. The program provided for under this subchapter shall be known as the Predischarge Education Program (PREP).

[(b) For the purposes of this subchapter, the term "eligible person" means any person serving on active duty with the Armed Forces who has completed more than 180 consecutive days of such active duty service as certified to the Administrator by the Secretary concerned.

[§ 1696. Payment of educational assistance allowance

[(a) The Administrator shall, under such regulations as the Administrator shall prescribe after consultation with the Secretary of Defense, pay the educational assistance allowance as computed in subsection to an eligible person enrolled and pursuing (1) a course or courses offered by an educational institution (other than by correspondence) and required to receive a secondary school diploma, or (2) any deficiency, remedial, or refresher course or courses offered by an educational institution and required for or preparatory to the pursuit of an appropriate course or training program in an approved educational institution or training establishment.

[(b) The educational assistance allowance of an eligible person pursuing education or training under this subchapter shall be computed at the rate of (1) the established charges for tuition and fees which the educational institution requires similarly circumstanced nonveterans enrolled in the same or a similar program to pay, and the cost of books and supplies peculiar to the course which such educational institution requires similarly circumstanced nonveterans enrolled in the same or similar program to have, or (2) $311 per month for a full-time course, whichever is the lesser. Where it is determined that there is no same program, the Administrator shall establish appropriate rates for tuition and fees designed to allow reimbursement for reasonable costs for the education or training institution.

[(c) The educational assistance allowance authorized by this section shall be paid without charge to any period of entitlement earned pursuant to section 1661(a) of this title.

[(d) After October 31, 1976, no person other than a member of the Armed Forces described in section 1631(b) of this title shall be permitted to enroll, or re-enroll, in any course provided under the authority of this subchapter.

[§ 1697. Educational and vocational guidance

[The Administrator shall, to the extent that professional counselors are available, provide, by contract or otherwise, educational and vocational guidance to persons eligible for educational assistance under this subchapter.

[§ 1698. Coordination with an participation by Department of Defense

[(a) The Administrator shall designate an appropriate official of the Veterans' Administration who shall cooperate with and assist the Secretary of Defense and the official the Administrator designates as administratively responsible for such matters, in carrying out functions and duties of the Department of Defense under the PREP program authorized by this subchapter. It shall be the duty of such official to assist the Secretary of Defense in all matters entailing cooperation or coordination between the Department of Defense and the Veterans' Administration in providing training facilities and released time from duty necessary to carry out the purposes of the program.

[(b) Educational institutions and training establishments administered by or under contract to the Department of Defense providing education and training to persons serving on active duty with the Armed Forces shall, in accordance with regulations jointly prescribed by the Administrator and the Secretary of Defense, be approved for the enrollment of eligible persons only at such time as the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing such Department's plan for implementation of the program established under this subchapter (except that on-going programs of education and training at such institutions or establishments may be continued for ninety days after the date of enactment of this section and prior to the submission of such report), which plan shall include provision for—

[(1) each Secretary concerned to undertake an information and outreach program designed to advise. counsel, and encourage each eligible person within each branch of the Armed Forces with respect to enrollment in a program under this subchapter, with particular emphasis upon programs under sections 1691(a)(2) and 1696(a)(2) of this title, and in all other programs for which such person, prior to or following discharge or release from active duty, may be eligible under chapters 31 and 34 of this title;

[(2) each Secretary concerned to undertake, in coordination with representatives of the Veterans' Administration, to arrange and carry out meetings with each approved educational institution located in the vicinity of an Armed Forces installation (or, in the case of installations overseas, which have the capacity to carry out such programs at such overseas installations) to encourage the establishment of a program by such institution under this subchapter and subchapter V of this chapter in connection with persons stationed at such installation, with particular emphasis upon programs under sections 1691(a)(2) and 1696(a)(2) of this title;

[(3) the release from duty assignment of any such eligible person for at least one-half of the hours required for such person to enroll in a full-time program of education or training under this subchapter during such person's military service, unless, pursuant to regulations prescribed by the Secretary concerned, it is determined that such release of time is inconsistent with the interests of the national defense; and

[(4) establishment of an Inter-Service and Agency Coordinating Committee, under the co-chairmanship of an Assistant Secretary of Defense and the Chief Benefits Director of the Veterans' Administration, to promote and coordinate the establishment and conduct of programs under this subchapter and other provisions of this title and the implementation of the plan submitted pursuant to this section.]

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

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§ 1732. Computation of educational assistance allowance

(a) (1) The educational assistance allowance on behalf of an eligible person who is pursuing a program of education consisting of institutional courses shall be computed at the rate prescribed in section 1682 (a) (1) of this title for full-time, three-quarter-time, or half-time pursuit, as appropriate, of an institutional program by an eligible veteran with no dependents.

(2) The educational assistance allowance on behalf of an eligible person pursuing a program of education on less than a half-time basis shall be computed at the rate prescribed in section 1682(b) (2) of this title for less-than-half-time pursuit of an institutional program by an eligible veteran.

(b) The educational assistance allowance to be paid on behalf of an eligible person who is pursuing a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion, shall be computed at the rate of [$251] *$276* per month.

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SUBCHAPTER V—SPECIAL RESTORATIVE TRAINING

§ 1742. Special training allowance

(a) While the eligible person is enrolled in and pursuing a fulltime course of special restorative training, the parent or guardian shall be entitled to receive on behalf of such person a special training allowance computed at the basic rate of [$311] *$342* per month. If the charges for tuition and fees applicable to any such course are more than [$98] *$108* per calendar month, the basic monthly allowance may be increased by the amount that such charges exceed [$98] *$108* a month, upon election by the parent or guardian or the eligible person to have such person's period of entitlement reduced by one day for each [$10.40] *$11.40* that the special training allowance paid exceeds the basic monthly allowance.

(b) No payments of a special training allowance shall be made for the same period for which the payment of an educational assistance allowance is made or for any period during which the training is pursued on less than a full-time basis.

(c) Full-time training for the purpose of this section shall be determined by the Administrator with respect to the capacities of the individual trainee.

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CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

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SUBCHAPTER I—STATE APPROVING AGENCIES

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§ 1780. Payment of educational assistance or subsistence allowances

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Advance Payment of Initial Educational Assistance of Subsistence Allowance

(d) (1) The educational assistance or subsistence allowance advance payment provided for in this subsection is based upon a finding by the Congress that eligible veterans and eligible persons may need additional funds at the beginning of a school term to meet the expenses of books, travel, deposits, and payments for living quarters, the initial installment of tuition, and the other expenses which are concentrated at the beginning of a school term.

(2) Subject to the provisions of this subsection, and under regulations which the Administrator shall prescribe, an eligible veteran or eligible person shall be paid an educational assistance allowance or subsistence allowance, as appropriate, advance payment. Such advance payment shall be made in an amount equivalent to the allowance for the month or fraction thereof in which pursuit of the program will commence, plus the allowance for the succeeding month. In the case of a serviceman on active duty, who is pursuing a program of education [(other than under subchapter VI of chapter 34)], the advance payment shall be in a lump sum based upon the amount payable for the entire quarter, semester, or term, as applicable. In no event shall an advance payment be made under this subsection to a veteran or person intending to pursue a program of education on less than a half-time basis. An advance payment may not be made under this subsection to any veteran or person unless the veteran or person requests such payment and the Administrator finds that the educational institution at which such veteran or person is accepted or enrolled has agreed to, and can satisfactorily, carry out the provisions of paragraphs 5 (B) and (C) and (6) of this subsection. The application for advance payment, to be made on a form prescribed by the Administrator, shall—

(A) in the case of an initial enrollments a veteran or person in an educational institution, contain information showing that the veteran or person (i) is eligible for educational benefits, (ii) has been accepted by the institution, and (iii) has notified the institution of such veteran's or person's intention to attend that institution; and

(B) in the case of a re-enrollment of a veteran or person, contain information showing that the veteran or person (i) is eligible to continue such veteran's or person's program of education or training and (ii) intends to re-enroll in the same institution.

and, in either case, shall also state the number of semester or clock-hours to be pursued by such veteran or person.

[(3) Subject to the provisions of this subsection, and under regulations which the Administrator shall prescribe, a person eligible for education or training under the provisions of subchapter VI of chapter 34 of this title shall be entitled to a lump-sum educational assistance allowance advance payment. Such advance payment shall in no event be made earlier than thirty days prior to the date on which pursuit of the person's program of education or training is to commence. The application for the advance payment, to be made on a form prescribed by the Administrator, shall, in addition to the information prescribed in paragraph (2)(A), specify—

[(A) that the program to be pursued has been approved;

[(B) the anticipated cost and the number of Carnegie, clock, or semester hours to be pursued; and

[(C) where the program to be pursued is other than a high school credit course, the need of the person to pursue the course or courses to be taken.]

[(4)] (*3*) For purposes of the Administrator's determination whether any veteran or person is eligible for an advance payment under this section, the information submitted by the institution, the veteran or person, shall establish such veteran's or person's eligibility unless there is evidence in such veteran's or person's file in the processing office establishing that the veteran or person is not eligible for such advance payment.

[(5)] (*4*) The advance payment authorized by [paragraphs] *paragraph* (2) [and (3)] of this subsection shall, in the case of an eligible veteran or eligible person, be (A) drawn in favor of the veteran or person; (B) mailed to the educational institution listed on the application form for temporary care and delivery to the veteran or person by such institution; and (C) delivered to the veteran or person upon the veteran's or person's registration at such institution, but in no event shall such delivery be made earlier than thirty days before the program of education is to commence.

[(6)] (*5*) Upon delivery of the advance payment pursuant to paragraph [(5)] (*4*) of this subsection, the institution shall submit to the Administrator a certification of such delivery. If such delivery is not effected within thirty days after commencement of the program of education in question, such institution shall return such payment to the Administrator forthwith.

Recovery of Erroneous Payments

(e) If an eligible veteran or eligible person fails to enroll in or pursue a course for which an educational assistance or subsistance allowance advance payment is made, the amount of such payment and any amount of subsequent payments which, in whole or in part, are due to erroneous information required to be furnished under subsection (d) (2) [and (3)] of this section, shall become an overpayment and shall constitute a liability of such veteran or person to the United States and may be recovered, unless waived pursuant to section 3102 of this title, from any benefit otherwise due such veteran or person

under any law administered by the Veterans' Administration or may be recovered in the same manner as any other debt due the United States.

Payments for Less Than Half-Time Training

(f) Payment of educational assistance allowance in the case of any eligible veteran or eligible person pursuing a program of education on less than a half-time basis [(except as provided by subsection (d)(3) of this section)] shall be made in an amount computed for the entire quarter, semester, or term during the month immediately following the month in which certification is received from the educational institution that such veteran or person has enrolled in and is pursuing a program at such institution. Such lump sum payment shall be computed at the rate provided in section 1682(b) or 1732(a)(2) of this title, as applicable.

Determination of Enrollment, Pursuit, and Attendance

(g) The Administrator may, pursuant to regulations which the Administrator shall prescribe, determine *and define* enrollment in, pursuit of, and attendance at, any program of education or training or course by an eligible veteran or eligible person for any period for which the veteran or person receives an educational assistance or subsistence allowance under this chapter for pursuing such program or course. Subject to such reports and proof as the Administrator may require to show an eligible veteran's or eligible person's enrollment in and satisfactory pursuit of such person's program, the Administrator is authorized to withhold the final payment of benefits to such person until the required proof is received and the amount of the final payment is appropriately adjusted.

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SUBCHAPTER II—MISCELLANEOUS PROVISIONS

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§ 1784. Reports by institutions; reporting fee

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(b) The Administrator may pay to any educational institution, or to any joint apprenticeship training committee acting as a training establishment, furnishing education or training under either this chapter or chapter 34 or 35 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to submit to the Administrator by law or regulation. Such reporting fee shall be computed for each calendar year by multiplying $7 by the number of eligible veterans or eligible persons enrolled under this chapter or chapter 34 or 35 of this title. of $11 in the case of those eligible veterans and eligible persons whose educational assistance checks are directed in care of each institution for temporary custody and delivery and are delivered at the time of registration as provided under section 1780(d) [(5)] *(4)* of this title, on October 31 of that year; except that the Admin-

istrator may, where it is established by such educational institution or joint apprenticeship training committee that eligible veteran plus eligible person enrollment on such date varies more than 15 per centum from the peak eligible veteran enrollment plus eligible person enrollment in such educational institution or joint apprenticeship training committee during such calendar year, establish such other date as representative of the peak enrollment as may be justified for such educational institution or joint apprenticeship training committee. The reporting fee shall be paid to such educational institution or joint apprenticeship training committee as soon as feasible after the end of the calendar year for which it is applicable. No reporting fee payable to an educational institution under this subsection shall be subject to offset by the Administrator against any liability of such institution for any overpayment for which such institution may be administratively determined to be liable under section 1785 of this title unless such liability is not contested by such institution or has been upheld by a final decree of a court of appropriate jurisdiction.

* * * * * * *

§ 1786. Correspondence courses

(a)(1) Each eligible veteran (as defined in section 1652(a)(1) and (2) of this title) and each eligible spouse or surviving spouse (as defined in section 1701(a)(1) (B), (C), or (D) of this title) who enters into an enrollment agreement to pursue a program of education exclusively by correspondence shall be paid an educational assistance allowance computed at the rate of 90 per centum of the established charge which the institution requires nonveterans to pay for the course or courses pursued by the eligible veteran or spouse or surviving spouse. The term "established charge" as used here in means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the veteran or spouse or surviving spouse, whichever is the lesser. Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the veteran or spouse or surviving spouse and serviced by the institution.

(2) The period of entitlement of any veteran or spouse or surviving spouse who is pursuing any program of education exclusively by correspondence shall be charged with one month for each [$311] *$342* which is paid to the veteran or spouse or surviving spouse as an educational assistance allowance for such course.

(3) No veteran, spouse, or surviving spouse may be paid an educational assistance allowance under this section unless the Administrator has determined that no type of education other than correspondence is reasonably and feasibly available to such veteran, spouse, or surviving spouse in order to pursue successfully the educational or vocational objective being sought.

§ 1787. Apprenticeship or other on-job training

* * * * * * *

(b)(1) The monthly training assistance allowance of an eligible veteran pursuing a program described under subsection (a) shall be as follows:

Column I	Column II	Column III	Column IV	Column V
Periods of training	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	$226	$254	$277	$12
Second 6 months	169	197	221	12
Third 6 months	113	141	164	12
Fourth and any succeeding 6-month periods.	56	84	108	12

Column I	*Column II*	*Column III*	*Column IV*	*Column V*
Periods of training	*No dependents*	*One dependent*	*Two dependents*	*More than two dependents*
				The amount in column IV, plus the following for each dependent in excess of two:
First 6 months	*$219*	*$279*	*$305*	*$18*
Second 6 months	*186*	*217*	*243*	*18*
Third 6 months	*124*	*155*	*180*	*18*
Fourth and any succeeding 6-month periods	*62*	*93*	*119*	*18*

Notwithstanding the provisions of clause (1) or (2) of this subsection, an educational institution offering courses not leading to a standard college degree may measure such courses on a quarter- or semester-hour basis (with full time measured on the same basis as provided by clause (4) of this subsection); but (A) the academic portions of such courses must require outside preparation and be measured on not less than one quarter or one semester hour for each fifty minutes net of instruction per week or quarter or semester; (B) the laboratory portions of such courses must be measured on not less than one quarter or one semester hour for each two hours of attendance per week per quarter or semester; and (C) the shop portions of such courses must be measured on not less than one quarter or one semester hour for each three hours of attendance per week per quarter or semester. In no event shall such course be considered a full-time course when less than twenty-two hours per week of attendance is required.

* * * * * * *

§ 1789. Period of operation for approval

(a) The Administrator shall not approve the enrollment of an eligible veteran or eligible person in any course offered by an educational institution when such course has been in operation for less than two years.

(b) Subsection (a) shall not apply to—

(1) any course to be pursued in a public or other tax-supported educational institution;

(2) any course which is offered by an educational institution which has been in operation for more than two years, if such

course is similar in character to the instruction previously given by such institution;

(3) any course which has been offered by an institution for a period of more than two years, notwithstanding the institution has moved to another location within the same general locality, or has made a complete move with substantially the same faculty, curricula, and students, without change in ownership;

(4) any course which is offered by a nonprofit educational institution of college level and which is recognized for credit toward a standard college degree;

(5) any course offered by a proprietary nonprofit educational institution which qualifies to carry out an approved program of education under the provisions of subchapter V [or VI] of chapter 34 of this title (including those courses offered at other than the institution's principal location) if the institution offering such course has been in operation for more than two years; or

* * * * * * *

(2) The monthly training assistance allowance of an eligible person pursuing a program described under subsection (a) shall be computed at the rate prescribed in paragraph (1) of this subsection for an eligible veteran with no dependents pursuing such a course.

(3) In any month in which an eligible veteran or person pursuing a program of apprenticeship or a program of other on-job training fails to complete one hundred and twenty hours of training in such months, the monthly training assistance allowance set forth in subsection (b) (1) or (2) of this section, as applicable, shall be reduced proportionately in the proportion that the number of hours worked bears to one hundred and twenty hours rounded off to the nearest eight hours.

(c) For the purpose of this chapter, the terms "program of apprenticeship" and "program of other on-job training" shall have the same meaning as "progam of education"; and the term "training assistance allowance" shall have the same meaning as "educational assistance allowance" as set forth in chapters 34 and 35 of this title.

§ 1788. Measurement of courses

(a) (1) * * *

* * * * * * *

(6) an institutional course offered as part of a program of education not leading to a standard college degree under section 1691(a)(2) [or 1696(a)(2)] of this title shall be considered a full-time course on the basis of measurement criteria provided in clause (2), (3), or (4) as determined by the educational institution.

§ 1798. Eligibility for loans; amount and conditions of loans; interest rate on loans

* * * * * * *

(b) (1) Subject to paragraph (3) of this subsection, the amount of the loan to which an eligible veteran or eligible person shall be entitled under this subchapter for any academic year shall be equal to the amount needed by such veteran or person to pursue a program of education at the institution at which the veteran or person is enrolled, as determined under paragraph (2) of this subsection.

(2) (A) The amount needed by a veteran or person to pursue a program of education at an institution for any academic year shall be determined by subtracting (i) the total amount of financial resources (as defined in subparagraph (B) of this paragraph) available to the veteran or person which may be reasonably expected to be expended by such veteran or person for educational purposes in any year from (ii) the actual cost of attendance (as defined in subparagraph (C) of this paragraph) at the institution in which such veteran or person is enrolled.

(B) The term "total amount of financial resources" of any veteran or person for any year means the total of the following:

(i) The annual adjusted effective income of the veteran or person less Federal income tax paid or payable by such veteran or person with respect to such income.

(ii) The amount of cash assets of the veteran or person.

(iii) The amount of financial assistance received by the veteran or person under the provisions of title IV of the Higher Education Act of 1965, as amended.

(iv) Educational assistance received by the veteran or person under this title other than under this subchapter.

(v) Financial assistance received by the veteran or person under any scholarship or grant program other than those specified in clauses (iii) and (iv).

(C) The term "actual cost of attendance" means, subject to such regulations as the Administrator may provide, the actual per-student charges for tuition, fees, room and board (or expenses related to reasonable commuting), books, and an allowance for such other expenses as the Administrator determines by regulation to be reasonably related to attendance at the institution at which the veteran or person is enrolled.

(3) The aggregate of the amounts any veteran or person may borrow under this subchapter may not exceed [$311] *$342* multiplied by the number of months such veteran or person is entitled to receive educational assistance under section 1661 or subchapter II of chapter 35, respectively, of this title, but not in excess of $2,500 in any one regular academic year.

(c) An eligible veteran or person shall be entitled to a loan under this subchapter if such veteran or person—

(1) is in attendance at an educational institution on at least a half-time basis and (A) is enrolled in a course leading to a standard college degree, or (B) is enrolled in a course, the completion of which requires six months or longer, leading to an identified and predetermined professional or vocational objective, except that the Administrator may waive the requirements of subclause (B) of this clause, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government;

(2) enters into an agreement with the Administrator meeting the requirements of subsection (d) of this section; and

(3) satisfies any criteria established under subsection (g) of this section.

No loan shall be made under this subchapter to an eligible veteran or person pursuing a program of correspondence, [flight, apprentice] *or apprenticeship* or other on-job [, or PREP] training.

* * * * * * *

(f)(1) * * *

(2) Payment of a loan made under this section shall be drawn in favor of the eligible veteran and mailed promptly to the educational institution in which such veteran is enrolled. Such institution shall deliver such payment to the eligible veteran as soon as practicable after receipt thereof. Upon delivery of such payment to the eligible veteran, such educational institution shall promptly submit to the Administrator a certification, on such form as the Administrator shall prescribe, of such delivery, and such delivery shall be deemed to be an advance payment under section 1780(d)[(5)] (4) of this title for purposes of section 1784(b) of this title.

* * * * * * *

(h) In the case of a loan made to a veteran under this section to pursue a program of education consisting exclusively of flight training, the Administrator shall, as hereafter provided in this subsection, cancel the repayment obligation (which for the purposes of this subsection shall include the obligation to pay interest), or reimburse for repayments already made, or both, as appropriate, if (1) such veteran has successfully completed such program and secured employment as a pilot or in a closely related occupation, and (2) such employment constitutes such veterans' primary vocational pursuit and major source of occupational income. Upon completion by such veteran of a full year of such employment during the first five years after the completion of such training $1,000 of the repayment obligation under any such loan shall be canceled; and, upon the completion by such veteran of any additional three-month period of such employment during such five-year period, such repayment obligation shall be canceled at the rate of $250 for each such three-month period. In the event that a veteran meets the requirement of this section for a repayment obligation cancellation in an amount exceeding any remaining unpaid balance of such obligation, the Administrator shall, to the extent that the amount of the cancellation to which the veteran is entitled exceeds such balance, reimburse such veteran for any amounts of such obligation that such veteran has repaid.

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.
3101. Nonassignability and exempt status of benefits.
3102. Waiver of recovery of claims by the United States.
3103. Certain bars to benefits.
3104. Prohibition against duplication of benefits.
3105. Waiver of retired pay.

3106. Renouncement of right to benefits.
3107. Apportionment of benefits.
3108. Withholding benefits of persons in territory of the enemy.
3109. Payment of certain withheld benefits.
3110. Payment of benefits for month of death.
3111. Prohibition of certain benefit payments.
3112. Annual adjustments of certain benefit rates.
3113. Indebtedness offsets.
3114. Interest and administrative costs charges on delinquent payments of certain amounts due the United States.
3115. Authority to sue to collect certain debts.

* * * * * * *

§ 3113. Indebtedness offsets

(a) Notwithstanding any other provision of this title or of any other law, where an individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, the amount of the indebtedness concerned shall, under regulations which the Administrator shall prescribe, be deducted from future payments made under laws administered by the Veterans' Administration to such individual if—

(1) such individual has been provided with reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title and with a reasonable opportunity to exercise such rights;

(2) the Administrator has made a determination with respect to any such challenge or request, unless the Administrator determines that the passage of the time required to make such determinations prior to making deductions would have the effect of jeopardizing the Administrator's ability to recover the full amount of such indebtedness through deductions from such payments; and

(3) the Administrator has made reasonable efforts to notify such individual about the proposed deduction from such payments and the provisions of subsection (c) of this section and the regulations prescribed thereunder.

(b) Notwithstanding any other provision of this title or of any other law, the authority of the Administrator to make deductions under this section or to take other administrative action authorized by law for the purpose of collecting an indebtedness described in subsection (a) of this section, or for determining the credit worthiness of the individual who owes such indebtedness, shall not be subject to any limitation with respect to the time for bringing civil actions or for commencing administrative proceedings.

(c) Upon application by the individual concerned and under such regulations, the Administrator may, in order to avoid undue hardship to such individual to the extent consistent with recovering the full amount of an indebtedness described in subsection (a) of this section, set the rate at which the amount of such indebtedness shall be deducted from future payments at a rate less than that which would otherwise be required.

§ 3114. Interest and administrative costs charged on delinquent payments of certain amounts due the United States

(a) Notwithstanding any other provision of this title or of any other law, and subject to section 3102 of this title, interest and administrative costs (as described in subsection (b) of this section) shall, under regulations which the Administrator shall prescribe, be charged on an amount owed to the United States—

(1) for an indebtedness to the United States resulting from a person's participation in a benefits program administered under this title by the Veterans' Administration, other than a loan, loan-guaranty, or loan-insurance program;

(2) for the provision of care or services under chapter 17 of this title; or

(3) to the extent permissible under the loan instruments concerned, for an indebtedness resulting from an individual's participation in a program of loans, loan-guaranties, or loan-insurance administered by the Veterans' Administration under this title,

if a reasonable period of time, as determined under such regulations, has expired following the initial notification of the amount due to the person owes such amount of the amount due and the fact that such amount has not been paid. Interest shall accrue on such amount after the expiration of such reasonable period of time, but not for any period prior to the date (A) of the enactment of this section, or (B) on which the administrator has mailed to the individual concerned, at such individual's most current available address, notice of the Administrator's intention to charge interest on the indebtedness.

(b)(1) The administrative costs to be charged under this section shall be so much of the costs incurred by the United States in collecting an indebtedness as the Administrator determines, under such regulations, to be reasonable and appropriate.

(2) The rate of interest to be charged under this section shall be based on the rate of interest paid by the United States for its borrowing and shall be determined by the Administrator, in consultation with the Secretary of the Treasury, under such regulations.

§ 3115. Authority to sue to collect certain debts

(a) Not later than 90 days after the date of the enactment of this section, the Administrator shall take appropriate steps to authorize attorneys employed by the Veterans' Administration to exercise the right of the United States to bring suit, subject to the direction and supervision of the Attorney General and upon such terms and conditions as the Attorney General may prescribe, in any court of competent jurisdiction to recover any indebtedness that is owed to the United States by an individual by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, if the Administrator has determined, under regulations which the Administrator shall prescribe, that such individual has failed to respond appropriately to reasonable administrative efforts to collect such indebtedness.

(b) Not later than 120 days after the date of the enactment of this section, the Administrator and the Attorney General shall submit to

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the appropriate committees of the Congress a joint report that describes and explains the actions taken by the Administrator and the Attorney General to implement subsection (a) of this section.

(c) Nothing in this section shall derogate from the authority of the Attorney General of the United States under sections 516 and 519 of title 28, United States Code, to direct and supervise all litigation to which the United States or any agency or officer thereof is a party.

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CHAPTER 57—RECORDS AND INVESTIGATIONS

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SUBCHAPTER I—RECORDS

§ 3301. Confidential nature of claims

(a) All files, records, reports, and other papers and documents pertaining to any claim under any of the laws administered by the Veterans' Administration and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans' Administration shall be confidential and privileged, and no disclose thereof shall be made except as provided in this section.

(b) The Administrator shall make disclosure of such files, records reports and other papers and documents as are described in subsection (a) of this section as follows:

(1) To a claimant or duly authorized agent or representative of a claimant as to matters concerning the claimant alone when, in the judgment of the Administrator, such disclosure would not be injurious to the physical or mental health of the claimant and to an independent medical expert or experts for an advisory opinion pursuant to section 4009 of this title.

(2) When required by process of a United States court to be produced in any suit or proceeding therein pending.

(3) When required by any department or other agency of the United States Government.

(4) In all proceedings in the nature of an inquest into the mental competency of a claimant.

(5) In *or in preparation for* any suit or other judicial proceeding when in the judgment of the Administrator such disclosure is deemed necessary and proper.

(c) The amount of pension, compensation, or dependency and indemnity compensation of any beneficiary shall be made known to any person who applies for such information, and the Administrator, with the approval of the President, upon determination that the public interest warrants or requires, may, at any time and in any manner, publish any or all information of record pertaining to any claim.

(d) The Administrator as a matter of discretion may authorize an inspection of Veterans' Administration records by duly authorized representatives of recognized organizations.

(e) Except as otherwise specifically provided in this section with respect to certain information, the Administrator may release information, statistics, or reports to individuals or organizations when in

the Administrator's judgment such release would serve a useful purpose.

(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the names or addresses, or both, of any present or former members of the Armed Forces and/or their dependents, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, or (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law. Any organization or member thereof or other person who, knowing that the use of any name of address released by the Administrator pursuant to the preceding sentence is limited to the purpose specified in such sentence, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

(g)(1) Subject to the provisions of this paragraph, the Administrator may, pursuant to regulations which the Administrator shall prescribe, release the name and address of an individual to a consumer reporting agency when necessary for the purpose of—

(A) locating such individual when (i) such individual is administratively determined to be indebted to the United States by virtue of such individual's participation in a benefits program administered by the Veterans' Administration under this title, or (ii) the Administrator determines under such regulations that (I) it is necessary to locate such individual in order to conduct a study pursuant to section 219 of this title or a study required by any other provision of law, (II) such individual's inclusion in such study and the cost of such inclusion, in light of any other alternatives reasonably available to develop information necessary for such study and the costs of such alternatives and any possible consequences for such individual resulting from such release, clearly warrant such release, and (III) the release of such information and the fact that the Administrator has inquired as to such individual's present address (in order that any such study may be conducted) will not create a substantial risk of being construed as indicating that such individual is indebted to the United States or of otherwise having an adverse effect on such individual's credit worthiness, credit standing, or credit capacity; or

(B) obtaining a consumer report in order to assess the ability of an individual so indebted to the United States to repay the indebtedness when the Administrator determines under such regulations that such individual has failed to respond appropriately to administrative efforts to collect such an indebtedness;

and may so release to such agency for either such purpose such other information as the Administrator determines under such regulations is reasonably necessary to identify such individual, but not including any information indicating expressly or implicitly any indebtedness

to the United States or any other information reflecting adversely on such individual. Prior to making any such release, the Administrator shall, to the maximum extent practicable and under such regulations, determine that such agency (including any consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which such information is to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) maintains and reports information of the character involved in such release in such a manner as not to indicate in its file on such individual or in any consumer report issued or other disclosure made by it that an inquiry by the Veterans' Administration pursuant to this paragraph indicates the existence of an indebtedness to the United States or otherwise reflects adversely on such individual. A consumer reporting agency to which the Administrator releases information under this paragraph may not, on the basis of such information, indicate by any such recording or notation in such file or in any consumer report issued or disclosure made by such agency the existence of such indebtedness or any other information reflecting adversely on such individual's credit worthiness, credit standing, or credit capacity. Any willful failure of such consumer reporting agency or of any employee of such agency to comply with the requirements set forth in the preceding sentence shall be punishable in the same manner prescribed for the violation described in the last sentence of subsection (f) of this section.

(2)(A) When the Administrator determines under such regulations that an individual has failed to respond appropriately to reasonable administrative efforts to collect an indebtedness described in paragraph (1)(A)(i) of this subsection, the Administrator may release information relating to such indebtedness and the identity and address of such individual to one or more consumer reporting agencies for the purposes of making such information available for inclusion in consumer reports regarding such individual and, if necessary, of locating such individual if—

(i) the individual has been provided reasonable notice of such individual's right to dispute through prescribed administrative processes the existence or amount of such indebtedness and the right to request a waiver of such indebtedness pursuant to section 3102 of this title, has been provided with a reasonable opportunity to exercise such rights, and the Administrator has made a determination with respect to any such challenge or request; and

(ii) sixty calendar days have elapsed following the mailing to such individual at such individual's most currently available address of notice of the Administrator's intent to release such information for such purposes, notice of the name and address of each consumer reporting agency to which such release will be made by the Administrator, and the specific information intended to be released.

(B) Following the release of information under subparagraph (A) of this paragraph—

(i) the Administrator shall notify each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administra-

tor has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which such information has been released by the Administrator of any substantial change in the status or amount of such indebtedness by the end of the calendar month following the calendar month during which such change occurs and shall, upon the request of any such consumer reporting agency for verification of any or all of the information so released, promtly provide verification or correction, as appropriate, of such information; and

(ii) if the Administrator determines that the individual concerned had not, prior to such release of information, received a communication from the Veterans' Administration providing such individual with actual notice of the indebtedness and the rights and the opportunity described in subparagraph (A)(i) of this paragraph, any information in the possession of a consumer reporting agency indicating that such indebtedness is delinquent or past due shall, notwithstanding any other provision of law, be deemed to be inaccurate for purposes of section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i), and the Administrator shall immediately advise such individual and each consumer reporting agency (including each consumer reporting agency described in paragraph (4)(B)(i) of this subsection to which the Administrator has caused such information to be transmitted by a consumer reporting agency described in paragraph (4)(B)(ii)(I) of this subsection) to which the Administrator has released information relating to such indebtedness that any such indication is inaccurate for purposes of such section and advise such individual of the provisions of such section.

(3) No contract entered into for any of the purposes of this subsection and no action taken pursuant to any such contract or this subsection shall result in the application of section 552a of title 5 to any consumer reporting agency or employee thereof.

(4) For the purposes of this subsection—

(A) The terms "consumer report" and "file" shall have the meaning provided in subsections (d) and (g) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (d) and (g)), respectively.

(B) The term "consumer reporting agency" (i) shall have the meaning provided in subsection (f) of section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a (f)), and (ii) shall also mean any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of (I) obtaining credit information or other information on consumers from consumer reporting agencies (as defined in subsection (f) of section 603 of such Act) for the purpose of furnishing such information to third parties, or (II) serving as a marketing agent under arrangements enabling third parties to obtain such information from such agencies.

[(g) Any] (h) Except as provided in subsection (g)(3) of this section, any disclosure made pursuant to this section shall be made in accordance with the provisions of section 552a of title 5.

* * * * * * *

Appendix: Department of Justice, Veterans Administration Memorandum of Understanding

1. This memorandum sets forth procedures for the conduct of a one-year test program designed to collect educational assistance overpayments in cases where the amounts owed to the United States are less than $600. The Veterans Administration has informed the Department of Justice that it intends to conduct the program at the following Veterans Administration Regional Offices: Boston, Chicago, New York, Newark, Atlanta, Detroit, Houston, Denver, San Francisco, Los Angeles. The area of jurisdiction for each Regional Office is attached. Upon agreement of the parties to this Memorandum of Understanding, additional Regional Offices may be added.

2. Except as indicated below, Veterans Administration personal will have primary responsibility to pursue collection efforts. This authority will include the authority to file suit and conduct litigation in federal district courts or state courts and to compromise or close claims or pending litigation.

3. The Federal Claims Collection Standards, 4 C.T.R., Chapter II. will remain generally applicable to the processing of cases in the test program. A determination to file suit will be made only after exhausting the procedures, set forth in the Standards, designed to effect administrative collection. Prior to filing suit, a final demand letter will be sent. Such letters will be sent only in those cases where the Veterans Administration is prepared to file suit promptly.

4. The Veterans Administration and the Department of Justice recognize the need for full cooperation between the Veterans Administration and the Department of Justice. Such cooperation will, *inter alia*, permit the Veterans Administration to draw upon the expertise of the United States Attorneys regarding local rules and practices. The Veterans Administration will obtain the concurrence of the United States Attorneys in those districts in which the test program is to be conducted. If concurrence is withheld by a United States Attorney, the Veterans Administration will notify the Civil Division of the Department of Justice, which will attempt to obtain such concurrence. As part of the consultation and cooperation between the Veterans Administration and the Department of Justice, the Veterans Administration will seek the advice of the United States Attorneys on such questions as whether to file suits in state or federal courts. To avoid the imposition of undue burdens on court dockets, the United States Attorney has the authority to place restrictions on the time of the filing of the actions.

5. In any case in which substantial legal issues are raised (such as the construction or constitutionality of federal statutes or issues which might affect enforcement policies of government-wide significance), the Veterans Administration will promptly notify the Civil Division. In such cases, the Department of Justice will have the right to assume primary litigative responsibility.

6. The Veterans Administration will furnish to the Civil Division and the local United States Attorneys, at least quarterly, reports containing, by judicial districts, at least the following information: the number of claims in which final demand letters have been sent; number of claims in which repayment or repayment plans have been achieved; number of suits filed and the results of such suits.

7. The Veterans Administration will furnish to the local United States Attorneys copies of all pleadings, motions, legal memoranda, orders, and opinions. The Veterans Administration will furnish to the Civil Division a sufficient sampling of such documents from each district as will keep the Civil Division generally apprised of the nature of the documents which are being filed.

8. Nothing in this memorandum shall affect the authority of the Solicitor General to authorize or to decline to authorize appeals or petitions by the government to any appellate courts. A copy of any order or judgment adverse to the government shall be sent promptly to the Civil Division. The Civil Division shall be promptly notified of any case in which an order or judgment favorable to the government has been appealed by the defendant. The conduct of appeals remains under the control of the Department of Justice.

9. The commitment of personnel by the Veterans Administration to this test program shall not affect the obligation of the Veterans Administration to provide the necessary agency support to United States Attorneys in cases not covered by the test program. In the conduct of this test program, regardless of where the primary litigative responsibility is reposed, the Veterans Administration and Department of Justice will cooperate fully and, as required by 28 U.S.C. § 519, the Attorney General will retain final authority to determine the government's litigation position.

GUY H. MCMICHAEL III,
General Counsel, Veterans Administration.

ALICE DANIEL,
Acting Assistant Attorney General,
Civil Division, Deparment of Justice.

SELECT COMMITTEE ON SMALL BUSINESS

SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C., June 25, 1980.

Hon. ERNEST HOLLINGS,
Chairman,
Hon. HENRY BELLMON,
Banking minority member, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR SENATORS HOLLINGS AND BELLMON: On June 12, 1980, the Congress completed action on H. Con. Res. 307, setting forth the Congressional Budget for fiscal year 1981, 1982, and 1983. Included in that resolution was a series of "reconciliation" instructions to various House and Senate committees. The Senate Small Business Committee was included among the committees receiving an instruction.

BUDGET RESOLUTION RECONCILIATION INSTRUCTION

Section 3 of that resolution provides:

"Pursuant to section 301(b)(2) of the Budget Act:

"(a)(19) The Senate Committee on Small Business shall recommend changes in laws within its jurisdiction to reduce spending for fiscal year 1981 by $800,000,000 in budget authority and $600,000,000 in outlays;" . . .

"(b)(2) not later than June 25, 1980, each committee specified in subsection (a) (10)–(15) and (17)–(20) shall submit its recommendations to the Senate Committee on the Budget; and

"(c) pursuant to subsection 310(c) of the Budget Act, the Committee on the Budget, after receiving recommendations submitted under subsections (a) and (b) of this section, shall report to their respective Houses a reconciliation bill or resolution or both carrying out all such recommendations without any substantive revisions. The provisions of subsection 310(e) of the Budget Act shall apply to consideration in the Senate of any reconciliation bill or resolution."

Pursuant to your request, and by direction of our committee, this letter will serve as the Select Committee on Small Business's recommendations to achieve the required budget savings.

BUDGET COMMITTEE ASSUMPTIONS

The Senate Budget Committee has assumed from the outset that the savings to be achieved by the Senate Small Business Committee should be achieved by eliminating the duplicative jurisdiction of the Small Business Administration and the Farmers Home Administration with respect to disaster actual loss emergency loan assistance for agricultural enterprises.

S. 2698

On June 17, 1980, the Senate adopted the conference report on S. 2698, the Small Business Development Act of 1980. The House of Representatives approved the conference report on June 19. Yesterday the enrolled bill was sent to the President for his signature. The Office of Management and Budget supports the passage of S. 2698, and we anticipate the bill will be enacted into law. Section 119 of that conference report amends section 18 of the Small Business Act, relating to duplication of benefits, to clarify that an agricultural enterprise would not be eligible for SBA physical disaster loan assistance unless that enterprise was first declined for, or would be declined for, emergency loan assistance from the Farmers Home Administration at substantially similar interest rates. A copy of that section of the conference report is enclosed for your information.

According to the statement of managers accompanying the conference report:

"The primary reason for this amendment is the accommodation of the Administration's policy of attempting to maximize the number of agricultural producers whose financial needs resulting from a physical or natural disaster are served by FmHA's emergency loan program rather than by SBA's disaster loan program. The conferees concur in this intent provided that an agricultural producer receives emergency loan assistance at substantially similar interest rates from FmHA or a non-agricultural business received from SBA . . ."

In addition, through the cooperation of the Senate and House Agriculture Committees, the conference report on the bill amends the Consolidated Farm and Rural Development Act to make emergency loans by the Farmers Home Administration available for the first time to farmers who can obtain credit elsewhere. This provision was necessary to insure that, to the maximum extent possible, agricultural small businesses would be served by the Farmers Home Administration and non-agricultural small businesses would be served by the Small Business Administration on comparable terms.

The statement of managers on the conference report states:

"The underlying issue is not one of equality and lack of discrimination and the conferees again state the basic premise that unless agricultural enterprise receives emergency loan assistance at substantially similar interest rates from FmHA as other business disaster victims receive from SBA, they may seek assistance from SBA."

The full text of the relevant portion of the statement of managers is enclosed for your information.

RELATION OF S. 2698 TO BUDGET INSTRUCTIONS

According to the estimates of the Congressional Budget Office, the enactment of section 119 of the conference report on S. 2698 would meet the entire budget authority and outlay savings mandated under the instruction to the Senate Small Business Committee contained in H. Con. Res. 307.

COMPLIANCE WITH THE BUDGET INSTRUCTION

It is our understanding that in your opinion the adoption of the conference report on S. 2698 qualifies as meeting the instruction to the Small Business Committee as contained in H. Con. Res. 307 and no further action by this Committee is required.

We appreciate your consideration of, and cooperation in, these matters. If we may be of any further assistance, please do not hesitate to contact us.

Sincerely,

LOWELL P. WEICKER,
Ranking Minority Member.
GAYLORD NELSON,
Chairman.

Enclosure.

SMALL BUSINESS DEVELOPMENT ACT OF 1980—CONFERENCE REPORT

[TO ACCOMPANY S. 2698]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2698) to provide authorizations for the Small Business Administration, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

TITLE I—AUTHORIZATIONS AND MISCELLANEOUS AMENDMENTS

PART A—PROGRAM LEVELS AND AUTHORIZATIONS

SEC. 101. Section 20 of the Small Business Act is amended by adding at the end thereof the following new subsections:

"(h) The following program levels are authorized for fiscal year 1981:

"(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $300,000,000 in direct and immediate participation loans, and $4,000,000,000 in deferred participation loans.

"(2) For the programs authorized by section 7(h) of this Act, the Administration is authorized to make $25,000,000 in direct and immediate participation loans and $12,000,000 in guaranteed loans."

DISASTER LOAN INTEREST RATES

SEC. 119. (a) Section 7(c) of the Small Business Act is amended by striking the period at the end and inserting in lieu thereof "; and" and by adding the following new paragraph:

"(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able

to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed $500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.";

(b) Section 7(c) of the Small Business Act is further amended by striking "October 1, 1982" and inserting in lieu thereof "October 1, 1983";

(c) Section 18 of the Small Business Act is amended by—

(1) striking the comma after the phrase "agricultural related industries" and inserting the following: ": *Provided*, That prior to October 1, 1983, an agricultural enterprise shall not be eligible for loan assistance under paragraph (1) of section 7(b) to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act," and

(2) striking subsection (b) and inserting in lieu thereof the following:

"(b) As used in this Act—

"(1) 'agricultural enterprises' means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

"(2) 'credit elsewhere' means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.";

(d) The amendments made by this section to sections 7(c)(3)(C) and 18 of the Small Business Act shall not apply to any disaster which commenced on or before the effective date of this Act.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment

of the House to the bill (S. 2698) to provide authorizations for the Small Business Administration, and for other purposes, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principle differences among the Senate bill, House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, confronting changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

LEGISLATIVE HISTORY

The conferees want to note the legislative history of this bill.

On May 8, 1979, the Senate Select Committee on Small Business ordered favorably reported S. 918, a bill to establish authorizations for the Small Business Administration, and for other purposes (See Senate Report 96–125).

The Senate considered and approved this legislation on May 16, 1979. The House of Representatives, having considered similar versions of this legislation (H.R. 90; H.R. 4011) agreed to the Senate bill, with an amendment in the nature of a substitute. Two conference committee meetings were held in June, 1979. However, because of substantial differences between House and Senate conferees on provisions in both bills relating exclusively to disaster reforms, conferees were unable to reach agreement on a conference report until December 13, 1979 (See House Report 96–507).

The House agreed to the conference report on December 19, 1979. The Senate did not consider the conference report until mid-January 1980.

Objections were raised in the Senate on January 24, 1980 about the accounting treatment for interest payments to the Treasury for the Small Business Administration's disaster loan revolving fund as contained in the conference report, and the Senate rejected the conference report on a roll call vote of 32–48. The conference report not being agreed to, an amendment to the House amendment to the Senate bill, containing the exact text of the conference report minus the single interest payment to Treasury provision, was adopted by a roll-call vote of 80–0. This action returned the measure to the House.

On February 6, 1980, by a vote of 348–17, the House agreed to the Senate amendment with a further amendment relating to the funding mechanisms for the two Small Business Administration revolving funds, returning the bill to the Senate. That legislation (S. 918) has been pending in the Senate since that date.

Recognizing that reaching concurrence on S. 918 could have taken additional time, and in light of the May 15 deadline for reporting new spending legislation to the Senate as provided for by the Congressional Budget Act, the Senate Select Committee on Small Business reported an original bill (S. 2698) to the Senate on May 14, 1980. That

bill removed all of the disaster-related provisions contained in the conference report on S. 918, and in the February 6 House-passed amendment.

The Senate considered, and passed, this legislation, with amendments including an amendment relating to disasters, on May 28, 1980.

With action delayed on S. 918, and in light of the reporting deadline imposed by the Congressional Budget Act, the House Committee on Small Business reported a series of bills containing, in their sum, many of the exact provisions as were contained in the conference report on S. 918.

On June 3, 1980, the House of Representatives considered, and adopted, one of those bills (H.R. 7297). After agreeing to that bill, the House substituted the text of H.R. 7297 for the Senate-passed legislation.

With the exception of certain disaster provisions relating to the funding mechanisms for the Small Business Administration's revolving funds, all provisions in this legislation have been considered by both Houses on several occasions.

On May 1, 1979, the Senate adopted S. 388, the "Small Business Employee Ownership Act of 1979."

Title V of this bill is the result of negotiations between Chairman Henry Nowak of the House Subcommittee on Access to Equity Capital and Business Opportunities, and Senator Donald Stewart of the Senate Select Committee on Small Business. This version takes into account changes which were suggested by expert witnesses and administration witnesses who testsified before the House Subcommittee at hearings on May 8 and 15, 1979. The Nowak Subcommittee drafted similar legislation and reached consensus with Congressman William Stanton and Senator Stewart on the language contained in the Senate-passed bill, and the conference substitute.

FARMER ELIGIBILITY AT SBA

Under existing law, farmers are statutorily eligible for assistance from SBA for all forms of physical disaster assistance, including crop loss. In addition, under certain circumstances, farmers are also eligible for assistance from the Farmers Home Administration. However, there is no requirement that farmers first seek assistance from Farmers Home before going to SBA.

The Senate bill amends section 18 of the Small Business Act, relating to duplication of benefits, to clarify that an agricultural enterprise would not be eligible for SBA physical disaster loan assistance to repair or replace property other than a residence unless that enterprise was first declined for, or would be declined for, emergency loan assistance from the Farmers Home Administration at substantially similar interest rates.

The Small Business Act is also amended to clarify the definition of "agricultural enterprises" and "credit elsewhere".

The House amendment contains no comparable provisions.

The conference substitute includes the Senate provision.

The primary reason for this amendment is the accommodation of the Administration's policy of attempting to maximize the number of agri-

cultural producers whose financial needs resulting from a physical or natural disaster are served by FmHA's emergency loan program rather than by SBA's disaster loan program. The conferees concur in this intent provided that an agricultural producer receives emergency loan assistance at substantially similar interest rates from FmHA or a non-agricultural business received from SBA.

There has been some discussion of administratively imposing a minimum loss test at SBA for agricultural producers. In the case of a disaster caused by drought, there is a variation from normal yields which would represent the amount by which yields presumably would be reduced in approximately one-half of the crop years. The conferees understand the Administration is attempting to determine a fair formula to take this natural occurrence into consideration in figuring net losses in those drought disaster cases. However, in disasters not related to drought involving crops, there is no normal reduction or increase from such nondrought causes; and since there is no arbitrary deduction from net loss in calculating the amount of loan eligibility for nonfarm businesses, homeowners and other eligible applicants, SBA should not arbitrarily reduce the amount of loan eligibility for non-drought disasters for agricultural producers.

The underlying issue is one of equality and lack of discrimination and the conferees again state the basic premise that unless agricultural enterprises receive emergency loan assistance at substantially similar interest rates from FmHA as other business disaster victims receive from SBA, they may seek assistance from SBA.

SAVINGS CLAUSE

The Senate bill provides that nothing in the amendments made by this legislation to section 7(c)(3)(C) (relating to the imposition of increased interest rates for business borrowers eligible to obtain credit elsewhere or the $500,000 cap) or section 18 (relating to the requirement that most agricultural enterprises must first seek assistance from FmHA) of the Small Business Act shall apply to any disaster which commenced on or before the effective date of this legislation.

The House amendment contains no comparable provision.

The conference substitute includes the Senate provision.

The conference substitute states that the amendments made by this section to section 7(c)(3)(C) (relating to the imposition of increased interest rates for business borrowers eligible to obtain credit elsewhere or the $500,000 cap) and section 18 (relating to the requirement that most agricultural enterprises must first seek assistance from FmHA) do not, and shall not, apply to any disaster which commenced on or before the effective date of this Act. The word "commenced" has been used because of the inconsistent position the agency has taken in the past with the term "occurred" in determining whether particular localities are eligible for new benefits.

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